

**REPORT OF THE JUDICIAL COUNCIL FAMILY LAW ADVISORY COMMITTEE
ON TERMINATION OF PARENTAL RIGHTS WHEN A CHILD
IS CONCEIVED BY SEXUAL ASSAULT**

January 23, 2020

The Judicial Council approved the Family Law Advisory Committee's request to study the parental rights of the sexual assault perpetrator when a child is conceived due to the sexual assault. The Committee has conducted a thorough study of the topic and recommends amendments to existing statutes as well as the creation of a new independent cause of action enabling the victim parent to petition to terminate the parental rights of the other biological parent ("other parent") regardless of whether that parent was ever convicted of the sexual assault during which the child was conceived.

COMMITTEE MEMBERSHIP

The members of the Judicial Council Family Law Advisory Committee are:

Hon. Mike Keeley, Chair, District Court Judge; Great Bend

Sara S. Beezley, Practicing Attorney; Girard.

Prof. Gillian Chadwick, Clinical Professor at Washburn University School of Law; Topeka.

Elizabeth Cohn, Program Attorney for Child Support Services, Department for Children and Families; Topeka.

Hon. Robert J. Frederick, District Court Judge, Garden City.

Joyce Grover, Executive Director for the Kansas Coalition Against Sexual and Domestic Violence; Topeka.

Charles F. Harris, Retired Attorney; Wichita.

Ronald W. Nelson, Practicing Attorney; Shawnee Mission.

Bethany Roberts, Practicing Attorney; Lawrence.

Ardith R. Smith-Woertz, Practicing Attorney; Topeka.

Prof. Suzanne Valdez, Clinical Professor at the University of Kansas School of Law; Lawrence.

BACKGROUND

Each year in the United States, an average of 321,000 individuals will be sexually assaulted or raped. It is estimated that between 25,000 and 32,000 rape-related pregnancies occur in the

United States each year.¹ “Of these women, an estimated twenty-six percent to fifty percent will choose to terminate their pregnancies; thirty-six percent of women who choose to carry to term will place the baby up for adoption. Based on these statistics, approximately 8,000 to 16,000 women become pregnant through rape each year in the United States and choose to raise the rape-conceived child.”²

Generally, when an individual becomes pregnant as a result of rape, absent statutes to the contrary, the victim parent and the other parent have the same parental rights. This means that if the victim parent chooses to raise the child, regardless of whether the other parent is ever convicted of the sexual assault or not, the victim parent and other parent could be forced to co-parent. In the case of an adoption, the victim parent could be forced to provide notice of the adoption to the other parent and risks that the other parent might challenge that adoption proceeding.

As of 2018,

“[f]orty-four states and the District of Columbia have enacted statutes that address the issue of rapist parents pursuing custody or visitation. States with these statutes generally restrict the parental rights of a rapist parent in one of two ways: either through terminating the rapist parent's parental rights or by enacting a prohibition on custody and visitation.

“Twenty-five states and the District of Columbia use termination of parental rights (TPR) proceedings to limit the parental rights of rapist parents. . . . Five of the twenty-five state TPR statutes regarding sexual assault and parental rights only provide grounds (based on commission of a sexual assault that results in conception) for TPR in cases of adoption. Three additional states make a finding of rape or rape conviction a mere factor in TPR proceedings, rather than grounds for mandatory TPR. In these three states, the decision to terminate is left to judicial discretion.

“Eighteen states have instituted a general prohibition on custody or visitation to the rapist parent. Fourteen states only have a general prohibition and four states provide both grounds for TPR and prohibit custody and visitation to rapist parents. Three additional states follow alternative strategies (revoking paternity or going through child abuse proceedings). Two states provide means for paternity to be revoked.”³

¹ Anastasia Doherty, *Choosing to Raise a Child Conceived Through Rape: The Double-Injustice of uneven State Protection*, 39 *Women’s Rts. L. Rep.* 220 (2018).

² *Id.*

³ *Id.* at 226-227 (internal citations removed). This article uses the term “rapist parent” referring to the alleged perpetrator of the sexual assault rather than “other parent” as used in this report.

DISCUSSION AND RECOMMENDATIONS

The Committee unanimously agreed that it is important for Kansas' statutes to offer a variety of ways to protect the victim parent and other parent from being required to co-parent. In the state of Kansas, adoption and child in need of care statutes already recognize the birth of a child due to rape as a factor in terminating parental rights; however, the committee has identified outstanding concerns. The following outlines the Committee's recommendations to amend the child in need of care and the family law statutes, as well as enact a protective independent action statute.

Adoption Cases

Within an adoption case, "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: . . . (F) the birth of the child was the result of rape of the mother[.]"⁴

The Committee agreed that this statute adequately protects the victim parent because it does not require the other parent to have been convicted of rape before the court can use the sexual assault that resulted in the conception of the child as grounds to terminate the other parents' rights.

Child in Need of Care Cases

In a child in need of care (CINC) case, K.S.A. 2018 Supp. 38-2269(e) allows the court to find a parent unfit if the parent "is convicted of a felony in which sexual intercourse occurred, or if a juvenile is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is conceived[.]" Additionally, under K.S.A. 2018 Supp. 38-2271(a), a parent may be presumed to be unfit if the "parent has been convicted of rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child[.]" Both these statutes apply only in the context of a child in need of care case under the Kansas Code for Care of Children. Therefore, before these statutes apply, the court must first have found that the child is a "child in need of care." Most CINC cases are brought by the state, though a CINC petition can also be filed by a private individual.

The Committee unanimously agreed that requiring the victim parent to allege that their child is a child in need of care, even though the child has the victim parent who is willing and able to take care of the child, is problematic.

It is also problematic that both K.S.A. 2019 Supp. 38-2269 and 38-2271 requires a parent be convicted of either rape or a felony in which sexual intercourse occurred. Out of every 1,000

⁴ K.S.A. 2018 Supp. 59-2136(h)(1).

sexual assaults, only 5 cases will lead to a felony conviction.⁵ It is also common that rape cases, are often pled down to less severe felonies, such as indecent liberties with a child.

The Committee agreed that it would be better for both K.S.A. 2019 Supp. 38-2269 and 38-2271 to allow the court to consider that the child was conceived by sexual assault regardless of whether the other parent was ever convicted for the sexual assault.

Therefore, the Committee recommends the amendments on page 8 to K.S.A. 2019 Supp. 38-2269(e) and on page 11 to K.S.A. 2019 Supp. 38-2271(a)(12).

Family Law Cases

The Committee recommends that the factors considered in determining child custody, residency, and parenting time under K.S.A. 2018 Supp. 23-3203 be amended to ensure that the court would take into consideration any “evidence of an act of sexual assault.” Sexual assault was already referenced in K.S.A. 2019 Supp. 23-3203(a)(9), but as a subsection of domestic abuse. The Committee recommends that the court consider all acts of sexual assault, not just those that take place within the context of a domestic relationship. The text of the proposed amendment is located on page 13.

Independent Action

The Committee spent many months reviewing Kansas’ current statutes to determine whether any of the existing statutory causes of action would adequately enable the victim parent to avoid co-parenting with the other parent. It concluded that none were adequate. The Committee considered using Kansas’ existing parentage and domestic case framework; however, if the victim parent chose to initiate a case to establish parentage and then request sole legal custody and no parenting time by the other parent, there is always the possibility that the judge could deny the victim parent’s motion for sole legal custody, grant joint legal custody, and award parenting time to the other parent. The risk of being required to co-parent with the other parent prevents victim parents from initiating the action. Instead, the Committee recommends that Kansas enact an independent cause of action specifically allowing the victim parent to bring a case to terminate the parental rights of the other parent.

The independent action allows the victim parent to permanently terminate the parental rights of the other parent without impacting the victim parent’s parental rights. The independent action would also be specifically crafted to provide necessary confidentiality and safety provisions, not provided in other causes of action. The text of the proposed independent action statute begins on page 15.

The recommended statute includes provisions providing for an appointed attorney for an indigent parent alleged to be a perpetrator, the appointment of a guardian ad litem for the child,

⁵ The Criminal Justice System: Statistics, Rape, Abuse & Incest Nat’l Network, <https://www.rainn.org/statistics/criminal-justice-system> (last visited Nov. 8, 2019).

the waiver of any docket fee, and the establishment of parentage according to the Kansas Parentage Act. One of the most important aspects of the proposed independent action is that termination of parental rights can occur even if the other parent was never convicted for the sexual assault. If the other parent was convicted, such conviction satisfies the victim parent's burden to prove the sexual assault occurred. As discussed above, only 5 out of every 1,000 sexual assaults lead to felony convictions.⁶ If the other parent is one of the many perpetrators who are never convicted of the sexual assault, the victim parent may still petition for the termination of the other parent's parental rights; however, the petitioner must prove the sexual assault occurred by clear and convincing evidence, which is the highest standard of evidence in a civil case.

The Committee felt strongly that the parties should be able to mutually consent to the termination of parental rights with requiring the court make findings of the elements required by subsection (r) of the attached proposed statute. If the other parent consents, it avoids putting the victim parent in the potentially re-traumatizing situation of testifying about the sexual assault. If the court suspects the parents are fraudulently claiming the child was conceived by sexual assault in order to terminate the rights of the other parent, the proposed statute gives the court the authority to appoint a guardian ad litem to protect the child's interests.

Even if parental rights were terminated by consent or by trial, the termination would not relieve the other parent of any obligation to pay child support unless waived by the victim parent and approved by the court. The Committee agreed that allowing the victim parent the opportunity to waive the child support, with court approval, would allow the victim parent to prevent any future contact with the other parent, even if only by receiving money. Requiring the other parent to pay child support despite the termination of parental rights would also help discourage parties from fraudulently using this action to terminate rights for the sole purpose of avoiding child support.

CONCLUSION

The Committee recommends Kansas provide a variety of ways for the victim parent to avoid co-parenting a child conceived by a sexual assault with the person who perpetrated the sexual assault. First, the Committee recommends that both K.S.A. 2019 Supp. 38-2269 and 38-2271 be amended to allow the court, in the context of a child in need of care case, to consider that the child was conceived by sexual assault regardless of whether the other parent was ever convicted for the sexual assault. Second, the Committee recommends that when the court, in the context of a family law case, makes a determination regarding the custody and parenting time of a child, the court consider all evidence of any act of sexual assault. Third, the Committee recommends the creations of the attached independent action allowing the victim parent to

⁶ *Id.*

permanently terminate the parental rights of the other parent without impacting the victim parent's parental rights.

38-2269. Factors to be considered in termination of parental rights; appointment of permanent custodian.

- (a) When the child has been adjudicated to be a child in need of care, the court may terminate parental rights or appoint a permanent custodian when the court finds by clear and convincing evidence that the parent is unfit by reason of conduct or condition which renders the parent unable to care properly for a child and the conduct or condition is unlikely to change in the foreseeable future.
- (b) In making a determination of unfitness the court shall consider, but is not limited to, the following, if applicable:
- (1) Emotional illness, mental illness, mental deficiency or physical disability of the parent, of such duration or nature as to render the parent unable to care for the ongoing physical, mental and emotional needs of the child;
 - (2) conduct toward a child of a physically, emotionally or sexually cruel or abusive nature;
 - (3) the use of intoxicating liquors or narcotic or dangerous drugs of such duration or nature as to render the parent unable to care for the ongoing physical, mental or emotional needs of the child;
 - (4) physical, mental or emotional abuse or neglect or sexual abuse of a child;
 - (5) conviction of a felony and imprisonment;
 - (6) unexplained injury or death of another child or stepchild of the parent or any child in the care of the parent at the time of injury or death;
 - (7) failure of reasonable efforts made by appropriate public or private agencies to rehabilitate the family;
 - (8) lack of effort on the part of the parent to adjust the parent's circumstances, conduct or conditions to meet the needs of the child; and
 - (9) whether, as a result of the actions or inactions attributable to the parent and one or more of the factors listed in subsection (c) apply, the child has been in the custody of the secretary and placed with neither parent for 15 of the most recent 22 months

beginning 60 days after the date on which a child in the secretary's custody was removed from the child's home.

(c) In addition to the foregoing, when a child is not in the physical custody of a parent, the court, shall consider, but is not limited to, the following:

- (1) Failure to assure care of the child in the parental home when able to do so;
- (2) failure to maintain regular visitation, contact or communication with the child or with the custodian of the child;
- (3) failure to carry out a reasonable plan approved by the court directed toward the integration of the child into a parental home; and
- (4) failure to pay a reasonable portion of the cost of substitute physical care and maintenance based on ability to pay.

In making the above determination, the court may disregard incidental visitations, contacts, communications or contributions.

(d) A finding of unfitness may be made as provided in this section if the court finds that the parents have abandoned the child, the custody of the child was surrendered pursuant to K.S.A. 2019 Supp. 38-2282, and amendments thereto, or the child was left under such circumstances that the identity of the parents is unknown and cannot be ascertained, despite diligent searching, and the parents have not come forward to claim the child within three months after the child is found.

~~(e) If a person is convicted of a felony in which sexual intercourse occurred, or if a juvenile is adjudicated a juvenile offender because of an act which, if committed by an adult, would be a felony in which sexual intercourse occurred, and as a result of the sexual intercourse, a child is conceived, a finding of unfitness may be made. A finding of unfitness may be made if a parent is shown by clear and convincing evidence to have committed one of the following acts, or if a juvenile is shown by clear and convincing evidence to have committed one of the following acts, which if committed by an adult, would be a felony:~~

- ~~(1) rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 21-5503, and amendments thereto, or comparable proceedings under the laws of another jurisdiction, resulting in the conception of the child;~~
- ~~(2) aggravated indecent liberties, K.S.A. 21-3504, prior to its repeal, K.S.A. 21-5506(b)(1), and amendments thereto, except when the act also meets the elements of unlawful~~

voluntary sexual relations as defined in K.S.A. 21-5507, and amendments thereto, or comparable proceedings under the laws of another jurisdiction, resulting in the conception of the child; or

(3) incest, K.S.A. 21-3602 or 21-3603, prior to its repeal, K.S.A. 21-5604, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child.

- (f) The existence of any one of the above factors standing alone may, but does not necessarily, establish grounds for termination of parental rights.
- (g) (1) If the court makes a finding of unfitness, the court shall consider whether termination of parental rights as requested in the petition or motion is in the best interests of the child. In making the determination, the court shall give primary consideration to the physical, mental and emotional health of the child. If the physical, mental or emotional needs of the child would best be served by termination of parental rights, the court shall so order. A termination of parental rights under the code shall not terminate the right of a child to inherit from or through a parent. Upon such termination all rights of the parent to such child, including, such parent's right to inherit from or through such child, shall cease.
- (2) If the court terminates parental rights, the court may authorize adoption pursuant to K.S.A. 2019 Supp. 38-2270, and amendments thereto, appointment of a permanent custodian pursuant to K.S.A. 2019 Supp. 38-2272, and amendments thereto, or continued permanency planning.
- (3) If the court does not terminate parental rights, the court may authorize appointment of a permanent custodian pursuant to K.S.A. 2019 Supp. 38-2272, and amendments thereto, or continued permanency planning.
- (h) If a parent is convicted of an offense as provided in K.S.A. 2019 Supp. 38-2271(a)(7), and amendments thereto, or is adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in K.S.A. 2019 Supp. 38-2271(a)(7), and amendments thereto, and if the victim was the other parent of a child, the court may disregard such convicted or adjudicated parent's opinions or wishes in regard to the placement of such child.
- (i) A record shall be made of the proceedings.
- (j) When adoption, proceedings to appoint a permanent custodian or continued permanency planning has been authorized, the person or agency awarded custody of the child shall

within 30 days submit a written plan for permanent placement which shall include measurable objectives and time schedules.

K.S.A. 38-2271. Presumption of unfitness, when; burden of proof.

- (a) It is presumed in the manner provided in K.S.A. 60-414, and amendments thereto, that a parent is unfit by reason of conduct or condition which renders the parent unable to fully care for a child, if the state establishes, by clear and convincing evidence, that:
- (1) A parent has previously been found to be an unfit parent in proceedings under K.S.A. 2019 Supp. 38-2266 et seq., and amendments thereto, or comparable proceedings under the laws of another jurisdiction;
 - (2) a parent has twice before been convicted of a crime specified in article 34, 35, or 36 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54, 55 or 56 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2019 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments thereto, or comparable offenses under the laws of another jurisdiction, or an attempt or attempts to commit such crimes and the victim was under the age of 18 years;
 - (3) on two or more prior occasions a child in the physical custody of the parent has been adjudicated a child in need of care as defined by K.S.A. 2019 Supp. 38-2202(d)(1), (d)(3), (d)(5) or (d)(11), and amendments thereto, or comparable proceedings under the laws of another jurisdiction;
 - (4) the parent has been convicted of causing the death of another child or stepchild of the parent;
 - (5) the child has been in an out-of-home placement, under court order for a cumulative total period of one year or longer and the parent has substantially neglected or willfully refused to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home;
 - (6) (A) the child has been in an out-of-home placement, under court order for a cumulative total period of two years or longer; (B) the parent has failed to carry out a reasonable plan, approved by the court, directed toward reintegration of the child into the parental home; and (C) there is a substantial probability that the parent will not carry out such plan in the near future;
 - (7) a parent has been convicted of capital murder, K.S.A. 21-3439, prior to its repeal, or K.S.A. 2019 Supp. 21-5401, and amendments thereto, murder in the first degree, K.S.A.

21-3401, prior to its repeal, or K.S.A. 2019 Supp. 21-5402, and amendments thereto, murder in the second degree, K.S.A. 21-3402, prior to its repeal, or K.S.A. 2019 Supp. 21-5403, and amendments thereto, voluntary manslaughter, K.S.A. 21-3403, prior to its repeal, or K.S.A. 2019 Supp. 21-5404, and amendments thereto, human trafficking or aggravated human trafficking, K.S.A. 21-3446 or 21-3447, prior to their repeal, or K.S.A. 2019 Supp. 21-5426, and amendments thereto, or commercial sexual exploitation of a child, K.S.A. 2019 Supp. 21-6422, and amendments thereto, or comparable proceedings under the laws of another jurisdiction or, has been adjudicated a juvenile offender because of an act which if committed by an adult would be an offense as provided in this subsection, and the victim of such murder was the other parent of the child;

(8) a parent abandoned or neglected the child after having knowledge of the child's birth or either parent has been granted immunity from prosecution for abandonment of the child under K.S.A. 21-3604(b), prior to its repeal, or K.S.A. 2019 Supp. 21-5605(d), and amendments thereto; or

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

(10) a 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;

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

(12) a parent has been ~~convicted of~~ shown, by clear and convincing evidence, to have committed one of the following acts, or if a juvenile is shown by clear and convincing evidence to have committed one of the following acts, which if committed by an adult, would be a felony:

(A) rape, K.S.A. 21-3502, prior to its repeal, or K.S.A. 2019 Supp. 21-5503, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child; or

(B) aggravated indecent liberties, K.S.A. 21-3504, prior to its repeal, K.S.A. 21-5506(b)(1), and amendments thereto, except when the act also meets the elements of unlawful voluntary sexual relations as defined in K.S.A. 21-5507, and amendments thereto, or comparable proceedings under the laws of another jurisdiction, resulting in the conception of the child; or

(C) incest, K.S.A. 21-3602 or 21-3603, prior to its repeal, K.S.A. 21-5604, and amendments thereto, or comparable proceedings under the laws of another jurisdiction resulting in the conception of the child;

(13) a parent has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making this determination the court may disregard incidental visitations, contacts, communications or contributions.

(b) The burden of proof is on the parent to rebut the presumption of unfitness by a preponderance of the evidence. In the absence of proof that the parent is presently fit and able to care for the child or that the parent will be fit and able to care for the child in the foreseeable future, the court shall terminate parental rights in proceedings pursuant to K.S.A. 2019 Supp. 38-2266 et seq., and amendments thereto.

23-3203. Factors considered in determination of child custody, residency and parenting time

(a) In determining the issue of legal custody, residency and parenting time of a child, the court shall consider all relevant factors, including, but not limited to:

- (1) Each parent's role and involvement with the minor child before and after separation;
- (2) the desires of the child's parents as to custody or residency;
- (3) the desires of a child of sufficient age and maturity as to the child's custody or residency;
- (4) the age of the child;
- (5) the emotional and physical needs of the child;
- (6) the interaction and interrelationship of the child with parents, siblings and any other person who may significantly affect the child's best interests;
- (7) the child's adjustment to the child's home, school and community;
- (8) the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent;
- (9) evidence of domestic abuse, including, but not limited to:
 - (A) A pattern or history of physically or emotionally abusive behavior or threat thereof used by one person to gain or maintain domination and control over an intimate partner or household member; or
 - (B) an act of domestic violence, stalking or sexual assault;
- (10) evidence of an act of sexual assault;
- (~~11~~) the ability of the parties to communicate, cooperate and manage parental duties;
- (~~12~~) the school activity schedule of the child;
- (~~13~~) the work schedule of the parties;

(~~143~~) the location of the parties' residences and places of employment;

(~~154~~) the location of the child's school;

(~~165~~) whether a parent is subject to the registration requirements of the Kansas offender registration act, [K.S.A. 22-4901 et seq.](#), and amendments thereto, or any similar act in any other state, or under military or federal law;

(~~176~~) whether a parent has been convicted of abuse of a child, [K.S.A. 21-3609](#), prior to its repeal, or [K.S.A. 21-5602](#), and amendments thereto;

(~~187~~) whether a parent is residing with an individual who is subject to registration requirements of the Kansas offender registration act, [K.S.A. 22-4901 et seq.](#), and amendments thereto, or any similar act in any other state, or under military or federal law; and

(~~198~~) whether a parent is residing with an individual who has been convicted of abuse of a child, [K.S.A. 21-3609](#), prior to its repeal, or [K.S.A. 21-5602](#), and amendments thereto.

(b) To aid in determining the issue of legal custody, residency and parenting time of a child, the court may order a parent to undergo a domestic violence offender assessment conducted by a certified batterer intervention program and may order such parent to follow all recommendations made by such program.

Independent Action

The legislature hereby declares that the purpose of this statute is to protect the victim of a sexual assault and to protect the child conceived as a result of that sexual assault, whether or not a conviction occurred, by creating a process to seek termination of the parental rights of the perpetrator of the sexual assault. The legislature further declares that this section creates civil remedies and is not created to punish the perpetrator but rather to protect the interests of the child and the victim of a sexual assault.

Be it enacted by the Legislature of the State of Kansas:

(a) *Definitions.* As used in this section, unless the context otherwise requires:

- (1) “Child” means a person allegedly conceived and born as a result of rape, aggravated indecent liberties, or incest.
- (2) “Conviction” includes a judgment of guilt entered upon a plea of guilty.
- (3) “Petitioner” means a victim of sexual assault or, if the victim is a minor, a person on their behalf, who files a petition for termination of the parent-child legal relationship of the other parent as provided in this section.
- (4) “Respondent” means a person against whom a petition for termination of the parent-child legal relationship is filed as provided in this section.
- (5) “Rape” means an act meeting the elements of K.S.A. 21-5503, and amendments thereto; or an act committed in any other jurisdiction which is substantially the same as the elements of K.S.A. 21-5503, and amendments thereto.
- (6) “Aggravated Indecent liberties” means an act meeting the elements of K.S.A. 21-5506(b)(1), and amendments thereto, or an act in any other jurisdiction which is substantially the same as the elements of K.S.A. 21-5506(b)(1), and amendments thereto, except when the act also meets the elements of unlawful voluntary sexual relations as defined in K.S.A. 21-5507, and amendments thereto.
- (7) “Incest” means an act meeting the elements of K.S.A. 21-5604, and amendments thereto; or an act in any other jurisdiction which is substantially the same as the elements of K.S.A. 21-5604, and amendments thereto.

- (b) *Initiation of proceedings under this section.* The petitioner may bring an action at any time during the child's minority to terminate the parental rights of the respondent if the child is alleged to have been conceived as a result of the act of rape, aggravated indecent liberties, or incest, whether or not a conviction occurred.
- (c) *Procedure.*
- (1) Except as otherwise provided in this act, any proceeding under this act shall be in accordance with chapter 60 of the Kansas Statutes Annotated.
 - (2) Trial of all issues in actions under this act shall be to the court.
- (d) *Venue.* The action may be brought in the county in which the child, the petitioner or the respondent resides or is found.
- (e) *Jurisdiction.* A petition under this act may be filed only in a court that has jurisdiction to make a child-custody determination with respect to the child under the uniform child custody jurisdiction and enforcement act, K.S.A. 23-37,101 et seq., and amendments thereto.
- (f) *Application of Indian Child Welfare Act.* If the child is an Indian child, the court shall ensure compliance with the Indian Child Welfare Act, 25 U.S.C. 1901 et seq.
- (g) *Verified petition and pleadings.*
- (1) All pleadings shall be captioned, "In the matter of the termination of the parental rights of _____ (name of respondent)."
 - (2) All pleadings, motions, briefs, and orders shall include the first and last name of the petitioner and respondent. In all pleadings, motions, briefs, and orders the child must be referred to by initials only or by given name and last initial.
 - (3) The verified petition filed under this section must allege facts sufficient to show the following:
 - (A) The respondent is the parent of the child;
 - (B) The respondent committed rape, aggravated indecent liberties, or incest against the petitioner;
 - (C) The child was conceived as a result of the act of rape, indecent liberties, or incest as defined under subsection (a) of this statute; and
 - (D) Termination of the parent-child legal relationship of the respondent with the child is in the best interests of the child.

- (4) The petition or in an attached affidavit shall include the information required by K.S.A. 23-37,209, and amendments thereto.
- (5) If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child and determines that the disclosure is in the interest of justice.

(h) *Summons and service of process.*

Summons, notice of hearings and other process may be served by one of the following methods:

- (1) *Personal and residence service.* Personal and residence service is completed by service in substantial compliance with the provisions of K.S.A. 60-303, and amendments thereto. Personal service upon an individual outside the state shall be made in substantial compliance with the applicable provisions of K.S.A. 60-308, and amendments thereto.
- (2) *Service by return receipt delivery.* Service by return receipt delivery is completed upon mailing or sending only in accordance with the provisions of subsection (c) of K.S.A. 60-303, and amendments thereto.
- (3) *First class mail service.* Service may be made by first class mail, addressed to the individual to be served at the usual place of residence of the person with postage prepaid, and is completed upon the person appearing before the court in response thereto. If the person fails to appear, the summons, notice or other process shall be delivered by personal service, residential service, certified mail service or publication service.
- (4) *Service upon confined parent.* If the person is confined in a state or federal penal institution, state or federal hospital or other institution, service shall be made by return receipt delivery to addressee only to both the person in charge of the institution and the confined person in care of the person in charge of the institution or that person's designee. Personal service on a confined person who

is present in the courtroom cures any defect in notice to the person in charge of the institution.

(5) *Service by publication.* If service cannot be completed after due diligence using any other method provided in this section, service may be made by publication in accordance with this subsection. Before service by publication, the petitioner, or someone on behalf of the petitioner, shall file an affidavit which shall state the affiant has made an attempt, but unsuccessful, with due diligence to ascertain the names or residences, or both, of the persons. The notice shall be published once a week for two consecutive weeks in the newspaper authorized to publish legal notices in the county where the petition is filed. If a person cannot be served by other means and due diligence has revealed with substantial certainty that the person is residing in a particular locality, publication shall also be in a newspaper authorized to publish legal notices in that locality.

(i) *Docket fee.* No docket fee shall be required.

(j) *Confidentiality.*

(1) In order to protect the privacy of the child, the court records shall be confidential and shall not be disclosed except to:

- (A) the court having jurisdiction over the proceeding, including the presiding judge and any court personnel designated by the judge;
- (B) the parties to the proceedings and their attorneys;
- (C) the child;
- (D) the child's appointed guardian ad litem; and
- (E) any other person or entity when authorized by a court order, subject to any conditions imposed by the order.

(2) Proceedings pursuant to this section shall be closed to all persons except the parties, parties' attorneys, the guardian ad litem, and officers of the court.

- (A) Other persons may be permitted to attend with the consent of the parties or by order of the court, if the court determines that it would be in the best interests of the child or the conduct of the proceedings, subject to such limitations as the court determines to be appropriate.
- (B) The court may exclude any person if the court determines that

such person's exclusion would be in the best interests of the child or the conduct of the proceedings.

(k) *Right to Counsel.*

- (1) *Attorney for the respondent.* The respondent is entitled to be represented by an attorney in connection with all proceedings under this act. If at any stage of the proceedings the respondent desires but is financially unable to employ an attorney, the court shall appoint an attorney for the respondent. It shall not be necessary to appoint an attorney to represent a respondent who fails or refuses to attend the hearing after having been properly served with process in accordance with this act, and amendments thereto. The respondent who is not a minor, a mentally ill person or a disabled person may waive counsel either in writing or on the record.
 - (2) The court shall appoint an attorney for the respondent who is a minor, a mentally ill person or a disabled person unless the court determines that there is an attorney retained who will appear and represent the interests of the respondent in the proceedings under this code.
 - (3) As used in this subsection:
 - (A) “mentally ill person” shall have the meaning ascribed thereto in K.S.A. 59-2946, and amendments thereto; and
 - (B) “disabled person” shall have the meaning ascribed thereto in K.S.A. 77-201, and amendments thereto.
 - (4) An attorney appointed pursuant to this act shall be allowed a reasonable fee for services.
- (l) *Appointment of guardian ad litem.* If requested by a party or upon the court’s own motion, the court may appoint an attorney to serve as guardian *ad litem* for the child. The guardian *ad litem* shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child. When the child's position is not consistent with the determination of the guardian *ad litem* as to the child's best interests, the guardian *ad litem* shall inform the court of the disagreement. The guardian *ad litem* or the child may request the court to appoint a second attorney to serve as attorney for the child, and the court, on good cause shown, may appoint such second attorney. The attorney for the child shall allow the child and the guardian *ad litem* to communicate with one another but may require such communications to occur in the attorney's presence.

(m) *Costs and fees.* The court may assess costs against the parties as justice and equity require. The court may only assess attorney fees against the petitioner if the court finds that the petition under this act is frivolous.

(n) *Temporary orders.*

(1) After the filing of a petition under this section, the court may enter an order restraining the respondent from following, harassing, telephoning, contacting or otherwise communicating with the petitioner or the child during the pendency of the action. Such restraining order may be ex parte and shall be served by personal service. The respondent may request a hearing to modify the restraining order.

(2) The court shall enter orders regarding service of pleadings, motions, and other documents between the parties.

(o) *Timing.* The court shall hear a petition to terminate the parent-child legal relationship of the respondent no more than sixty days after service of the petition or from the first appearance date, whichever is later, unless both parties consent to an extension or the court finds good cause to extend the hearing.

(p) *Establishing parentage.* Parentage shall be determined pursuant to the Kansas parentage act, K.S.A. 23-2201 *et seq.*, and amendments thereto.

(q) *Termination by consent.* If the parties consent, the court may enter an order of termination pursuant to this section with a finding of the elements required by subsection (r) of this section.

(r) (1) *Termination order.* Upon the finding of parentage, the court shall terminate the parent-child legal relationship of the respondent and issue a protective order preventing respondent from having future contact with the petitioner and the child if the court finds by clear and convincing evidence, and states the reasons for its decision, that:

(A) The respondent committed an act of rape, aggravated indecent liberties, or incest against the petitioner, as evidenced by either:

(i) When a criminal conviction occurred, a showing that respondent was convicted of an act of rape, aggravated indecent liberties, or incest against the petitioner or convicted of a crime in which the underlying factual basis was rape, aggravated indecent liberties, or incest against the petitioner; or

- (ii) When a criminal conviction did not occur, clear and convincing evidence that respondent committed an act of rape, indecent liberties, or incest against the petitioner;

(B) the child was conceived as a result of the act described in subsection (r)(1) of this section; and

(C) Termination of the parent-child legal relationship is in the best interests of the child. There is a rebuttable presumption that terminating the parental rights of the parent who committed the act described in subsection (r)(1) of this section is in the best interests of the child. The court shall not presume that having only one remaining parent is contrary to the child's best interests.

(2) If parentage cannot be established and the court finds by clear and convincing evidence that the child was conceived as a result of the act described in subsection (r)(1) of this section, the court shall enter an order awarding sole legal custody to the petitioner and denying all contact between the child and the respondent.

(s) *Rights of child after termination.* A termination of parental rights under this section shall not terminate the right of a child to inherit from or through a parent.

(t) *Rights of respondent after termination.* A respondent whose parental rights are terminated in accordance with this section has:

(1) No right to allocation of parental responsibilities, including parenting time and decision-making responsibilities for the child;

(2) No right to make medical treatment decisions or any other decisions on behalf of the child;

(3) No right of inheritance from or through the child; and

(4) No right to notification of, or standing to object to, the adoption of the child.

(u) *Child support.*

(1) Termination of parental rights under this section does not relieve the respondent of any obligation to pay child support, unless waived by the petitioner and approved by the court. In cases in which child support obligations are not waived, the court, as informed by the wishes of the petitioner, shall determine if

entering an order to pay child support is in the best interests of the child. If an order of support is in the best interests of the child, the court shall determine the amount to be paid for child support by following the Kansas child support guidelines adopted by the supreme court pursuant to K.S.A. 20-165, and amendments thereto.

(2) All child support payments shall be made through the Kansas Payment Center.

(3) Modification of the child support order shall be pursuant to K.S.A. 23-3001 *et seq.*

(4) If child support is ordered or terminated, a separate journal entry or judgment form shall be made and provided to the entity enforcing the child support by the clerk of the court. The journal entry or judgment form shall be entitled:

“In the matter of _____ (obligee's name) and _____ (obligor's name)”

and shall contain no reference to this proceeding except the facts necessary to establish personal jurisdiction over the parent, the name, date of birth and social security number of each child, and findings of fact and conclusions of law directly related to the child support obligation.

(5) Registration of the child support order shall be completed pursuant to K.S.A. 38-2279, and amendments thereto.

(v) *Genetic, Medical, and Social History.* The court may order a respondent whose parent-child legal relationship has been terminated to provide the respondent's genetic, medical and social history to be shared with the child, as appropriate, and with the petitioner. The Kansas department for children and families shall adopt rules and regulations establishing procedures to determine how the information is collected, who can access it, when it can be accessed, when and how it is updated, and how it is stored. The court may order that a respondent's failure to comply with the request for information in a timely manner constitutes contempt of court.

(w) *Independent action.* Termination of the parent-child legal relationship pursuant to this section is an independent basis for termination of parental rights, and the court need not make any of the considerations or findings described in K.S.A. 38-2269 or 59-2136.