

**38-2272. Appointment of permanent custodian.** (a) A permanent custodian may be appointed:

- (1) With the consent and agreement of the parents and approval by the court;
- (2) after a finding of unfitness pursuant to K.S.A. 2014 Supp. 38-2269, and amendments thereto; or
- (3) after termination of parental rights pursuant to K.S.A. 2014 Supp. 38-2270, and amendments thereto.

(b) Upon the appointment of a permanent custodian, the secretary's custody of the child shall cease. The court's jurisdiction over the child shall continue unless the court enters an order terminating jurisdiction.

(c) Subject to subsection (d), a permanent custodian shall stand in loco parentis and shall exercise all of the rights and responsibilities of a parent except the permanent custodian shall not:

- (1) consent to an adoption of the child; and
- (2) be subject to court ordered child support or medical support.

(d) When the court retains jurisdiction after appointment of a permanent custodian, the court, in its order, may impose limitations or conditions upon the rights and responsibilities of the permanent custodian including, but not limited to, the right to:

- (1) Determine contact with the biological parent;
- (2) consent to marriage;
- (3) consent to psychosurgery, removal of a bodily organ or amputation of a limb;
- (4) consent to sterilization;
- (5) consent to behavioral and medical experiments;
- (6) consent to withholding life-prolonging medical treatment;
- (7) consent to placement in a treatment facility; or
- (8) consent to placement in a psychiatric hospital or an institution for the developmentally disabled.

(e) Absent a judicial finding of unfitness or court-ordered limitations pursuant to subsection (d), a permanent custodian may share parental responsibilities with a parent of the child as the permanent custodian determines is in the child's best interests. Sharing parental responsibilities does not relieve the permanent custodian of legal responsibility for the child.

(f) Parental consent to appointment of a permanent custodian shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the consent is acknowledged before a judge of a court of record, it shall be the duty of the court before which the consent is acknowledged to advise the consenting parent of the consequences of the consent, including the following:

(1) Do you understand that your parental rights are not being terminated and you can be ordered to pay child support and medical support for your child?

(2) Do you understand that to get the rights you still have with your child, you must keep the court up to date about how to contact you? This means that the court needs to always have your current address and telephone number.

(3) Do you understand that if your child is ever placed for adoption, the court will try to let you know by using the information you have given them? If your address and telephone number are not up to date, you might not know your child is placed for adoption.

(4) Do you understand that if you want information about your child's health or education, you will have to keep the information you give the court about where you are up to date because the information will be sent to the latest address the court has?

(5) Do you understand that you may be able to have some contact with your child, but only if the permanent custodian decides it is in the child's best interests and if the court allows the contact?

(6) Do you understand that unless the court orders differently, the permanent custodian has the right to make the following decisions about your child: The amount and type of contact you have with the child; consent to your child's marriage; consent to medical treatment; consent to mental health treatment; consent to placement in a psychiatric hospital or an institution for the developmentally disabled; consent to behavioral and medical experiments; consent to sterilization and consent to withholding life-prolonging medical treatment?

(g) (1) A consent is final when executed, unless the parent whose consent is at issue, prior to issuance of the order appointing a permanent custodian, proves by clear and convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with that parent.

(2) If a parent has consented to appointment of a permanent custodian based upon a belief that the child's other parent would so consent or would be found unfit, and this does not occur, the consent shall be null and void.

(h) If a permanent custodian is appointed after a judicial finding of parental unfitness without a termination of parental rights, the parent shall retain only the following rights and responsibilities:

- (1) The obligation to pay child support and medical support; and
- (2) the right to inherit from the child.

(3) The right to consent to adoption of the child. All other parental rights transfer to the permanent custodian.

(i) If a permanent custodian is appointed after termination of parental rights, the parent retains no right or responsibilities to the child.

(j) Prior to appointing a permanent custodian, the court shall receive and consider an assessment of any potential permanent custodian as provided in K.S.A. 59-2132, and amendments thereto. In making an order appointing a permanent custodian the court shall give preference, to the extent that the court finds it in the child's best interests, to first appointing a permanent custodian who is a relative of the child or second a person with whom the child has close emotional ties.

(k) If permanent custodians are divorced, such custodian's marriage is annulled or the court orders separate maintenance, the court in that case has jurisdiction to make custody determinations between the permanent custodians.

**History:** L. 2006, ch. 200, § 67; L. 2010, ch. 75, § 15; July 1.