

UPDATED
SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2536

As Amended by House Committee on Child
Welfare and Foster Care

Brief*

HB 2536, as amended, would establish a new legal permanency option for children 16 years of age or older who are in the custody of the Secretary for Children and Families (Secretary). The bill would also amend various statutes contained in the Revised Kansas Code for Care of Children (CINC Code) to reference this new form of permanency, which would be designated as “SOUL Family Legal Permanency” (SFLP).

Establishment of SOUL Family Legal Permanency (New Section 1)

The appointment of SOUL Family Legal Permanency (SFLP) could be made with:

- Agreement and approval of a child 16 years of age or older;
- Agreement and consent of the child’s parent unless there has been a finding of unfitness or termination of parental rights and consent is no longer required; and
- Approval of the court set forth in a court order.

The bill would allow a court to order SFLP:

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- After a finding of parental unfitness;
- After termination of parental rights; or
- When determined to be in the best interests of the child and the requirements of the appointment described above are met.

Parental Consent Requirements

When parental consent is required for the appointment of SFLP, the bill would require the consent to be in writing and acknowledged by a judge of a court of record or before an officer authorized by law to take acknowledgments. The bill would require that before any consent is acknowledged by a court of record, the court must advise the consenting parent of the consequences of the consent by asking five questions, as specified by the bill.

Parental consent would be final when executed, unless the parent contesting consent proves by clear and convincing evidence the consent was not freely and voluntarily given. The bill would specify the burden of proving consent was not freely and voluntarily given rests with the contesting parent. The bill would require the parent to contest consent prior to the issuance of the order appointing a SFLP custodian.

The bill would also specify that when a parent has consented to SFLP based upon a belief that the child's other parent would also consent or be found unfit but the other parent does not consent, the consent would be null and void.

Potential SFLP Custodian Review

Prior to making the SFLP appointment, the bill would require the Secretary to submit a report to the court containing the following determinations:

- The ability and suitability of a potential custodian to care for the child, after observing the child in the home of the custodian with whom the child will reside;
- Whether the names of any potential SFLP custodians appear on the Department for Children and Families (DCF) Child Abuse and Neglect Registry;
- Whether any potential SFLP custodians have been convicted of any crime specified in KSA 59-2132(e); and
- The consideration of the appointment of a relative or an individual with whom the child has close emotional ties, to the extent the Secretary determines the appointment to be in the best interests of the child.

Review and Approval by the Court

Prior to ordering SFLP, the bill would require the court to review and consider the Secretary's report described above and additional information provided by the Secretary related to benefits of the SFLP, including, but not limited to, financial support, medical coverage, and educational support if SFLP is established. The bill would require the court ensures the child has access to the maximum allowable benefits available under other legal permanency options.

When appointing SFLP, the bill would require the court to consider, to the extent the court finds it in the child's best interest, appointing a relative or an individual with whom the child has close emotional ties. The bill would provide if a court appoints more than one individual as SFLP custodian, the child and the individual may be unrelated.

The bill would provide that upon the establishment of SFLP, the Secretary's custody would end, and the court's

jurisdiction over the child would continue unless the court enters an order terminating jurisdiction.

Effect of SFLP on Parental Rights

If SFLP is ordered after a judicial finding of parental unfitness without a termination of parental rights, the bill would provide all parental rights transfer to the SFLP custodian, except for:

- The obligation to pay child support and medical support;
- The right to inherit from the child; and
- The right to consent to adoption of the child.

If SFLP is ordered after termination of parental rights, the bill would provide the parent retains no rights or responsibilities to the child upon termination.

Rights and Responsibilities of Custodian

Pursuant to the bill, a custodian would stand *in loco parentis* to the child and exercise all the rights and responsibilities of a parent, except that the custodian could not consent to an adoption of the child or be subject to court-ordered child support or medical support for the child. [Note: “*In loco parentis*” means acting in the place of a parent.]

The bill would also allow a custodian to share parental responsibilities with a parent of a child if the custodian believes it is in the best interests of the child, and there has not been a finding of parental unfitness or another court-ordered limitation. However, this would not relieve the custodian of legal responsibility.

The bill would allow the court, upon motion of parties, interested parties, or its own motion, to impose limitations or

conditions upon the rights and responsibilities of the custodian, if determined by the court to be in the best interests of the child.

Documentation Required to be Filed With the Court

The bill would require certain documents to be signed and filed with the court with respect to the appointment of a custodian:

- A document confirming the custodian's willingness to serve as custodian; and
- An order of the court appointing such custodian.

When Multiple Custodians Appointed

When more than one custodian has been appointed, the bill would require the court to designate one individual as primary custodian, with the approval of the child and the individual. This primary custodian would be required to consider information provided by the child and other custodians for possible resolution in any dispute that may arise between the child and the custodian, or between multiple custodians.

The bill would allow the court to order alternative dispute resolution upon motion by the child or custodian if a dispute remains unresolved prior to:

- The child reaching 18 years of age;
- June 1 of the school year in which the child reached 18 years of age, if still attending high school.

In the event the court has previously terminated jurisdiction of a child's case, the bill would direct that a court

could reinstate the jurisdiction to consider a motion for alternative dispute resolution.

Effect of Divorce

The bill would provide if custodians are married at the time of the appointment but subsequently divorce, the marriage is annulled, or the court orders separate maintenance with respect to the custodians, the court would be required to make custody determinations between the custodians.

Rights of Inheritance

The bill would require the custodians to consider, and separately sign, agreements stating whether they will provide any rights of inheritance to the child and medical power of attorney for the child.

Other Supportive Individuals

The bill would state a court could also recognize other individuals who testify to the court that they will provide support to the child, at the request and approval of the child and custodian. The bill would specify such individuals do not have legal obligations or rights related to the child.

Amendments to CINC Code

Definitions (Section 2)

The bill would define the term “Support, Opportunity, Unity, Legal Relationships Family Legal Permanency” or “SOUL Family Legal Permanency” to mean the appointment of one or more adults, approved by a child who is 16 years of age or older and the subject of a child in need of care (CINC) proceeding. The bill would add the establishment of SFLP as

one outcome of the permanency planning process in the definition of “permanency goal.”

The bill would also make a technical amendment to add the definition of “behavioral health crisis” in this section. [Note: This is a technical amendment reconciling two versions of the statute enacted during the 2023 Legislative Session and is not new language.]

Other Provisions (Sections 3-9)

The bill would add references to SFLP in sections of the CINC Code where other types of permanency are discussed, including provisions governing: jurisdiction, contents of the CINC petition, authorized dispositions in a CINC case, permanency hearings, request for termination of parental rights and appointment of custodian, and voluntary relinquishment and appointment of custodian. [Note: Only substantive amendments are described below.]

In the section governing jurisdiction, the bill would specify that when a child has been ordered a SFLP custodian, the court’s jurisdiction over the child may continue until:

- The child has reached 18 years of age; or
- June 1 of the school year in which the child reached 18 years of age, if still attending high school.

In the section governing the voluntary relinquishment and appointment of a permanent custodian, the bill would specify when a parent voluntarily relinquishes his or her rights to a SFLP custodian, a parent may consent to the custodianship pursuant to provisions outlined in New Section 1 of the bill. The bill would provide if the individual designated as the SFLP custodian consents to the appointment and is approved by the court, the custodian would have all the rights and responsibilities of a permanent custodian, subject to the

provisions of New Section 1. The bill would also require each consent to the appointment of a SFLP custodian to be in writing and signed by either parent or legal guardian of the child.

The bill would also make technical amendments throughout to ensure consistency in statutory phrasing.

Background

The bill was introduced by the House Committee on Child Welfare and Foster Care at the request of a representative of the Children's Alliance of Kansas (CAK).

House Committee on Child Welfare and Foster Care

In the House Committee hearing, **proponent** testimony was provided by two private citizens, four representatives of the SFLP Implementation Team, and representatives of CAK, Center for the Rights of Abused Children, DCF, FosterAdopt Connect, Kansas Action for Children, Kansas Appleseed Center for Law and Justice, and KVC Kansas. The proponents stated that creating this permanency option would address the specific needs of older foster youth who would benefit from establishing legal relationships with supportive adults in their lives, while still maintaining legal relationships with birth parents and siblings.

Written-only proponent testimony was provided by one private citizen and representatives of Cornerstones of Care, Kansas Citizens Review Custody to Transition Panel, and Kansas Family Advisory Network.

Written-only neutral testimony was provided by a representative of Saint Francis Ministries.

No other testimony was provided.

The House Committee adopted a technical amendment to correct a grammatical error.

Senate Committee on Public Health and Welfare

In the Senate Committee hearing, **proponent** testimony was provided by three private citizens, four representatives of the SFLP Implementation Team, and representatives of CAK, FosterAdopt Connect, and Kansas Appleseed Center for Law and Justice. The proponents stated the SFLP was designed by and for young people who have foster care experience and understand the need to build permanent long-term relationships with adults. The SFLP option establishes lifelong, strong relationships between a young person and one or more adults with the legal status of family relationships who support the young person in transitioning to adulthood while not requiring termination of legal relationships with a young person's biological family.

Written-only proponent testimony was provided by representatives of the American Civil Liberties Union-Kansas, Cornerstones of Care, DCF, Kansas Action for Children, Kansas Division of the Child Advocate, KVC Kansas, Saint Francis Ministries, and TFI Family Services.

No other testimony was provided.

When the Senate Committee took final action on the bill on March 19, 2024, a representative of DCF provided updated fiscal information that was submitted to the Division of the Budget to revise the initial fiscal note.

Fiscal Information

[*Note:* An earlier fiscal note on this bill, as introduced, was revised by DCF and is not applicable. The revised fiscal note, as outlined below, describes the changes in the cost estimates for fiscal years (FYs) 2024, 2025, and 2026 and the reasons for such changes.]

According to the revised fiscal note prepared by the Division of the Budget on the bill, as amended by the House Committee on Child Welfare and Foster Care, DCF indicates

enactment of the bill, in any version, would have a fiscal effect on expenditures of the agency. DCF states that a reduction of the length of stay for a youth in foster care would make this program cost neutral. The average cost for a youth in foster care for six months is \$25,890. In year three (full implementation) of this program if at least 32 (23.0 percent) of the anticipated 135 youth have a shortened stay in foster care by six months, the foster care savings would make this program cost neutral to the state.

DCF worked in conjunction with the Annie E. Casey Foundation and Mainspring Consulting to develop the costs of implementing this new permanency option. Mainspring began by collecting trend data provided by DCF to project the number of young people who were likely to establish SOUL families. Based on that data, detailed cost assumptions were developed related to the benefits package designed by the stakeholder group. Mainspring used the following assumptions to calculate the costs of implementing the SFLP Program:

- 25.0 percent of youth who age out and all youth ages 16 and over who currently exit to guardianship would establish SOUL families;
- Caregiver Benefits would be the same as provided in the current Adoption Support Program;
- All youth who are expected to establish SFLP would have formerly aged out of foster care making young adult subsidy, independent living start-up costs, and vehicle repair and maintenance cost budget neutral;
- 40.0 percent of youth who are expected to establish SFLP would be eligible to access state funded post-secondary educational benefits; and
- 44 young people would be estimated to create a SOUL family in FY 2024, 91 in FY 2025, and full

implementation with 135 young people choosing this option by FY 2026.

Based upon the above-listed assumptions, the estimate of the total SOUL family costs for FYs 2024, 2025, and 2026, including caregiver non-recurring expenses and one-time payments, caregiver subsidy, and post-secondary educational benefits costs, would be as follows:

- FY 2024: \$175,261;
- FY 2025: \$464,687; and
- FY 2026: \$827,841.

In the initial DCF fiscal note, DCF included the costs for two categories that in hindsight should be eliminated. The first was the inclusion of youth subsidy added to the Adoption Support Program, that should be a program policy change and any additional funding would be requested through an enhancement request as part of the state budget cycle at the appropriate time. The second category that DCF removed from the estimate are the annual medical costs. Initially the thought was that an amendment to the Medicaid State Plan would be needed for these youth to continue to be covered by the medical card. DCF now believes these youth would continue to be covered by the medical card without any change needed to the Medicaid State Plan. Originally, the total state costs were \$714,199 from the State General Fund for FY 2024, \$2.4 million from the State General Fund for FY 2025 and FY 2026.

The assumptions that were removed are:

- 75.0 percent of youth who are expected to establish SOUL family legal permanency would need to purchase insurance on the exchange for two years and that the Medicaid waiver will be in place by year three of implementation; and

- Young people adopted at age 16 and over would all receive state-funded benefits to match SOUL youth so as not to disincentivize adoption for older youth.

The Office of Judicial Information indicates enactment of the bill, in any version, would have a negligible fiscal effect on expenditures of the Judicial Branch and would not affect revenues.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Children; minors; Revised Kansas Code for the Care of Children; permanency; SOUL Family Legal Permanency; parental rights