

SOUL Family Legal Permanency Option; HB 2536

HB 2536 establishes 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 also amends various statutes contained in the Revised Kansas Code for Care of Children (CINC Code) to reference this new form of permanency, which is designated as “Support, Opportunity, Unity, Legal Relationships (SOUL) Family Legal Permanency” (SFLP).

Establishment of SOUL Family Legal Permanency

The appointment of SOUL Family Legal Permanency (SFLP) may 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 allows a court to order SFLP:

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

The bill also specifies 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 is null and void.

Potential SFLP Custodian Review

Prior to making the SFLP appointment, the bill requires 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 requires 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 requires the court to ensure the child has access to the maximum allowable benefits available under other legal permanency options.

When appointing SFLP, the bill requires 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 provides if a court appoints more than one individual as SFLP custodian, the child and the individual may be unrelated.

The bill provides that upon the establishment of SFLP, the Secretary's custody ends, and the court's jurisdiction over the child continues 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 provides 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 provides the parent retains no rights or responsibilities to the child upon termination.

Rights and Responsibilities of Custodian

Pursuant to the bill, a custodian exercises all the rights and responsibilities of a parent, except the custodian may not consent to an adoption of the child or be subject to court-ordered child support or medical support for the child.

The bill also allows 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 does not relieve the custodian of legal responsibility.

The bill allows the court, upon motion of parties or 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 requires 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 requires the court to designate one individual as primary custodian, with the approval of the child and the individual. This primary custodian is 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 allows 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 directs that a court may reinstate the jurisdiction to consider a motion for alternative dispute resolution.

Effect of Divorce

The bill provides 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 is required to make custody determinations between the custodians.

Rights of Inheritance

The bill requires 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 states a court may 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 specifies such individuals do not have legal obligations or rights related to the child.

Amendments to CINC Code

Definitions

The bill defines the term “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 adds the establishment of SFLP as one outcome of the permanency planning process in the definition of “permanency goal.”

The bill also makes 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

The bill adds 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 specifies that when a child has been ordered to have 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 specifies 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 the bill. The bill provides 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 the bill. The bill also requires each consent to the appointment of a SFLP custodian to be in writing and signed by either parent or legal guardian of the child.