



SOUL Family

SUPPORT · OPPORTUNITY · UNITY · LEGAL RELATIONSHIPS

Legal Overview

Office of Judicial Administration (OJA) Best Practices Training

Kathy Armstrong, Esq, Consultant

August 2024



SOUL Family

SUPPORT · OPPORTUNITY · UNITY · LEGAL RELATIONSHIPS

Permanency Matters Ideal Outcome: A Loving and Forever Family for Every Child

- Relationships are essential to healthy development and well being.
- Family provides young people the identity, love, support, resources and connections that allow them to thrive as adults.
- Family is fundamental. We owe it to our youth who come into the foster system to do all possible to maintain their family connections, surround them with people they can count on and ensure a deep sense of belonging.



Permanency Matters Ideal Outcome: A Loving and Forever Family for Every Child



SOUL Family

SUPPORT • OPPORTUNITY • UNITY • LEGAL RELATIONSHIPS

- Child welfare agencies have a legal obligation to ensure young people in foster care have a permanent family (Permanency) and this obligation is realized through collaboration with the courts/legal community and other stakeholders.
- A solid network of relationships with family and loving adults who provide support throughout life is vital. Such a network provides young people with love, support, education and connection that allow them to thrive.
- Yet, each year more than 20,000 young people nationwide leave the system with no permanency, back up plan or safety net. The outcomes for these young people are poor—increased risk of homelessness, poverty, involvement with the criminal justice system/incarceration, etc.



Permanency Matters Ideal Outcome: A Loving and Forever Family for Every Child

- Based upon nationwide data collected by Administration for Children and Families from state Title IV-E child welfare agencies, too many young people are “aging out” of the system with no permanency such as reintegration, adoption or permanent custodianship (includes Kansas). The data also indicates the proportion of teens aging out of care in Kansas is higher than national average.
- “Another Planned Permanent Living Arrangement (APPLA)” was originally intended to be an exception and allowed only in rare exceptions where state could make compelling case a child/youth could never return home or achieve other permanency options, but APPLA has become more routine as case plan goal, especially for older youth in care. Many young leaders and agencies and stakeholders agree APPLA is not generally the ideal case plan option for youth.



Youth-Adult Partnerships Were Established to Strengthen All Legal Permanency Options

- Young leaders nationwide addressed challenges of permanency for youth in foster care
- Focus groups of young people from multiple states discussed issues and solutions
- Partnered with Juvenile Law Center to build out structure and recommendations in consultation with an Advisory Committee
- Partnered with young leaders with experience in foster care in Kansas in shaping and advancing SOUL Family Legal Permanency as an option in Kansas



Legal Permanency Options Prior to Passage of SOUL Family Legal Permanency Legislation

(Effective July 1, 2024)

Reunification

- Return home to parent or legal guardian



Adoption

- Termination of biological parents' rights
- New legal parent(s)/family is established



Permanent Custodianship

- An individual is granted key decision-making rights and responsibilities until youth reaches adulthood
- Biological parents retain some rights



Another Planned Permanent Living Arrangement (APPLA)

- Only permissible for youth ages 16 and older
- Does not require the identification of a parent-like figure or caring adult





What do Foster Youth Want from Legal Permanency?



Youth want to **maintain relationships with biological family**, including siblings, and develop new bonds



Youth want **relationships that are long lasting** and do not end at age 18 (as permanency custodianship does)



Previous permanency arrangements often did not adequately **involve youth in decision making**



Previous permanency arrangements could sometimes force youth to **choose between permanence and getting support and services**

Goal of SOUL Family Legal Permanency

- Legal long-term relationships established with adults who stand “in loco parentis” to youth. SOUL Family may include placement with a SOUL Family permanency custodian, depending on age of youth. Youth may maintain legal relationships with bio family.
- Courts may identify “other individuals” who have no legal obligations/rights to the youth, but vow to provide specific supports to youth.
- Provide support & access to all transition-to-adulthood benefits and services (i.e. medical, financial and education).
- Support youth so they have access to assistance if certain disputes arise.



Kansas: SOUL Family Legal Permanency (HB 2536/Chapter 38-CINC Code) Effective 7/1/2024



SOUL Family

SUPPORT • OPPORTUNITY • UNITY • LEGAL RELATIONSHIPS

- The SOUL Family Legal Permanency Option is an important new legal option that was designed by and for young people 16 and older in foster care to improve permanency.
- Previous permanency options of reintegration, permanent custodianship, adoption and APPLA worked for some, but data indicates more than 50% of foster youth in Kansas still age out of the system without a permanent family.
- This new option allows young people 16 and older to choose one or more caregivers (need not be related to each other or the youth) to be legally responsible for them until they became adults -- but with the goal of maintaining their emotional ties for a lifetime.
- It also allows the young person to maintain their legal relationship with their birth families and recognize a broader network of other caring adults who will have an ongoing role in their lives.
- This important new option is strongly supported by Kansas Department of Children and Families, Licensed Child Placing Agencies, young leaders with lived expertise, multiple community-based organizations and other stakeholders who provided input regarding the new permanency option.

Kansas: DCF Requirements to Establish SOUL Family Legal Permanency (HB 2536/K.S.A. Chapter 38-CINC Code)



PRIOR to asking the court to order SOUL Family Legal Permanency, Department for Children and Families (DCF)/DCF's Case Management Providers shall:

- Observe youth in the home of the SOUL Family custodian with whom the child will reside and determine the “ability and suitability of the potential custodian to care for the child”.
- Run criminal background and abuse/neglect checks of the potential SOUL Family custodian(s). Specific requirements are set out in DCF PPS Policy & Procedure Manual (PPM).
- Consider a relative or person who has close emotional ties to the youth to serve as SOUL Family legal custodian, if it is determined to be in the youth's best interest. Consider input of the youth. Provide the recommendation to the court.
- Submit court report to the court with the required information set out above.
- The court report should include all relevant information about the benefits to which the youth will be entitled if SOUL Family is established by the court.

Kansas: Requirements to Establish SOUL Family Legal Permanency (HB 2536/K.S.A. Chapter 38-CINC Code)



Establishing SOUL Family Legal Permanency requires:

- Agreement and approval of the youth.
- Consent and approval of the parents (if their parental rights are still intact) SOUL Family legal permanency does not require a finding of parental unfitness or termination of parental rights, but court may still order Soul Family Legal Permanency if there has earlier been a finding of parental unfitness or the termination of parental rights by the court).
- Approval by the court.
- Compliance with all of the requirements above should be confirmed and set out in court orders.
- Kansas Judicial Council (KJC) forms impacted by passage of HB 2536 were revised as needed. Multiple new Judicial Council forms were created to support implementation when no existing forms sufficed. KJC forms will support the Courts and legal community with the legal process related to SOUL Family Legal Permanency.
- Multiple CINC Code (K.S.A. Chapter 38-2201 et seq.) revisions were approved related to new permanency option of SOUL Family Legal Permanency.

Kansas: Requirements to Establish SOUL Family Legal Permanency (HB 2536/K.S.A. Chapter 38-CINC Code)



- PRIOR to establishing SOUL Family Legal Permanency, the court shall review DCF/DCF Case Management Provider's report referenced in the preceding slide to ensure "maximum allowable benefits available under other permanency options" (benefits mentioned in the statute include financial support, medical coverage and educational support).
- Ensure the Consent(s) of parent(s), Affidavit of potential SOUL Family Legal Permanency Custodians and "other individuals" willing to provide certain specific supports to youth and approval of the youth are completed/submitted to the court.
- NOTE: The case plan goal will be a concurrent one (i.e. SOUL Family Legal Permanency/Permanent Custodianship), due to the fact state compliance with Adoption and Safe Families Act (ASFA) is required and SOUL Family Legal Permanency is not as yet included in federal law.
- The youth may designate more than one or more SOUL Family Legal Permanency custodians and they need not be related to each other or to the youth. The statute indicates they should be a relative of the youth OR a person with whom they have close emotional ties so long as it is determined to be in the best interest of the youth.

Kansas: Requirements to Establish SOUL Family Legal Permanency (HB 2536/K.S.A. Chapter 38-CINC Code)



- Use of the approved Kansas Judicial Council forms should be used to make certain all required findings are made and reflected in the court's orders (Many are mandated per Kansas Supreme Court Rule 174). Once SOUL Family Legal Permanency is established, DCF custody of the youth ceases and the youth's case is closed. Court jurisdiction continues until the youth becomes an adult, unless the court terminates per K.S.A. 38-2203.
- Permanency hearings will continue (only 1-2 more after appointment as SOUL Family is limited to youth 16 years and older) and will generally include only a limited review.
- All SOUL Family Legal Permanency custodians stand "in loco parentis" to make decisions on behalf of the youth, subject to specific statutory limitations. Statute requires one primary SOUL Family Legal Permanency custodian be appointed and this becomes relevant if and when any substantive disputes arise within the SOUL Family Legal Permanency which remain unresolved.
- "Other individuals", approved by the youth, may be recognized by the court as individuals willing to provide support as agreed upon by the youth and the SOUL Family Legal Permanency custodians. The "other individuals" have no legal rights or responsibilities to the youth but pledge their support.
- SOUL Family Legal Permanency custodians are required "to consider" inheritance rights of the youth and/or medical power of attorney for the child.

Kansas Judicial Council Forms Impacted by SOUL Family Legal Permanency (HB 2536)



- Kansas Judicial Council (KJC) forms impacted by passage of HB 2536 were revised as needed. Multiple new Judicial Council forms were created to support implementation when no existing forms sufficed. Forms are posted on KJC website.
- Some of the KJC CINC case forms are mandated by Kansas Supreme Court Rule 174 to be used, but it is recommended all KJC forms posted for use in CINC actions be used to ensure all findings required by state and federal law are made. Certain findings are necessary to comply with federal laws which related to child welfare system in order to maximize federal funding which is vital for supports and services for children and families who have contact or involvement with the system.
- A complete list of all Kansas Judicial Council forms impacted by passage of HB2536 (now embodied in the Kansas Child in Need of Care Code) relating to SOUL Family Legal Permanency is provided as a resource in connection with this training.

Kansas Judicial Council Forms impacted by SOUL Family Legal Permanency (HB 2536)



Summary of New Forms:

- **+190:** Affidavit of SOUL Family Legal Permanency Custodian
- **+191:** Consent to Appointment of SOUL Family Legal Permanency Custodian
- **+192:** Order Appointing SOUL Family Legal Permanency
- **+262:** Motion Regarding Dispute in SOUL Family Legal Permanency
- **+263:** Order Regarding Dispute in SOUL Family Legal Permanency
- **+264:** Order Reinstating Case – SOUL Family Legal Permanency



Identifying a Permanency Pathway that Works for Every Young Person

- SOUL Family Legal Permanency is intended to enhance and not replace the other legal permanency options as part of a healthy permanency continuum (e.g., reintegration, permanent custodianship, adoption, etc.)
- And as with all the permanency options, there is no one-size-fits-all solution to building strong supports for young people.
- With the support of caseworkers and the court, young people should be able to choose the option that best works for their circumstances and engages their networks of supportive adults.
- Young people's planning, solid casework, thorough supportive court practices and guidance from supportive adults are critical to any successful permanency outcome



Three Case Studies: Key Considerations

- As with all permanency options, there might be instances in which SOUL Family in which adoption, permanent custodianship or other permanency options might be a better permanency choice.
- Some of these considerations may include:
 - Acute medical conditions or disabilities (e.g., medically fragile young people with special care considerations)
 - Mental health conditions (e.g., need for part-time or full-time residential treatment or other specialized interventions)
 - Special educational considerations (e.g., unique educational opportunities or educational supports not covered currently under SOUL benefits)

Questions and Discussion



SOUL Family

SUPPORT · OPPORTUNITY · UNITY · LEGAL RELATIONSHIPS



For Legal Technical Assistance on SOUL Family Legal Permanency



SOUL Family

SUPPORT · OPPORTUNITY · UNITY · LEGAL RELATIONSHIPS

Kathy L. Armstrong, J.D.

Consultant

Commerce Bank Bldg.

8700 Monrovia St. #310

Lenexa, Kansas 66215

karmstronglaw@yahoo.com

