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MEMORANDUM

To: House Committee on Child Welfare and Foster Care
From: Office of Revisor of Statutes
Date: January 24, 2024
Subject: HB 2536: Establishing the SOUL family legal permanency option for children 16 years of age or older.

House Bill 2536 establishes SOUL family legal permanency as a permanency option for children in custody of the secretary. A court may order SOUL family legal permanency for a child, if the child is 16 years of age or older. The bill also amends existing statutes to integrate SOUL family legal permanency into procedures in the revised Kansas code for care of children.

Section 1 allows for the appointment of SOUL family legal permanency for a child who is 16. The appointment may be made if the child agrees and approves of the appointment, the parent consents, unless parental rights have been terminated, and the court orders the SOUL family legal permanency. The court may order such permanency for the child when the court makes a finding of unfitness, terminates parent rights or determines that it is in the best interest of the child and requirements for such appointment are met.

Before submitting a proposed SOUL family legal permanency custodian for appointment, the secretary shall observe the child in the home of the proposed SOUL family legal permanency custodian, determine whether the custodian had been convicted of certain crimes, consider appointment of a relative or individual with whom the child has close emotional ties, and submit a report of these completed items to the court. Before the court orders SOUL family legal permanency, the court shall review the report submitted by the secretary and other financial information. The court shall ensure that the child has the maximum benefits available to the child.

When the court appoints a SOUL family legal permanency custodian, the court shall consider appointing a relative or a person with whom the child has close emotional ties. Once the court appoints a SOUL family legal permanency custodian, the jurisdiction of the secretary

terminates. The appointed SOUL family legal permanency custodian shall exercise the rights and responsibilities of a parent, except that the custodian cannot consent to adoption or be subject to court-ordered child support. If SOUL family legal permanency is ordered but parental rights are not terminated, the parents shall retain rights to consent to adoption, may be subject to court-ordered child support, and retain rights of inheritance. The court may impose additional limitations on the custodian. If the custodian determines that it is in the best interests of the child, the custodian may choose to share some responsibilities with the parent of the child.

The court may appoint more than one SOUL family legal permanency custodian and designate one custodian as the primary SOUL family legal permanency custodian. The section provides for dispute resolution between the SOUL family legal permanency custodian and the child. In cases of a divorce of two married persons appointed as SOUL family legal permanency custodians after the appointment, the court shall decide custody.

Section 2 amends the definition section of the revised Kansas code for care of children. The bill adds SOUL family legal permanency in the definition of “permanency goal.” The bill defines “SOUL family legal permanency” as 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 proceeding, pursuant to the new section. The bill also reconciles K.S.A. 38-2202 and 38-2202a with the addition of behavioral health crisis from last year’s session.

Section 3 adds the new section establishing of SOUL family legal permanency to the list of Kansas statutes that are subject to the Federal Indian Child Welfare Act. The section also allows a court to continue to exercise jurisdiction over a child when SOUL family legal permanency has been ordered by the court, until the child is 18 or if the child is in high school, June 1 of the school year during which the child reached 18.

Section 4 amends the contents of a petition filed for an action under the revised Kansas code for care of children. The petition is required to include a statement that if a parent does not appear in the court, the court shall make decisions without their input, including the removal of a child, payment of child support, termination of parental rights, and the appointment of a permanent custodian or a SOUL family legal permanency custodian.

In section 5, if custody has been awarded to a person other than a parent, a permanency plan is required and provided at the dispositional hearing at which the court determines whether reintegration is viable, and if not, what is a viable alternative. The section would include SOUL family legal permanency as a viable alternative. Then, in proceedings where a reintegration is not a viable alternative as determined by the court, the court shall initiate an adoption or appointment

of a permanent custodian or a SOUL family legal permanency custodian, unless the court has documented compelling reasons why that is not in the best interests of the child. If the court does not document such reasons, the county or district attorney shall motion to appoint a permanent custodian or a SOUL family legal permanency custodian. But, no hearing is required when parents voluntarily relinquish parental rights or consent to the alternative.

In section 6, when a child is in an out-of-home placement, the permanency plan should include a plan for reintegration or, if reintegration is not a viable alternative, a statement for that basis and a plan for permanency that includes adoption, a permanent custodian, SOUL family legal permanency or another permanent living arrangement when adoption, a permanent custodian or SOUL family legal permanency is not in the child's best interests.

In section 7, the court shall hold hearings to consider progress towards the accomplishment of a permanency plan. At such hearings, the court shall determine whether the child will be reintegrated with the child's parents, placed for adoption, or with a permanent custodian or a SOUL family legal permanency custodian. Permanency hearings shall continue until an adoption or the appointment of a permanent custodian or a SOUL family legal permanency custodian. If the court does not determine that reasonable efforts are being made towards adoption or a permanent custodian or a SOUL family legal permanency custodian, the court may rescind previous orders and make other orders the court finds appropriate.

Section 8 allows an interested party to file a motion for the court to determine unfitness of a parent or to terminate parental rights and ask that a permanent custodian or a SOUL family legal custodian be appointed. In section 9, before a hearing to terminate parental rights, if a permanency plan includes an adoption or the appointment of a permanent custodian or SOUL family legal permanency custodian, a parent may consent to the permanency plan's identified adoption or appointment. Upon an appointment by the court, the individual appointed may consent to the appointment and will have all the rights and responsibilities of a permanent custodian. The child's parents shall execute their consent to such appointment in writing.