

**Questions and Answers Related to Session II of the OJA Best Practices Training**  
**August 20, 2024**  
**SOUL Family Legal Permanency**

**NOTE:** Responses are being provided with the caveat that SOUL Family Legal Permanency is a completely new permanency option in Kansas as of July 1, 2024 for older youth in foster care. There are some unknowns subject to possible to varying interpretations of statutes as this new option is being implemented. The responses are not intended to be finally definitive or based upon a rigid interpretation of statute. K.S.A. 38-2201 requires the CINC Code is to be “liberally construed” to carry out the policies of the state as further set out in said statute. The below is a good faith effort by legal counsel involved with this initiative since it was initially conceived to provide responses to questions submitted at the August 20, 2024 OJA Best Practices Training. There will likely be additional learning as the state moves forward with SOUL Family Legal Permanency implementation.

**QUESTIONS and RESPONSES:**

**1. Very excited to hear about this one. Biggest question I hope to hear an answer on is, can SOUL be utilized if an out-of-state family is interested in being the SOUL family or is this an in-Kansas-only option?**

**Response:** SOUL Family Legal Permanency may be used if an out-of-state family if the family members are interested in serving as SOUL Family Legal Custodians and all statutory requirements are complied with including, but not limited to, a determination the court appointment is in the best interest of the youth.

The issue of applicability and needed compliance with the Interstate Compact on the Placement of Children (ICPC) should also be considered and addressed.

**2. Can you explain how this works with ASFA? Do courts need to make dual case plan findings since SOUL is a creature of KS, not federal statute?**

**Response:** The Kansas Judicial Council (KJC) forms have attached Notes on Use. The KJC Child in Need of Care (CINC) Permanency Hearing forms contemplate a concurrent case plan and the attached Notes on Use so state to ensure compliance with Adoption and Safe Families Act (ASFA) since federal law does not as yet recognize SOUL Family Legal Permanency as a permanency option. It is suggested permanent custodianship (most closely aligning with the SOUL Family Legal Permanency option) or adoption be used, but there may be fact situations in certain cases which result in reintegration or APPLA being the concurrent case plan goal. This is an area where definitive answers may not yet be available, but the suggested approach places the state in a good position for flexibility to implement SOUL Family and still ensure compliance with ASFA. HHS Administration for Children and Families (ACF) staff have expressed support conceptually for the SOUL Family Legal Permanency option and are well aware of the Kansas SOUL team’s work to bring forward this new option for consideration and hopefully adoption by other states. Kansas has taken the lead and served as the first state to successfully pass the needed legislation.

3. **I spoke with Saint Francis Ministries and they indicated that the SOUL option will be capped at 25 cases for this year. Is that still the case now?**

**Response:** There is no statutory cap on the number of cases in which SOUL Family Legal Permanency may be established for youth 16 years and older. Prior to a proposed bill being introduced to the Kansas Legislature, data was earlier submitted by DCF/DCF providers to indicate number of identified youth in care who might be eligible for SOUL Family Legal Permanency for purposes of completion of a detailed fiscal analysis by an independent entity. The numbers utilized for that analysis did not mean there was any cap on the number of youth who could have a SOUL Family established.

4. **Is it a requirement by law that parents who have had their rights terminated cannot have contact with the child who has reached permanency via SOUL? Or is it a case-by-case basis for the Court to decide if it is in the child's best interest to maintain contact with bio parent(s)?**

**Response:** Even if parents' parental rights have been terminated before the establishment of SOUL Family Legal Permanency, the statute does not expressly prohibit contact between the youth and their bio parents. It would require a case-by-case analysis by the court and other professionals involved with the case to determine what, if any, contact would be in the best interest of the subject youth.

5. **Also, will there be a reporting requirement for the SOUL custodian to report back to the Court like they would for a guardianship?**

**Response:** There is no statutory requirement for such reporting, but it will likely be up to the individual court as to what the court requires in terms of report(s) from the SOUL Family Legal Permanency custodian(s).

6. **Will SOUL families have training and requirements like foster families?**

**Response:** Statute does not require such training. IF the SOUL Family Legal Permanency custodians happen to be licensed foster parents, they would have already completed such training. DCF/DCF Providers may by policy require training for SOUL Family Legal Permanency custodians, so it is recommended persons contact DCF regarding any agency requirements.

7. **Can a SOUL case plan be ordered over the objection of a parent whose rights are intact?**

**Response:** Statute requires the consent of the parents if their parental rights remain intact. The only stated exception statutorily to required consent is when parental rights were earlier terminated.

8. **Your screen indicates the case plan goal must be concurrent because it is not federally approved permanency option. If it is not included as a Federally approved permanency option how can it resolve the case? Or does it just remain pending until the child ages out? Does that not negate the point?**

**Response:** The case plan goal will be a concurrent one to ensure compliance with ASFA (reflected in reporting required by DCF to their federal partners and the Court Improvement Program (CIP) required reporting to their federal partners). The statute provides that though DCF custody ceases upon the establishment of SOUL Family Legal Permanency, the court jurisdiction will continue and permanency hearings convened at least every 12 months (pragmatically, there will only be 1-2 more permanency hearings after the SOUL Family is

appointed since youth must be 16 years or older to initially have SOUL Family appointed. Those 1-2 hearings may look more like a review hearing to verify no significant issues exist and needs of youth are being met.) This permanency option was not intended to call for an inflexible approach, but was youth designed and driven as a new option which they indicated would more truly serve the best interest of older youth. If even a few youth have SOUL Family Legal Permanency appointed, it will result in fewer youth “aging out” with no permanency.

**9. If a parent consents to SOUL, is it to the specific to the individual? So if something happens and that disrupts, do you have to go back to the bio parent to consent to a new SOUL custodian?**

**Response:** It was intended and contemplated the parents would be consenting to the specific individuals being considered for appointments as SOUL Family Legal Permanency custodians. IF there is disruption, it is possible (given the court jurisdiction of the case continues) to appoint another SOUL Family Legal Permanency custodian and compliance with the statute would be ensured by obtaining their consent to any “new” custodian.

**10. Slide 12 says "Once SOUL Family Legal Permanency is established, DCF custody of the youth ceases and the youth's case is closed." But in the next bullet it says "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." How are both these things true? If the case is closed, why are permanency hearings required "after appointment [of a] SOUL Family"?**

**Response: The Slide states as follows:**

- “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. 38-2103.”

This bullet’s language in the 1<sup>st</sup> sentence indicates that when SOUL Family Legal Permanency is established, DCF’s custody ceases and their (DCF) case is closed regarding the youth. The 2<sup>nd</sup> sentence indicates the court’s jurisdiction continues, so the court case remains open until court jurisdiction ceases. This is why permanency hearings continue to be required. Both the 1<sup>st</sup> and 2<sup>nd</sup> statements in the bullet can be and are accurate as relates to SOUL Family Legal Permanency.

**11. Should the slide be referring to 38-2203? it says 38-2103. Is SOUL being recodified into Article 21 instead of Article 22?**

**Response:** You are correct to identify this typo. It should reference K.S.A. 38-2203, not 38-2103. This has been corrected and the updated ppt is attached as a resource on the OJA website. No, SOUL Family Legal Permanency is NOT being recodified into Article 21.

**12. On page 12 of the power point, should the statute number referenced be K.S.A. 38-2203 rather than 38-2103?**

**Response:** Please see response to Question 11. above.

**13. Who should be drafting and submitting these forms to the Court?**

**Response:** The person responsible for preparing the required forms may depend on the specific judicial district and court. It can be determined based upon who generally prepares and/or submits forms for other permanency options. If there is question as to who should prepare, the court presiding over the case has authority to clarify or direct per

court order who is responsible. Needed forms are posted on the Kansas Judicial Council website within the Child In Need of Care section.

14. **If a child consents to multiple SOUL Custodians, must that child also consent to the Court appointing one person as the Primary Custodian? Or could the Court overrule the child's decision?**

**Response:** The statutory language specifically provides “If there is more than one SOUL family legal permanency custodian, one individual shall be designated as primary custodian by the court with the approval of the child and individual to serve in such role.”

15. **Are the “SOUL” custodians compelled to attend the yearly permanency hearings?**

**Response:** It would seem advisable for such custodians to attend permanency hearings for the youth. They will receive notice, but it is not indicated in statute they are “compelled” to attend. It would seem the court would have authority to issue orders the custodians attend if a particular court deems such action necessary.

16. **Are the SOUL custodians required to attend the permanency hearings?**

**Response:** Please see response to Question 15. above.

17. **If the SOUL permanency option fails, does the Court then seek a new/subsequent SOUL family permanency option or is any form of permanency a possibility?**

**Response:** It is unclear how the person asking this question would define failure, but if ALL of the appointed SOUL Family Legal Permanency custodians are no longer willing and/or able to serve in that role and the court’s case remains open, hopefully there could be identified by the youth another individual or individuals who are willing to serve and the court could issue a new order releasing the other custodians and after other statutory requirements are complied with, the new individual or individuals could be appointed to serve. If court jurisdiction continues, it seems feasible all relevant information to ensure best interest of the youth could then be considered and appropriate orders entered.

18. **Does SOUL possibilities have to file for Interested Party status?**

**Response:** It is not required by statute. The intent is that all relevant information regarding permanency and appropriateness of SOUL Family Legal Permanency would have been addressed prior to the appointment of such custodians. The SOUL Family Legal Permanency statutory language allows for the filing of a motion in the event a dispute arises, so IP status is not required for that action. This issue likely needs to be evaluated on a case-by-case basis as there may be a unique fact situation giving rise to need to request IP status.

19. **Does a SOUL case plan have to be held prior to SOUL being appointed or is it ok to appoint SOUL as long as all forms and requirements are met?**

**Response:** Not completely clear on this question. There should ideally be a concurrent case plan goal which includes SOUL Family Legal Permanency as the primary permanency option and statutory requirements must be complied with to support the path to SOUL Family appointment. All necessary forms must be completed and submitted to the court to support compliance with statutory requirements.

20. **By retaining court jurisdiction, but released from DCF custody, do they lose their GAL? When you say the “court” will work with the youth after a failed SOUL placement, I’m wondering who exactly that would be.**

**Response:** It is contemplated that so long as court jurisdiction continues, the GAL should be available to represent the youth in such circumstances. A court could, in such situation, clarify if there are questions. The prosecutor should also continue to represent the state and available to be contacted by the GAL, youth and/or court appointed custodian. Again, it is important to understand this option is very new and learning will occur as the state continues to implement. The goal is to serve the best interest of the youth and under existing statutes to address as best as is feasible any unique situations or problems which arise in the matter.

21. **Will there be any legislative action to provide eligibility for the tuition waiver under SOUL?**

**Response:** The possibility has been discussed, but there has been no final determination on specific legislative agenda moving forward related to this issue. It is important to note, however, even without the tuition waiver, DCF agreed that tuition assistance would be available to young people who select SOUL Family as their permanency option through a combination of other programs so that a lack of tuition assistance would not prevent a young person from selecting the SOUL Family Legal Permanency as the right permanency option for them.