



HB 28, SB 49, and SB 176: 2016 Changes to Articles 1, 3A, 4, and 8 of the Children’s Code

April 6, 2016

General Observations. The changes described below come from 3 different bills passed by the Legislature during the 2016 Regular Session (HB 28, SB 49, and SB 176). For ease of reading, the changes are listed below by Section of the Children’s Code (not by bill). Minor stylistic changes and grammatical corrections are not noted in this summary.

Effective Date. All provisions go into effect on July 1, 2016.

Change of language. The phrase “treatment plan” has been changed to “case plan” throughout Article 4 of the Children’s Code.

Compliance with federal law. Many of the changes relate to CYFD’s duty to identify, notify, and study certain relatives. These changes are intended to codify the requirements of the Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351.

Significant changes to the Citizen Review Board. SB 49 eliminated the Citizen Review Board’s Statewide Advisory Committee, created an Advisory Council in its place, authorized the Council to adopt rules to govern the Citizen Review Board’s activities, moved the CRB administratively from the Department of Finance and Administration to the Regulation and Licensing Department, and eliminated the apparent requirement that the CRB review every child protection case.

Specific Provisions.

Article 1. Section 32A-1-4 new definitions.

Council means the substitute care advisory council established by the §32A-8-4 of the Citizen Substitute Care Review Act.

Fictive kin means a person not related by birth, adoption or marriage with whom a child has an emotionally significant relationship.

Relative means a person related to another person by birth, adoption or marriage within the fifth degree of consanguinity.¹

Sibling means a brother or sister having one or both parents in common by birth or adoption.

Article 3A (Families Services).

§32A-3A-11 Criminal History Record Check during Emergency Placement

- 11(A) was amended to allow CYFD or a criminal justice agency to request the required criminal history record check of each adult residing in the home where a child may be placed in an emergency.
- 11(B). When an adult resident contests the denial of an emergency child placement and the denial was the result of the criminal history record check, the adult shall now be entitled to review the information obtained from the resident's criminal history record check if that check was performed using the resident's fingerprints.
- 11(D) clarifies that these provisions apply whenever there is an "emergency placement," which means "those limited instances when the department is placing a child in the home of private individuals, including neighbors, friends or relatives, as a result of sudden unavailability of the child's primary caretaker."

Article 4 (Abuse & Neglect Act)

New §32A-4-17.1 requires CYFD to exercise due diligence and make reasonable efforts to notify all grandparents, parents of the child's sibling, and other adult relatives of a child within 30 days of the child being taken into custody by law enforcement or filing of a custody petition, whichever occurs first; notice is not required if it would be contrary to the child's best interests due to family or domestic violence.

- **The notice must:** specify that the child has been or is being removed from the custody of his or her parents, explain the relative's options for participating in the child's care and placement, explain what options may be lost by failing to respond to the notice, describe the requirements for becoming a foster home and any additional services or support available for children placed in a home, and set out the dates of any scheduled court hearings involving the child.

§32A-4-18(E) creates a placement preference for the home of an adult relative of a child when CYFD determines that the home meets all relevant child protection and licensing standards; requires CYFD to

¹ For a simple map of relationships by degree of consanguinity, see https://en.wikipedia.org/wiki/Consanguinity#/media/File:Table_of_Consanguinity_showing_degrees_of_relations.png.

make reasonable efforts to inspect the home and the relatives who express an interest in having the child placed with them.

§32A-4-21(B)(4) requires the predisposition study to contain “a statement of the efforts the department has made to identify and locate all grandparents and other relatives and to conduct home studies on any appropriate relative expressing an interest in providing care for the child.”

§32A-4-22:

- (A)(6) requires judges to make findings on whether CYFD made reasonable efforts to identify, locate, and give notice to grandparents and other relatives and to conduct home studies on any appropriate relative who has an interest in caring for the child. If the Court finds that CYFD has not made these reasonable efforts, the Court may “make supplemental orders as necessary” and reconsider the matter at the initial judicial review and subsequent permanency hearings. (This subsection replaces 32A-4-25.1(D) of the existing code.)
- (A)(7) requires the Court to make findings on whether CYFD has considered the child’s familial identity and connections.
- (B)(3)(a) and (b): When entering its disposition of an abused or neglected child, the Court may transfer legal custody of the child to CYFD (as opposed to “an agency responsible for the care of neglected or abused children” or “a child placement agency willing and able to assume responsibility for the education”). Transferring legal custody to CYFD remains the third of three possible dispositions; the first two (permitting the child to remain with the parent, guardian or custodian subject to conditions and limitations prescribed by the court, and placing the child under protective supervision of the department) remain unchanged.

§32A-4-25 Periodic Judicial Review of Dispositional Judgments

- The word “judicial” was added throughout this section to clarify that the reviews being discussed are reviews conducted by a court.
- (A)—initial judicial review. Before the initial judicial review, CYFD shall submit the adjudicatory order, dispositional order, and notice of the initial judicial review to the substitute care advisory council (the council), not the local substitute care review board.
 - The council staff or contractor shall review the case. If the case meets criteria established by council rules the case shall be designated for review by a local substitute care review board.
 - If a local board is designated by the council, a representative of the local board may attend the initial judicial review and comment to the court.
- (B)—subsequent periodic judicial reviews. Wherever the current statute mentions a local substitute care review board, the amended statute now says “any designated substitute care review board” or “the substitute care review board.”
- (D)—formerly subsection C. Requires the CCA to give notice of all judicial reviews to: “all parties,” (which it defines to include the child alleged to be neglected or abused or in need of court-ordered services, by and through the child's guardian ad litem or attorney; the parent,

guardian or custodian who has allegedly neglected or abused the child or is in need of court-ordered services; and any other person made a party by the court); the child's CASA; the child's foster parent or substitute care provider of the time; and, if designated by the council, the substitute care review board.

- (E)—presenting evidence/cross-examination. The department and all parties (presumably as defined in subsection D) given notice shall have the opportunity to present evidence and cross-examine witnesses at any subsequent judicial review hearings. Note, however, that subsection F still allows the court to admit the “testimony of any person given notice of the hearing who has information about the status of the child or the status of the treatment plan.”

§32A-4-25.1 Permanency Hearings—Permanency Review Hearings

- When the Court adopts a permanency plan of reunification, **Subsection (C)** requires the Court to adopt a plan for transitioning the child home “within a reasonable period depending on the facts and circumstances of the case, but not to exceed six months” (Currently the transition home must occur within 3 months.)
- The original language in **Subsection D** was deleted and replaced. Language similar to the deleted language (requiring CYFD to exercise due diligence and reasonable efforts to identify and locate grandparents and adult relatives) has been added to §32A-4-22(A)(6). The amended Subsection D (a modified version of the current Subsection E) outlines the custody options for the child from that point in the case forward. In addition to allowing the court to change the plan from reunification to an alternative plan, to dismiss the case and return custody to the parent, guardian or custodian, or to return the child to the custody of the parent, guardian or custodian subject to conditions, the Court may now continue legal custody of the child in CYFD for up to 6 months to allow completion of the transition home plan.

§32A-4-33 Confidentiality- Records-Penalty

- (B) expands the list of individuals to whom confidential records (described in subsection A) may be disclosed to include:
 - persons or entities authorized by contract with the court to review, inspect or otherwise have access to records or information in the court’s possession,
 - persons or entities authorized by contract with the department to review, inspect or otherwise have access to records or information in the department’s possession,
 - a grandparent, parent of a sibling, relative or fictive kin, if the records or information pertain to the child’s placement with that listed relative and the records concern the child’s social, medical, psychological, or educational needs,
 - representatives of the federal government or their contractors to review, inspect, audit or otherwise have access to records and information pertaining to neglect or abuse proceedings, and

- any person or entity attending a meeting arranged by the department to discuss the safety, well-being and permanency of a child, when the parent/legal custodian has consented to the disclosure.
- B(2) clarifies that confidential records may only be disclosed to the court appointed special advocate “appointed to the neglect or abuse proceeding.”

§32A-8-2 Purpose. Adds new language to clarify how the Citizens Substitute Care Review Act provides a permanent system for independent and objective monitoring of children placed in the custody of CYFD: by examining the policies, procedures and practices of the department and, where appropriate, specific cases to evaluate the extent to which the department is effectively discharging its child protection responsibilities."

§32A-8-4

- (A) creates a substitute care advisory council that will oversee local substitute care review boards that will identify systemic policy issues regarding substitute care. The council of 9 will include the secretaries of public education, health, human services, and finance and administration or their designees; and 5 appointees of the governor, including 2 who were previously in substitute care, 2 who have expertise in child welfare, and 1 children’s court judge.
- (F) authorizes the council to adopt rules relating to the functions and procedures of the council and the local boards. Specifically, the rules shall:
 - establish training requirements for board members, criteria for council designation of cases for local board review, procedures for local review of designated cases, criteria for membership and tenure on and operating procedures for local boards; and
 - specify information needed for designated cases to be monitored by local boards and case information to be tracked and reported to the council.
- (G) When adopting rules establishing criteria for designation of cases for local review, the council shall weigh the importance of the following factors: sibling placements, frequency and severity of neglect or abuse, the behavioral health status of household members, the placement of children in households where there are no relatives of the children, data related to demographics, and relevant trend data.
- (H) requires the council to review and coordinate the activities of the local boards and report its recommendations to CYFD, the courts and legislative interim committees each year regarding statutes, rules, policies, and procedures relating to substitute care.

§32A-8-5 establishes the number of local boards in each judicial district, as well as other administrative details (per diem, frequency of meetings, etc.).

- Subsection D requires that the local boards be composed of members that are “broadly representative of the community in which the board serves and include members with expertise in

the prevention and treatment of child abuse and neglect and may include adult former victims of child abuse or neglect.”

- **Subsection E** requires local boards to meet at least once per quarter to review designated cases.

§32A-8-6 eliminates the requirement that the local boards review every case and eliminates the requirement that the cases designated for review be reviewed before every judicial review. Instead, whenever the Council designates a case for review, the local board will provide notice to the parties of the meeting to review the case, provide the parties an opportunity to participate fully in the meeting, and submit a report to the court regarding the case. The local board will operate according to the rules the Council will adopt.