

Proposed statute changes passed by the State Advisory Committee on November 15, 2014
Undiscussed public comments received are attached on pages 12 to 14

Existing Statute	Proposed changes/additions	Rationale
<p>32A-8-1. Short title.</p> <p>Chapter 32 [32A], Article 8 NMSA 1978 may be cited as the "Citizen Substitute Care Review Act".</p>	<p>32A-8-1. Short title.</p> <p>Chapter 32 [32A], Article 8 NMSA 1978 may be cited as the "Citizen Substitute Care Review Act".</p>	<p>The title of the current legislation is adequate and reasonable states the content of the legislation.</p>
<p>32A-8-2. Purpose of act.</p> <p>The purpose of the Citizen Substitute Care Review Act is to provide a permanent system for independent and objective monitoring of children placed in the custody of the department.</p>	<p>32A-8-2. Purpose of act.</p> <p>The purpose of the Citizen Substitute Care Review Act is to provide a permanent system for independent and objective monitoring of children placed in the custody of the state through the substitute care system.</p>	<p>The purpose of the act does not change. Clarification provided in changing “children in the custody of the department” to “children in the custody of the state through the substitute care system”.</p>
<p>32A-8-3. Implementation of act.</p> <p>The department of finance and administration shall maintain and fund a contract with a nonprofit organization having a demonstrated knowledge of the problem of children in substitute care and the issues in permanency planning to operate a statewide system of local substitute care review boards.</p>	<p>32A-8-3. Implementation of act.</p> <p>The department of finance and administration shall serve as the confirming body for the Statewide Advisory Committee, to provide oversight and maintain and fund a contract with a nonprofit organization having a demonstrated knowledge of child development, child maltreatment, children in substitute care and their well-being, permanency and safety of children to operate a statewide system of local substitute care review boards and collaborate with and administratively support the state advisory committee.</p>	<ol style="list-style-type: none"> 1. In the current statute there is no confirming body to the state advisory committee. It is a self-appointing body. This change identifies the confirming body for members. 2. This change clarifies the expertise expectations of the contractor and encompasses reasons children are in substitute care as well as what occurs after children are returned to the home. 3. Added contractor expectation to collaborate with and support State Advisory Committee.

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	<p>32A-8-3a. Implementation of act administrative fees.</p> <p>The department of finance and administration may collect up to 2 percent of appropriated monies for administrative expenses.</p>	<p>This is a reasonable amount to provide for administrative costs including travel to attend meetings, materials, and some salary. Many of the existing boards/commissions/committees have this within the enacting statute.</p>
<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>A. A state advisory committee shall be composed of three persons with expertise in the area of substitute care, appointed by the secretary of finance and administration, and also one representative of each local substitute care review board. Each local board shall select its representative to the state advisory committee in accordance with procedures established by that committee. No person employed by the department or a district court may serve on the state advisory committee.</p>	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>A. A state advisory committee shall be composed of one representative with experience in child care issues from: a) local actively serving board member from each judicial district, b) secretary of children youth and families department or designatee, c) secretary of department of finance and administration or designatee, d) Chief justice of the supreme court or designatee from the administrative office of the courts, e) secretary of department of health or designatee. Members from local boards and the public appointees shall be voting members and eligible to hold office. Remaining members will be non-voting members and are not eligible to hold office. Each local board in the judicial districts shall nominate an individual or individuals for confirmation as their representative to the state advisory</p>	<p>The current set up permits a totally self governing and self generating body. There is no oversight from the legislature on selection of state advisory committee members. This proposed change would permit the establishment of a smaller committee composed of approximately 20 individuals; involves the departments concerned in the recommendations promulgated. This gives more ownership to the state of New Mexico through the legislature and would allow for additional members if judicial districts would be increased.</p>

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	committee in accordance with policies and procedures established by the state advisory committee in collaboration with the state advisory committee and the contractor.	
<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>B. Terms of office of local substitute care review board members of the state advisory committee shall be coterminous with their terms as members of the local boards. Terms of office of members who are appointed by the secretary of finance and administration shall be for three years; provided, however, that appointment of the first state advisory committee members shall be to staggered terms so that one member shall serve for a term of three years, one member shall serve for a term of two years and one member shall serve for a term of one year. The term of each member shall expire on June 30 of the appropriate year. In the event that a vacancy occurs among the members of the state advisory committee appointed by the secretary of finance and administration, the secretary shall appoint another person to serve the unexpired portion of the term</p>	<p>32A-8-4. State advisory committee; members; compensation;</p> <p>B. Terms of office for the state advisory committee members from local substitute care review boards shall be one year from July 1 to June 30 or following the date of appointment to the June 30 of the appropriate year.</p>	<p>Clarifies the term start and end dates for state advisory committee members from local substitute care review boards will be one year.</p>

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<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>C. The state advisory committee shall select a chairperson, a vice chairperson, an executive committee and other officers as it deems necessary.</p>	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>C. The state advisory committee shall select a chairperson, a vice chairperson, and other officers as it deems necessary. The state advisory committee shall establish policies and procedures related to its functioning.</p>	<ol style="list-style-type: none"> 1. This change removes the executive committee. 2. This addition specifies the expectation that SAC establish policies and procedures related to its functioning, for example attendance protocol responsibilities and similar items
<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>D. The state advisory committee shall meet no less than twice annually and more frequently upon the call of the chairperson or as the executive committee may determine. The state advisory committee is authorized to adopt reasonable rules relating to the functions and procedures of the local substitute care review boards and the state advisory committee in accordance with the duties of the boards as provided in the Citizen Substitute Care Review Act [this article]. These rules shall include guidelines for the determination of the appropriate type of review and the</p>	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>D. The state advisory committee shall meet no less than twice annually and more frequently upon the call of the chair or vice chair in consultation with the department of finance and administration and contractor.</p>	<ol style="list-style-type: none"> 1. Eliminates the executive committee determining the meetings of SAC. 2. Adds the vice-chair authority to call meetings. 3. Adds in collaboration with DFA and contractor to call additional meetings. 4. Separates out the meetings expectations with the responsibility expectations (added in E and F)

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<p>information needed for all cases to be monitored by the local substitute care review boards. The state advisory committee shall review and coordinate the activities of the local substitute care review boards and make recommendations to the department, the courts and the legislature, on or before January 1 of each year, regarding statutes, policies and procedures relating to substitute care.</p>		
<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>E. State advisory committee members shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.</p>	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>E. The state advisory committee serves as advisor to the contractor in establishing best practice for local substitute care review board operation; identifying focus areas and making recommendations to the state legislature on or before January 1 of each year to improve statutes, policies and procedures related to system support and response to child welfare.</p>	<p>1. This separates the responsibilities previously in “D” to its own section. Move compensation from “E” top “F”. 2. This change clarifies the role of the SAC as an advisor to the contractor.</p>
<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p>	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>F. State advisory committee members who travel more than 35 miles to meetings</p>	<p>1. Adds “F”.</p>

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	shall receive mileage; members who must stay overnight shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.	2. Clarifies the use of per diem and mileage. Mileage is applicable if travel over 35 miles and per diem if applicable if the individual stays overnight for the meeting.
32A-8-4. State advisory committee; members; compensation; responsibilities.	32A-8-4. State advisory committee; members; compensation; responsibilities. G. The state advisory committee is subject to the Open meetings Act.	1. Adds "G". 2. This addition clarifies being subject to the Open Meetings Act.
32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings. A. The contractor, selected by the department of finance and administration pursuant to the provisions of Section 32-8-3 [32A-8-3] NMSA 1978, shall establish and maintain local substitute care review boards to review, as provided in the Citizen Substitute Care Review Act [this article], the disposition of children in the custody of the department prior to judicial review. Each board shall, to the maximum extent feasible, represent the various socioeconomic, racial and ethnic groups of the community that they serve.	32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings. A. The contractor, selected by the department of finance and administration pursuant to the provisions of Section 32-8-3 [32A-8-3] NMSA 1978, shall establish and maintain a minimum of one local substitute care review board within the separate judicial districts to review, as provided in the Citizen Substitute Care Review Act [this article], case information for children in the custody of the state prior to selected judicial reviews.	1. Change to note the local boards are set up on judicial district boundaries. 2. Moves the diversity expectation for the boards to "B". 3. Added "selected to judicial reviews.

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<p>32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.</p> <p>B. Criteria for membership and tenure on local substitute care review boards shall be determined by the state advisory committee, after consultation with the department of finance and administration and the contractor. No person employed by the department of finance and administration, the department or a district court may serve on a local substitute care review board.</p>	<p>32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.</p> <p>The contractor shall appoint members to the local boards following criteria established by the state advisory committee in collaboration with the department of finance and administration and the contractor. Each board shall, to the maximum extent feasible, represent the various socioeconomic, racial, and ethnic groups of the community that they serve. No person employed by the department of finance and administration, the children youth and families department, the administrative office of the courts, or a district court or their successors may serve on a local substitute care review board</p>	<ol style="list-style-type: none"> 1. This change clarifies the responsibilities of the contractor. 2. This change clarifies “the department”, adds administrative office of the courts and “or their successors”. 3. Moves the diversity expectation from “A” to the section describing board composition.
<p>32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.</p> <p>C. Each local substitute care review board shall elect a chairperson, a vice chairperson and other officers as it deems necessary.</p>	<p>32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.</p> <p>C. Each local substitute care review board shall elect a chairperson, a vice chairperson, in accordance with procedures established by the state advisory committee in collaboration with the department of finances and administration and the contractor.</p>	<p>As currently reads does not provide standard operation procedures. No other would be deemed necessary.</p>

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<p>32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.</p> <p>D. Local substitute care review board members may receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.</p>	<p>32A-8-5. Local boards; appointments; exclusion; terms; training; compensation; meetings.</p> <p>D. Local board members who travel more than 35 miles to meetings shall receive mileage; members who must stay overnight shall receive per diem and mileage as provided for nonsalaried public officers in the Per Diem and Mileage Act [10-8-1 NMSA 1978] and shall receive no other compensation, perquisite or allowance.</p>	<ol style="list-style-type: none"> 1. This change from “may “ to “shall” will ensure that members are compensated for travel expenses to attend meeting and trainings. 2. Clarifies the use of per diem and mileage. Mileage is applicable if travel over 35 miles and per diem is applicable if the individual stays overnight for the meeting.
<p>32A-8-6. Citizen review board reviews of dispositional judgments.</p> <p>A. Prior to any judicial review by the court pursuant to Section 32-4-23 [32A-4-25] NMSA 1978, the local substitute care review board shall review any dispositional order or the continuation of the order and the department's progress report on the child and submit a report to the court. The parties in the children's court proceedings shall be given prior notice of the review board meeting and be afforded the opportunity to participate fully in the meeting.</p>	<p>32A-8-6. Citizen review board reviews of dispositional judgments.</p> <p>A. Prior to selected judicial reviews by the court pursuant to Section 32-4-23 [32A-4-25] NMSA 1978, the local substitute care review board may review case information, including but not limited to, affidavit, dispositional orders, case plans and progress reports and all diagnostic reports summaries and make recommendations to the contractor. The contractor shall submit a report to the court for each case reviewed. The report, to the maximum extent possible, shall represent the conclusion of the local board review. The parties in the children's court proceedings shall be given prior notice of</p>	<ol style="list-style-type: none"> 1. Clarifies language as to what is subject to review. 2. Changed “shall” to “may” to allow flexibility in what is reviewed. 3. Clarified the contractor submits the report that represents the conclusion of the local board. 4. Changed “fully participate” to “participate”. This eliminates the focus on the definition of “fully” which may have differing interpretations.

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	the review board meeting and be afforded the opportunity to participate in the review.	
<p>32A-8-6. Citizen review board reviews of dispositional judgments.</p> <p>B. The report of the local substitute care review board submitted to the court pursuant to this section shall become a part of the child's permanent court record.</p>	<p>32A-8-6. Citizen review board reviews of dispositional judgments.</p> <p>B. The report of the local substitute care review board submitted to the court pursuant to this section shall become a part of the child's permanent court record.</p>	No change from the current statute.
<p>32A-8-7. Temporary provisions; transfer; funds; contracts.</p> <p>A. On the effective date of the Children's Code [32A-1-1 NMSA 1978], all records, personnel, money, property, equipment and supplies of the department relating to the Citizen Substitute Care Review Act shall be transferred to the department of finance and administration.</p> <p>B. On the effective date of the Children's Code, all appropriations, contract funds and funds for contract administration and staff, the cost of advisory committee per diem and travel, training and all other costs relating to the Citizen Substitute Care Review Act shall be transferred from the department to the department of finance and administration.</p> <p>C. On the effective date of the Children's</p>	<p>32A-8-7. Temporary provisions; transfer; funds; contracts.</p> <p>Eliminate</p>	<p>This language was relevant when the statute was established and transfer of funds and files to DFA were needed. DFA already has this same section in its contract so this section would not be needed.</p>

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<p>Code all existing rules and regulations, contracts and agreements in effect with the department for providing a statewide system of local substitute care review boards shall be binding and effective on the department of finance and administration.</p>		
<p>32A-8-7. Temporary provisions; transfer; funds; contracts.</p> <p>B. On the effective date of the Children's Code, all appropriations, contract funds and funds for contract administration and staff, the cost of advisory committee per diem and travel, training and all other costs relating to the Citizen Substitute Care Review Act shall be transferred from the department to the department of finance and administration.</p>	<p>Eliminate</p>	<p>This language was relevant when the statute was established and transfer of funds and files to DFA were needed. DFA already has this same section in its contract so this section would not be needed.</p>
<p>32A-8-7. Temporary provisions; transfer; funds; contracts.</p> <p>C. On the effective date of the Children's Code all existing rules and regulations, contracts and agreements in effect with the department for providing a statewide system of local substitute care review boards shall be binding and effective on the department of finance and administration.</p>	<p>Eliminate</p>	<p>This language was relevant when the statute was established and transfer of funds and files to DFA were needed. DFA already has this same section in its contract so this section would not be needed.</p>

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	<p>32A-8-7. Legal Representation. Local board members and members of the state advisory committee shall be represented by the New Mexico Attorney General's office when acting within the scope of their duties as members of the local board or state advisory board.</p>	<p>New section clarifies legal representation when acting within the scope of duties for the local review board or state advisory committee.</p>
	<p>32A-8-8. Children, Youth and families department, or its successor requirements</p> <p>A. Children, youth and families department or its successor shall transmit to the contractor:</p> <ol style="list-style-type: none"> 1. No later than July 15, 2015, identifying information of each child in the custody of the state through the substitute care system as of July 1, 2015. Information shall include, but is not limited to name, gender, date of birth, date of custody, affidavit, any dispositional order, case plans, and the advanced calendar for expected court hearings. 2. The identifying information of a child in the custody of the state through substitute care system within 10 working days following the 10 day hearing. The identifying information shall include, but is not limited to name, 	<p>Effective local board reviews are contingent on timely receipt of accurate information from CYFD. This addition establishes timelines for submission of information.</p>

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	<p>gender, date of birth, date of custody, affidavit, any dispositional order, case plans, and the advanced calendar for expected court hearings</p> <p>3. Notices of future hearing within 5 working days of court hearing held.</p> <p>4. Any requested case information within 10 working days of request.</p>	
	<p>32A-8-8. Children,. Youth and families department, or its successor requirements</p> <p>B. The children, youth and families department or its successor, shall provide written notice to parents, substitute caregivers, and contract providers of their right to request a local substitute care review board review of a case of a child in the custody of the state through the substitute care system.</p>	<p>Adds the requirement for CYFD to notify others of their right to request a case be selected for local board review.</p>
Additional proposal for 32A-8-6 Citizen Review board reviews of dispositional judgments		
	<p>32A-8-6. Citizen review board reviews of dispositional judgments.</p> <p>B. If a duly appointed Court Appointed Special Advocate, who assists the court in determining the best interests of the child by investigating the case and submitting a report to the court per §32A-1-4(D) is</p>	<p>This is a public comment that was received but no rationale was forwarded with the comment.</p>

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	<p>appointed to a case of a child in custody of the department the Citizen Review Board may waive review of that case but must file a notice to the court of that waiver.</p>	
<p>Additional proposals for 32A-8-1 and following Citizen Substitute Care Review Act sections</p>		
	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>G. The contractor shall provide local board members with training in areas specific to child welfare, including but not limited to state and federal case law on the rights of parents and children, applicable state and federal statutes, cross-cultural awareness, and the physical, neurological, and mental effects of abuse and neglect.</p>	<p>Adding the requirement for the contractor to provide training for Citizen Review Board members.</p> <p>Training requirements are part of the policies and procedures to be promulgated by the state advisory committee as part of its duties in proposed section 32A-8-4 (E).</p>
	<p>32A-8-4. State advisory committee; members; compensation; responsibilities.</p> <p>Terms of office for the State Advisory committee shall be three years from July 1 following the date of appointment. The terms will be staggered with approximately 1/3 of the terms ending each year on June 30 of the appropriate year. Members may be reappointed.</p>	<p>A three year term would allow the local board members from the respective judicial districts to have sufficient time to research topics developed through information gathered during local reviews and current research and developments in the substitute care field to make recommendations to the legislature.</p>

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	<p>32A-8-9. Penalty.</p> <p>Any person violating any of the provisions of NMSA 1978, Section 32A-8-8 is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) for each offense.</p>	<p>This added section provides consequences to the law ensuring that the requested information contained in 32A-8-8 is forwarded in a timely manner.</p>
	<p>32A-8-10. Enforcement.</p> <p>A. An action to enforce the Citizen Substitute Care Review Act may be brought by:</p> <p>(1) the attorney general or</p> <p>(2) the current contractor whose written or electronic request has been denied.</p> <p>B. The exhaustion of administrative remedies shall be required prior to bringing any action to enforce the procedures of the Citizen Substitute Care Review Act.</p>	<p>This added section would permit legal action if needed to insure the responsible individual holding the information would provide the information. Subsection would insure legal action was a final action after administrative actions were taken to insure delivery of the requested information in 32A-8-8.</p>
	<p>B. The exhaustion of administrative remedies shall be required prior to bringing any action to enforce the procedures of the Citizen Substitute Care Review Act.</p>	<p>This added section would permit legal action if needed to insure the responsible individual holding the information would provide the information. Subsection would insure legal action was a final action after administrative actions were taken to insure delivery of the requested information in 32A-8-8.</p>