



General Assembly

February Session, 2016

Raised Bill No. 187

LCO No. 1497



Referred to Committee on COMMITTEE ON CHILDREN

Introduced by:
(KID)

AN ACT CONCERNING TRANSFERS OF GUARDIANSHIP.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-114 of the 2016 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective from passage*):

4 (a) As used in this section, (1) "approval" or "approved" means that
5 a person has been approved to provide foster care by a child-placing
6 agency licensed pursuant to section 17a-149, (2) "licensed" means a
7 person holds a license to provide foster care issued by the Department
8 of Children and Families, (3) "fictive kin caregiver" means a person
9 who is twenty-one years of age or older and who is unrelated to a child
10 by birth, adoption or marriage but who has an emotionally significant
11 relationship with such child amounting to a familial relationship and
12 who is [not] approved or licensed to provide foster care, [by the
13 Department of Children and Families,] and (4) "regular unsupervised
14 access" means periodic interaction with a child in the home for
15 purposes of unsupervised child care, medical or other services to the
16 child.

17 (b) (1) No child in the custody of the Commissioner of Children and
18 Families shall be placed in foster care with any person, unless (A) such
19 person is licensed for that purpose by the department or the
20 Department of Developmental Services pursuant to the provisions of
21 section 17a-227, or (B) such person's home is approved by a child
22 placing agency licensed by the commissioner pursuant to section 17a-
23 149, or (C) such person has received approval as provided in this
24 section. Any person licensed by the department may be a prospective
25 adoptive parent. The commissioner shall adopt regulations, in
26 accordance with the provisions of chapter 54, to establish the licensing
27 procedures and standards.

28 (2) The commissioner shall require each applicant for licensure or
29 approval pursuant to this section and any person sixteen years of age
30 or older living in the household of such applicant to submit to state
31 and national criminal history records checks prior to issuing a license
32 or approval to such applicant to accept placement of a child for
33 purposes of foster care or adoption. Such criminal history records
34 checks shall be conducted in accordance with section 29-17a. The
35 commissioner shall also check the state child abuse registry established
36 pursuant to section 17a-101k for the name of such applicant and for the
37 name of any person sixteen years of age or older living in the
38 household of such applicant.

39 (3) The commissioner, at his or her discretion, may require any
40 person sixteen years of age or older, who is not living in the household
41 but who has regular unsupervised access to a child in the home of an
42 applicant for licensure or approval, to submit to state and national
43 criminal history records checks prior to issuing a license or approval to
44 such applicant to accept placement of a child. Such criminal history
45 records checks shall be conducted in accordance with section 29-17a.
46 The commissioner may also check the state child abuse registry
47 established pursuant to section 17a-101k for the name of any person
48 sixteen years of age or older who is not living in the household but
49 who has regular unsupervised access to a child.

50 (4) The commissioner shall require each individual licensed or
51 approved pursuant to this section and any person sixteen years of age
52 or older living in the household of such individual to submit to state
53 and national criminal history records checks prior to renewing a
54 license or approval for any individual providing foster care.

55 (5) The commissioner, at his or her discretion, may require any
56 person sixteen years of age or older who is not living in the household
57 but who has regular unsupervised access to a child in the home of any
58 individual licensed or approved pursuant to this section to submit to
59 state and national criminal history records checks prior to renewing a
60 license or approval for such individual providing foster care.

61 (c) Notwithstanding the requirements of subsection (b) of this
62 section, the commissioner may place a child with a relative or fictive
63 kin caregiver who has not been issued a license or approval, when
64 such placement is in the best interests of the child, provided a
65 satisfactory home visit is conducted, a basic assessment of the family is
66 completed and such relative or fictive kin caregiver attests that such
67 relative or fictive kin caregiver and any adult living within the
68 household has not been convicted of a crime or arrested for a felony
69 against a person, for injury or risk of injury to or impairing the morals
70 of a child, or for the possession, use or sale of a controlled substance.
71 Any such relative or fictive kin caregiver who accepts placement of a
72 child shall be subject to licensure by the commissioner, pursuant to
73 regulations adopted by the commissioner in accordance with the
74 provisions of chapter 54 to implement the provisions of this section or
75 approval by child-placing agency licensed pursuant to section 17a-149.
76 The commissioner may grant a waiver from such regulations,
77 including any standard regarding separate bedrooms or room-sharing
78 arrangements, for a child placed with a relative or fictive kin caregiver,
79 on a case-by-case basis, if such placement is otherwise in the best
80 interests of such child, provided no procedure or standard that is
81 safety-related may be so waived. The commissioner shall document, in
82 writing, the reason for granting any waiver from such regulations.

83 (d) Any individual who has been licensed or [received approval]
84 approved to provide foster care and any relative or fictive kin
85 caregiver shall apply a reasonable and prudent parent standard, as
86 defined in subsection (a) of section 17a-114d, on behalf of the child.

87 Sec. 2. Section 17a-126 of the 2016 supplement to the general statutes
88 is repealed and the following is substituted in lieu thereof (*Effective*
89 *from passage*):

90 (a) As used in this section, (1) "caregiver" means (A) a fictive kin
91 caregiver, as defined in section 17a-114, as amended by this act, who is
92 caring for a child, [or] (B) a relative caregiver, which means a person
93 who is twenty-one years of age or older, related to a child by birth,
94 adoption or marriage and is licensed or approved to provide foster
95 care, or (C) a person who is a licensed or approved foster care provider
96 pursuant to section 17a-114, as amended by this act, and is caring for a
97 child [who is related to such person,] because the parent of the child
98 has died or become otherwise unable to care for the child for reasons
99 that make reunification with the parent and adoption not viable
100 options within the foreseeable future, and (2) "commissioner" means
101 the Commissioner of Children and Families.

102 (b) The commissioner shall establish a program of subsidized
103 guardianship for the benefit of children who have been in foster care
104 for not less than six consecutive months, for whom neither
105 reunification with a parent nor adoption is an appropriate permanency
106 option, and who have been living with [(1) caregivers, or (2) foster care
107 providers who have been approved to provide foster care by a child-
108 placing agency licensed pursuant to section 17a-149] a caregiver. A
109 caregiver may request a guardianship subsidy from the commissioner.

110 (c) If a caregiver who is receiving a guardianship subsidy for a child
111 is also caring for the child's sibling, the commissioner shall provide a
112 guardianship subsidy to such caregiver in accordance with regulations
113 adopted by the commissioner pursuant to subsection (e) of this section.

114 For purposes of this subsection, "child's sibling" includes a stepbrother,
115 stepsister, a half-brother or a half-sister.

116 (d) The commissioner shall provide the following subsidies under
117 the subsidized guardianship program in accordance with this section
118 and the regulations adopted pursuant to subsection (e) of this section:
119 (1) A special-need subsidy, which shall be a lump sum payment for
120 one-time expenses resulting from the assumption of care of the child
121 and shall not exceed two thousand dollars; and (2) a medical subsidy
122 comparable to the medical subsidy to children in the subsidized
123 adoption program. The subsidized guardianship program shall also
124 provide a monthly subsidy on behalf of the child payable to the
125 caregiver that is based on the circumstances of the caregiver and the
126 needs of the child and shall not exceed the foster care maintenance
127 payment that would have been paid on behalf of the child if the child
128 had remained in licensed foster care.

129 (e) The commissioner shall adopt regulations, in accordance with
130 chapter 54, implementing the subsidized guardianship program
131 established under this section. Such regulations shall include all
132 federal requirements necessary to maximize federal reimbursement
133 available to the state, including, but not limited to, (1) eligibility for the
134 program, (2) the maximum age at which a child is no longer eligible for
135 a guardianship subsidy, including the maximum age, for purposes of
136 claiming federal reimbursement under Title IV-E of the Social Security
137 Act, at which a child is no longer eligible for a guardianship subsidy,
138 and (3) a procedure for determining the types and amounts of the
139 subsidies.

140 (f) (1) At a minimum, the guardianship subsidy provided under this
141 section shall continue until the child reaches the age of eighteen or the
142 age of twenty-one if such child is in full-time attendance at a secondary
143 school, technical school or college or is in a state accredited job training
144 program or otherwise meets the criteria set forth in federal law.

145 (2) A guardianship subsidy may be provided for a child, subject to
146 the commissioner's annual review, through his or her twenty-first
147 birthday, provided: (A) The transfer of guardianship to a successor
148 guardian, as provided in subsection (i) of this section, was finalized on
149 or after October 1, 2013; (B) the child was sixteen years of age or older
150 when such transfer was finalized; and (C) the child is (i) enrolled in a
151 full-time approved secondary education program or an approved
152 program leading to an equivalent credential, (ii) enrolled full time in
153 an institution that provides postsecondary or vocational education, or
154 (iii) participating full time in a program or activity approved by the
155 commissioner that is designed to promote or remove barriers to
156 employment. The commissioner, in his or her discretion, may waive
157 the provision of full-time enrollment or participation based on
158 compelling circumstances. To receive a guardianship subsidy pursuant
159 to this subsection, the guardian shall, at the time of the annual review,
160 submit to the commissioner a sworn statement that the child is still
161 meeting the requirements of clause (i), (ii) or (iii) of subparagraph (C)
162 of this subdivision, provided the commissioner, in his or her
163 discretion, may waive such requirements based on compelling
164 circumstances.

165 (3) Annually, the subsidized guardian shall submit to the
166 commissioner a sworn statement that the child is still living with and
167 receiving support from the guardian. The parent of any child receiving
168 assistance through the subsidized guardianship program shall remain
169 liable for the support of the child as required by the general statutes.

170 (g) A guardianship subsidy shall not be included in the calculation
171 of household income in determining eligibility for benefits of the
172 caregiver of the subsidized child or other persons living within the
173 household of the caregiver.

174 (h) Payments for guardianship subsidies shall be made from
175 moneys available from any source to the commissioner for child
176 welfare purposes. The commissioner shall develop and implement a

177 plan that: (1) Maximizes use of the subsidized guardianship program
178 to decrease the number of children in the legal custody of the
179 commissioner and to reduce the number of children who would
180 otherwise be placed into nonrelative foster care when there is a
181 caregiver willing to provide care; (2) maximizes federal reimbursement
182 for the costs of the subsidized guardianship program, provided
183 whatever federal maximization method is employed shall not result in
184 the caregiver of a child being subject to work requirements as a
185 condition of receipt of benefits for the child or the benefits restricted in
186 time or scope other than as specified in subsection (c) of this section;
187 and (3) ensures necessary transfers of funds between agencies and
188 interagency coordination in program implementation. The
189 commissioner shall seek all federal waivers and reimbursement as are
190 necessary and appropriate to implement this plan.

191 (i) In the case of the death, severe disability or serious illness of a
192 caregiver who is receiving a guardianship subsidy, the commissioner
193 may transfer the guardianship subsidy to a successor guardian who
194 meets the department's foster care safety requirements [if such
195 successor guardian has been identified in the subsidy agreement, or an
196 addendum thereto, and such successor guardian] and who is
197 appointed as legal guardian by a court of competent jurisdiction. For
198 purposes of maximizing federal reimbursement for the costs of the
199 subsidized guardianship program, the commissioner shall request that
200 the caregiver identify such successor guardian in the subsidy
201 agreement and any addendum thereto.

202 (j) Nothing in this section shall prohibit the commissioner from
203 continuing to pay guardianship subsidies to those relative caregivers
204 who entered into written subsidy agreements with the Department of
205 Children and Families prior to October 5, 2009.

206 (k) Not less than thirty days prior to the termination or reduction of
207 a guardianship subsidy, the commissioner shall (1) provide written
208 notice of such reduction or termination to the caregiver receiving such

209 subsidy, and (2) provide such caregiver with a hearing before the
210 Subsidy Review Board. If such an appeal is taken, the subsidy shall
211 continue without modification until the final decision of the Subsidy
212 Review Board.

213 Sec. 3. Subsection (j) of section 46b-129 of the 2016 supplement to the
214 general statutes is repealed and the following is substituted in lieu
215 thereof (*Effective from passage*):

216 (j) (1) For the purposes of this subsection and subsection (k) of this
217 section, (A) "permanent legal guardianship" means a permanent
218 guardianship, as defined in section 45a-604, and (B) "caregiver" means
219 (i) a fictive kin caregiver, as defined in section 17a-114, as amended by
220 this act, who is caring for a child, (ii) a relative caregiver, as defined in
221 section 17a-126, as amended by this act, or (iii) a person who is
222 licensed or approved to provide foster care pursuant to section 17a-
223 114, as amended by this act.

224 (2) Upon finding and adjudging that any child or youth is uncared
225 for, neglected or abused the court may (A) commit such child or youth
226 to the Commissioner of Children and Families, and such commitment
227 shall remain in effect until further order of the court, except that such
228 commitment may be revoked or parental rights terminated at any time
229 by the court; (B) vest such child's or youth's legal guardianship in any
230 private or public agency that is permitted by law to care for neglected,
231 uncared for or abused children or youths or with any other person or
232 persons found to be suitable and worthy of such responsibility by the
233 court, including, but not limited to, any relative of such child or youth
234 by blood or marriage; (C) vest such child's or youth's permanent legal
235 guardianship in any person or persons found to be suitable and
236 worthy of such responsibility by the court, including, but not limited
237 to, any relative of such child or youth by blood or marriage in
238 accordance with the requirements set forth in subdivision (5) of this
239 subsection; or (D) place the child or youth in the custody of the parent
240 or guardian with protective supervision by the Commissioner of

241 Children and Families subject to conditions established by the court.

242 (3) If the court determines that the commitment should be revoked
243 and the child's or youth's legal guardianship or permanent legal
244 guardianship should vest in someone other than the respondent
245 parent, parents or former guardian, or if parental rights are terminated
246 at any time, there shall be a rebuttable presumption that an award of
247 legal guardianship or permanent legal guardianship upon revocation
248 to, or adoption upon termination of parental rights by, any [relative
249 who is licensed as a foster parent for such child or youth, or] caregiver
250 or person or who is, pursuant to an order of the court, the temporary
251 custodian of the child or youth at the time of the revocation or
252 termination, shall be in the best interests of the child or youth and that
253 such [relative] caregiver is a suitable and worthy person to assume
254 legal guardianship or permanent legal guardianship upon revocation
255 or to adopt such child or youth upon termination of parental rights.
256 The presumption may be rebutted by a preponderance of the evidence
257 that an award of legal guardianship or permanent legal guardianship
258 to, or an adoption by, such [relative] caregiver would not be in the
259 child's or youth's best interests and such [relative] caregiver is not a
260 suitable and worthy person. The court shall order specific steps that
261 the parent must take to facilitate the return of the child or youth to the
262 custody of such parent.

263 (4) The commissioner shall be the guardian of such child or youth
264 for the duration of the commitment, provided the child or youth has
265 not reached the age of eighteen years, or until another guardian has
266 been legally appointed, and in like manner, upon such vesting of the
267 care of such child or youth, such other public or private agency or
268 individual shall be the guardian of such child or youth until such child
269 or youth has reached the age of eighteen years or, in the case of a child
270 or youth in full-time attendance in a secondary school, a technical high
271 school, a college or a state-accredited job training program, until such
272 child or youth has reached the age of twenty-one years or until another
273 guardian has been legally appointed. The commissioner may place any

274 child or youth so committed to the commissioner in a suitable foster
275 home or in the home of a [person related by blood or marriage to such
276 child or youth] fictive kin caregiver, relative caregiver, or in a licensed
277 child-caring institution or in the care and custody of any accredited,
278 licensed or approved child-caring agency, within or without the state,
279 provided a child shall not be placed outside the state except for good
280 cause and unless the parents or guardian of such child are notified in
281 advance of such placement and given an opportunity to be heard, or in
282 a receiving home maintained and operated by the Commissioner of
283 Children and Families. In placing such child or youth, the
284 commissioner shall, if possible, select a home, agency, institution or
285 person of like religious faith to that of a parent of such child or youth,
286 if such faith is known or may be ascertained by reasonable inquiry,
287 provided such home conforms to the standards of said commissioner
288 and the commissioner shall, when placing siblings, if possible, place
289 such children together. Upon the issuance of an order committing the
290 child or youth to the Commissioner of Children and Families, or not
291 later than sixty days after the issuance of such order, the court shall
292 determine whether the Department of Children and Families made
293 reasonable efforts to keep the child or youth with his or her parents or
294 guardian prior to the issuance of such order and, if such efforts were
295 not made, whether such reasonable efforts were not possible, taking
296 into consideration the child's or youth's best interests, including the
297 child's or youth's health and safety.

298 (5) A youth who is committed to the commissioner pursuant to this
299 subsection and has reached eighteen years of age may remain in the
300 care of the commissioner, by consent of the youth and provided the
301 youth has not reached the age of twenty-one years of age, if the youth
302 is (A) enrolled in a full-time approved secondary education program
303 or an approved program leading to an equivalent credential; (B)
304 enrolled full time in an institution which provides postsecondary or
305 vocational education; or (C) participating full time in a program or
306 activity approved by said commissioner that is designed to promote or

307 remove barriers to employment. The commissioner, in his or her
308 discretion, may waive the provision of full-time enrollment or
309 participation based on compelling circumstances. Not more than one
310 hundred twenty days after the youth's eighteenth birthday, the
311 department shall file a motion in the superior court for juvenile
312 matters that had jurisdiction over the youth's case prior to the youth's
313 eighteenth birthday for a determination as to whether continuation in
314 care is in the youth's best interest and, if so, whether there is an
315 appropriate permanency plan. The court, in its discretion, may hold a
316 hearing on said motion.

317 (6) Prior to issuing an order for permanent legal guardianship, the
318 court shall provide notice to each parent that the parent may not file a
319 motion to terminate the permanent legal guardianship, or the court
320 shall indicate on the record why such notice could not be provided,
321 and the court shall find by clear and convincing evidence that the
322 permanent legal guardianship is in the best interests of the child or
323 youth and that the following have been proven by clear and
324 convincing evidence:

325 (A) One of the statutory grounds for termination of parental rights
326 exists, as set forth in subsection (j) of section 17a-112, or the parents
327 have voluntarily consented to the establishment of the permanent legal
328 guardianship;

329 (B) Adoption of the child or youth is not possible or appropriate;

330 (C) (i) If the child or youth is as least twelve years of age, such child
331 or youth consents to the proposed permanent legal guardianship, or
332 (ii) if the child is under twelve years of age, the proposed permanent
333 legal guardian is: (I) A relative, (II) a caregiver, or [(II)] (III) already
334 serving as the permanent legal guardian of at least one of the child's
335 siblings, if any;

336 (D) The child or youth has resided with the proposed permanent
337 legal guardian for at least a year; and

338 (E) The proposed permanent legal guardian is (i) a suitable and
339 worthy person, and (ii) committed to remaining the permanent legal
340 guardian and assuming the right and responsibilities for the child or
341 youth until the child or youth attains the age of majority.

342 (7) An order of permanent legal guardianship may be reopened and
343 modified and the permanent legal guardian removed upon the filing
344 of a motion with the court, provided it is proven by a fair
345 preponderance of the evidence that the permanent legal guardian is no
346 longer suitable and worthy. A parent may not file a motion to
347 terminate a permanent legal guardianship. If, after a hearing, the court
348 terminates a permanent legal guardianship, the court, in appointing a
349 successor legal guardian or permanent legal guardian for the child or
350 youth shall do so in accordance with this subsection.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	17a-114
Sec. 2	<i>from passage</i>	17a-126
Sec. 3	<i>from passage</i>	46b-129(j)

Statement of Purpose:

To permit the transfer of subsidies in cases where a guardian is removed and another is appointed, and to permit a permanent transfer of guardianship to fictive kin.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]