

Memorandum

To: Members of House Judiciary
From: Ken Schatz, Commissioner, Department for Children and Families
Date: January 20, 2016
Re: Changes to H.400

Thank you for the opportunity to speak to you this week about H.400 and the reforms to judicial proceedings. DCF support this bill with three recommended changes.

Upon its passage, Act 60 contained some of the reforms proposed in this bill; specifically the language in Section 3. Therefore we propose striking this section.

As part of the implementation of Act 60 and addressing the timeliness of CHINS (Children in Need of Supervision) proceedings, DCF participated in the CHINS Work Group along with other key players from the juvenile system including:

- William Sorrell, Attorney General, *Chair*
- David Cahill, Executive Director of State's Attorneys and Sheriffs
- Hon. Brian Grearson, Chief Superior Judge
- Susan Hong, Guardian ad Litem, Vermont Superior Court
- Matthew Valerio, Defender General

Several recommendations that address the incredible strain on all parts of the child protection system are included the December 1, 2015 report, two of which require legislation. We propose adding the following language to H. 400 in order to help make the merits and disposition phases of abuse and neglect cases more efficient:

(From the Report)

First, the Legislature could amend 33 V.S.A. § 5315 to provide that the “final decision” for purpose of appeal in a CHINS matter is the disposition order, not the decision on the merits of the CHINS petition. Under current law as interpreted by the Vermont Supreme Court, a decision on the merits that a child is CHINS must be appealed immediately or the appeal is deemed waived. *See generally In re D.D.*, 194 Vt. 508 (2013). In a single case, this can result in multiple appeals that strain attorney and court resources and delay permanency for the child. It would be more efficient if, in



most cases, the decision on the merits could only be appealed after a disposition order is entered. The working group recommends the following amendment:

§ 5315. Merits adjudication

- (a) At a hearing on the merits of a petition, the State shall have the burden of establishing by a preponderance of the evidence that the child is in need of care and supervision. In its discretion, the Court may make findings by clear and convincing evidence.
- (b) The parties may stipulate to the merits of the petition. Such stipulation shall include a stipulation as to the facts that support a finding that the child is in need of care and supervision.
- (c) If the merits are contested, all parties shall have the right to present evidence on their own behalf and to examine witnesses.
- (d) A merits hearing shall be conducted in accordance with the Vermont Rules of Evidence. A finding of fact made after a contested temporary care hearing based on nonhearsay evidence may be adopted by the Court as a finding of fact at a contested merits hearing provided that a witness who testified at the temporary care hearing may be recalled by any party at a contested merits hearing to supplement his or her testimony.
- (e) If the merits are contested, the Court after hearing the evidence shall make its findings on the record.
- (f) If the Court finds that the allegations made in the petition have not been established, the Court shall dismiss the petition and vacate any temporary orders in connection with this proceeding. A dismissal pursuant to this subsection is a final order subject to appeal.
- (g) If the Court finds that the allegations made in the petition have been established based on the stipulation of the parties or on the evidence if the merits are contested, the Court shall order the Department to prepare a disposition case plan within 28 days of the merits hearing and shall set the matter for a disposition hearing. An adjudication pursuant to this subsection is not a final order subject to appeal separate from the resulting disposition order.
- (h) The Court in its discretion and with the agreement of the parties may waive the preparation of a disposition case plan and proceed directly to disposition based on the initial case plan filed with the Court pursuant to section 5314 of this title.

Second, the Legislature could add a new section to chapter 53 of Title 33 that expressly authorizes parties to enter into, and for the courts to consider and approve when appropriate, stipulated CHINS findings and defined case plans. Such stipulated





agreements would include parents in the case planning process at an early stage and thus would provide an incentive not to contest a CHINS finding. In addition to helping resolve cases more quickly, the child's best interests would be protected because stipulations would require DCF agreement and court approval. The working group recommends the following addition:

§ 5315a. Merits stipulation

- (a) At any time after the filing of the petition and prior to an order of adjudication on the merits, the Court may approve a written stipulation to the merits of the petition and any or all elements of the disposition plan, including the permanency goal, placement, visitation, or services.
- (b) A stipulation shall not be approved unless:
 - 1) the Parties to the petition, as defined in §5102(22), agree to the terms of the stipulation; and
 - 2) the Court determines that the child's, and parents', guardian's or custodian's, agreement are voluntary and that they understand the nature of the allegation and the rights which will be waived if the Court approves the stipulation and issues an order based upon the stipulation.

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We hope that you will consider amending H.400 to include both of these provisions. If you have any questions, please do not hesitate to reach out to Karen Vastine, the Legislative Liaison for DCF:

Karen.vastine@vermont.gov.



