

**Memorandum**

**To: Sen. Richard Sears, Chair, Senate Judiciary Committee**  
**From: Ken Schatz, Commissioner of DCF**  
**Date: March 30, 2016**  
**Re: H.400**

The Department for Children and Families supports H.400, a bill that proposes some changes to the judicial procedures of juvenile cases. We would also like to note that we appreciate the time your Committee is devoting to issues involving the Department. The table below explains the changes proposed in the bill and DCF's comments and explanations about why we think these proposed changes are necessary to further improve the child protection system.

Section	Comments/Explanation of the language
<p>           Sec. 1 – proposed changes to the permanent guardianship statute found in 14 VSA §2666.         </p> <p>           This section applies when a permanent guardian has died or the guardianship terminated – i.e. a permanent change in the permanent guardianship status.         </p>	<p>           There are three components to the proposed language:         </p> <ol style="list-style-type: none"> <li>(1) Allows for a Probate Division order placing a child in the custody of DCF and notification to DCF, State's Attorney (SA) and the Family Court of the change in custody to DCF.</li> <li>(2) This paragraph defines the legal custody of DCF as that in the juvenile proceedings act (JPA) and is clear that the custody of DCF comes with all the rights and responsibilities in the title 33 JPA. "Custody" is not defined in the probate guardianship statutes.</li> <li>(3) Directs the State (SA) to file a CHINS(A) because the permanent guardian has either died or the guardianship has been dissolved.</li> </ol> <p> <b>DCF supports this language as it ensures that the Department receives notification when a permanent guardian dies or the guardianship is terminated. This language also clarifies the process and responsibilities of the various parties in these situations.</b> </p>

Section	Comments/Explanation of the language
<p>Sec. 2 – proposed change to 14 VSA §2667 (another provision in the permanent guardianship statute).</p> <p>This section applies when there is a temporary change in the status of the permanent guardianship – i.e. when the probate court has stayed the order of the permanent guardianship because of allegations of immediate harm to the child.</p>	<p>There are also three components to the proposed language:</p> <p>(b) Clarifies that “legal custody” is transferred to the Commissioner of DCF (prior language was “parental rights and responsibilities”).</p> <p>(1) Defines what “legal custody” means – see explanation above in §2666.</p> <p>(2) Allows for notification to DCF, SA and Family Court when custody is transferred to DCF and clarifies that the State may seek a new CHINS petition against the current permanent guardian.</p> <p><b>DCF similarly supports this language. Please note that these situations do not happen very often, but we think that it is important to also clarify this statute and align it with changes made above in 14 VSA §2666.</b></p>
<p>Sec. 3 – proposed change to 33 VSA 5223 relating to the filing of delinquency petitions.</p>	<p>This proposed language provides notice to DCF of a new delinquency case when it is filed so that DCF is aware of the case.</p> <p>DCF is not a party in the delinquency case until after the merits finding and so does not receive notice of petitions filed.</p> <p><b>Even though not a party, DCF is required to file a disposition case plan following merits. DCF needs to know about the case since it is charged with preparing the case plan.</b></p>
<p>Sec. 4, 5, 6 &amp; 8 - proposed changes to the delinquency and CHINS statutes regarding timing of the filing of the disposition case plans.</p>	<p>These four sections contain similar language regarding the timing of the filing of disposition case plans.</p> <p>Instead of tying the filing to the merits findings (current law is 28 days following merits), the proposal is to link the filing to the scheduled disposition hearing (seven business days before the disposition hearing).</p>

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	<p>Courts struggle to keep up with the current statutory timelines. DCF is currently preparing disposition case plans following merits, but having to “redo” and update the case plan because so much time has elapsed since merits by the time that the disposition hearing is scheduled.</p> <p>This proposed change ensures that DCF is not redoing disposition case plans and that the case plans filed with the parties and court have the most up to date information.</p> <p><b>DCF supports the proposal to change the timing to seven business days before the disposition hearing. There are other proposed changes in this bill to replace references to “days” with “business days”, which DCF also supports.</b></p>
<p>Sec. 6 - proposal in 33 V.S.A. §5315(g)</p> <p>This language was a recommendation of the CHINS working group.</p>	<p>This is the first of two legislative proposals from the CHINS working group which was formed out of Act 60 (S.9).</p> <p>This proposed change will help to alleviate some of the strain on the child protection system by making clear that the “final decision” for purposes of appeal in a CHINS matter is the disposition order, not the merits finding.</p> <p>Under current law, as interpreted by the Vermont Supreme Court, a decision on the merits that a child is CHINS must be immediately appealed or the appeal is deemed waived. In a single case, this can result in multiple appeals that strain court and attorney resources and delay permanency for the child.</p> <p><b>This proposed change makes clear that the decision on the merits can only be appealed after a disposition order is entered.</b></p>

Section	Comments/Explanation of the language
<p>Sec. 7 – proposal to add 33 V.S.A. §5315a</p> <p><b>This proposal was the second legislative recommendation from the CHINS working group.</b></p>	<p>This proposed language expressly authorizes parties to enter into and for the courts to consider and approve, when appropriate, stipulated CHINS findings and defined case plans.</p> <p>This proposal encourages the participation by parents in the case planning process at an early stage and helps to potentially resolve some CHINS cases more quickly.</p> <p><b>The child’s interests in the case are protected because stipulations would require DCF and Court approval.</b></p>
<p>Sec. 9 – effective date</p>	<p><b>DCF supports the effective date as proposed, which is upon passage.</b></p>