

Memorandum

To: House Human Services Committee
From: Leslie Wisdom, DCF General Counsel
Re: H.424
Date: January 15, 2020

Thank you for the opportunity to speak with you about H.424, the bill proposing to adopt the new interstate compact on the placement of children. States adopt the new interstate compact by adopting laws with the new compact language. Each state adopts the same language, making the compact a legally binding contract between states.

In order for the new compact to be effective between states, at least 35 states have to adopt the new compact (see Article XIV). Only about 13 states have adopted the new compact, with many bills pending in other states, including New Hampshire.

The fact that the new compact has not yet been adopted by all the states means that Vermont needs to:

- Adopt the new compact so that it is one of the first 35 states to adopt, but also
- Keep the current compact language in Vermont law for now so that Vermont can participate in interstate transfers until the new compact is effective

Based on this information, DCF proposes H.424 as introduced is amended as follows:

- Keep the current chapter 59 of title 33 (old compact language) in Vermont law
- Also add a new chapter in Vermont law, such as chapter 59a, with the new compact language
 - Legislative counsel can help with language explaining that this new compact language has been adopted, but is not yet effective
- Include in the bill an annual reporting requirement for DCF to notify this committee about the status of other state's adoption of the new compact

Procedural Due Process for Out-of-State Placements

Finally, DCF recommends the following amendment to clarify procedural due process protections for youth being placed out-of-state. Subchapter 2 of chapter 59 is a Vermont specific section of the compact that explains the interstate compact language and that also provides for Vermont-specific due process protections.

DCF's proposed amendment is consistent with Vermont supreme court decisions that have clarified that all children in DCF custody have the right to a hearing before being placed out-of-state and also that the right to request a hearing belongs to the child, not the parents. If a child requests a hearing, the parents must be provided notice and an opportunity to be heard. *See In re M.C.*, 2018 Vt. 139, 204 A.3d 1123 (2018); *In re A.K.*, 153 Vt. 462, 571 A.2d 75 (1990).



33 V.S.A. § 5926 is amended to read:

§ 5926. Placement of ~~neglected or unmanageable~~ children

The officers and agencies of this State having authority to place abused, neglected, or unmanageable children may place such a child in another state.

- (1) Notice. Notice of the proposed placement in another state shall be given to the child and parent or guardian. This notice shall not apply to parents or guardians whose rights have been judicially terminated.
- (2) Hearing. Any child who may be placed in another state pursuant to this compact ~~However, unless parental rights have been judicially terminated, any such child being placed in another state pursuant to this compact~~ shall, upon request, be given a court hearing ~~on notice to the parent or guardian~~ with opportunity to be heard prior to his or her being sent to such other state for care and the court finds that:
 - ~~(1)~~ (a) equivalent facilities for the child are not available in this State;
 - ~~(2)~~ (b) care in the other state is in the best interest of the child and will not produce undue hardship.

Conclusion

DCF recommends:

- Keep existing interstate compact law in title 33, chapter 59 so that Vermont can continue to work with other states on interstate transfers until the new compact is effective
 - But amend one provision in subchapter 2 of chapter 59 with respect to due process
- Add the new compact language in a new chapter 59a in title 33, which will not yet be effective
- Include in the bill language directing DCF to report annually on the status of other states' adoption of the new compact

Thank you.