

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

Pursuant to the authority of Iowa code sections 232, 235A and 2016 Iowa Acts, Senate File 2258, the Department of Human Services hereby gives Notice of Intended Action to amend Chapter 175, “Abuse of Children,” Iowa Administrative Code.

These amendments implements federal law, “ Justice for Victims of Trafficking Act (P.L. 114-22).” The law requires state child protective service agencies to consider a child to be a victim of “child abuse and neglect” and of “sexual abuse” if the child is identified as being a victim of sex trafficking or a victim of severe form of trafficking in persons. This law also requires individuals who patronize or solicit persons for a commercial sex act to be equally culpable for sex trafficking offenses.

In addition, these amendments add an 11<sup>th</sup> category of abuse, child sex trafficking in accordance with P.L. 114-22 and 2016 Iowa Acts, Senate File 2258 and modify the current categories of sexual abuse.

Any interested person may make written comments on the proposed amendments on or before August 23, 2016. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 5<sup>th</sup> Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by email to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A, 217).

After analysis and review of this rule making, there may be an impact on jobs. All perpetrators of child sex trafficking who have a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons 14 years or older who reside in a home with the child that they are confirmed to have sexually abused will be placed on the Central Abuse Registry. Perpetrators of sexual abuse age 14-17 years old may also have their name withheld from the Central Abuse Registry upon order from the court.

These amendments are intended to implement Iowa code sections 232, 235A, and 2016 Iowa Acts, Senate File 2258.

The following amendments are proposed.

ITEM 1. Amend rule ~~441—175.21(232,235A)~~, definitions of “Child abuse assessment,” “Commercial sex act,” “Home,” “Reside” or “Resides,” “ Severe form of trafficking in persons,” “Sex trafficking,” and “Sex trafficking victim,” as follows:

“Child abuse assessment” means an assessment process by which the department responds to all accepted reports of child abuse which allege child abuse as defined in Iowa Code section 232.68(2)“a”(1) through (3) and (5) through (101); or which allege child abuse as defined in Iowa Code section 232.68(2)“a”(4) that also allege imminent danger, death, or injury to a child. A “child abuse assessment” results in a disposition and a determination of whether a case meets the definition of child abuse and a determination of whether criteria for placement on the registry are met.

~~“Commercial sex act,” as provided in 22 U.S.C. Section 7102(4), means any sex act on account of which anything of value is given to or received by any person.~~

“Home” means a permanent or temporary structure where one resides, including a licensed foster family home. For the purpose of this chapter, home shall not be construed to

include any public or private facility, such as an institution, hospital, health care facility, intermediate care facility for persons with an intellectual disability, residential care facility for persons with an intellectual disability, a skilled nursing facility, group care, mental health facility, residential treatment facility, shelter care facility, detention facility, licensed daycare center, or child foster care provided by an agency.

“Reside” or “Resides” means to habitually sleep or live. A persons subjective intent as to where they reside is not relevant.

~~“Severe form of trafficking in persons,” as provided in 22 U.S.C. Section 7102(9)(A), means sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.~~

~~“Sex trafficking,” as provided in 22 U.S.C. Section 7102(10), means the recruitment, harboring, transportation, provision, ~~or~~ obtaining, patronizing, or soliciting of a person for the purpose of ~~a~~ commercial sexual activity as defined in Iowa Code section 710A.1.~~

~~“Sex trafficking victim,” as provided in 42 U.S.C. Section 675(9), means any of the following:~~

- ~~1. A a victim of sex trafficking.~~
- ~~2. A victim of a severe form of trafficking in persons.~~

ITEM 2. Amend paragraph **175.22(2)“b”** as follows:

b. If a report constitutes an allegation of child sexual abuse as defined under Iowa Code section 232.68(2)“ea,”(3) except that the suspected abuse resulted from the acts or omissions of a person who was not a caretaker or was not a person who resides in a home with the child, the

department shall refer the report to law enforcement orally and, as soon as practicable, follow up in writing within 72 hours of receiving the report.

ITEM 3. Amend paragraph **175.24(1)“b”** as follows:

b. The alleged perpetrator of child abuse is: ~~a caretaker.~~

(1). A caretaker; or

(2) A person who resides in a home with the child, if the allegation is sexual abuse, as defined in Iowa Code section 232.68 (2)“a”(3); or

(3). A person who engages in or allows child sex trafficking, as defined in Iowa Code section 232.68(2)“a”(11).

ITEM 4. Amend paragraph **175.24(2)“a”** as follows:

a. A child abuse assessment is required for all accepted reports which allege child abuse as defined in Iowa Code section 232.68(2)“a”(1) through (3) and (5) through (10~~1~~); or which allege child abuse as defined in Iowa Code section 232.68(2)“a”(4) that also allege imminent danger, death, or injury to a child. If one or more of the following factors are met, a child abuse assessment shall be required:

(1) - (10) No change.



Iowa Department of Human Services  
**Information on Proposed Rules**

|  |                                  |  |
|--|----------------------------------|--|
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1. Give a brief summary of the rule changes:

The proposed rule changes are to implement federal law ***Justice for Victims of Trafficking Act (P.L. 114-22)***, to require state child protective service agencies to consider a child to be a victim of “child abuse and neglect” and of “sexual abuse” if the child is identified as being a victim of sex trafficking or a victim of severe form of trafficking in persons. This law also required individuals who patronize or solicit persons for a commercial sex act to be equally culpable for sex trafficking offenses.

As a result of the federal law, an 11<sup>th</sup> category of abuse, child sex trafficking, was added to the Iowa Code. While modifying the State law, the definition to the current category of sexual abuse was also modified.

2. What is the legal basis for the change? (Cite the authorizing state and federal statutes and federal regulations):

***Justice for Victims of Trafficking Act (P.L. 114-22)***, effective May 29, 2015  
***Iowa Code 2016, Senate File 2258***, effective July 1, 2016

3. What is the reason for the Department requesting these changes?

Compliance with federal and state laws.

4. What will be the effect of this rule making (who, what, when, how)?

The rule conforms to the federal and state law changes to add child sex trafficking as a new category of child abuse and modify the current definition of sexual abuse.

5. Is the change mandated by State or Federal Law?

Yes.

6. Will anyone be affected by this rule change? If yes, who will be affected and will it be to the person’s (organization’s) benefit or detriment?

Yes, all perpetrators of child sex trafficking who have a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons who reside in a home with the child that they are confirmed to have sexually abused will be placed on the Central Abuse Registry. The benefit for perpetrators of sexual abuse under the age of 14 years will continue to be withheld from the Central Abuse Registry and perpetrators of sexual abuse age 14-17 years old may have their name withheld from the Central Abuse Registry upon order from the court.

7. What are the potential benefits of this rule?

The IDHS will be able to serve a vulnerable population previously not eligible for services.

8.What are the potential costs, to the regulated community or the state of Iowa as a whole, of this rule?

Costs to update Child Welfare Information Systems, IAC and manual updates, training to field staff, and potential increase in appeals will be absorbed into IDHS daily operations.

9.Do any other agencies regulate in this area? If so, what agencies and what Administrative Code sections apply?

No.

10.What alternatives to direct regulation in this area are available to the agency? Why were other alternatives not used?

Proposed rules are the minimum necessary to implement federal and state law.

11.Does this rule contain a waiver provision? If not, why?

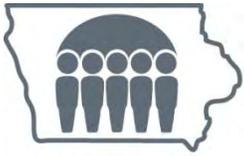
Yes

12.What are the likely areas of public comment?

The public is expected to support the implementation of the child sex trafficking law. The public will likely question the modification to the sexual abuse definition which requires the IDHS to assess sexual abuse perpetrated by any person who resides in a home with the child, even if that person is a child (under 18 years old) themselves. The public is not likely to understand the legislative intent to 1. Continue to keep perpetrators of sexual abuse under the age of 14 (and 14-17 with a court order) off of the Central Abuse Registry and 2. Provide services (not previously available) to children and families struggling to deal with sexual abuse occurring in the home.

13.Do these rules have an impact on private-sector jobs and employment opportunities in Iowa? (If yes, describe nature of impact, categories and number of jobs affected, state regions affected, costs to employer per employee)

Yes, all perpetrators of child sex trafficking who have a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons 14 years or older who reside in a home with the child that they are confirmed to have sexually abused will be placed on the Central Abuse Registry. Perpetrators of sexual abuse age 14-17 years old may also have their name withheld from the Central Abuse Registry upon order from the court.



## Administrative Rule Fiscal Impact Statement

Date: 6/14/2016

**Agency:** Human Services  
**IAC citation:** IAC 441-175  
**Agency contact:** Roxanne Riesberg, 1-8786

**Summary of the rule:**

Implements federal and state law to add child sex trafficking as an additional category of child abuse and modifies the definition of the sexual abuse category of child abuse.

*Fill in this box if the impact meets these criteria:*

- No fiscal impact to the state.  
 Fiscal impact of less than \$100,000 annually or \$500,000 over 5 years.  
 Fiscal impact cannot be determined.

**Brief explanation:**

Because the IDHS is adding a new category of child abuse and modifying sexual abuse to include a new population of perpetrators that have not been previously included, additional persons will have confirmed findings of child abuse, making them eligible for appeal. There will be a slight increase in appeals.

In 2015 and historically, sexual abuse has made up approximately 5% of all Confirmed or Founded Abuse Types. The current percent of appeals regarding sexual abuse is unknown, but is expected to increase slightly since it is expected that the % of Confirmed or Founded sexual abuse will increase slightly due to expanded definition to include not only the caretaker, but any person who resides in a home with the child victim.

The impact of adding child sex trafficking as a new category of abuse is unknown, but expected to be slight as well. It is expected that the % of Confirmed or Founded child sex trafficking will be comparable to the % for sexual abuse if not lower, even with the consideration that caretaker status is not required for this type of abuse.

In May 2016, 15 children entered foster care with sexual abuse as the primary reason for placement. It's estimated that there may be an additional 1 – 2% increase in placement as a result of sexual abuse (up to 2 children per year for an average stay of 9 months). The annual cost (state \$) for a child placed in family foster care is approximately \$7,100.

*Fill in the form below if the impact does not fit the criteria above:*

- Fiscal impact of \$100,000 annually or \$500,000 over 5 years.

**Assumptions:**

**Describe how estimates were derived:**

**Estimated Impact to the State by Fiscal Year**

|                                | Year 1 (FY ) | Year 2 (FY ) |
|--------------------------------|--------------|--------------|
| <b>Revenue by each source:</b> |              |              |
| General fund                   | _____        | _____        |
| Federal funds                  | _____        | _____        |
| Other (specify):               | _____        | _____        |
| <b>TOTAL REVENUE</b>           | _____        | _____        |
| <b>Expenditures:</b>           |              |              |
| General fund                   | _____        | _____        |
| Federal funds                  | _____        | _____        |
| Other (specify):               | _____        | _____        |
| <b>TOTAL EXPENDITURES</b>      | _____        | _____        |
| <b>NET IMPACT</b>              | _____        | _____        |

This rule is required by state law or federal mandate.

*Please identify the state or federal law:*

Identify provided change fiscal persons:

*Justice for Victims of Trafficking Act (P.L. 114-22), effective May 29, 2015  
Iowa Code 2016, Senate File 2258, effective July 1, 2016*

Funding has been provided for the rule change.

*Please identify the amount provided and the funding source:*

Funding has not been provided for the rule.

*Please explain how the agency will pay for the rule change:*

Costs to update Child Welfare Information Systems, IAC and manual updates, training to field staff, and potential increase in appeals will be absorbed into IDHS daily operations. The cost for additional foster care placements will be minimal and will be absorbed in the Child and Family Service appropriation.

***Fiscal impact to persons affected by the rule:***

Yes, all perpetrators of child sex trafficking with a confirmed finding of child abuse will be placed on the Central Abuse Registry. Additionally, persons 14 years or older who reside in a home with the child that they are confirmed to have sexually abused will be placed on the Central Abuse Registry. Perpetrators of sexual abuse age 14-17 years old may also have their name withheld from the Central Abuse Registry upon order from the court.

Placement on the Central Abuse Registry may disqualify the perpetrator from employment in certain professions.

***Fiscal impact to counties or other local governments (required by Iowa Code 25B.6):***

No fiscal impact is anticipated. There may be an increase in court hearings.

Agency representative preparing estimate: Victoria Wiedemeier

Telephone number: 515-281-6856