Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

December 15, 2011

Michael Marshall
Secretary of the Senate
State Capitol Building
L O C A L

Charlie Smithson
Chief Clerk of the House
State Capitol Building
L O C A L

Dear Mr. Marshall and Mr. Smithson:

Enclosed please find the Summary of Charge from House File 562, Section 7, Child Protection System Improvements.

This report is also available on the Department of Human Services website at http://www.dhs.iowa.gov/Partners/Reports/LegislativeReports/LegisReports.html.

Sincerely,

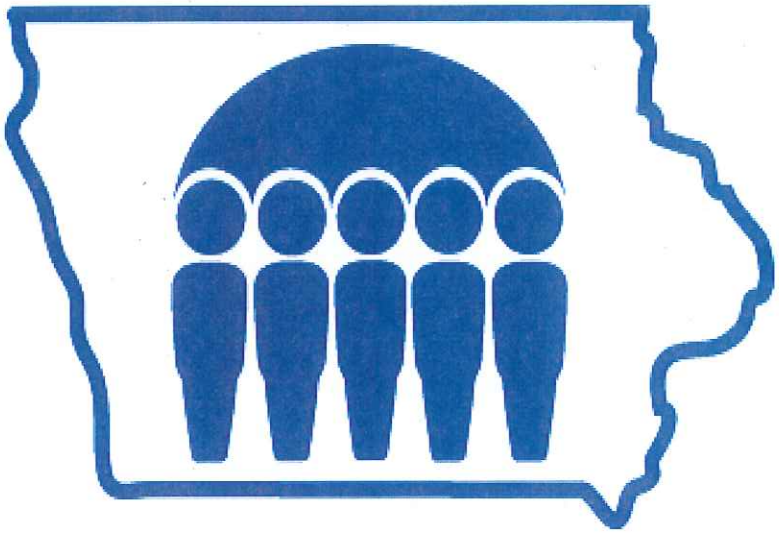
Jennifer Davis Harbison (dvj)

Jennifer Davis Harbison
Policy Advisor

Enclosure

cc: Governor Terry E. Branstad
Senator Jack Hatch
Senator David Johnson
Representative David Heaton
Representative Lisa Heddens
Legislative Services Agency
Kris Bell, Senate Majority Staff
Josh Bronsink, Senate Minority Staff
Brad Trow, House Majority Staff
Zeke Furlong, House Minority Staff

Iowa Department of Human Services



Summary of Charge From House File 562

December 2011

Letter to the Iowa General Assembly:

To the members of the Iowa General Assembly's standing committees on human resources and the Legislative Services Agency:

The Workgroup on Iowa's Child Abuse Registry came together pursuant to the direction of Section 7 of House File 562: "The department of human services shall continue working with the office of the attorney general, department of inspections and appeals, office of the citizens' aide, prevent child abuse Iowa, Iowa civil liberties union, and other stakeholders to develop and implement improvements in the child abuse assessment and registry processes and other child protection system provisions as outlined in this section in order to ensure the due process rights of persons alleged to have committed child abuse are addressed in a more timely manner while also ensuring that children are protected from abuse." That bill also gave a specific charge for the group which is noted below.

The Workgroup conducted five (5) meetings, facilitated by Jerry Foxhoven. The product of this group consists of a series of recommendations for short-term, medium-term and long-term changes that the group believes will improve Iowa's Child Abuse Registry process, balancing protections of children and the due process rights of alleged perpetrators of child abuse. Some of these proposals (the short-term proposals) have been or are being implemented without the need for legislative changes. The medium-term recommendations require some legislative action, but can be accomplished rather quickly after legislative enactment. The long-term recommendations require legislative changes as well as a more lengthy time period to fully implement the contemplated changes.

All members of the Workgroup on Iowa's Child Abuse Registry wish to thank the Iowa General Assembly for creating the vehicle for this review of Iowa's Child Abuse Registry.

Summary of Charge from House File 562

Section 7 of House file 562 requested a review of both near-term solutions and long-term solutions:

Near-term solutions that can be initiated without legislation, which may include but are not limited to all of the following:

a. Shifting financial resources to expand the positions in the office of the attorney general involved with child abuse appeals.

b. Improving the training of child protection workers regarding evidence standards, confirmed child abuse, and founded child abuse.

c. Expediting process for the director of human services' review and response to administrative law judge decisions.

Options to address long-term issues with the child protection system, including but not limited to all of the following:

a. Considering changes to registry placement provisions to verify that registry placement applies to the persons who have posed a consequential risk to the health and safety of the child found to have been abused and unwarranted placement is limited or eliminated.

b. Providing a differential response to child abuse allegations based upon the severity of the allegation.

c. Allowing for reconsideration of founded abuse findings or registry placement status based upon the rehabilitation of the alleged perpetrator.

d. Varying the duration of registry placement based upon the severity of the child abuse finding.

Child Abuse Registry Facts

There are currently between 50,000 and 60,000 individuals on Iowa's Child Abuse Registry.

There were 26,697 reports of child abuse in FY 2011. Of these reports, 8,890 were "founded" to be child abuse, requiring placement on the registry. Another 3,071 reports met the definition in the Code of "confirmed" to be child abuse, but did not meet the criteria under the Code to be placed on the registry.

There were 1,269 Child Abuse appeals in FY 2011. Of those:

- 109 appeals were from a finding of "not confirmed".
- 75% - 80% of the remaining appeals were settled.

The most common settlement is an agreement that the abuse be confirmed, but not placed on the registry. Settlements often occur because the alleged perpetrator of the abuse has participated in and completed recommended services, resulting in an absence of further risk of abuse.

The length of time for an appeal of a placement on Iowa's Child Abuse Registry is just under one year (down from over 2 years in the past).

All individuals placed on the Child Abuse Registry remain on the registry for ten (10) years, regardless of the severity of the abuse or the risk of re-abuse.

Parents of an alleged victim of child abuse have "party status" in Iowa, allowing a parent to appeal a decision in favor of the other parent.

Evolution of the Purpose of the Registry

Iowa's child abuse registry was initially created to ensure that victims in families who move to a different county (or state) were still protected by a statewide record of abuse victims and perpetrators. The Registry was also designed to identify victims who needed to be provided services.

The role of the child abuse registry evolved into one involving a substantial employment background check component. The employment purpose of the registry was designed to provide a check for child care agencies, then foster homes, then nursing homes and other care facilities. Finally, other employers, who had consents signed by potential employees, came to use the Child Abuse Registry to screen potential employees.

When an eligible (by Code) employer asks for a child abuse registry background check, the Iowa Department of Human Services (DHS) performs the check and reports that there is or is not a "hit". No details are provided as to the type of abuse or the circumstances surrounding the abuse. If the potential employer of selected programs requests approval of eligibility to hire, DHS will review 7 issues and indicate that the employee either is or is not prohibited from serving in the specific employment role based upon the registry placement.

Structural and Procedural Issues Identified

The workgroup has identified a number of structural and procedural issues that delay registry appeals or that affect placement or retention on the registry without significantly advancing due process rights:

- There is no method for a differential response to cases being taken into the system. A differential response would identify at least two discrete response pathways for cases being screened in to the system, one of which would be comprised of a voluntary non-investigative response.
- Iowa statutes do not provide for a shorter time on the registry in cases where the abuse is determined to be less severe and the risk of re-abuse less likely.
- Parents currently have "party status," allowing them to use the registry appeal process to advance their position in the dissolution of marriage courts.
- Iowa Supreme Court decisions have interpreted existing statues to require full hearings when there is no legal ground for appeal of a registry placement.
- There is no method for an individual to be removed from the child abuse registry before expiration of 10 years, regardless of risk.
- Iowa law and procedure do not contain a separate, expedited appeal track for parties whose employment status is threatened by placement on the child abuse registry.
- Except for the current 90-day requirement for filing an appeal, there are no statutory or regulatory timeframes for the appeals process, including the Director's review.

Near Term Solutions Already Implemented

- The Attorney General's office and the Department of Inspections and Appeals (DIA) have implemented procedures to expedite appeals in cases where employment is at risk, offering the parties the opportunity to have an appeal heard as quickly as six weeks after notification of the appeal.
- The Attorney General's office has agreed to temporarily shift resources to add additional assistant attorneys general if necessary to prevent backlogs and delays in expedited appeals (those having employment implications).
- DIA Appeals Division has agreed to provide periodic feedback to DHS concerning any training issues noted by Administrative Law Judges, and the Attorney General's Office and DHS has agreed to respond by providing worker training in the identified areas.
- DHS has agreed to modify the notice of an abuse finding, highlighting the consequences of being placed on the child abuse registry and directing the person subject to the notice to a web link with a form for perfecting an appeal.
- The DHS Director has agreed to add a staff position to process appeals from the proposed Administrative Law Judge decisions filed with and taken by the department to the Director.

Medium-Term Recommendations

Minor statutory changes can reduce numbers of cases on appeal without putting children at risk, resulting in quicker dispositions of all appeals:

- The Code should be amended to provide that the contested case hearing process be limited to alleged perpetrators who have been adversely affected by either a "founded and placed" or a "confirmed not placed" disposition. At the time that the notice of decision is issued, subjects should be informed about the appeal process and provided information about the intervention process for contested case proceedings.
- The Code should be amended to allow issue and claim preclusion principles to be applied to child abuse registry appeals based upon final decisions in juvenile or district court cases.
- The Code should be clarified to provide that, upon the request of any party to the contested case proceeding, the presiding officer can stay the hearing pending the final decision in a juvenile or district court case relating to the abuse findings.
- The General Assembly should request that the Department of Human Services (DHS) and the Department of Inspections and Appeals (DIA) report back to the General Assembly in one year on the length of time for appeals of placement on the child abuse registry and the reasons for the "outliers" in length of time on appeal.

Long-Term Recommendations

Significant changes in the Code can make substantial improvements in Iowa's Registry:

- The Code should be amended to provide DHS with the discretion (based upon established criteria) to remove a person from the child abuse registry before the completion of ten years, and allowing a party placed on the registry to request DHS to exercise this discretion. Records would be sealed under the same terms as would occur if discretion was not exercised.
- The General Assembly should direct that DHS conduct a comprehensive review to evaluate the possibility of implementing a differential response to child abuse reports.
- The Administrative rules should be amended to include the following procedure upon appeal of a ruling by the administrative law judge (ALJ) to the Director: if the Director does not take any action within 90 days of the perfection of an appeal from the ALJ decision, the ruling is automatically affirmed; if the Director takes any action within 90 days of the appeal (including issuing a notice of intent to issue decision) the director shall have a total of 120 days to issue a ruling.

Minority Report and Conclusions

The Child Abuse Registry Workgroup consisted of representatives of the Iowa Department of Human Services, the Iowa Department of Inspections and Appeals, the Iowa Attorney General's office, the Office of the Citizens' Aide/Ombudsman, the Iowa Legislative Services Agency, Prevent Child Abuse Iowa, the American Civil Liberties Union of Iowa, Iowa Legal Aid, the Youth Law Center, providers, parents and other child advocates and advocates for individuals placed on the child abuse registry. These representatives worked together closely to examine ways to improve Iowa's child protective services system and to expedite the child abuse registry process while ensuring the safety of children and the due process rights of individuals placed on Iowa's Child Abuse Registry.

Minority Report

From the outset of its proceedings, this workgroup accepted the possibility that there could be a "minority report" containing recommendations that were supported by some members of the group, but not by the majority. In spite of a significant diversity in the background of the workgroup members (child advocates, parent advocates, government representatives and individuals placed on the registry) a surprising consensus prevailed where members agreed on most of the proposed statutory changes noted above. However, the following minority positions were expressed by members of the group:

- The type and severity of abuse should be considered in determining the length of time a person is placed on the registry. The Code should be amended to provide that the length of time that an individual is placed on the child abuse registry varies based upon the severity of the abuse and the likelihood of re-abuse (a substantial minority supported this proposal).
- Timeframes should be set for hearings and decisions, subject to continuances or extensions for "good cause" or upon agreement of the parties, to help ensure all appeals cases (not just employment-related cases that may be expedited) move along towards completion (one member supported this proposal). Members opposed to this proposal wanted to "wait and see" if the proposals contained in this report and the changes already implemented as a result of the work of this group would substantially lower the delay in appeals.
- The code should be amended to provide that parties with employment issues should not be placed on the child abuse registry until the appeals process is completed, unless there has been a determination that the case is "high risk" warranting immediate placement (a minority of members supported this proposal).

Conclusions

Differential Response: The workgroup determined that addressing differential response at the point of an initial report of child abuse would involve a comprehensive review of DHS' entire system for addressing child abuse complaints, requiring more time and resources than were allotted to this workgroup. The General Assembly should direct DHS to study the issue and explore the possibility of developing a differential response to child abuse reports.

Minutes/Handouts of Meetings: This report contains highlights of the recommendations and work of this workgroup. The General Assembly will be provided with minutes of the meetings (along with handouts) that led to the formulation of these recommendations for a more comprehensive explanation of the reasons for the recommendations and for more details concerning the recommendations.

Conclusion: The proposed statutory changes recommended in this report can be implemented without placing children at risk but balancing the due process rights of individuals subject to placement on the Child Abuse Registry.