Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

December 3, 2012

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

Carmine Boal
Chief Clerk of the House
State Capitol Building
L O C A L

Dear Mr. Marshall and Ms. Boal:

Enclosed please find the Summary of Charge from House File 2226, Section 6, Child Abuse Registry Length of Time Review.

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

Sincerely,

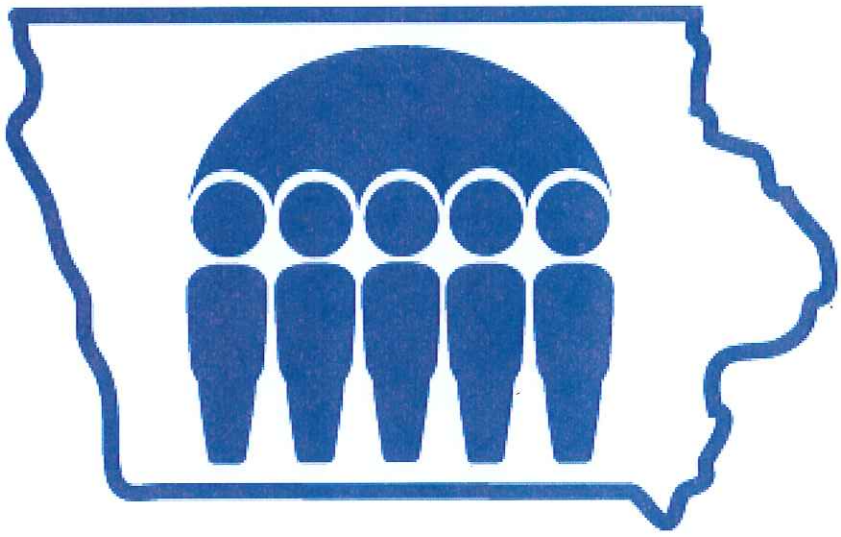
Jennifer Davis Harbison (dy)

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
Carrie Kobrinetz, House Majority Staff
Zeke Furlong, House Minority Staff

Iowa Department of Human Services



Summary of Child Abuse Registry Length of Time Review, Charge from House File 2226

December 2012

Executive Summary:

The workgroup produced recommendations that it believes will improve Iowa's Child Abuse Registry process, balancing protections of children and the employment opportunities of those placed on the registry. These recommendations require legislative changes that can be accomplished fairly quickly following legislative enactment.

The workgroup's major recommendations include:

- A change to the duration of time a founded abuse report is listed on the Child Abuse Registry for certain types of abuses. Some reports would be on the registry for five years. Current law provides a ten-year listing for all founded abuse reports. The change would apply only going forward. Duration of time would not change for reports currently on the registry.

- Permit the Department of Human Services at its discretion to remove a person from either the five- or ten-year registry prior to either of those limits. In a minority position, the DHS is strongly opposed to this recommendation.

Introduction:

The Iowa 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 registry evolved into one that included a substantial employment background check component. The employment purpose of the registry was designed to provide a check for child care agencies, and later, foster homes, nursing homes and other care facilities. Finally, other employers, who had consents signed by potential employees, began to use the registry to screen potential employees.

When an eligible employer asks for a registry background check, the Single Contact Repository (SING) application (developed and sponsored by the Iowa Department of Administrative Services / Information Technology Enterprises for registered users, eligible per Iowa Code 235A.15), 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 a statutorily defined program requests approval to hire, the Department of Human Services (DHS) will review criteria as defined in Iowa Administrative Code and indicate whether the employee is or is not prohibited from serving in the specific employment role based upon the registry placement.

As the use of the registry has evolved, it is worthwhile to review the placement and expungement requirements of reports placed on the registry and to consider whether to vary the length of time spent on the registry based on severity and risk.

Workgroup Overview:

The Workgroup on Iowa's Child Abuse Registry came together pursuant to the direction of Section 6 of House File 2226: "The department of human services shall also review and recommend the length of time a person named in a child abuse report as having abused a child should remain on the child abuse registry and the circumstances under which the department may remove the name of a person named in the report as having abused a child from the report and disposition data prior to the expiration of a ten-year period."

This section of the bill also gave a specific charge for a "comprehensive review to determine whether to recommend implementation of a differential response to child abuse reports when the initial report is received by the department pursuant to section 232.70." A different workgroup addressed this charge and is submitting a separate report.

The workgroup began the first half-day meeting discussing the charge of House File 2226 and reviewing current Iowa Code. The discussion focused on the best approach to determine:

- The length of time a person named in a child abuse report as having abused a child should remain on the registry.
- The circumstances under which the department may remove the name of a person named in the report as having abused a child from the report and disposition data prior to the expiration of a ten-year period.

The workgroup unanimously concluded that the best approach was to consider both the length of time and circumstances for placement on the registry at the time in which a child abuse report is completed. Specifically, the workgroup agreed that a reduced amount of time, namely five years, for placement on the registry could be identified for specific types of abuse and circumstances based on severity and risk.

Consideration for Placement <10 Years:

To begin this task, the workgroup reviewed the ten categories of child abuse, as defined in Iowa Code Section 232.68, and the child abuse subcategories. These categories of child abuse were compared with criminal law provisions and safety and risk factors for each subcategory of child abuse.

The workgroup determined that all sexual abuse categories should be exempt from a reduced time of placement on the registry. Likewise, the workgroup determined not to reduce time on the registry for a person found to have committed these types of child abuse:

- Sexual abuse
- Prostitution
- Bestiality in the presence of a minor
- Allowing access by a registered sex offender
- Allowing access to obscene materials
- Mental injury

The above categories make up less than 6 percent of all abuse findings.

The workgroup determined that some instances of abuse are appropriate for placement on the registry for a reduced amount equal to five years, rather than the ten-year period. These types of child abuse included:

- Physical abuse
- Denial of critical care
- Presence of illegal drugs in a child's body
- Manufacture and possession of a dangerous substance

Minority Position for Manufacture and Possession of a Dangerous Substance:

A minority position was expressed from a workgroup member regarding the issue of manufacture and possession of a dangerous substance being identified for placement on the registry for a reduced amount equal to five years. The majority of the workgroup agreed that both categories of abuse relating to substance abuse (presence of illegal

drugs in a child's body and manufacture and possession of a dangerous substance) should be treated the same, due to research shared by substance abuse treatment professionals that all persons who abuse substances have an equal ability to recover no matter what their drug of choice.

The minority position was that cases of manufacture and possession of a dangerous substance should be included for placement on the registry for the ten-year period as an effort to protect children. The minority position noted the devastating impact of methamphetamine and cited numerous efforts to combat this drug:

- In 2001, the Iowa Legislature added manufacturing methamphetamine in a child's presence as a new category of child abuse and the basis for a CINA proceeding.
- In 2004, the legislature added a new category of child endangerment to include knowingly allowing a child to be present during methamphetamine manufacturing and also increased by five years the sentence for methamphetamine manufacturing when done in the presence of a child.
- In 2005, the legislature recognized the harm to children from methamphetamine manufacturing while enacting restrictions on access to pseudoephedrine, a key manufacturing ingredient.
- Since the early 2000s, Iowa has operated a statewide Drug Endangered Children program, which has worked extensively to mitigate the harm to children from being in a methamphetamine manufacturing environment.

Standards to Exempt Abuse from a Reduced Placement:

Circumstances surrounding abuse vary greatly. Therefore the workgroup determined it was necessary to identify standards that would exempt some subtypes of abuse from a reduced length of time on the registry.

The workgroup established two standards to address the issue. Specifically, the report would not qualify for a shortened amount of time for placement on the registry if non-accidental physical abuse, denial of critical care, presence of illegal drugs in a child's body, or manufacture and possession of a dangerous substance resulted in:

- A child's death, or
- Serious injury (as defined in Iowa Code section 702.18)

Retroactivity:

Retroactivity was briefly addressed by the workgroup as it relates to whether changes for placement less than ten years would be applied to all persons currently on the registry or only those placed on the registry after the effective date of the proposed law change. It was agreed that there would be legal implications (specifically as it relates to any previous legal settlements or appeals) if changes were allowed to be retroactive. The consensus by the workgroup was that retroactivity should not be considered applicable and that only founded abuse assessment reports after the effective date of the proposed law change should apply.

Subsequent Reports of Abuse:

The workgroup agreed that the current standard for subsequent reports of abuse should remain the same. Therefore, if a subsequent report of abuse was received within this five-year period, the report would be sealed ten years after receipt of the subsequent report unless good cause is shown why the data should remain open to authorized access.

Consideration of Previous Confirmed Abuse:

With focus on best-practice, the workgroup discussed common scenarios in which the same perpetrator is confirmed to have abused a child or different children multiple times. "Confirmed" reports are those in which abuse occurred but the abuse was minor, isolated, and not likely to reoccur. Perpetrators of "founded" abuses are placed on the registry but perpetrators of "confirmed" abuses are not. People who commit a subsequent confirmed abuse are not placed on the registry if there was at least 18 months separating the abuses. This scenario not only keeps reoffending perpetrators off of the registry, it also does not qualify children and their families for formal DHS services that would be necessary to assist the family. For this reason, the workgroup supported a change that would require five years to have passed since the last confirmed report of abuse for the same person.

Discretion for Removal from Registry:

The workgroup discussed the potential for circumstances where the DHS might utilize discretion to remove a person from the Child Abuse Registry prior to the five- or ten-year period. The discretion used to remove a person from the registry should not be subject to due process rights. The workgroup agreed that any such discretion should be limited as follows:

- For reports on the registry for five years, no DHS discretion can be utilized for the first two years of placement.
- For reports on the registry for ten years, no DHS discretion can be utilized for the first five years of placement.
- DHS discretion can not be used for a person placed on the registry for the following abuse types (exemption applied if finding of abuse is by omission):
    - Sexual abuse, 1st degree
    - Sexual abuse, 2nd degree
    - Incest
- The report itself would remain on the registry until all subjects of the report met criteria for sealing as defined in Iowa Code 235.18.

The DHS Position Regarding Discretion for Removal from Registry:

While the workgroup majority favored some level of discretion for the DHS to remove a person from the registry, the DHS holds deep reservation for any such discretion, specifically because of the additional due process rights that would result. The workgroup said a discretionary decision by the DHS would not be subject to due process rights, but the DHS does not believe it is possible to deny such rights because criteria for how to implement the discretion would need to be set out in the Iowa Administrative Code. That criteria would allow the DHS to take a negative action against someone (deny them from being removed from the Child Abuse Registry) thus creating due process.

If this discretion was allowed, it would require some process be available to anyone who might want to request their name be removed from the registry. As a result, the DHS would ultimately require additional resources to address the secondary appeal process that this discretion for removal would cause. The potential for increasing the number of appeals is a grave concern for the DHS as well as the attorney general's office which consulted on the matter.

The DHS has taken strides to decrease the length of time for appeals and continues with efforts to assist in decreasing the negative impacts of placing persons on the registry. The recommendations in this report to apply a reduced amount of time for placement and differential response recommendations by a separate workgroup are supported by the DHS. These efforts not only decrease the amount of time that individuals are on the registry but keep them off altogether in cases where there is not imminent danger or serious harm.

Conclusion/Recommendations:

- Amend Iowa Code section 235A.18 (1)(a) to allow the following types of founded abuse to be sealed five years after initial placement of the report and disposition data on the Child Abuse Registry if the abuse did not result in a child's death or serious injury (as defined in Iowa Code section 702.18):
    - Non-accidental physical abuse (as defined in Iowa Code section 232.68(2)(a)(1)
    - Denial of critical care (as defined Iowa Code section 232.68(2)(a)(4)
    - Presence of illegal drugs in a child's body (as defined in Iowa Code section 232.68(2)(a)(6)
    - Manufacture and possession of a dangerous substance
- Amend Iowa Code section 235A.18 (1)(a) to require a subsequent report of abuse within this five-year period to be sealed ten years after receipt of the subsequent report unless good cause be shown why the data should remain open to authorized access.
- Amend Iowa Code section 232.71D (3)(b)(2) to change the language "eighteen-month" to "five years."
- Amend Iowa Code section 235A.18 to provide DHS with discretion to remove a person from the Child Abuse Registry prior to the five- or ten-year period. The discretion used to remove a person from the Child Abuse Registry should not be subject to due process rights. Discretion should be limited as follows:
    - For reports on the Child Abuse Registry for five years, no DHS discretion can be utilized for the first two years of placement.
    - For reports on the Child Abuse Registry for ten years, no DHS discretion can be utilized for the first five years of placement.
- DHS discretion can not be utilized for a person placed on the registry for the following abuse types (exemption applied if finding of abuse is by omission):
    - DHS discretion can not be used for a person placed on the registry for the following abuse types (exemption if finding of abuse is by omission):
        - Sexual abuse, 1st degree
        - Sexual abuse, 2nd degree

        - Incest
    - The report itself would remain on the Child Abuse Registry until all subjects of the report met criteria for sealing as defined in Iowa Code 235.18.

(As noted in the report, the DHS does not support this specific recommendation)

References:

1. State of Iowa General Assembly, House File 2226
2. Iowa Code Chapters 232, 235, 701, 702, 709, 726, and 135C.
3. 441 IAC 175
4. DHS Policy and Procedure Manual, Title 17
5. Child Maltreatment Statistical Report (2011)

Roster of Workgroup Members:

Name	Organization	Title
Kirsten Faisal	Iowa Coalition Against Domestic Violence	Director of Training and Technical Assistance
Jerry Foxhoven	Drake Legal Clinic	Executive Director
Tony Montoya	Iowa Department of Human Services, Field Operations	Child Protective Policy Specialist
Denise Moore	Polk County Decategorization	Des Moines Service Area Parent Partner Coordinator
Roxanne Riesberg	Iowa Department of Human Services, Adult, Children & Family Services	Child Protective Program Manager
Stephen Scott	Prevent Child Abuse Iowa	Executive Director