Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

November 21, 2013

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 Report on Child Abuse Assessments Administrative Appeals.

This report was prepared pursuant to HF 2226, Section 7.

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

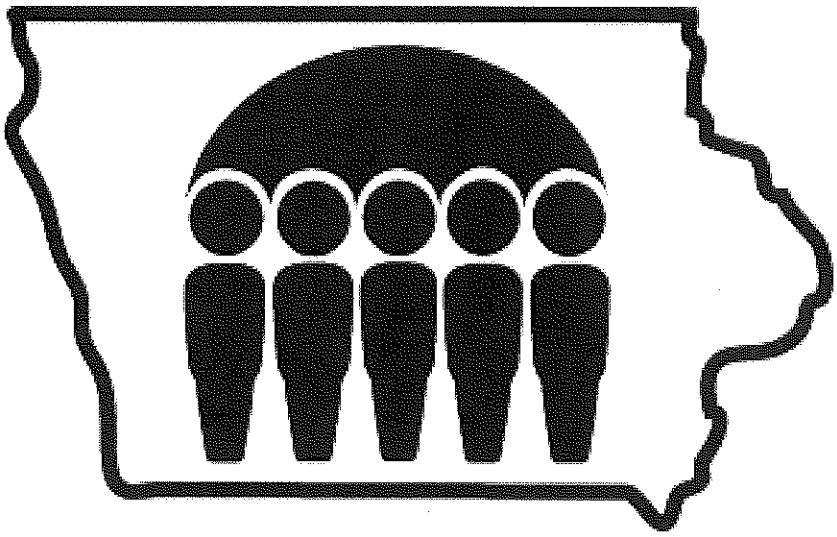
Sincerely,

Jennifer Davis Harbison
Policy Advisor

Enclosure

cc: Governor Terry E. Branstad
Senator Jack Hatch
Senator David Johnson
Representative David Heaton
Representative Lisa Heddens
Legislative Services Agency
Aaron Todd, Senate Majority Staff
Josh Bronsink, Senate Minority Staff
Carrie Malone, House Majority Staff
Zeke Furlong, House Minority Staff

Iowa Department of Human Services



Summary of Child Abuse Assessments
Administrative Appeals
Charge from House File 2226

December 2013

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Executive Summary:

The workgroup conducted five meetings and was comprised of members representing the Iowa Department of Inspections and Appeals (DIA), the office of the Iowa Attorney General, and four divisions within the Iowa Department of Human Services (DHS). As requested in House File 2226, the product of this group consists of information on:

1. The number of persons appealing
2. The alleged reason for the placement
3. The length of time for an appeal (including the time between a request for a contested case hearing and the occurrence of the contested case hearing)
4. The proposed decision of the presiding officer
5. If the proposed decision was appealed, the review of the director
6. Reasons for outliers in the length of time for an appeal

Introduction:

The DHS implemented the current appeals information tracking software, the Appeals Information System (AIS), in January 2010 after 2.5 years of development. Prior to that time, information regarding appeals was monitored through a combination of mainframe programming and an ACCESS database. Due to limited data contained within the old system the report utilized information from AIS on founded child abuse assessments, which were completed in calendar years (CY) 2010, 2011, 2012, and through August 31st for 2013.

Workgroup Overview:

The Child Abuse Assessments Administrative Appeals Workgroup is the result of Section 7 of House File 2226: "The department of human services and the department of inspections and appeals shall, by December 1, 2012, submit a preliminary report to the governor and general assembly regarding the length of time for appeals of placement on the child abuse registry within the last five years." This section of the bill further stated: "The department of human services and the department of inspections and appeals shall submit a final report to the governor and the general assembly by December 1, 2013."

The workgroup began reviewing the charge of House File 2226 and discussing the methodology for how to provide the information in a clear and concise manner. The workgroup confirmed that the charge was specific to the length of time for appeals of placement on the Child Abuse Registry. Therefore, it was determined that only founded reports of child abuse that were appealed would be used in this report. Confirmed and

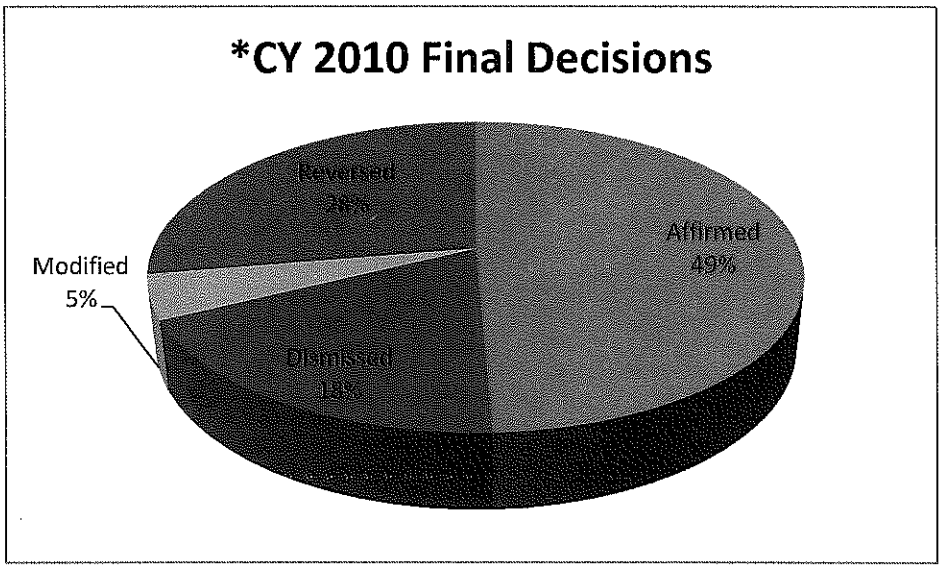
not confirmed reports of child abuse were excluded since these reports would not be listed on the registry.

The workgroup used a "snapshot in time" report generated from the AIS. This AIS report provides information on the number of appeals received by the DHS appeals unit within any specified period of time. In addition to the number of appeals received, it gives details on how many appeals were disposed (completed), the method of disposition (affirmed, reversed, dismissed, modified, withdrawn, abandoned, denied, or remanded; see Appendix A for definitions), and information on timeliness of appeal completion. The workgroup focused on appeals of founded reports of child abuse that were considered complete, by having a disposition, in CY 2010, 2011, 2012, and through August 31st for 2013.

The Number of Persons Appealing:

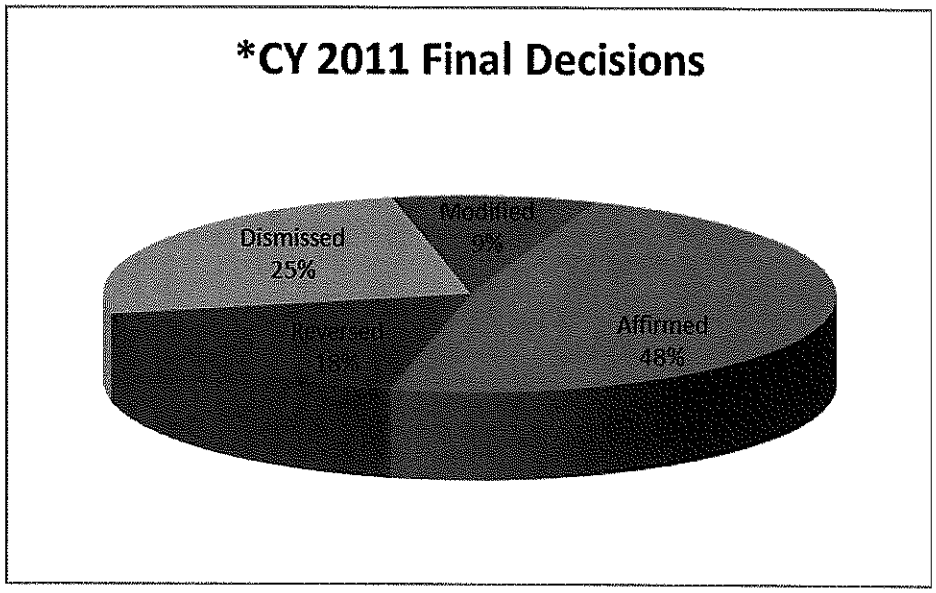
The workgroup separated the information regarding appeals that proceeded through the entire appeal process (from filing to a final decision) from those that did not go through the entire appeal process. This separation allows for a clear view of the different paths that are possible within the appeal process.

Appeals that proceeded through the entire appeal process included those with dispositions (final decisions) that were affirmed, reversed, dismissed, or modified. The AIS report confirmed there were 152 founded child abuse assessment reports under appeal which proceeded through the entire appeal process and closed in CY 2010. The dispositions of those appeals appear within the chart below:



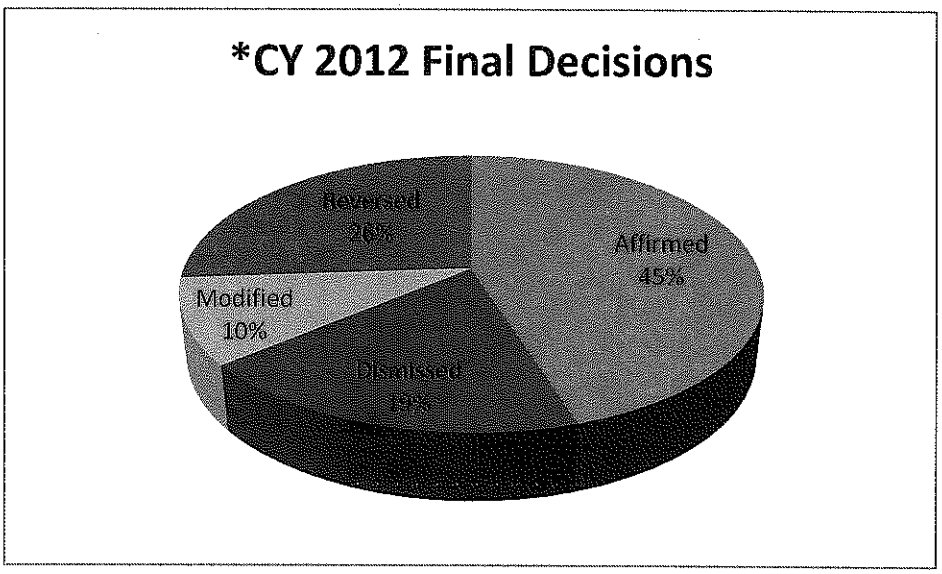
*See Appendix A for definitions

A total of 196 founded child abuse assessment reports under appeal that closed in CY 2011 proceeded through the entire appeal process. The dispositions of those appeals appear within the chart below:



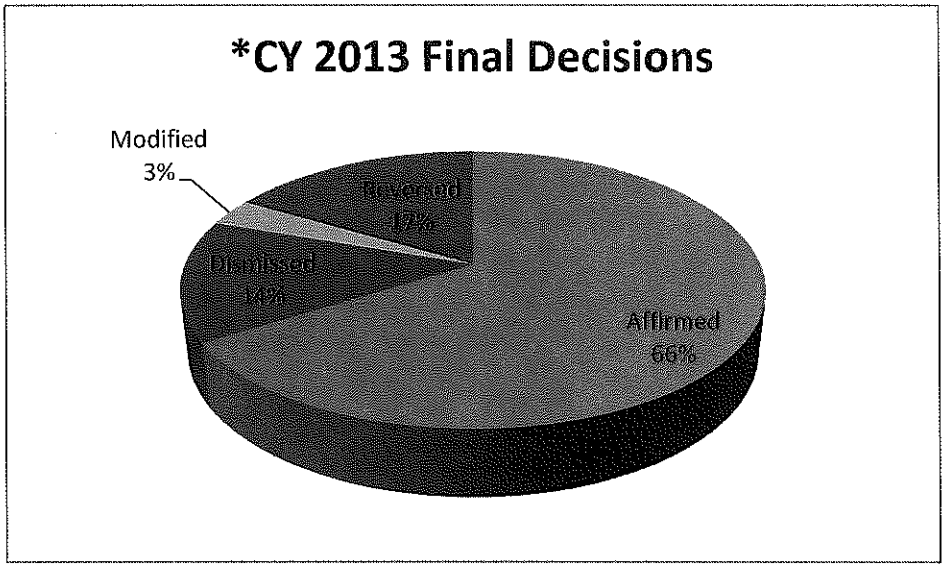
*See Appendix A for definitions

There were 271 founded child abuse assessment reports under appeal which proceeded through the entire appeal process and closed in CY 2012. The dispositions of those appeals appear within the chart below:



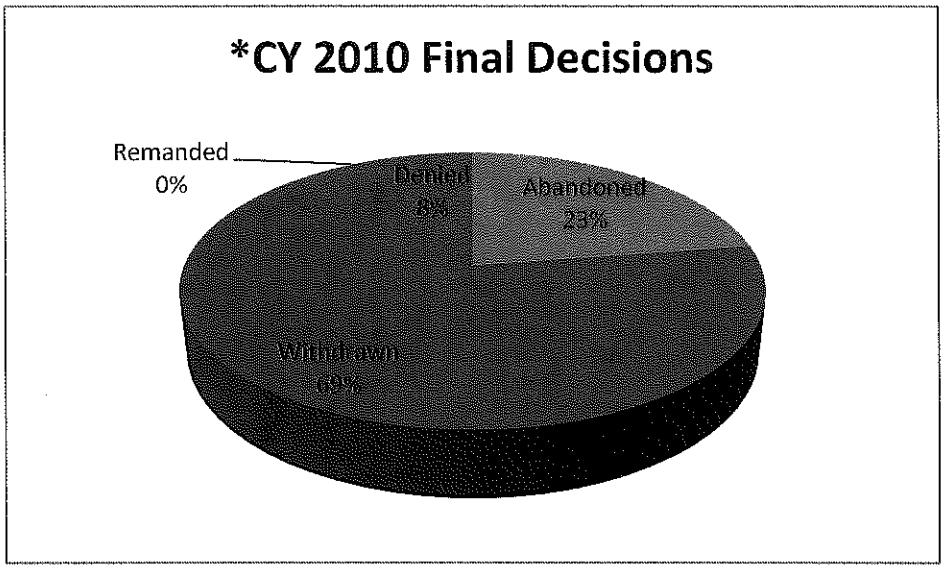
*See Appendix A for definitions

A total of 127 founded child abuse assessment reports under appeal that closed by August 31st of CY 2013 proceeded through the entire appeal process. The dispositions of those appeals appear within the chart below:



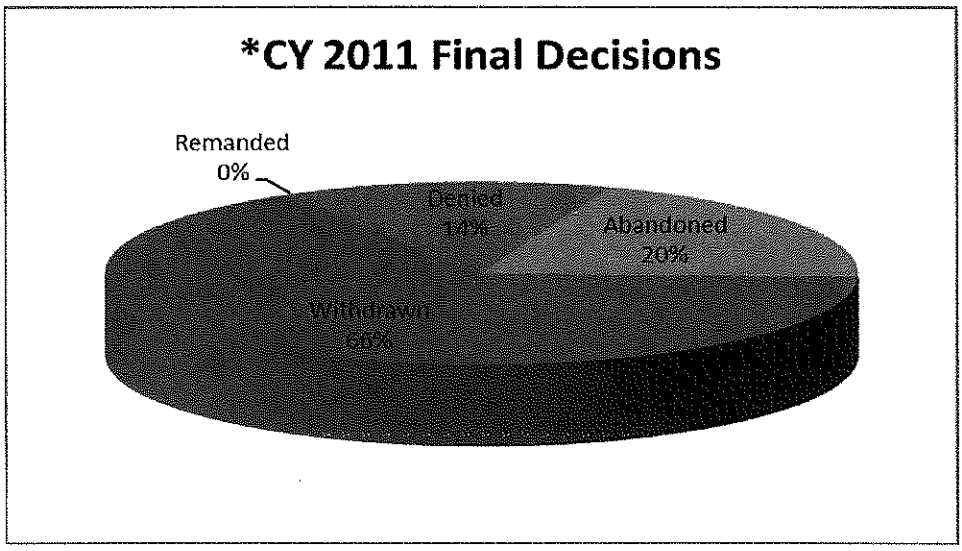
* See Appendix A for definitions and note data through CY August 31, 2013 included.

Appeals which did not go through the entire process included those with dispositions that were abandoned, withdrawn, remanded, and denied. A total of 1,226 founded child abuse assessment reports under appeal that were closed in CY 2010 did not go through the entire appeal process. The dispositions of those appeals appear within the chart below:



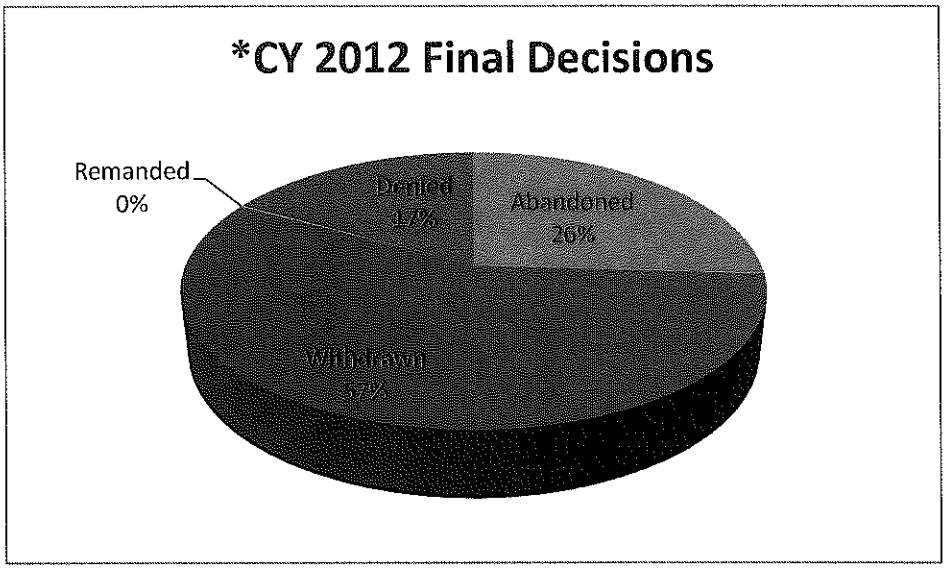
*See Appendix A

A total of 1,021 founded child abuse assessment reports under appeal that closed in CY 2011 did not go through the entire appeal process. The dispositions of those appeals appear within the chart below:



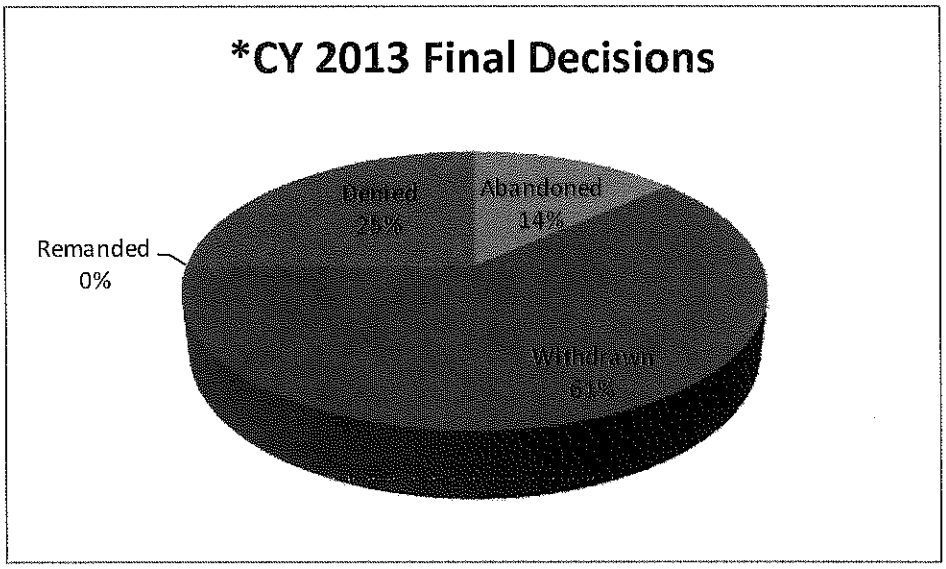
*See Appendix A

A total of 1,555 founded child abuse assessment reports under appeal that were closed in CY 2012 did not go through the entire appeal process. The dispositions of those appeals appear within the chart below:



*See Appendix A

A total of 731 founded child abuse assessment reports under appeal that closed by August 31st of CY 2013 did not go through the entire appeal process. The dispositions of those appeals appear within the chart below:

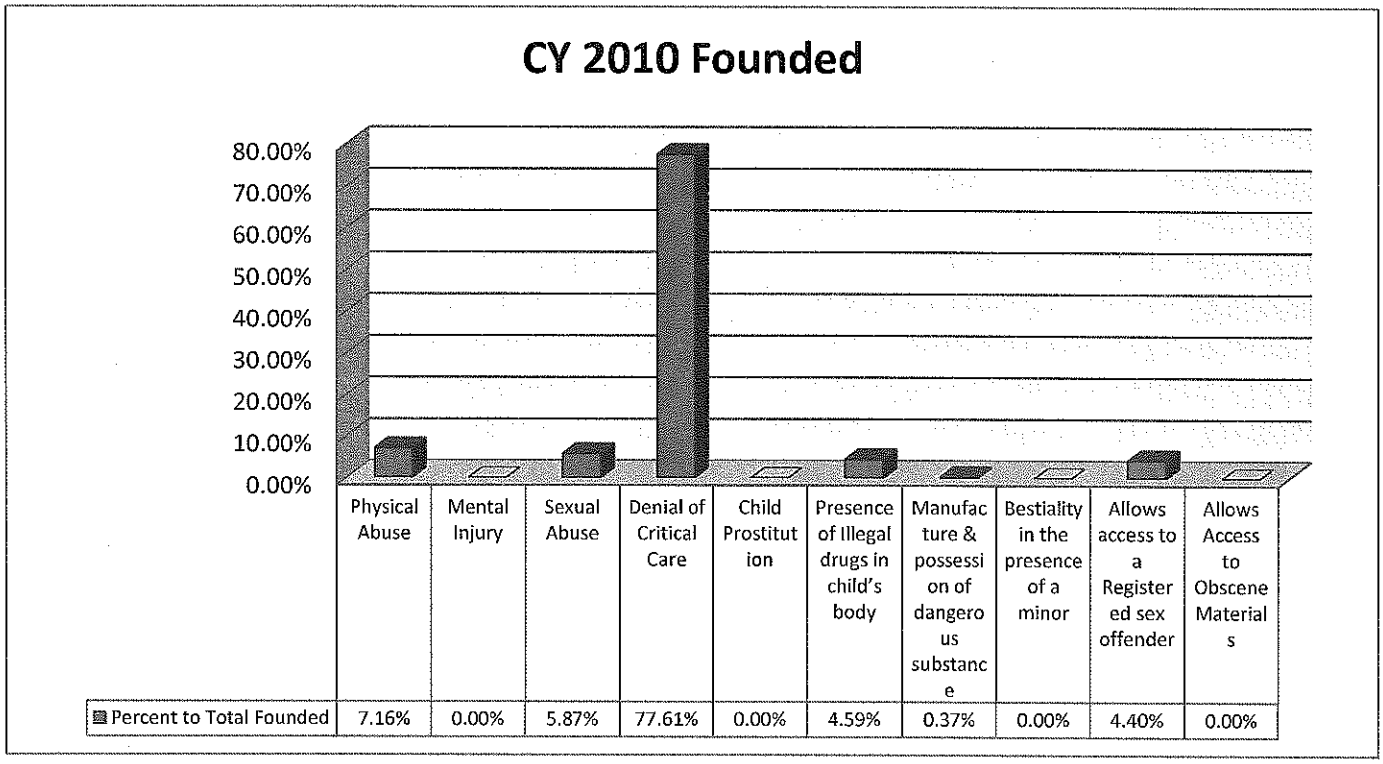


* See Appendix A for definitions and note data through CY August 31, 2013 included.

The Reason for the Placement:

The majority of appeals for founded child abuse assessments in CY 2010 were associated with the abuse category for denial of critical care. The disposition of each abuse category appears within the graph below:

- Denial of Critical Care, 78%
- Physical Abuse, 7%
- Sexual Abuse, 6%
- Presence of Illegal Drugs in a Child's Body, 5%
- Allows Access to a Registered Sex Offender, 4%
- Manufacture and Possession of a Dangerous Substance, <1%

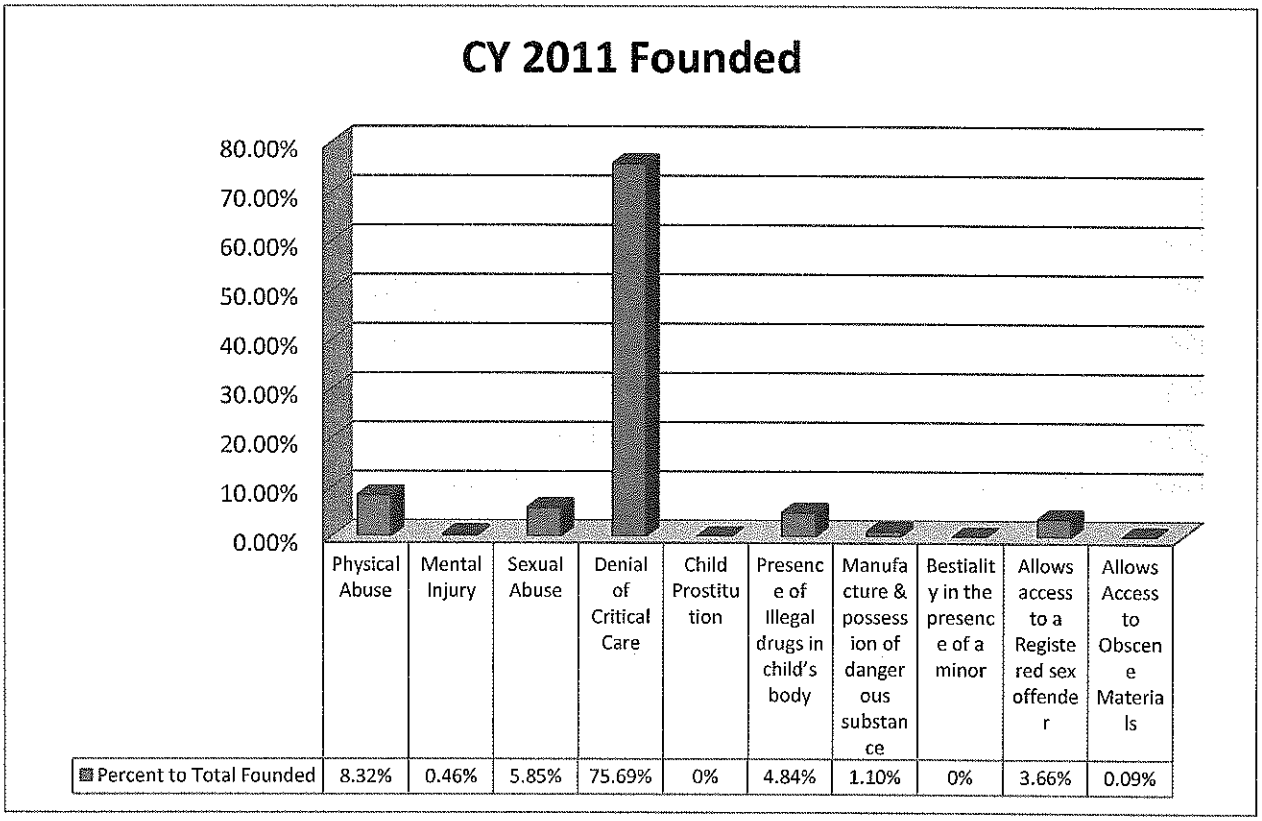


	Physical Abuse	Mental Injury	Sexual Abuse	Denial of Critical Care	Child Prostitution	Presence of Illegal drugs in child's body	Manufacture & possession of dangerous substance	Bestiality in the presence of a minor	Allows access to a Registered sex offender	Allows Access to Obscene Materials
Percent to Total Founded	7.16%	0.00%	5.87%	77.61%	0.00%	4.59%	0.37%	0.00%	4.40%	0.00%

No appeals associated with the abuse categories mental injury, child prostitution, bestiality in the presence of a minor, or allows access to obscene materials were completed in CY 2010. The obscene material category became effective on July 1, 2010.

Again in CY 2011, the majority of appeals completed for founded child abuse assessments were associated with the abuse category of denial of critical care. The disposition of each abuse category appears within the graph below:

- Denial of Critical Care, 76%
- Physical Abuse, 8%
- Sexual Abuse, 6%
- Presence of Illegal Drugs in a Child's Body, 5%
- Allows Access to a Registered Sex Offender, 4%
- Manufacture and Possession of a Dangerous Substance, 1%
- Mental Injury <1%
- Allows Access to Obscene Materials <1%

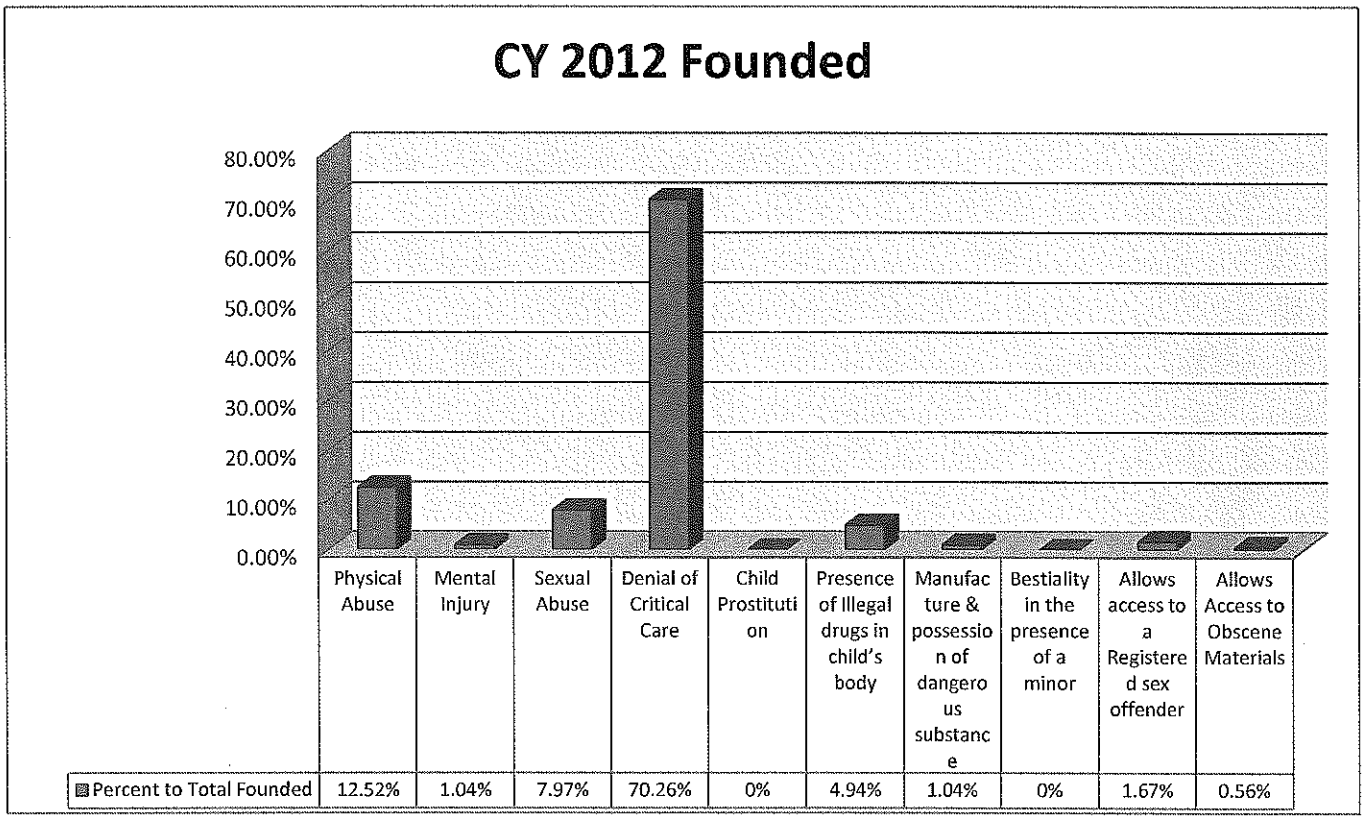


	Physical Abuse	Mental Injury	Sexual Abuse	Denial of Critical Care	Child Prostitution	Presence of Illegal drugs in child's body	Manufacture & possession of dangerous substance	Bestiality in the presence of a minor	Allows access to a Registered sex offender	Allows Access to Obscene Materials
Percent to Total Founded	8.32%	0.46%	5.85%	75.69%	0%	4.84%	1.10%	0%	3.66%	0.09%

No appeals associated with the abuse categories of child prostitution or bestiality were completed in CY 2011.

In CY 2012, denial of critical care was the type of abuse most appealed for all child abuse assessments. The disposition of each abuse category appears within the graph below:

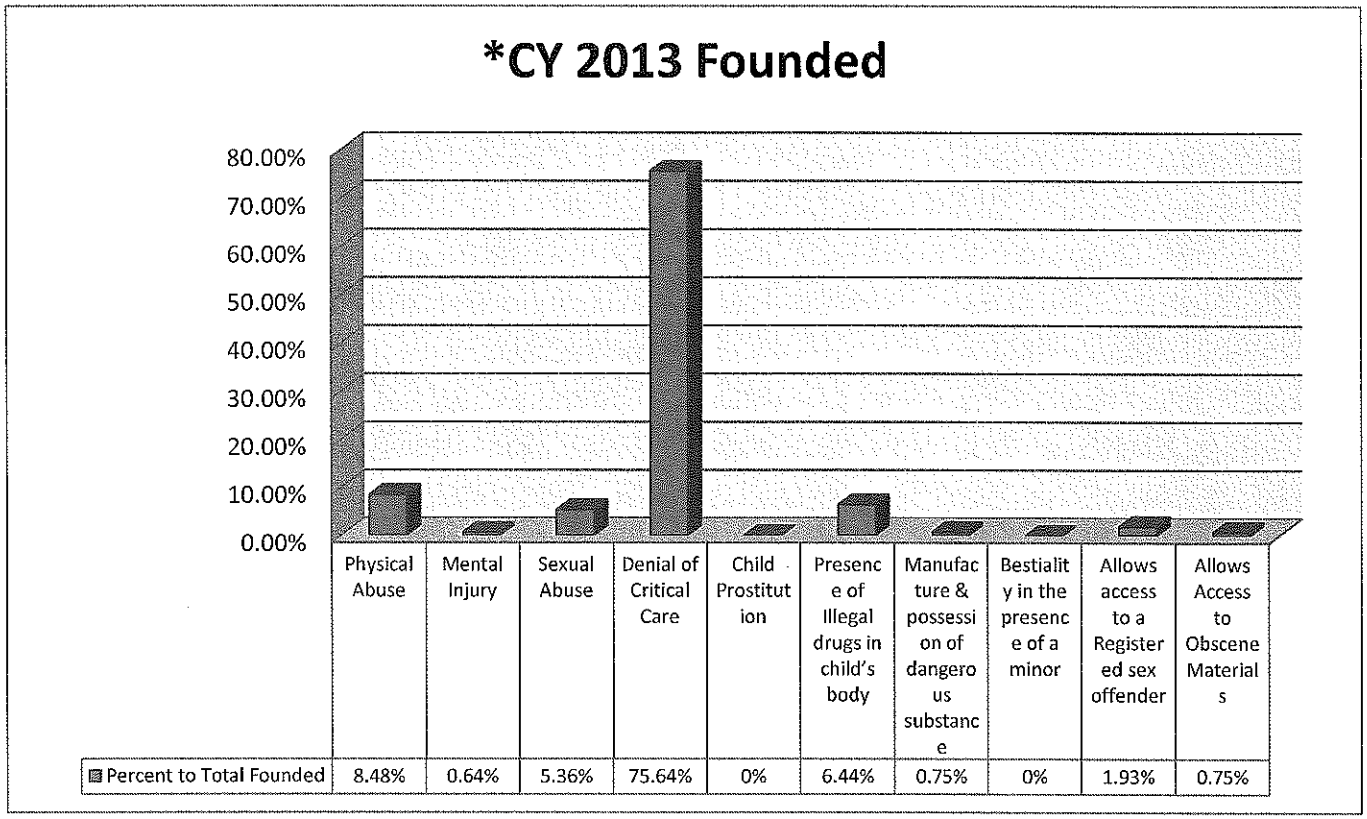
- Denial of Critical Care, 70%
- Physical Abuse, 13%
- Sexual Abuse, 8%
- Presence of Illegal Drugs in a Child's Body, 5%
- Allows Access to a Registered Sex Offender, 2%
- Manufacture and Possession of a Dangerous Substance, 1%
- Allows Access to Obscene Materials, 1%



No appeals associated with the abuse categories of child prostitution or bestiality were completed in CY 2012.

Denial of critical care was also the type of abuse most appealed for all child abuse assessments through August 31st of CY 2013. The disposition of each abuse category appears within the graph below:

- Denial of Critical Care, 76%
- Physical Abuse, 8%
- Presence of Illegal Drugs in a Child's Body, 6%
- Sexual Abuse, 5%
- Allows Access to a Registered Sex Offender, 2%
- Mental Injury, 1%
- Manufacture and Possession of a Dangerous Substance, 1%
- Allows Access to Obscene Materials, 1%



*Data through CY August 31, 2013 included.

No appeals associated with the abuse categories of child prostitution or bestiality were completed in CY 2013.

The Length of Time for an Appeal:

To identify the length of time for an appeal, the workgroup used the data set of founded child abuse assessments which proceeded through the entire appeal process. As stated previously, these appeals had a proposed decision and included dispositions that were modified, reversed, affirmed, or dismissed.

It should be noted that cases which were identified as "loops" were not included in the analyzed data set. Any appeal where the process must be "re-started" due to legal considerations is referred to as a loop or loop back case. One example of a loop is when an appeal is sent back for re-adjudication as the result of a director's review. These cases are considered outliers. Outliers are further addressed in the "Reasons for Outliers" section.

In order to give a full picture of the appeals process, eight separate data points were identified, which highlight different stages of the appeal process. The following data points show the length of time for founded child abuse assessments with appeals that closed in CY 2010, 2011, 2012, and through August 31st for 2013.

1. **Days for DHS Intake**. The time it takes for the DHS appeals unit to accept, analyze, certify, or deny an incoming appeal, from the date it is filed to the date it is certified to DIA.

   The average in 2010 was 23 days

   The average in 2011 was 13 days

   The average in 2012 was 11 days

   The average in 2013 was 8 days

2. **Days Certified to DIA to Prehearing**. The time it takes for the prehearing to occur, from the date the appeal is certified to DIA to the date of the prehearing. NOTE: CY 2010 was the first year in which AIS was utilized and unfortunately this data point was not captured for CY 2010. However, by the second year, CY 2011, the tracking was fully implemented for this data point.

   The average in 2010, not available

   The average in 2011, 61 days

   The average in 2012 was 86 days

   The average in 2013 was 124 days

3. **Day Prehearing to Hearing**. The time it takes for the hearing to occur, from the date of the prehearing to the date of the hearing. It is important to note this number is impacted by the fact that all parties involved with the appeal determine this date.
   NOTE: CY 2010 was the first year in which AIS was utilized and unfortunately this data point was also not captured for CY 2010. However, by the second year, CY 2011, the tracking was fully implemented for this data point.

   The average in 2010, not available

   The average in 2011, 151 days

   The average in 2012 was 153 days

   The average in 2013 was 82 days

4. **Days to Hearing**. The total time it takes for the hearing, from the date the appeal is filed to the date of the hearing. This number is also impacted by the fact that all parties involved with the appeal determine this date.

   The average in 2010, 206 days

   The average in 2011, 289 days

   The average in 2012 was 251 days

   The average in 2013 was 221 days

5. **Days to Proposed Decision**. The time it takes for a proposed decision, from the date of the hearing to the date of the proposed decision.

   The average in 2010, 65 days

   The average in 2011, 38 days

   The average in 2012 was 29 days

   The average in 2013 was 18 days

6. **Days to Review Requested**. The time it takes between the proposed decision date and the date a director's review is requested.
   NOTE: The parties are allowed 10 days after the date of the proposed decision to request a review.

   The average in 2010, 8 days

   The average in 2011, 9 days

The average in 2012 was 8 days

The average in 2013 was 8 days

7. **Days for Review**. The time used by the DHS to conduct an appeal review, from the date the director's review was requested to the date of the final decision. NOTE: It is expected that this number will continue to decrease with the law change that took effect July 1, 2012, which requires the proposed decision to become the final decision after 45 days if there is not a final decision made prior to that time.

   The average in 2010, 210 days

   The average in 2011, 288 days

   The average in 2012 was 103 days

   The average in 2013 was 75 days

8. **Total Days for Appeal**. The total time it takes for a hearing, from the date the appeal is filed to the date of the final decision.
   NOTE: The average days for appeals where a director's review was requested will naturally be higher than the appeals where a director's review was not requested due to the extra step in the process for those cases that are reviewed.

   The average in 2010, 388 days

   The average in 2011, 369 days

   The average in 2012 was 205 days

   The average in 2013 was 187 days

Reasons for Outliers:

New cases are certified by DHS on a daily basis. Upon receipt, DIA reviews the new case files. Cases involving child abuse appeals are immediately pulled and provided to the DIA scheduler responsible for maintaining the child abuse calendars. Typically, the new cases are placed on a judge's calendar and all cases are scheduled for a prehearing conference. Although the length of time to schedule the prehearing did increased in 2013, the time until the hearing was scheduled decreased and had no overall negative impact.

The date for the hearing is determined by all the parties at the prehearing conference. There are a number of variables that the parties discuss and consider in determining the

hearing date. The parties can discuss the need for an expedited hearing for appellants whose employment is affected by placement on the registry, but they also balance in other factors, including the time necessary to complete discovery, the trial schedules of the attorneys involved in the case, the schedules of all of the other parties involved, and whether there is also a matter pending as either a juvenile or criminal case.

Throughout the entire appeal process, parties also have the opportunity to request continuances for any number of reasons. These continuances add to delay in the process and can greatly influence the timeline of an appeal.

Any appeal where the process must be "re-started" due to legal considerations is referred to as a loop or a loop back case. As mentioned in the previous section, all of these types of cases were considered outliers.

Conclusion:

Of all of the cases on the child abuse registry that proceeded through the entire appeal process, the following percentages were reversed or modified:

- 33 percent were reversed or modified on appeals completed in CY 2010
- 27 percent were reversed or modified on appeals completed in CY 2011
- 36 percent were reversed or modified on appeals completed in CY 2012
- 20 percent were reversed or modified on appeals completed in CY 2013

Again, when considering the total of cases on the child abuse registry that proceeded through the entire appeal process, the following percentages were affirmed or dismissed:

- 67 percent were affirmed or dismissed in CY 2010
- 73 percent were affirmed or dismissed in CY 2011
- 64 percent were affirmed or dismissed in CY 2012
- 80 percent were affirmed or dismissed in CY 2013

The cases on the child abuse registry that did not go through the entire appeal process due to being withdrawn by the appellant, included:

- 69 percent that were withdrawn in CY 2010
- 66 percent that were withdrawn in CY 2011
- 69 percent that were withdrawn in CY 2012
- 82 percent that were withdrawn in CY 2013

The majority of cases withdrawn are the result of a settlement which is agreed to by all parties during the prehearing conference. Prehearing conferences occurred as follows:

- Within 61.3 days in CY 2011
- Within 86 days in CY 2012
- Within 124 days in CY 2013

NOTE: As a result of efforts between all parties to settle at the prehearing conference, a large percentage of cases do not go to hearing and are closed much earlier in the appeal process.

When reviewing types of abuse, annual child abuse statistics continue to show that denial of critical care is the leading type of abuse in all child protective assessments, at nearly 80 percent. Therefore, it was not surprising to find that similar percentages of denial of critical care cases on the registry were appealed:

- In 2010 and 2011, nearly 80 percent of the cases appealed were denial of critical care.
- In 2012, just over 70 percent of the cases appealed were denial of critical care.
- In 2013, just over 75 percent of cases appealed were denial of critical care.

The Workgroup was encouraged by the timeliness of the work being performed, particularly in the areas in which the DHS and the DIA have control. As the data indicates, the number of days between the date of the prehearing and date of the actual hearing make up one of the largest amounts of time for an appeal. This length of time is

dictated by all parties involved and is not an area DIA and/or DHS alone can reduce due to all parties' entitlement to "due process".

The number of days for review (from the date a director's review is requested to the date of the final decision) also makes up a large amount of time for an appeal. As the data shows, this amount of time continues to be reduced due to strategies implemented based on recommendations by a 2011 legislated workgroup. Recommendations made in 2011 by the Child Abuse Registry Workgroup (pursuant to the direction of Section 7 of House File 562) led the length of this time to decrease significantly. The specific recommendations that had an impact on the decrease include:

- The DHS director agreed to add a staff position to process appeals from the proposed administrative law judge decisions filed with and taken by the DHS to the director.
- The Iowa Code amendment that any proposed decisions made after July 1, 2012, will be the final decision after 45 days if there is not a final decision made prior to that time.

In addition to the implemented changes to decrease the days for a director's review, a number of other recommendations made by the workgroup under House File 562 and House File 2226 will also assist in decreasing not only the length of time for the overall appeal process, but the number of cases on appeal overall. The specific recommendations that will impact this decrease include:

- Attorney General's Office and the DIA's implemented procedure 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.
- Attorney General's Office agreed to temporarily shift resources to add additional assistant attorneys if necessary to prevent back logs and delays.
- Code amendment allows the contested case hearing process to be limited to the alleged perpetrators who have been adversely affected by a founded child abuse disposition.
- Code amendment allows the presiding officer to stay the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings.

- Differential Response Workgroup recommendations to create an alternate response to accepted reports of suspected child abuse. Less serious cases when safety of a child is not compromised would be linked to appropriate services, not result in a "finding" and not be eligible for placement on the central abuse registry.
- Child Abuse Registry Workgroup recommendations regarding type and severity of abuse in determining the length of time a person is placed on the child abuse registry.

The total days for appeal has steadily declined each year, dropping from 388 days in 2010, 369 days in 2011, 205 days in 2012, and 187 days through August 31, 2013. The strategies outlined within this report to reduce the lengths of time for appeal has produced positive results.

References:

1. State of Iowa General Assembly, House File 2226
2. Iowa Code Chapters 217 and 232
3. 441 IAC 7 and 175
4. DHS Policy and Procedure Manual, Title 1-E and 17-B
5. Appeals Information System (AIS) data
6. Statewide Tracking of Assessment Reports (STAR) system data

Roster of Workgroup Members:

Name	Organization	Title
Julie Allison	Iowa Department of Human Services, Division of Adult, Children & Family Services	Bureau Chief of Child Welfare & Community Services
Patrick Brodeur	Iowa Department of Human Services, Division of Data Management	Information Technology Specialist 5
Jeffrey Farrell	Iowa Department of Inspections and Appeals, Administrative Hearings Division	Acting Chief Administrative Law Judge
Tony Montoya	Iowa Department of Human Services, Division of Field Operations	Child Protective Policy Specialist
Shankar Raman	Iowa Department of Human Services, Division of Data Management	Information Technology Specialist 4
Roxanne Riesberg	Iowa Department of Human Services, Division of Adult, Children & Family Services	Child Protective Program Manager
Harry Rossander	Iowa Department of Human Services	Bureau Chief of Policy Coordination
Diane Stahle	Iowa Department of Justice, Office of the Attorney General	Assistant Attorney General
Kevin Wright	Iowa Department of Human Services, Division of Field Operations	Management Analyst

Appendix A,
Definitions for Appeal Dispositions:

Affirmed – A decision by the Administrative Law Judge that determines the action under appeal was found to be correct.

Reversed – A decision by the Administrative Law Judge that determines the action under appeal was found to be incorrect.

Dismissed – A decision by the Administrative Law Judge that determines the action under appeal will end due to a legal basis.

Modified – A decision by the Administrative Law Judge that determines the action under appeal was changed.

Withdrawn – A decision by the appellant to voluntarily end an appeal.

Abandoned – A decision to end the appeal as the result of the appellant or the appellant's authorized representative's failure, without good cause, to appear at the hearing.

Denied – A decision by the Department of Human Services Appeals Section that determines an appellant will not be granted a hearing in accordance with the applicable rules, state statutes, or federal regulations.

Remanded – A decision by the Administrative Law Judge to return the case to the DHS county office for further action.