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HOUSE REPUBLICAN STAFF ANALYSIS

Bill: House File 562
Committee: Human Resources
Floor Manager: Representative Joel Fry
Date: July 14, 2011
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Child Abuse Registry and Due Process

In July of 2010, the Iowa Supreme Court ruled that the Department had overstepped its authority in placing a southeast Iowa woman on the child abuse registry due to a lack of supervision. The Court ordered the woman to be removed from the state's Child Abuse Registry, because the Code language governing the Registry did not include the reason for the finding of abuse – denial of critical care.

At the same time, there has been growing, bipartisan concern that the system under which abuse is investigated and determination made did not adequately protect the due process rights of the accused. House File 562 addresses both issues.

House File 562 rewrites state law defining child abuse and the situations that merit placement on the Child Abuse Registry. The bill also speeds up the process for appealing a finding of child abuse and directs DHS to undertake certain actions to further enhance the system.

Summary of Action

Committee Action – The Human Resources Committee **PASSED** House Study Bill 132 (House File 562) on a vote of 21-0 on March 1, 2011.

House Action – The House **ADOPTED** House File 562 on a vote of 94-0 on March 15, 2011.

Senate Action – The Senate **ADOPTED** House File 562 on a vote of 50-0 on March 28, 2011.

Final Action – The Governor **SIGNED** House File 562 on April 6, 2011.

Section by Section Analysis

Section 1 – The section amends Iowa Code section 232.68 (2)(d) – the definition of child abuse – by revising the language setting out what is the failure to provide adequate care. The new language adds the term “supervision” to what is defined to be a failure to provide adequate care. The new language also places into the Code a definition of failing to provide proper supervision. The new section still maintains the religious exception language.

Section 2 – The section amends Iowa Code section 232.68 (2) by adding language stating that the definition of “child abuse” or “abuse” cannot be read in a manner to hold a victim of a crime responsible for failing to prevent a crime against the victim. The intent of the language is to address the situation where a victim of domestic abuse is determined to have committed child abuse because the child was present when the domestic abuse occurred.

Section 3 – The section amends Iowa Code section 232.71D (2-3). This section sets out the legal basis under which people are placed on the Child Abuse Registry. Current law sets out a specific list of actions under which the Department has no discretion and the person committing the act must be placed on the Registry, while the language provides two types of abuse that may not be placed on the Registry if certain conditions exist.

Under Section 3, the current language is replaced with two exemptions where a founded child abuse case is not placed on the Registry. These exemptions are:

- Finding of physical abuse but DHS has determined that the injury is minor, isolated, and unlikely to reoccur; or
- Finding of failure to provide adequate supervision or failure to provide adequate clothing but DHS has determined that the risk to the child’s health and welfare was minor, isolated, and unlikely to reoccur. Findings for other forms of denial of critical care would not be eligible to be left of the Registry.

The section also rewrites the language of 232.71D that states what situations are placed on the Child Abuse Registry. The new language creates three situations where a report would be placed on the Registry:

- The case was referred for juvenile or criminal action within 12 months of DHS’s report, as a result of the acts or omissions of the alleged perpetrator, and the alleged perpetrator was convicted of a crime involving the child or that there was a finding of delinquency or child in need of assistance;
- DHS has determined that the acts or omissions of the alleged perpetrator meets the definition of child abuse and DHS had previously determined within the preceding 18 months that acts by the alleged perpetrator were child abuse but were not placed on the Registry; or
- DHS has determined that the alleged perpetrator will continue to pose a danger to the child involved in the child abuse report or to another child that the alleged perpetrator may come in contact with.

Section 4 – The section creates a new subsection in Iowa Code section 232.71D pertaining to how the Registry will handle those cases where the alleged perpetrator is a minor. The subsection directs that a finding of sexual abuse where the alleged perpetrator is 13 or younger will be placed on the Registry, but the name of the perpetrator will be withheld.

In those situations where the alleged perpetrator of sexual assault is between 14 and 17, and the court may find good cause for the name of the perpetrator to be removed from the Registry. When that happens, only the name of perpetrator is removed from the Registry.

Section 5 – The section strikes Iowa Code section 235A.18 (3), which set up a procedure to review those cases that were on the Child Abuse Registry on July 1, 1997 to re-determine if those cases would be on the Registry under the procedures put in place in 1997.

Section 6 – The section amends Iowa Code section 235A.19 (2)(a) by shortening the amount of time a person has to appeal the Department’s decision from 180 days to 90 days. The section also changes the hearing that a person can request from an evidentiary hearing to a contested case hearing.

Finally, the section shortens the amount of time the Department can defer an administrative hearing in the case. Current law allows DHS to delay that hearing until the conclusion of a pending juvenile or district court case. The new language shortens this to until the juvenile or criminal case has completed the adjudicatory phase.

Section 7 – The section requires the Department of Human Services to continue working with state agencies and other parties to improve the child protection system while respecting the due process rights of Iowans accused of abuse.

DHS is given authority to implement near-term solutions that do not require legislative action. These may include:

- Shifting resources to speed up administrative and legal cases determining whether a person should be placed on the registry or not;
- Improving the training of child protection workers regarding evidence standards, confirmed child abuse, and founded child abuse; and
- Expediting the DHS director’s review of ALJ decisions.

DHS and its working group are also directed to work on identifying additional issues that the Legislature could take up in the 2012 session. The group is to report its work on December 15, 2011.