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LSB 2462SS 74

SENATE FILE 472  
BY DIELEMAN and TAYLOR

(COMPANION TO LSB 2462HH  
BY DAGGETT)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to child abuse by establishing certain  
2 requirements for child abuse investigations, challenge of  
3 findings, and release of information.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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*SF 472*

1 Section 1. Section 232.70, Code 1991, is amended by adding  
2 the following new subsection:

3 NEW SUBSECTION. 7. a. Upon receipt of a report, the de-  
4 partment shall notify the subject of the report and the  
5 parents or guardians of the alleged victim, immediately upon  
6 the determination of the report's surface credibility during  
7 the intake process. The notification shall be accompanied by  
8 a copy of the intake document and any other information  
9 gathered at the time of the report's receipt.

10 b. Upon determination as to whether a child abuse  
11 allegation is founded or unfounded, the department shall  
12 notify the subject of the report and the parent or guardian of  
13 the child alleged to have been abused. The notification shall  
14 include a summary of the investigative process and a self-  
15 addressed stamped envelope with a reply card to serve as  
16 acknowledgment receipt of notice and to ascertain whether or  
17 not the subject or parent or guardian wishes to challenge the  
18 determination pursuant to section 235A.19. If the reply card  
19 is not returned within ten days, the department shall make a  
20 second mailing by certified mail with return receipt  
21 requested. Upon receipt of the reply card indicating a desire  
22 to challenge the determination, the department shall  
23 immediately transmit all records of the child abuse  
24 investigation to the subject or parent or guardian.

25 Sec. 2. Section 235A.15, Code 1991, is amended by adding  
26 the following new subsections:

27 NEW SUBSECTION. 4. If a person has filed a challenge with  
28 the department concerning the results of a child abuse  
29 investigation pursuant to section 235A.19, distribution of  
30 child abuse information from the registry or any source, shall  
31 be strictly prohibited prior to the affirmed finding of the  
32 administrative law judge or following the expiration of the  
33 challenge period. However, this requirement shall not apply  
34 under either of the following circumstances:

35 a. A court order explicitly identifies a compelling and

1 current need for the distribution in the interest of the child  
2 listed in the child abuse information.

3 b. Written consent for the distribution is obtained from  
4 the subject of the report, in response to each specific  
5 request.

6 NEW SUBSECTION. 5. The registry shall respond immediately  
7 to an information request from a subject of the report. The  
8 subject of a report and parents of a child shall be notified  
9 immediately of an information request received by the  
10 registry. The county attorney and designated officers of the  
11 juvenile court shall have on-site access to the information in  
12 the registry during business hours. The registry shall  
13 provide monthly to the county attorney and to the juvenile  
14 court, a confidential listing of child abuse cases with  
15 identifying information withheld and shall make  
16 recommendations for court action relating to the cases within  
17 the county.

18 Sec. 3. Section 235A.16, Code 1991, is amended by striking  
19 the section and inserting in lieu thereof the following:

20 235A.16 REQUESTS FOR CHILD ABUSE INFORMATION.

21 1. The department shall fulfill a request for child abuse  
22 information from a subject of a report or parent or guardian  
23 of the alleged victim on a timely basis as follows:

24 a. A request made in person at an office of the depart-  
25 ment, two hours.

26 b. A request made in person by any other means, three  
27 working days.

28 c. If no urgency is noted in the request, ten working  
29 days.

30 2. The information provided in response to a request from  
31 the subject of a report or parent or guardian of the alleged  
32 victim, unless otherwise indicated by the requester, shall  
33 include but is not limited to: report data, investigation  
34 data, disposition data, intake documents, a copy of the intake  
35 audio recording, investigative plan, requests or applications,

1 and court orders for extensions of time for investigation  
2 reports or other matters, worker notes and narratives, medical  
3 and psychological reports, protective treatment records,  
4 interview notes, video and audio recordings, telephone call  
5 slips, written mandatory reports, affidavits from witnesses  
6 and collateral information relied upon in the report, and  
7 other correspondence. All other authorized requests shall be  
8 limited to provision of disposition data unless release of  
9 other information is agreed to in writing by the subject of  
10 the report or the parent or guardian of the alleged victim.

11 2. If a perpetrator is not determined or if a parent or  
12 guardian elects to appeal the matter, that individual shall  
13 have the same access to child abuse information as the alleged  
14 perpetrator.

15 4. The appeal process and information concerning the  
16 process shall not be available to any court-appointed or  
17 department-designated temporary care provider except under any  
18 of the following circumstances:

- 19 a. The individual is the alleged perpetrator.
- 20 b. The individual is a member of the alleged victim's  
21 immediate family or is the alleged victim's grandparent.
- 22 c. By order of the appointing juvenile or district court,  
23 based upon explicitly cited, compelling interests.

24 Sec. 4. Section 235A.17, Code 1991, is amended by striking  
25 the section and inserting in lieu thereof the following:

26 235A.17 REDISSEMINATION OF CHILD ABUSE INFORMATION.

27 Unless otherwise authorized in writing by the subject of a  
28 child abuse report or by order of the court, or as is needed  
29 for the challenge process under section 235A.19, child abuse  
30 information shall not be viewed by, listened to, or copies  
31 provided to any individual except for information released by  
32 the subject of the report and releases made by the child abuse  
33 registry. All documents released by the registry shall be  
34 dated and distinctly marked so that unauthorized  
35 redissemination can be traced.

1     Sec. 5. Section 235A.18, subsections 1 and 2, Code 1991,  
2 are amended by striking the subsections and inserting in lieu  
3 thereof the following:

4     1. Child abuse information relating to a particular case  
5 of suspected child abuse shall be expunged from the registry  
6 within thirty days following the fifth anniversary of the  
7 receipt of the initial report, unless either of the following  
8 circumstances exist:

9     a. For good cause shown, a one-year extension is requested  
10 and granted by the juvenile or district court.

11    b. A challenge by a subject of a report is pending as to  
12 the correctness of the report pursuant to section 235A.19, in  
13 which case expungement shall be delayed pending outcome of the  
14 challenge.

15    2. A conclusion of a challenged child abuse report shall  
16 be treated as unfounded until one of the following  
17 circumstances applies:

18    a. The time given for challenge expires.

19    b. A final ruling affirms the determination that the child  
20 abuse report is founded.

21    c. A court with proper jurisdiction finds the report to be  
22 necessary to the resolution of a matter taken in the interest  
23 of the alleged victim.

24    Sec. 6. Section 235A.18, Code 1991, is amended by adding  
25 the following new subsection:

26    NEW SUBSECTION. 5. Child abuse information which cannot  
27 be determined by a preponderance of the evidence to be founded  
28 shall be expunged immediately upon determination. A copy of  
29 the information shall be given to the subject of the report  
30 prior to expungement. A founded report shall be expunged  
31 under any of the following circumstances:

32    a. If both of the following conditions exist:

33    (1) The report has been submitted in full or in part, or  
34 evidence substantially similar to the report, has been entered  
35 in any court with Iowa jurisdiction.

1 (2) The order or ruling arising from the court action  
2 under subparagraph (1) fails to affirm the report with an  
3 explicitly cited foundation for an affirmed finding.

4 b. If a juvenile or district court orders the report  
5 expunged or declares the subject of the report to be innocent  
6 of the alleged offense.

7 c. If in an evidentiary hearing under section 235A.19, the  
8 report cannot be affirmed.

9 d. If, prior to the opening of the evidentiary hearing  
10 under section 235A.19, the department elects to fully satisfy  
11 the challenge request.

12 e. If the elapsed time between a request for expungement  
13 and the final administrative decision exceeds sixty days,  
14 barring delays solely attributed to the challenge.

15 Sec. 7. Section 235A.19, subsection 2, Code 1991, is  
16 amended by striking the subsection and inserting in lieu  
17 thereof the following:

18 2. a. A person receiving notice of the results of an  
19 investigation pursuant to section 232.70, subsection 7, may  
20 file a challenge with the department within one year of re-  
21 ceipt of the notice of the closing or dismissal of a court  
22 hearing relating to the notice.

23 b. The form of challenge shall be a written statement or a  
24 preprinted checklist challenging the accuracy of the child  
25 abuse information or any determination made by the department  
26 concerning this information.

27 c. The department shall provide to the person a timely  
28 opportunity for discovery and an evidentiary hearing pursuant  
29 to contested case proceedings under chapter 17A to determine  
30 whether:

- 31 (1) Investigative procedures were correct.
- 32 (2) Conclusions fall within statutory definitions.
- 33 (3) Judgment of the investigator was based upon  
34 substantial evidence and reasoning upon which reasonably  
35 prudent persons are accustomed to rely for conduct of their

1 serious affairs.

2 d. The child abuse report shall stand as sole evidence and  
3 presentation for the position of the department in the  
4 proceedings.

5 e. The administrative law judge in the proceedings is not  
6 bound to affirm a declared child abuse finding if any of the  
7 following circumstances are found to exist:

8 (1) A serious error was committed in the investigatory  
9 process.

10 (2) Due process notices were not timely served.

11 (3) The challenge process was seriously frustrated by  
12 delay, refusal to produce materials, or failure to give timely  
13 and sufficient response to interrogatories propounded.

14 (4) A serious flaw was noted in acts or omissions of  
15 departmental employees.

16 (5) The initial child abuse report was not determined to  
17 be a child abuse allegation by the department's central intake  
18 team.

19 f. Notwithstanding sections 17A.15 and 17A.16, the depart-  
20 ment shall have no further recourse to the decision of the  
21 administrative law judge for a proceeding under this section.

22 EXPLANATION

23 This bill relates to child abuse by establishing certain  
24 requirements for child abuse investigations, challenge of  
25 findings, and release of information.

26 Section 1 requires certain notice information to be  
27 provided to a subject of a child abuse report upon receipt of  
28 the report.

29 Section 2 limits distribution of child abuse information  
30 from the registry if a person has filed a challenge with the  
31 department of human services concerning the results of a child  
32 abuse investigation. This section provides for exceptions to  
33 the limits, provides notice to subjects and parents if infor-  
34 mation is requested, and requires the registry to provide  
35 monthly reports to the county attorney and juvenile court.

1 Section 3 strikes and rewrites requirements for requests  
2 for child abuse information. The availability of information  
3 is limited to a subject of a child abuse report or parent or  
4 guardian and requirements are established for timely response  
5 to requests. The information may be used for the process  
6 established for challenge of the department's findings in sec-  
7 tion 7 of the bill. Information required to be provided is  
8 specified.

9 Section 4 strikes and rewrites current law relating to re-  
10 dissemination of child abuse information. It is prohibited to  
11 release the information unless specifically authorized by the  
12 subject of a child abuse report or court order or by the child  
13 abuse registry. Documents released by the registry must be  
14 distinctly marked.

15 Sections 5 and 6 strike and rewrite current law relating to  
16 sealing and expungement of child abuse information. The  
17 current requirement for sealing the information after 10 years  
18 is replaced with a requirement for sealing after five years.  
19 This requirement may be delayed under certain circumstances.  
20 Current law requiring expungement of an undetermined report  
21 after one year is stricken and replaced in section 6 with a  
22 requirement for immediate expungement. Additional require-  
23 ments for expungement of founded reports are also provided in  
24 section 6.

25 Section 7 strikes current law providing for correction of  
26 child abuse information. It is replaced with a procedure for  
27 filing a challenge and provides for a hearing before an  
28 administrative law judge in a contested case proceeding under  
29 the administrative procedures Act. Various requirements are  
30 provided for these proceedings. The department is prohibited  
31 from further action following the administrative law judge's  
32 decision.

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