

(P. 703) 3-16-94 Senate - Human Resources
(P. 836) 3-24-94 Senate - Amend/Do Pass
W/S-5300

FEB 23 1994
Place On Calendar

HOUSE FILE 2261
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO HSB 566)

Passed House, ^(P. 649) Date 3-16-94 Passed Senate, ^(P. 1110) Date 4-8-94
Vote: Ayes 99 Nays 0 Vote: Ayes 49 Nays 0

Approved April 28, 1994
~~Passed 4-14-94~~

~~Vote 96-1~~ A BILL FOR
~~(P. 1583)~~

1 An Act relating to child abuse provisions involving child abuse
2 definitions, mandatory reporters, investigation procedures,
3 and correction of child abuse information, and providing an
4 effective date.

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

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HF 2261

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DIVISION I

CHILD ABUSE DEFINITIONS

Section 1. Section 232.68, subsection 2, paragraph f, Code Supplement 1993, is amended to read as follows:

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian person responsible for the care of the child.

Sec. 2. Section 232.68, subsection 7, paragraph b, Code Supplement 1993, is amended to read as follows:

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

DIVISION II

MANDATORY REPORTERS OF CHILD ABUSE

Sec. 3. Section 232.69, subsection 1, paragraph b, Code 1993, is amended to read as follows:

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) Every A self-employed social worker, every.
- (2) A social worker under the jurisdiction of the department of human services, any.
- (3) A social worker employed by a public or private agency or institution.
- (4) An employee or operator of a public or private health care facility as defined in section 135C.1.
- (5) A certified psychologist.
- (6) A licensed school employee.
- (7) An employee or operator of a licensed child care center or registered group day care home or registered family day care home, individual licensee under chapter 237, member of the staff.

1 (8) An employee or operator of a substance abuse program
2 or facility licensed under chapter 125.

3 (9) An employee of a department of human services
4 institution listed in section 218.1.

5 (10) An employee or operator of a juvenile detention or
6 juvenile shelter care facility approved under section 232.142.

7 (11) An employee or operator of a foster care facility
8 licensed or approved under chapter 237.

9 (12) An employee or operator of a mental health center.

10 (13) A peace officer.

11 (14) A dental hygienist.

12 (15) A counselor, or mental health professional, who, in
13 the scope of professional practice or in providing child
14 foster care, examines, attends, counsels or treats a child and
15 reasonably believes a child has suffered abuse.

16 DIVISION III

17 CHILD ABUSE INVESTIGATIONS

18 Sec. 4. Section 232.71, subsection 1, Code Supplement
19 1993, is amended to read as follows:

20 1. If a report is determined to constitute a child abuse
21 allegation, the department of human services shall promptly
22 commence an appropriate investigation. The primary purpose of
23 this investigation shall be the protection of the child named
24 in the report. The department, within five working days of
25 commencing the investigation, shall provide written
26 notification of the investigation to the child's parents.
27 However, if the department shows the court to the court's
28 satisfaction that notification is likely to endanger the child
29 or other persons, the court shall ~~issue an emergency order~~
30 restraining the notification orally direct the department to
31 withhold notification. Within one working day of issuing an
32 oral directive, the court shall issue a written order
33 restraining the notification. If a report is determined to
34 not to constitute a child abuse allegation, but a criminal act
35 harming a child is alleged, the department shall immediately

1 refer the matter to the appropriate law enforcement agency.

2 Sec. 5. Section 232.71, subsection 2, paragraph d, Code
3 Supplement 1993, is amended to read as follows:

4 d. An evaluation of the home environment, ~~and-relationship~~
5 of If protective concerns are identified, the department shall
6 evaluate the child named in the report and any other children
7 in the same home as the parents or other persons responsible
8 for their care.

9 Sec. 6. Section 232.77, subsection 1, Code Supplement
10 1993, is amended to read as follows:

11 1. Any A person who is required to report a case of child
12 abuse may take or cause to be taken, at public expense,
13 photographs, or X rays, or other physical examinations or
14 tests of the-areas-of-trauma-visible-on a child which would
15 provide medical indication of allegations arising from a child
16 abuse investigation. Any A health practitioner may, if
17 medically indicated, cause to be performed radiological
18 examination, physical examination, or other medical tests of
19 the child. Any A person who takes any photographs or X rays
20 or performs physical examinations or other tests pursuant to
21 this section shall notify the department of human services
22 that such the photographs or X rays have been taken, ~~-and~~ or
23 the examinations or other tests have been performed. The
24 person who made notification shall retain such the photographs
25 or X rays or examination or test findings for a reasonable
26 time thereafter following the notification. Whenever such the
27 person is required to report under section 232.69, in that
28 person's capacity as a member of the staff of a medical or
29 other private or public institution, agency or facility, that
30 person shall immediately notify the person in charge of such
31 the institution, agency, or facility or that person's
32 designated delegate of the need for photographs or X rays or
33 examinations or other tests.

34 Sec. 7. 1993 Iowa Acts, chapter 172, sections 32, 33, 38,
35 and 39, are repealed.

1 Sec. 8. EFFECTIVE DATE. Section 7 of this Act, being
2 deemed of immediate importance, takes effect upon enactment.

3

DIVISION IV

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CHILD ABUSE INFORMATION

5 Sec. 9. Section 235A.18, subsection 2, unnumbered
6 paragraph 1, Code Supplement 1993, is amended to read as
7 follows:

8 Child abuse information which cannot be determined by a
9 preponderance of the evidence to be founded or unfounded shall
10 be sealed one year after the receipt of the initial report of
11 abuse and expunged five years after the date it was sealed.
12 Child abuse information which is determined by a preponderance
13 of the evidence to be unfounded shall be expunged when six
14 months after the date it is determined to be unfounded.
15 During the six-month period the information shall be sealed
16 and is accessible only through a court order. A report shall
17 be determined to be unfounded as a result of any of the
18 following:

19 Sec. 10. Section 235A.19, subsections 1, 2, and 3, Code
20 1993, are amended to read as follows:

21 1. Any-person-or-that-person's-attorney A subject of a
22 child abuse report, as identified in section 235A.15,
23 subsection 2, paragraph "a", shall have the right to examine
24 child abuse information in the registry which refers to that
25 person the subject. The registry may prescribe reasonable
26 hours and places of examination.

27 2. a. A person subject of a child abuse report may file
28 with the department within six months of the date of the
29 notice of the results of an investigation required by section
30 232.71, subsection 7, a written statement to the effect that
31 child abuse information referring to the person subject is in
32 whole or in part erroneous, and may request a correction of
33 that information or of the findings of the investigation
34 report. The department shall provide the person subject with
35 an opportunity for an evidentiary hearing pursuant to chapter

1 17A to correct the information or the findings, unless the
2 department corrects the information or findings as requested.
3 The department shall delay the expungement of information
4 which is not determined to be founded until the conclusion of
5 a proceeding to correct the information or findings. The
6 department may defer the hearing until the conclusion of a
7 pending juvenile or district court case relating to the
8 information or findings.

9 b. The department shall not disclose any child abuse
10 information until the conclusion of the proceeding to correct
11 the information or findings, except as follows:

12 (1) As necessary for the proceeding itself.

13 (2) To the parties and attorneys involved in a judicial
14 proceeding.

15 (3) For the regulation of child care or child placement.

16 (4) Pursuant to court order.

17 (5) To the subject of an investigation or a report.

18 (6) For the care or treatment of a child named in a report
19 as a victim of abuse.

20 (7) To persons involved in an investigation of child
21 abuse.

22 3. The decision resulting from the hearing may be appealed
23 to the district court of Polk county by the person requesting
24 the correction or to the district court of the district in
25 which the person subject of the child abuse report resides.
26 Immediately upon appeal the court shall order the department
27 to file with the court a certified copy of the child abuse
28 information. Appeal shall be taken in accordance with chapter
29 17A.

30 EXPLANATION

31 This bill relates to child abuse provisions involving the
32 presence of an illegal drug in a child's body, mandatory
33 reporters, investigation procedures, correction of child abuse
34 information, and criminal and child abuse records of persons
35 working in facilities.

1 Division I amends two of the child abuse definitions used
2 for reporting and investigations. First, the current child
3 abuse definitions address the presence of an illegal drug in a
4 child relating to the acts or omissions of the child's parent,
5 guardian, or custodian. The bill would expand this
6 responsibility for the presence of a drug in a child to any
7 person responsible for the care of the child. The second
8 amendment affects the definition of "person responsible for
9 the care of a child" which is the basis for determining
10 whether a person is a perpetrator of child abuse. The bill
11 would amend that portion of the definition which addresses a
12 relative or any other person with whom a child resides by also
13 requiring that person to have assumed care or supervision of
14 the child.

15 Division II relates to mandatory reporters of child abuse.
16 The listing of child abuse reporters who are not health care
17 providers is rewritten to be in a numbered list form. The
18 following facility or program employees and operators would be
19 added to the list under the bill: health care facilities,
20 substance abuse programs and facilities, department of human
21 services facilities, and juvenile detention and shelter care
22 facilities. Although foster care licensees are on the list
23 under current law, the bill would rewrite the foster care
24 provision to apply to employees and operators of licensed or
25 approved foster care facilities.

26 Division III includes various provisions relating to child
27 abuse investigations. Current law permits the court to order
28 withholding notification of a parent concerning a child abuse
29 investigation. The bill would permit the court to initially
30 restrain notification orally followed by a written order
31 within one working day of the oral directive.

32 Division III would modify the child abuse investigation
33 requirement for evaluation of the home environment and the
34 relationships of the child named in the report. The
35 modification would permit performance of the evaluation of the

1 child and the child's relationships to be predicated on the
2 presence of protective concerns.

3 Division III amends section 232.77, relating to performance
4 of and payment for photographs and other medically relevant
5 tests during a child abuse investigation. The bill would add
6 physical examinations or other medical tests to the existing
7 provisions to pay for photographs and X rays.

8 Finally, Division III repeals the elimination of
9 multidisciplinary teams. The multidisciplinary teams are used
10 to assist the department in the child abuse report process.
11 The elimination of the teams is to take effect on July 1,
12 1994.

13 Division IV relates to sealing and expungement of unfounded
14 child abuse information and procedures for correction or
15 expungement of child abuse information. Under current law,
16 the department is to expunge child abuse information when it
17 is determined to be unfounded. The bill provides for
18 expungement of the information six months after it is
19 determined to be unfounded. During the six-month period the
20 information is to be sealed and accessible only through a
21 court order.

22 Under current law only a person or the person's attorney
23 has the right to examine child abuse information in the child
24 abuse registry which relates to that person and to request
25 correction of the information or of the findings of the child
26 abuse report.

27 This division would provide those rights to the following
28 parties to a child abuse investigation and report: the child
29 named in the report and the child's attorney and guardian ad
30 litem; the parent of a child named in a report or the parent's
31 attorney; the guardian or legal custodian of a child named in
32 a report or that person's attorney; and the person named in a
33 report as having abused a child or that person's attorney.

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HOUSE FILE 2261

S-5447

1 Amend House File 2261, as passed by the House, as
2 follows:

3 1. Page 5, by inserting after line 29 the
4 following:

DIVISION V

CHILD OR DEPENDENT ADULT ABUSE

INFORMATION -- USE AND ACCESS

8 "Sec. ____ . Section 125.14A, Code 1993, is amended
9 by adding the following new subsections:

10 NEW SUBSECTION. 5. In addition to the record
11 checks required under this section, the department of
12 human services may conduct dependent adult abuse
13 record checks in this state and may conduct these
14 checks in other states, on a random basis. The
15 provisions of this section, relative to an evaluation
16 following a determination that a person has been
17 convicted of a crime or has a record of founded child
18 abuse, shall also apply to a random check conducted
19 under this subsection.

20 NEW SUBSECTION. 6. Beginning July 1, 1994, a
21 program or facility shall inform all new applicants
22 for employment of the possibility of the performance
23 of a record check and shall obtain, from the
24 applicant, a signed acknowledgment of the receipt of
25 the information.

26 NEW SUBSECTION. 7. On or after July 1, 1994, a
27 program or facility shall include the following
28 inquiry in an application for employment: "Do you
29 have a record of founded child or dependent adult
30 abuse or have you ever been convicted of a crime in
31 this state or any other state?"

32 Sec. ____ . NEW SECTION. 135C.33 CHILD OR
33 DEPENDENT ADULT ABUSE INFORMATION AND CRIMINAL RECORDS -
34 - EVALUATIONS.

35 1. On or after July 1, 1994, with regard to new
36 applicants for licensure or employment, if a person is
37 being considered for licensure under this chapter, or
38 for employment involving direct responsibility for a
39 resident or with access to a resident when the
40 resident is alone, or if the person considered for
41 licensure or employment under this chapter will reside
42 in a facility, the facility may request that the
43 department of human services conduct criminal and
44 child and dependent adult abuse record checks in this
45 state and in other states, on a random basis.
46 Beginning July 1, 1994, a facility shall inform all
47 new applicants for employment of the possibility of
48 the performance of a record check and shall obtain,
49 from the applicant, a signed acknowledgment of the
50 receipt of the information. Additionally, on or after

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1 July 1, 1994, a facility shall include the following
2 inquiry in an application for employment: "Do you
3 have a record of founded child or dependent adult
4 abuse or have you ever been convicted of a crime, in
5 this state or any other state?" If the person has
6 been convicted of a crime under a law of any state or
7 has a record of founded child or dependent adult
8 abuse, the department of human services shall perform
9 an evaluation to determine whether the crime or
10 founded child or dependent adult abuse warrants
11 prohibition of licensure, employment, or residence in
12 the facility. The evaluation shall be performed in
13 accordance with procedures adopted for this purpose by
14 the department of human services.

15 2. If the department of human services determines
16 that a person has committed a crime or has a record of
17 founded child or dependent adult abuse and is
18 licensed, employed by a facility licensed under this
19 chapter, or resides in a licensed facility, the
20 department shall notify the licensee that an
21 evaluation will be conducted to determine whether
22 prohibition of the person's licensure, employment, or
23 residence is warranted.

24 3. In an evaluation, the department of human
25 services shall consider the nature and seriousness of
26 the crime or founded child or dependent adult abuse in
27 relation to the position sought or held, the time
28 elapsed since the commission of the crime or founded
29 child or dependent adult abuse, the circumstances
30 under which the crime or founded child or dependent
31 adult abuse was committed, the degree of
32 rehabilitation, the likelihood that the person will
33 commit the crime or founded child or dependent adult
34 abuse again, and the number of crimes or founded child
35 or dependent adult abuses committed by the person
36 involved. The department of human services has final
37 authority in determining whether prohibition of the
38 person's licensure, employment, or residence is
39 warranted.

40 4. If the department of human services determines
41 that the person has committed a crime or has a record
42 of founded child or dependent adult abuse which
43 warrants prohibition of licensure, employment, or
44 residence, the person shall not be licensed under this
45 chapter and shall not be employed by a facility or
46 reside in a facility licensed under this chapter.

47 Sec. _____. Section 135H.7, Code 1993, is amended by
48 adding the following new subsections:

49 NEW SUBSECTION. 4. In addition to the record
50 checks required under subsection 2, the department of

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1 human services may conduct dependent adult abuse
2 record checks in this state and may conduct these
3 checks in other states, on a random basis. The
4 provisions of subsections 2 and 3, relative to an
5 evaluation following a determination that a person has
6 been convicted of a crime or has a record of founded
7 child abuse, shall also apply to a random dependent
8 adult abuse record check conducted under this
9 subsection.

10 NEW SUBSECTION. 5. Beginning July 1, 1994, a
11 licensee shall inform all new applicants for
12 employment of the possibility of the performance of a
13 record check and shall obtain, from the applicant, a
14 signed acknowledgment of the receipt of the
15 information.

16 NEW SUBSECTION. 6. On or after July 1, 1994, a
17 licensee shall include the following inquiry in an
18 application for employment: "Do you have a record of
19 founded child or dependent adult abuse or have you
20 ever been convicted of a crime, in this state or any
21 other state?"

22 Sec. _____. Section 237.8, Code 1993, is amended by
23 adding the following new subsections:

24 NEW SUBSECTION. 3. In addition to the record
25 checks required under subsection 2, the department of
26 human services may conduct dependent adult abuse
27 record checks in this state and may conduct these
28 checks in other states, on a random basis. The
29 provisions of subsection 2, relative to an evaluation
30 following a determination that a person has been
31 convicted of a crime or has a record of founded child
32 abuse, shall also apply to a random check conducted
33 under this subsection.

34 NEW SUBSECTION. 4. On or after July 1, 1994, a
35 licensee shall inform all new applicants for
36 employment of the possibility of the performance of a
37 record check and shall obtain, from the applicant, a
38 signed acknowledgment of the receipt of the
39 information.

40 NEW SUBSECTION. 5. On or after July 1, 1994, a
41 licensee shall include the following inquiry in an
42 application for employment: "Do you have a record of
43 founded child or dependent adult abuse or have you
44 ever been convicted of a crime, in this state or any
45 other state?"

46 Sec. _____. Section 237A.5, Code 1993, is amended by
47 adding the following new subsections:

48 NEW SUBSECTION. 3. In addition to the record
49 checks required under subsection 2, the department of
50 human services may conduct dependent adult abuse

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1 record checks in this state and may conduct these
2 checks in other states, on a random basis. The
3 provisions of subsection 2, relative to an evaluation
4 following a determination that a person has been
5 convicted of a crime or has a record of founded child
6 abuse, shall also apply to a random dependent adult
7 abuse record check conducted under this subsection.

8 NEW SUBSECTION. 4. On or after July 1, 1994, a
9 licensee or registrant shall inform all new applicants
10 for employment of the possibility of the performance
11 of a record check and shall obtain, from the
12 applicant, a signed acknowledgment of the receipt of
13 the information.

14 NEW SUBSECTION. 5. On or after July 1, 1994, a
15 licensee or registrant shall include the following
16 inquiry in an application for employment: "Do you
17 have a record of founded child or dependent adult
18 abuse or have you ever been convicted of a crime, in
19 this state or any other state?"

20 Sec. ____ . Section 692.2, subsection 1, paragraph
21 c, Code Supplement 1993, is amended to read as
22 follows:

23 c. The department of human services for the
24 purposes of section 135C.33, section 218.13, section
25 232.71, subsection 16, section 232.142, section 237.8,
26 subsection 2, section 237A.5, section 237A.20, and
27 section 600.8, subsections 1 and 2.

28 Sec. ____ . Section 692.2, subsection 1, Code
29 Supplement 1993, is amended by adding the following
30 new paragraph:

31 NEW PARAGRAPH. 1. Health care facilities licensed
32 pursuant to chapter 135C for the purposes of section
33 135C.33.

34 Sec. ____ . Section 692.3, subsection 2, Code 1993,
35 is amended to read as follows:

36 2. Notwithstanding subsection 1, paragraph "a",
37 the department of human services may disseminate
38 criminal history data obtained pursuant to section
39 692.2, subsection 1, paragraph "c", to persons
40 licensed, registered, or certified under chapters
41 135C, 237, 237A, 238 and 600 for the purposes of
42 section 135C.33, section 237.8, subsection 2 and
43 section 237A.5. A person who receives information
44 pursuant to this subsection shall not use the
45 information other than for purposes of section
46 135C.33, section 237.8, subsection 2, section 237A.5,
47 or section 600.8, subsections 1 and 2. A person who
48 receives criminal history data pursuant to this
49 subsection who uses the information for purposes other
50 than those permitted by this subsection or who

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- 1 communicates the information to another person except
- 2 for the purposes permitted by this subsection is
- 3 guilty of an aggravated misdemeanor."
- 4 2. By renumbering as necessary.

By MARY E. KRAMER

ROBERT E. DVORSKY

Adopted 4-8-94 (p. 1109)

S-5447 FILED APRIL 5, 1994

HOUSE FILE 2261

S-5300

- 1 Amend House File 2261, as passed by the House, as
- 2 follows:
- 3 1. Page 4, by striking lines 5 through 18.
- 4 2. By renumbering as necessary.

By COMMITTEE ON HUMAN RESOURCES

ELAINE SZYMONIAK, Chairperson

Lost 4-6-94 (p. 1063)

S-5300 FILED MARCH 24, 1994

HOUSE FILE 2261

S-5390

- 1 Amend House File 2261, as passed by the House as
- 2 follows:
- 3 1. Page 5, by striking lines 22 through 25 and
- 4 inserting the following:
- 5 "3. The subject of a child abuse report may appeal
- 6 the decision resulting from the a hearing may-be
- 7 appealed held pursuant to subsection 2 to the district
- 8 court of Polk county by-the-person-requesting-the
- 9 correction or to the district court of the district in
- 10 which the person subject of the child abuse report
- 11 resides."

Adopted 4-8-94 (p. 1109) By O. GENE MADDOX

S-5390 FILED MARCH 31, 1994

HOUSE FILE 2261

S-5538

1 Amend House File 2261, as passed by the House, as
2 follows:

3 1. Page 5, by inserting after line 29 the fol-
4 lowing:

5 "Sec. ____ . CHILD PROTECTION TASK FORCE. The
6 legislative council is requested to establish a task
7 force for the 1994 interim to review federal and state
8 laws, regulations, and policies regarding child
9 protection, including the central child abuse
10 registry, and to make recommendations for changes in
11 the child protection system. The task force members
12 shall include legislators, individuals knowledgeable
13 concerning child protection and prevention of child
14 abuse, and other interested persons. The task force
15 shall submit a report of its findings and
16 recommendations to the general assembly on or before
17 January 9, 1995. The department of human services
18 shall seek federal or private funding for the costs of
19 the task force.

20 Sec. ____ . EFFECTIVE DATE. Section 9 of this Act
21 takes effect July 1, 1995."

22 2. By renumbering as necessary.

By ROBERT E. DVORSKY
ELAINE SZYMONIAK
MAGGIE TINSMAN

S-5538 FILED APRIL 7, 1994

*adopted 4-8-94
(P 1109)*

SENATE AMENDMENT TO HOUSE FILE 2261

H-6063

1 Amend House File 2261, as passed by the House as
2 follows:

3 1. Page 5, by striking lines 22 through 25 and
4 inserting the following:

5 "3. The subject of a child abuse report may appeal
6 the decision resulting from the a hearing may-be
7 appealed held pursuant to subsection 2 to the district
8 court of Polk county by-the-person-requesting-the
9 correction or to the district court of the district in
10 which the person subject of the child abuse report
11 resides."

12 2. Page 5, by inserting after line 29 the
13 following:

14 DIVISION V
15 CHILD OR DEPENDENT ADULT ABUSE
16 INFORMATION -- USE AND ACCESS

17 "Sec. ____ . Section 125.14A, Code 1993, is amended
18 by adding the following new subsections:

19 NEW SUBSECTION. 5. In addition to the record
20 checks required under this section, the department of
21 human services may conduct dependent adult abuse
22 record checks in this state and may conduct these
23 checks in other states, on a random basis. The
24 provisions of this section, relative to an evaluation
25 following a determination that a person has been
26 convicted of a crime or has a record of founded child
27 abuse, shall also apply to a random check conducted
28 under this subsection.

29 NEW SUBSECTION. 6. Beginning July 1, 1994, a
30 program or facility shall inform all new applicants
31 for employment of the possibility of the performance
32 of a record check and shall obtain, from the
33 applicant, a signed acknowledgment of the receipt of
34 the information.

35 NEW SUBSECTION. 7. On or after July 1, 1994, a
36 program or facility shall include the following
37 inquiry in an application for employment: "Do you
38 have a record of founded child or dependent adult
39 abuse or have you ever been convicted of a crime in
40 this state or any other state?"

41 Sec. ____ . NEW SECTION. 135C.33 CHILD OR
42 DEPENDENT ADULT ABUSE INFORMATION AND CRIMINAL RECORDS
43 --EVALUATIONS.

44 1. On or after July 1, 1994, with regard to new
45 applicants for licensure or employment, if a person is
46 being considered for licensure under this chapter, or
47 for employment involving direct responsibility for a
48 resident or with access to a resident when the
49 resident is alone, or if the person considered for
50 licensure or employment under this chapter will reside

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1 in a facility, the facility may request that the
2 department of human services conduct criminal and
3 child and dependent adult abuse record checks in this
4 state and in other states, on a random basis.
5 Beginning July 1, 1994, a facility shall inform all
6 new applicants for employment of the possibility of
7 the performance of a record check and shall obtain,
8 from the applicant, a signed acknowledgment of the
9 receipt of the information. Additionally, on or after
10 July 1, 1994, a facility shall include the following
11 inquiry in an application for employment: "Do you
12 have a record of founded child or dependent adult
13 abuse or have you ever been convicted of a crime, in
14 this state or any other state?" If the person has
15 been convicted of a crime under a law of any state or
16 has a record of founded child or dependent adult
17 abuse, the department of human services shall perform
18 an evaluation to determine whether the crime or
19 founded child or dependent adult abuse warrants
20 prohibition of licensure, employment, or residence in
21 the facility. The evaluation shall be performed in
22 accordance with procedures adopted for this purpose by
23 the department of human services.

24 2. If the department of human services determines
25 that a person has committed a crime or has a record of
26 founded child or dependent adult abuse and is
27 licensed, employed by a facility licensed under this
28 chapter, or resides in a licensed facility, the
29 department shall notify the licensee that an
30 evaluation will be conducted to determine whether
31 prohibition of the person's licensure, employment, or
32 residence is warranted.

33 3. In an evaluation, the department of human
34 services shall consider the nature and seriousness of
35 the crime or founded child or dependent adult abuse in
36 relation to the position sought or held, the time
37 elapsed since the commission of the crime or founded
38 child or dependent adult abuse, the circumstances
39 under which the crime or founded child or dependent
40 adult abuse was committed, the degree of
41 rehabilitation, the likelihood that the person will
42 commit the crime or founded child or dependent adult
43 abuse again, and the number of crimes or founded child
44 or dependent adult abuses committed by the person
45 involved. The department of human services has final
46 authority in determining whether prohibition of the
47 person's licensure, employment, or residence is
48 warranted.

49 4. If the department of human services determines
50 that the person has committed a crime or has a record

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1 of founded child or dependent adult abuse which
2 warrants prohibition of licensure, employment, or
3 residence, the person shall not be licensed under this
4 chapter and shall not be employed by a facility or
5 reside in a facility licensed under this chapter.

6 Sec. _____. Section 135H.7, Code 1993, is amended by
7 adding the following new subsections:

8 NEW SUBSECTION. 4. In addition to the record
9 checks required under subsection 2, the department of
10 human services may conduct dependent adult abuse
11 record checks in this state and may conduct these
12 checks in other states, on a random basis. The
13 provisions of subsections 2 and 3, relative to an
14 evaluation following a determination that a person has
15 been convicted of a crime or has a record of founded
16 child abuse, shall also apply to a random dependent
17 adult abuse record check conducted under this
18 subsection.

19 NEW SUBSECTION. 5. Beginning July 1, 1994, a
20 licensee shall inform all new applicants for
21 employment of the possibility of the performance of a
22 record check and shall obtain, from the applicant, a
23 signed acknowledgment of the receipt of the
24 information.

25 NEW SUBSECTION. 6. On or after July 1, 1994, a
26 licensee shall include the following inquiry in an
27 application for employment: "Do you have a record of
28 founded child or dependent adult abuse or have you
29 ever been convicted of a crime, in this state or any
30 other state?"

31 Sec. _____. Section 237.8, Code 1993, is amended by
32 adding the following new subsections:

33 NEW SUBSECTION. 3. In addition to the record
34 checks required under subsection 2, the department of
35 human services may conduct dependent adult abuse
36 record checks in this state and may conduct these
37 checks in other states, on a random basis. The
38 provisions of subsection 2, relative to an evaluation
39 following a determination that a person has been
40 convicted of a crime or has a record of founded child
41 abuse, shall also apply to a random check conducted
42 under this subsection.

43 NEW SUBSECTION. 4. On or after July 1, 1994, a
44 licensee shall inform all new applicants for
45 employment of the possibility of the performance of a
46 record check and shall obtain, from the applicant, a
47 signed acknowledgment of the receipt of the
48 information.

49 NEW SUBSECTION. 5. On or after July 1, 1994, a
50 licensee shall include the following inquiry in an

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1 application for employment: "Do you have a record of
2 founded child or dependent adult abuse or have you
3 ever been convicted of a crime, in this state or any
4 other state?"

5 Sec. _____. Section 237A.5, Code 1993, is amended by
6 adding the following new subsections:

7 NEW SUBSECTION. 3. In addition to the record
8 checks required under subsection 2, the department of
9 human services may conduct dependent adult abuse
10 record checks in this state and may conduct these
11 checks in other states, on a random basis. The
12 provisions of subsection 2, relative to an evaluation
13 following a determination that a person has been
14 convicted of a crime or has a record of founded child
15 abuse, shall also apply to a random dependent adult
16 abuse record check conducted under this subsection.

17 NEW SUBSECTION. 4. On or after July 1, 1994, a
18 licensee or registrant shall inform all new applicants
19 for employment of the possibility of the performance
20 of a record check and shall obtain, from the
21 applicant, a signed acknowledgment of the receipt of
22 the information.

23 NEW SUBSECTION. 5. On or after July 1, 1994, a
24 licensee or registrant shall include the following
25 inquiry in an application for employment: "Do you
26 have a record of founded child or dependent adult
27 abuse or have you ever been convicted of a crime, in
28 this state or any other state?"

29 Sec. _____. Section 692.2, subsection 1, paragraph
30 c, Code Supplement 1993, is amended to read as
31 follows:

32 c. The department of human services for the
33 purposes of section 135C.33, section 218.13, section
34 232.71, subsection 16, section 232.142, section 237.8,
35 subsection 2, section 237A.5, section 237A.20, and
36 section 600.8, subsections 1 and 2.

37 Sec. _____. Section 692.2, subsection 1, Code
38 Supplement 1993, is amended by adding the following
39 new paragraph:

40 NEW PARAGRAPH. 1. Health care facilities licensed
41 pursuant to chapter 135C for the purposes of section
42 135C.33.

43 Sec. _____. Section 692.3, subsection 2, Code 1993,
44 is amended to read as follows:

45 2. Notwithstanding subsection 1, paragraph "a",
46 the department of human services may disseminate
47 criminal history data obtained pursuant to section
48 692.2, subsection 1, paragraph "c", to persons
49 licensed, registered, or certified under chapters
50 135C, 237, 237A, 238 and 600 for the purposes of

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1 section 135C.33, section 237.8, subsection 2 and
 2 section 237A.5. A person who receives information
 3 pursuant to this subsection shall not use the
 4 information other than for purposes of section
 5 135C.33, section 237.8, subsection 2, section 237A.5,
 6 or section 600.8, subsections 1 and 2. A person who
 7 receives criminal history data pursuant to this
 8 subsection who uses the information for purposes other
 9 than those permitted by this subsection or who
 10 communicates the information to another person except
 11 for the purposes permitted by this subsection is
 12 guilty of an aggravated misdemeanor."

13 3. Page 5, by inserting after line 29 the fol-
 14 lowing:

15 "Sec. ____ . CHILD PROTECTION TASK FORCE. The
 16 legislative council is requested to establish a task
 17 force for the 1994 interim to review federal and state
 18 laws, regulations, and policies regarding child
 19 protection, including the central child abuse
 20 registry, and to make recommendations for changes in
 21 the child protection system. The task force members
 22 shall include legislators, individuals knowledgeable
 23 concerning child protection and prevention of child
 24 abuse, and other interested persons. The task force
 25 shall submit a report of its findings and
 26 recommendations to the general assembly on or before
 27 January 9, 1995. The department of human services
 28 shall seek federal or private funding for the costs of
 29 the task force.

30 Sec. ____ . EFFECTIVE DATE. Section 9 of this Act
 31 takes effect July 1, 1995."

32 4. By renumbering, relettering, or redesignating
 33 and correcting internal references as necessary.

RECEIVED FROM THE SENATE

H-6063 FILED APRIL 8, 1994

House Concurred

4-14-94

(P. 1562)

*Martin, Ch.
Meyer
Moreland*

HSB 566

HUMAN RESOURCES

SENATE/HOUSE FILE 2261
BY (PROPOSED DEPARTMENT OF
HUMAN SERVICES BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to child abuse provisions involving child abuse
2 definitions, mandatory reporters, investigation procedures,
3 correction of child abuse information, and criminal and child
4 abuse checks of persons associated with state-regulated
5 facilities and programs.

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

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DIVISION I
CHILD ABUSE DEFINITIONS

Section 1. Section 232.68, subsection 2, paragraph f, Code Supplement 1993, is amended to read as follows:

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the child's-parent,-guardian, or-custodian person responsible for the care of the child.

Sec. 2. Section 232.68, subsection 7, paragraph b, Code Supplement 1993, is amended to read as follows:

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

DIVISION II
MANDATORY REPORTERS OF CHILD ABUSE

Sec. 3. Section 232.69, subsection 1, paragraph b, Code 1993, is amended to read as follows:

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) Every A self-employed social worker, every,
- (2) A social worker under the jurisdiction of the department of human services, any,
- (3) A social worker employed by a public or private agency or institution,
- (4) An employee or operator of a public or private health care facility as defined in section 135C.17,
- (5) A certified psychologist,
- (6) A licensed school employee,
- (7) An employee or operator of a licensed child care center or registered group day care home or registered family day care home, individual licensee under chapter 237, member of the staff.

1 (8) An employee or operator of a substance abuse program
2 or facility licensed under chapter 125.

3 (9) An employee of a department of human services
4 institution listed in section 218.1.

5 (10) An employee or operator of a juvenile detention or
6 juvenile shelter care facility approved under section 232.142.

7 (11) An employee or operator of a foster care facility
8 licensed or approved under chapter 237.

9 (12) An employee or operator of a mental health center.

10 (13) A peace officer.

11 (14) A dental hygienist.

12 (15) A counselor, or mental health professional, who, in
13 the scope of professional practice or in providing child
14 foster care, examines, attends, counsels or treats a child and
15 reasonably believes a child has suffered abuse.

16 DIVISION III

17 CHILD ABUSE INVESTIGATIONS

18 Sec. 4. Section 232.71, subsection 1, Code Supplement
19 1993, is amended to read as follows:

20 1. If a report is determined to constitute a child abuse
21 allegation, the department of human services shall promptly
22 commence an appropriate investigation. The primary purpose of
23 this investigation shall be the protection of the child named
24 in the report. The department, within five working days of
25 commencing the investigation, shall provide written
26 notification of the investigation to the child's parents.
27 However, if the department shows the court to the court's
28 satisfaction that notification is likely to endanger the child
29 or other persons, the court shall issue an emergency order
30 restraining the notification orally direct the department to
31 withhold notification. Within one working day of issuing an
32 oral directive, the court shall issue a written order
33 restraining the notification. If a report is determined to
34 not to constitute a child abuse allegation, but a criminal act
35 harming a child is alleged, the department shall immediately

1 refer the matter to the appropriate law enforcement agency.

2 Sec. 5. Section 232.71, subsection 2, paragraph d, Code
3 Supplement 1993, is amended to read as follows:

4 d. An If protective concerns are identified, evaluation of
5 the home environment and relationship of the child named in
6 the report and any other children in the same home as the
7 parents or other persons responsible for their care.

8 Sec. 6. Section 232.77, subsection 1, Code Supplement
9 1993, is amended to read as follows:

10 1. Any A person who is required to report a case of child
11 abuse may take or cause to be taken, at public expense,
12 photographs, or X rays, or other physical examinations or
13 tests of the areas of trauma visible on a child which would
14 provide medical indication of allegations arising from a child
15 abuse investigation. Any A health practitioner may, if
16 medically indicated, cause to be performed radiological
17 examination, physical examination, or other medical tests of
18 the child. Any A person who takes any photographs or X rays
19 or performs physical examinations or other tests pursuant to
20 this section shall notify the department of human services
21 that such the photographs or X rays have been taken, and or
22 the examinations or other tests have been performed. The
23 person who made notification shall retain such the photographs
24 or X rays or examination or test findings for a reasonable
25 time thereafter following the notification. Whenever such the
26 person is required to report under section 232.69, in that
27 person's capacity as a member of the staff of a medical or
28 other private or public institution, agency or facility, that
29 person shall immediately notify the person in charge of such
30 the institution, agency, or facility or that person's
31 designated delegate of the need for photographs or X rays or
32 examinations or other tests.

33 Sec. 7. 1993 Iowa Acts, chapter 172, sections 32, 33, 38,
34 and 39, are repealed.

35 Sec. 8. EFFECTIVE DATE. Section 7 of this Act, being

1 deemed of immediate importance, takes effect upon enactment.

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DIVISION IV

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CORRECTION OF CHILD ABUSE INFORMATION

4 Sec. 9. Section 235A.19, subsections 1, 2, and 3, Code
5 1993, are amended to read as follows:

6 1. ~~Any person or that person's attorney~~ A subject of a
7 child abuse report, as identified in section 235A.15,
8 subsection 2, paragraph "a", shall have the right to examine
9 child abuse information in the registry which refers to ~~that~~
10 person the subject. The registry may prescribe reasonable
11 hours and places of examination.

12 2. a. A person subject of a child abuse report may file
13 with the department within six months of the date of the
14 notice of the results of an investigation required by section
15 232.71, subsection 7, a written statement to the effect that
16 child abuse information referring to the person subject is in
17 whole or in part erroneous, and may request a correction of
18 that information or of the findings of the investigation
19 report. The department shall provide the person subject with
20 an opportunity for an evidentiary hearing pursuant to chapter
21 17A to correct the information or the findings, unless the
22 department corrects the information or findings as requested.
23 The department shall delay the expungement of information
24 which is not determined to be founded until the conclusion of
25 a proceeding to correct the information or findings. The
26 department may defer the hearing until the conclusion of a
27 pending juvenile or district court case relating to the
28 information or findings.

29 b. The department shall not disclose any child abuse
30 information until the conclusion of the proceeding to correct
31 the information or findings, except as follows:

32 (1) As necessary for the proceeding itself.

33 (2) To the parties and attorneys involved in a judicial
34 proceeding.

35 (3) For the regulation of child care or child placement.

1 (4) Pursuant to court order.

2 (5) To the subject of an investigation or a report.

3 (6) For the care or treatment of a child named in a report
4 as a victim of abuse.

5 (7) To persons involved in an investigation of child
6 abuse.

7 3. The decision resulting from the hearing may be appealed
8 to the district court of Polk county by the person requesting
9 the correction or to the district court of the district in
10 which the person subject of the child abuse report resides.
11 Immediately upon appeal the court shall order the department
12 to file with the court a certified copy of the child abuse
13 information. Appeal shall be taken in accordance with chapter
14 17A.

15 DIVISION V

16 RECORD CHECKS OF STAFF

17 Sec. 10. Section 125.14A, Code 1993, is amended to read as
18 follows:

19 125.14A PERSONNEL OF A LICENSED PROGRAM ADMITTING
20 JUVENILES.

21 1. If a person is being considered for licensure under
22 this chapter, or for employment involving direct
23 responsibility for a child or with access to a child when the
24 child is alone, by a program admitting juveniles subject to
25 licensure under this chapter, or if a person will reside in a
26 facility utilized by such a program, and if the person has
27 been convicted of a crime or has a record of founded child
28 abuse, ~~the department of human services and the program, for~~
29 ~~an employee of the program, shall perform an evaluation to~~
30 ~~determine whether the crime or founded child abuse warrants~~
31 ~~prohibition of~~ the person's licensure, employment, or
32 residence in the facility is prohibited. The department of
33 human services shall conduct criminal and child abuse record
34 checks in this state and may conduct these checks in other
35 states. ~~The evaluation shall be performed in accordance with~~

1 procedures-adopted-for-this-purpose-by-the-department-of-human
2 services.

3 2. If the department of human services determines that a
4 person has committed a crime or has a record of founded child
5 abuse and is licensed, employed by a program licensed under
6 this chapter, or resides in a licensed facility the-department
7 shall-notify-the-program-that-an-evaluation-will-be-conducted
8 to-determine-whether-prohibition-of the person's licensure,
9 employment, or residence is warranted prohibited.

10 3.--In-an-evaluation,-the-department-of-human-services-and
11 the-program-for-an-employee-of-the-program-shall-consider-the
12 nature-and-seriousness-of-the-crime-or-founded-child-abuse-in
13 relation-to-the-position-sought-or-held,-the-time-elapsed
14 since-the-commission-of-the-crime-or-founded-child-abuse,-the
15 circumstances-under-which-the-crime-or-founded-child-abuse-was
16 committed,-the-degree-of-rehabilitation,-the-likelihood-that
17 the-person-will-commit-the-crime-or-founded-child-abuse-again,
18 and-the-number-of-crimes-or-founded-child-abuses-committed-by
19 the-person-involved.--The-department-of-human-services-may
20 permit-a-person-who-is-evaluated-to-be-licensed,-employed,-or
21 to-reside,-or-to-continue-to-be-licensed,-employed,-or-to
22 reside-in-a-program,-if-the-person-complies-with-the
23 department's-conditions-relating-to-the-person's-licensure,
24 employment,-or-residence,-which-may-include-completion-of
25 additional-training.--For-an-employee-of-a-licensee,-these
26 conditional-requirements-shall-be-developed-with-the-licensee.
27 The-department-of-human-services-has-final-authority-in
28 determining-whether-prohibition-of-the-person's-licensure,
29 employment,-or-residence-is-warranted-and-in-developing-any
30 conditional-requirements-under-this-subsection.

31 4.--If-the-department-of-human-services-determines-that-the
32 person-has-committed-a-crime-or-has-a-record-of-founded-child
33 abuse-which-warrants-prohibition-of-licensure,-employment,-or
34 residence,-the-person-shall-not-be-licensed-under-this-chapter
35 to-operate-a-program-admitting-juveniles-and-shall-not-be

1 employed-by-a-program-or-reside-in-a-facility-admitting
2 juveniles-licensed-under-this-chapter.

3 Sec. 11. Section 218.13, subsections 2, 3, 4, and 5, Code
4 1993, are amended to read as follows:

5 2. If a person is being considered for employment
6 involving direct responsibility for a resident or with access
7 to a resident when the resident is alone, or if a person will
8 reside in a facility utilized by an institution, and if the
9 person has been convicted of a crime or has a record of
10 founded child abuse, ~~the department shall perform an~~
11 ~~evaluation to determine whether the crime or founded child~~
12 ~~abuse warrants prohibition of~~ person's employment or residence
13 in the facility is prohibited. The department shall conduct
14 criminal and child abuse record checks of the person in this
15 state and may conduct these checks in other states. The
16 ~~investigation and evaluation shall be performed in accordance~~
17 ~~with procedures adopted for this purpose by the department.~~

18 3. If the department determines that a person, who is
19 employed by an institution or resides in a facility utilized
20 by an institution, has been convicted of a crime or has a
21 record of founded child abuse, ~~the department shall perform an~~
22 ~~evaluation to determine whether prohibition of~~ the person's
23 employment or residence is warranted prohibited. The
24 ~~evaluation shall be performed in accordance with procedures~~
25 ~~adopted for this purpose by the department.~~

26 ~~4. In an evaluation, the department shall consider the~~
27 ~~nature and seriousness of the crime or founded child abuse in~~
28 ~~relation to the position sought or held, the time elapsed~~
29 ~~since the commission of the crime or founded child abuse, the~~
30 ~~circumstances under which the crime or founded child abuse was~~
31 ~~committed, the degree of rehabilitation, the likelihood that~~
32 ~~the person will commit the crime or founded child abuse again,~~
33 ~~and the number of crimes or founded child abuses committed by~~
34 ~~the person involved. The department may permit a person who~~
35 ~~is evaluated to be employed or reside or to continue~~

1 employment-or-residence-if-the-person-complies-with-the
2 department's-conditions-relating-to-employment-or-residence
3 which-may-include-completion-of-additional-training:

4 5:--If-the-department-determines-that-the-person-has
5 committed-a-crime-or-has-a-record-of-founded-child-abuse-which
6 warrants-prohibition-of-employment-or-residence,-the-person
7 shall-not-be-employed-by-an-institution-or-reside-in-a
8 facility-utilized-by-an-institution:

9 Sec. 12. Section 232.142, subsection 4, Code 1993, is
10 amended to read as follows:

11 4. The director shall adopt minimal rules and standards
12 for the establishment, maintenance, and operation of such
13 homes as shall be necessary to effect the purposes of this
14 chapter. The rules shall apply the requirements of section
15 237.8, concerning employment and-evaluation of persons with
16 direct responsibility for a child or with access to a child
17 when the child is alone and persons residing in a child foster
18 care facility, to persons employed by or residing in a home
19 approved under this section. The director shall, upon
20 request, give guidance and consultation in the establishment
21 and administration of the homes and programs for the homes.

22 Sec. 13. Section 237.8, subsection 2, Code 1993, is
23 amended to read as follows:

24 2. a. If a person is being considered for licensure under
25 this chapter, or for employment involving direct
26 responsibility for a child or with access to a child when the
27 child is alone, by a licensee under this chapter, or if a
28 person will reside in a facility utilized by a licensee, and
29 if the person has been convicted of a crime or has a record of
30 founded child abuse, ~~the-department-and-the-licensee-for-an~~
31 ~~employee-of-the-licensee-shall-perform-an-evaluation-to~~
32 ~~determine-whether-the-crime-or-founded-child-abuse-warrants~~
33 ~~prohibition-of~~ the person's licensure, employment, or
34 residence in the facility is prohibited. The department shall
35 conduct criminal and child abuse record checks in this state

1 and may conduct these checks in other states. The evaluation
2 shall be performed in accordance with procedures adopted for
3 this purpose by the department.

4 b. If the department determines that a person has
5 committed a crime or has a record of founded child abuse and
6 is licensed, employed by a licensee, or resides in a licensed
7 facility the department shall notify the licensee that an
8 evaluation will be conducted to determine whether prohibition
9 of the person's licensure, employment, or residence is
10 warranted prohibited.

11 c. -- In an evaluation, the department and the licensee for
12 an employee of the licensee shall consider the nature and
13 seriousness of the crime or founded child abuse in relation to
14 the position sought or held, the time elapsed since the
15 commission of the crime or founded child abuse, the
16 circumstances under which the crime or founded child abuse was
17 committed, the degree of rehabilitation, the likelihood that
18 the person will commit the crime or founded child abuse again,
19 and the number of crimes or founded child abuses committed by
20 the person involved. -- The department may permit a person who
21 is evaluated to be licensed, employed, or to reside, or to
22 continue to be licensed, employed, or to reside in a licensed
23 facility, if the person complies with the department's
24 conditions relating to the person's licensure, employment, or
25 residence, which may include completion of additional
26 training. -- For an employee of a licensee, these conditional
27 requirements shall be developed with the licensee. -- The
28 department has final authority in determining whether
29 prohibition of the person's licensure, employment, or
30 residence is warranted and in developing any conditional
31 requirements under this paragraph.

32 d. -- If the department determines that the person has
33 committed a crime or has a record of founded child abuse which
34 warrants prohibition of licensure, employment, or residence,
35 the person shall not be licensed under this chapter and shall

1 not-be-employed-by-a-licensee-or-reside-in-a-licensed
2 facility-

3 Sec. 14. Section 237A.5, subsection 2, Code 1993, is
4 amended to read as follows:

5 2. a. If a person is being considered for licensure or
6 registration under this chapter, or for employment involving
7 direct responsibility for a child or with access to a child
8 when the child is alone, by a child day care facility subject
9 to licensure or registration under this chapter, or if a
10 person will reside in a facility, and if the person has been
11 convicted of a crime or has a record of founded child abuse,
12 ~~the-department-and-the-licensee-or-registrant-for-an-employee~~
13 ~~of-the-licensee-or-registrant-shall-perform-an-evaluation-to~~
14 ~~determine-whether-the-crime-or-founded-child-abuse-warrants~~
15 ~~prohibition-of~~ the person's licensure, registration,
16 employment, or residence in the facility is prohibited. The
17 department shall conduct criminal and child abuse record
18 checks in this state and may conduct these checks in other
19 states. ~~The-evaluation-shall-be-performed-in-accordance-with~~
20 ~~procedures-adopted-for-this-purpose-by-the-department-~~

21 b. If the department determines that a person has
22 committed a crime or has a record of founded child abuse and
23 is licensed, employed by a licensee or registrant or
24 registered under this chapter, or resides in a licensed or
25 registered facility ~~the-department-shall-notify-the-licensee~~
26 ~~or-registrant-that-an-evaluation-will-be-conducted-to~~
27 ~~determine-whether-prohibition-of~~ the person's licensure,
28 registration, employment, or residence is warranted
29 prohibited.

30 ~~c.--In-an-evaluation, the-department-and-the-licensee-or~~
31 ~~registrant-for-an-employee-of-the-licensee-or-registrant-shall~~
32 ~~consider-the-nature-and-seriousness-of-the-crime-or-founded~~
33 ~~child-abuse-in-relation-to-the-position-sought-or-held, the~~
34 ~~time-elapsed-since-the-commission-of-the-crime-or-founded~~
35 ~~child-abuse, the-circumstances-under-which-the-crime-or~~

1 founded-child-abuse-was-committed, the-degree-of
2 rehabilitation, the-likelihood-that-the-person-will-commit-the
3 crime-or-founded-child-abuse-again, and-the-number-of-crimes
4 or-founded-child-abuses-committed-by-the-person-involved.--The
5 department-may-permit-a-person-who-is-evaluated-to-be
6 licensed, registered, employed, or-to-reside, or-to-continue
7 to-be-licensed, registered, employed, or-to-reside-in-a
8 licensed-facility, if-the-person-complies-with-the
9 department's-conditions-relating-to-the-person's-licensure,
10 registration, employment, or-residence, which-may-include
11 completion-of-additional-training.--For-an-employee-of-a
12 licensee-or-registrant, these-conditional-requirements-shall
13 be-developed-with-the-licensure-or-registrant.--The-department
14 has-final-authority-in-determining-whether-prohibition-of-the
15 person's-licensure, registration, employment, or-residence-is
16 warranted-and-in-developing-any-conditional-requirements-under
17 this-paragraph.

18 d.--If-the-department-determines-that-the-person-has
19 committed-a-crime-or-has-a-record-of-founded-child-abuse-which
20 warrants-prohibition-of-licensure, registration, employment,
21 or-residence, the-person-shall-not-be-licensed-or-registered
22 under-this-chapter-to-operate-a-child-day-care-facility-and
23 shall-not-be-employed-by-a-licensure-or-registrant-or-reside-in
24 a-facility-licensed-or-registered-under-this-chapter.

25 EXPLANATION

26 This bill relates to child abuse provisions involving the
27 presence of an illegal drug in a child's body, mandatory
28 reporters, investigation procedures, correction of child abuse
29 information, and criminal and child abuse records of persons
30 working in facilities.

31 Division I amends two of the child abuse definitions used
32 for reporting and investigations. First, the current child
33 abuse definitions address the presence of an illegal drug in a
34 child relating to the acts or omissions of the child's parent,
35 guardian, or custodian. The bill would expand this

1 responsibility for the presence of a drug in a child to any
2 person responsible for the care of the child. The second
3 amendment affects the definition of "person responsible for
4 the care of a child" which is the basis for determining
5 whether a person is a perpetrator of child abuse. The bill
6 would amend that portion of the definition which addresses a
7 relative or any other person with whom a child resides by also
8 requiring that person to have assumed care or supervision of
9 the child.

10 Division II relates to mandatory reporters of child abuse.
11 The listing of child abuse reporters who are not health care
12 providers is rewritten to be in a numbered list form. The
13 following facility or program employees and operators would be
14 added to the list under the bill: health care facilities,
15 substance abuse programs and facilities, department of human
16 services facilities, and juvenile detention and shelter care
17 facilities. Although foster care licensees are on the list
18 under current law, the bill would rewrite the foster care
19 provision to apply to employees and operators of licensed or
20 approved foster care facilities.

21 Division III includes various provisions relating to child
22 abuse investigations. Current law permits the court to order
23 withholding notification of a parent concerning a child abuse
24 investigation. The bill would permit the court to initially
25 restrain notification orally followed by a written order
26 within one working day of the oral directive.

27 Division III would modify the child abuse investigation
28 requirement for evaluation of the home environment and the
29 relationships of the child named in the report. The
30 modification would permit performance of the evaluation to be
31 predicated on the presence of protective concerns.

32 Division III amends section 232.77, relating to performance
33 of and payment for photographs and other medically relevant
34 tests during a child abuse investigation. The bill would add
35 physical examinations or other medical tests to the existing

1 provisions to pay for photographs and X rays.

2 Finally, Division III repeals the elimination of
3 multidisciplinary teams. The multidisciplinary teams are used
4 to assist the department in the child abuse report process.
5 The elimination of the teams is to take effect on July 1,
6 1994.

7 Division IV relates to procedures for correction or
8 expungement of child abuse information. Under current law
9 only a person or the person's attorney has the right to
10 examine child abuse information in the child abuse registry
11 which relates to that person and to request correction of the
12 information or of the findings of the child abuse report.

13 This division would provide those rights to the following
14 parties to a child abuse investigation and report: the child
15 named in the report and the child's attorney and guardian ad
16 litem; the parent of a child named in a report or the parent's
17 attorney; the guardian or legal custodian of a child named in
18 a report or that person's attorney; and the person named in a
19 report as having abused a child or that person's attorney.

20 Division V expressly prohibits the licensure, registration,
21 employment, or residence of persons with a record of founded
22 child abuse or a criminal record in various facilities and
23 programs. Current law authorizes the department of human
24 services, and licensees for employees of licensees, to
25 evaluate individual cases based upon specified standards and
26 to make exceptions. The bill would affect substance abuse
27 programs and facilities, department of human services'
28 institutions, juvenile detention centers and shelters, foster
29 care programs and facilities, and child day care registrants
30 and licensees.

31 BACKGROUND STATEMENT

32 SUBMITTED BY THE AGENCY

33 Division I relates to the presence of illegal drugs in a
34 child's body. Currently, for a case to be investigated or
35 founded, illegal drugs must be present within a child's body

1 as the result of acts or omissions of the child's parent,
2 guardian, or custodian. This current law was enacted during
3 the 1993 legislative session, and is now part of the
4 definition of "child abuse." All other definitions of child
5 abuse require that the abuse occur as the result of acts or
6 omissions of a "person responsible for the care of a child."
7 By only including instances where the drug's presence is the
8 result of parent/guardian/custodian actions, any time a child
9 has a positive drug screening as a result of, for example, a
10 babysitter's acts or omissions, it could not be investigated
11 under this category. Also, by changing the language to
12 "person responsible for the care of a child," the language
13 would be consistent with other Code language defining various
14 types of child abuse. It is recommended that the wording be
15 changed to be the result of acts or omissions of the person
16 responsible for the care of the child.

17 Division I also relates to the person responsible for the
18 care of a child. In the definition of "person responsible for
19 the care of a child", one of the definitions states "a
20 relative or any other person with whom the child resides..."
21 This should be changed to read "a relative or any other person
22 with whom the child resides, who assumes care or supervision
23 of the child..." Current language technically could mean that
24 an infant or young child could be a caretaker, since the
25 language reads "any person" with whom the child resides.
26 Also, problems have arisen in cases in which a boarder or
27 roomer who never assumes any responsibility for a child may be
28 considered a caretaker under the current definition. This is
29 not consistent with other aspects of the legal definition of a
30 "person responsible for the care of a child." The proposed
31 language cleans this up, and is consistent with caretaker
32 requirement in previous Code definitions. The impact would be
33 minimal, but would assist in maintaining clarity on the
34 "caretaker" role as a necessary component for an investigation
35 of child abuse. Child advocacy organizations may interpret

1 this as a device to investigate fewer cases, but the proposed
2 language improves consistency and would assist field staff in
3 making a determination about caretaker status when
4 investigating allegations occurring within the child's home.

5 Division II relates to mandatory reporters of child abuse.
6 Current Code requires that employees or operators of licensed
7 child care centers or registered day care homes be mandated to
8 report suspected child abuse. It is recommended that
9 employees of licensed or approved residential care facilities
10 for children also be mandated to report suspected child abuse.
11 Employees of licensed or approved residential care facilities
12 are currently required to report suspected child abuse through
13 licensing rules in administrative code. In order to be
14 consistent with the requirement that employees of licensed or
15 registered day care centers be mandated by law to report,
16 employees of residential facilities should also be added.
17 This amendment will allow for employees of facilities
18 providing overnight care for children to be considered
19 mandatory reporters and, as such, allow them to assume the
20 duties of persons required to report suspected child abuse.
21 Currently most persons in these categories are mandated to
22 report suspected abuse through administrative rules, but the
23 addition to Code strengthens their status and makes them
24 consistent with other providers of child care.

25 Division III includes various provisions affecting child
26 abuse investigations. Division III addresses written
27 notification to parents regarding investigation. Current law
28 requires written notification be provided to parents within
29 five working days of commencing a child abuse investigation.
30 This notification may be waived if notification is likely to
31 endanger the child or victim or other persons if the court
32 issues an emergency order restraining the notification. It is
33 recommended that juvenile court be allowed to restrain the
34 notification by verbally directing the worker to withhold
35 notification, and that the court not be required to issue an

1 order. This is recommended because there are times when an
2 investigation involves criminal activity (example, child
3 pornography) and by the time this is discovered, the five
4 working days are almost completed. There are times when it is
5 difficult to quickly obtain an order, but it would be more
6 feasible to obtain the court's verbal permission to restrain
7 notification. This amendment would allow quicker action by
8 the court if a worker discovers, several days into the
9 investigation, that parental notification would be dangerous
10 to the child/victim or others. It will improve efforts in
11 rare instances to safeguard children or others when
12 investigations involve the likelihood of criminal charges.
13 Similar language has been approved by the child protection
14 council and the major case review committee.

15 Division III also affects evaluation of home environment
16 and relationship of children in the household with parents or
17 caretakers. Current Code requires that every investigation
18 include "an evaluation of the home environment and
19 relationship of...children in the...home...with the parent or
20 caretaker." It is recommended that the following phrase
21 precede the requirement..."Whenever protective concerns are
22 identified, an evaluation of the home environment and
23 relationship..." shall be included in the investigation.
24 There are occasions when, early in an investigation, a worker
25 discovers that the initial allegation was completely without
26 merit, and there are no protective concerns within the family.
27 (For example, when there is an allegation of children residing
28 in a filthy house, and during an unannounced home visit, the
29 worker discovers that the house is spotlessly clean.)
30 Currently, to meet Code requirements, the worker must
31 "evaluate the home environment" and the relationship of all
32 children residing in the household with the parents or care-
33 takers. This, of course, requires that all children be
34 observed and assessed. This is an overly intrusive practice
35 when a case is without merit. The worker should have the

1 ability to stop interviewing children and other household
2 members when there is nothing to interview them about because
3 the allegation is false. The worker should have the ability
4 to discontinue an evaluation of the home environment when
5 there are no protective concerns arising from the
6 investigation. This amendment reflects a consistent request
7 from field staff to cease evaluation of the home environment
8 and family relationships when there are no protective
9 concerns. This will be favorably received by DHS
10 investigative workers, as well as by families who must wonder
11 why they are being requested to continue to meet with the
12 investigating worker when the abuse allegations are without
13 merit. Similar language is being proposed by the child
14 protection council. The major case review committee endorses
15 the language in this proposal.

16 Division III would revise payment for physical examinations
17 and necessary medical tests in order to complete a child abuse
18 investigation. Current Code allows for uncomplicated
19 reimbursement for expenses associated with child abuse
20 investigation when these expenses involve taking photographs,
21 X rays, or providing sexual abuse examinations to alleged
22 child victims. It is recommended that physical examinations
23 and other tests needed to complete an investigation be
24 reimbursable through funds available to the central abuse
25 registry, as are expenses associated with X rays and
26 photographs. At present, it is sometimes difficult to secure
27 necessary information during an investigation as the needed
28 information involves a physical examination or other medical
29 tests. On occasion, court-ordered care and treatment funds
30 are used for these expenses, but the practice varies among
31 judicial districts and is cumbersome and confusing to workers
32 and clients. Adequate and accessible funds should be set
33 aside for necessary medical assessment when this assessment is
34 incurred during the course of a child abuse investigation.
35 There may be some fiscal impact, but moneys currently provided

1 to the court-ordered care and treatment fund could be used to
2 help offset the additional expense. All procedures arising
3 out of an investigation could be billed initially to the
4 child's or family's insurance, and these moneys would be used
5 only as a last resort when no insurance funding would be
6 available. This amendment would allow improved access to
7 medical providers by investigating workers who have concerns
8 about a child's injuries or condition, but need medical
9 examination and assistance to determine if child abuse is a
10 factor in the child's condition. An example of a case where
11 medical examination may occur would be suspicious injuries to
12 an infant or toddler (nonverbal child) where a medical opinion
13 would assist in determining and documenting the extent of the
14 injuries, and assist in assessing the explanation for the
15 injury. Currently, bills are sometimes being paid through the
16 court-ordered care and treatment funds, but access to these
17 funds varies greatly among judicial districts, and some DHS
18 regions must work with more than one judicial district's
19 policy, making reimbursement of providers a lengthy process.
20 Similar language has been approved by the child protection
21 council and by the major case review committee.

22 Division III would repeal the elimination of
23 multidisciplinary teams. Language in the 1993 DHS
24 appropriations bill, House File 518, provides for the
25 elimination of multidisciplinary teams. It is believed that
26 multidisciplinary teams are a valuable resource to the child
27 protective service workers. Members of these teams are
28 professionals interested in the protection of children and
29 providing treatment services to families. These teams provide
30 consultation and assessment services in cases of child abuse.
31 The types of child abuse cases the teams consult upon are
32 typically difficult cases where the multidisciplinary approach
33 is needed to provide for better handling of the case. No
34 fiscal impact is projected as all members of multidisciplinary
35 teams offer their services without receiving any

1 reimbursement. The program impact would be positive in that
2 DHS staff would continue to have multidisciplinary teams
3 available for case consultation. Also, use of multi-
4 disciplinary teams often strengthens the department's position
5 regarding case findings. Use of multidisciplinary team
6 members for investigative and treatment cases reinforces the
7 concept that community involvement and responsibility are a
8 necessary component in addressing child abuse and treatment
9 for children and families.

10 Division IV relates to requests for correction or
11 expungement and appeal of child abuse reports. A recent
12 ruling of the Iowa court of appeals, upheld by the supreme
13 court, stated that only alleged perpetrators of child abuse
14 could be considered as eligible to request review, correction,
15 or expungement of a child abuse report. This has necessitated
16 a change in policy for the child abuse registry and department
17 of inspections and appeals, in that persons who are subjects
18 of child abuse reports but not alleged perpetrators are now
19 denied review and appeal. This does not allow for all
20 subjects to have equal rights, and should be corrected.
21 Minimal fiscal impact is projected, in that until July 1,
22 1993, the registry was accepting requests for review,
23 correction, or expungement from all subjects, and this
24 legislation would simply return to that policy. Recent
25 publicity regarding this issue may encourage more subjects who
26 are not perpetrators to request review, correction, or
27 expungement. This Code change is supported by the major case
28 review team, and similar language is also being proposed by
29 the Iowa chapter, National Committee to Prevent Child Abuse
30 (NCPCA).

31 Division V relates to founded child abuse and criminal
32 convictions for staff in various facilities. Currently, Iowa
33 Code allows persons who have responsibility for children in
34 child care facilities (foster parents, registered day care
35 home providers, licensed day care centers, residential care

1 facilities, and substance abuse programs and facilities to be
2 responsible for such children even when the employee or
3 operator has a founded child abuse report or criminal
4 conviction, if the department of human services conducts an
5 evaluation of the founded abuse report or criminal conviction
6 and determines that the report or conviction does not warrant
7 exclusion from employment as a provider of care for children.
8 It is suggested that this policy fails to adequately safeguard
9 children being cared for in facilities licensed, registered,
10 or approved by the department. Thus, it is being recommended
11 that any person with a founded child abuse report or criminal
12 conviction be prohibited from providing care for children in
13 settings regulated by the department. The fiscal impact to
14 the department would be minimal, because the revised policy
15 would eliminate our evaluative duty when licensees or
16 registrants have founded child abuse reports or criminal
17 convictions. The revised policy may, however, impact current
18 licensees or registrants who have been favorably evaluated by
19 the department and continue to provide services to children in
20 licensed, approved, or registered facilities. The revision
21 could cause some staff turnover in child facilities where
22 employees have previously received favorable evaluations.
23 While this language may improve safety for children, many
24 potential employees in these positions will be eliminated due,
25 in some circumstances, to relatively minor child abuse or
26 criminal histories. It is anticipated that this Code change
27 would not be supported by facility advocates, such as the
28 coalition of family and children's services.

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HOUSE FILE 2261

AN ACT

RELATING TO CHILD ABUSE PROVISIONS INVOLVING CHILD ABUSE DEFINITIONS, MANDATORY REPORTERS, INVESTIGATION PROCEDURES, AND CORRECTION OF CHILD ABUSE INFORMATION, AND PROVIDING AN EFFECTIVE DATE.

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

DIVISION I
CHILD ABUSE DEFINITIONS

Section 1. Section 232.68, subsection 2, paragraph f, Code Supplement 1993, is amended to read as follows:

f. An illegal drug is present in a child's body as a direct and foreseeable consequence of the acts or omissions of the child's parent, guardian, or custodian person responsible for the care of the child.

Sec. 2. Section 232.68, subsection 7, paragraph b, Code Supplement 1993, is amended to read as follows:

b. A relative or any other person with whom the child resides and who assumes care or supervision of the child, without reference to the length of time or continuity of such residence.

DIVISION II
MANDATORY REPORTERS OF CHILD ABUSE

Sec. 3. Section 232.69, subsection 1, paragraph b, Code Supplement 1993, is amended to read as follows:

b. Any of the following persons who, in the scope of professional practice or in their employment responsibilities, examines, attends, counsels, or treats a child and reasonably believes a child has suffered abuse:

- (1) Every A self-employed social worker, every,
- (2) A social worker under the jurisdiction of the department of human services, any,

(3) A social worker employed by a public or private agency or institution,

(4) An employee or operator of a public or private health care facility as defined in section 135C.17,

(5) A certified psychologist,

(6) A licensed school employee,

(7) An employee or operator of a licensed child care center or registered group day care home or registered family day care home, individual licensee under chapter 237, member of the staff,

(8) An employee or operator of a substance abuse program or facility licensed under chapter 125,

(9) An employee of a department of human services institution listed in section 218.1,

(10) An employee or operator of a juvenile detention or juvenile shelter care facility approved under section 232.142,

(11) An employee or operator of a foster care facility licensed or approved under chapter 237,

(12) An employee or operator of a mental health center,

(13) A peace officer,

(14) A dental hygienist,

(15) A counselor, or mental health professional, who, in the scope of professional practice or in providing child foster care, examines, attends, counsels or treats a child and reasonably believes a child has suffered abuse.

DIVISION III
CHILD ABUSE INVESTIGATIONS

Sec. 4. Section 232.71, subsection 1, Code Supplement 1993, is amended to read as follows:

1. If a report is determined to constitute a child abuse allegation, the department of human services shall promptly commence an appropriate investigation. The primary purpose of this investigation shall be the protection of the child named in the report. The department, within five working days of commencing the investigation, shall provide written notification of the investigation to the child's parents.

However, if the department shows the court to the court's satisfaction that notification is likely to endanger the child or other persons, the court shall ~~issue an emergency order restraining the notification orally direct the department to withhold notification.~~ Within one working day of issuing an oral directive, the court shall issue a written order restraining the notification. If a report is determined to not to constitute a child abuse allegation, but a criminal act harming a child is alleged, the department shall immediately refer the matter to the appropriate law enforcement agency.

Sec. 5. Section 232.71, subsection 2, paragraph d, Code Supplement 1993, is amended to read as follows:

d. An evaluation of the home environment, and relationship of if protective concerns are identified, the department shall evaluate the child named in the report and any other children in the same home as the parents or other persons responsible for their care.

Sec. 6. Section 232.77, subsection 1, Code Supplement 1993, is amended to read as follows:

1. Any A person who is required to report a case of child abuse may take or cause to be taken, at public expense, photographs, or X rays, or other physical examinations or tests of the areas of trauma visible on a child which would provide medical indication of allegations arising from a child abuse investigation. Any A health practitioner may, if medically indicated, cause to be performed radiological examination, physical examination, or other medical tests of the child. Any A person who takes any photographs or X rays or performs physical examinations or other tests pursuant to this section shall notify the department of human services that such the photographs or X rays have been taken and or the examinations or other tests have been performed. The person who made notification shall retain such the photographs or X rays or examination or test findings for a reasonable time thereafter following the notification. Whenever such the person is required to report under section 232.69, in that

person's capacity as a member of the staff of a medical or other private or public institution, agency or facility, that person shall immediately notify the person in charge of such ~~the~~ institution, agency, or facility or that person's designated delegate of the need for photographs or X rays or examinations or other tests.

Sec. 7. 1993 Iowa Acts, chapter 172, sections 32, 33, 38, and 39, are repealed.

Sec. 8. EFFECTIVE DATE. Section 7 of this Act, being deemed of immediate importance, takes effect upon enactment.

DIVISION IV

CHILD ABUSE INFORMATION

Sec. 9. Section 235A.18, subsection 2, unnumbered paragraph 1, Code Supplement 1993, is amended to read as follows:

Child abuse information which cannot be determined by a preponderance of the evidence to be founded or unfounded shall be sealed one year after the receipt of the initial report of abuse and expunged five years after the date it was sealed. Child abuse information which is determined by a preponderance of the evidence to be unfounded shall be expunged when six months after the date it is determined to be unfounded. During the six-month period the information shall be sealed and is accessible only through a court order. A report shall be determined to be unfounded as a result of any of the following:

Sec. 10. Section 235A.19, subsections 1, 2, and 3, Code 1993, are amended to read as follows:

1. Any person or that person's attorney A subject of a child abuse report, as identified in section 235A.15, subsection 2, paragraph "a", shall have the right to examine child abuse information in the registry which refers to that person the subject. The registry may prescribe reasonable hours and places of examination.

2. a. A person subject of a child abuse report may file with the department within six months of the date of the

notice of the results of an investigation required by section 232.71, subsection 7, a written statement to the effect that child abuse information referring to the person subject is in whole or in part erroneous, and may request a correction of that information or of the findings of the investigation report. The department shall provide the person subject with an opportunity for an evidentiary hearing pursuant to chapter 17A to correct the information or the findings, unless the department corrects the information or findings as requested. The department shall delay the expungement of information which is not determined to be founded until the conclusion of a proceeding to correct the information or findings. The department may defer the hearing until the conclusion of a pending juvenile or district court case relating to the information or findings.

b. The department shall not disclose any child abuse information until the conclusion of the proceeding to correct the information or findings, except as follows:

- (1) As necessary for the proceeding itself.
- (2) To the parties and attorneys involved in a judicial proceeding.
- (3) For the regulation of child care or child placement.
- (4) Pursuant to court order.
- (5) To the subject of an investigation or a report.
- (6) For the care or treatment of a child named in a report as a victim of abuse.
- (7) To persons involved in an investigation of child abuse.

3. The subject of a child abuse report may appeal the decision resulting from the a hearing may-be-appealed held pursuant to subsection 2 to the district court of Polk county ~~by the person requesting the correction~~ or to the district court of the district in which the person subject of the child abuse report resides. Immediately upon appeal the court shall order the department to file with the court a certified copy of the child abuse information. Appeal shall be taken in accordance with chapter 17A.

DIVISION V
CHILD OR DEPENDENT ADULT ABUSE
INFORMATION -- USE AND ACCESS

Sec. 11. Section 125.14A, Code 1993, is amended by adding the following new subsections:

NEW SUBSECTION. 5. In addition to the record checks required under this section, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of this section, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

NEW SUBSECTION. 6. Beginning July 1, 1994, a program or facility shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

NEW SUBSECTION. 7. On or after July 1, 1994, a program or facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime in this state or any other state?"

Sec. 12. NEW SECTION. 135C.33 CHILD OR DEPENDENT ADULT ABUSE INFORMATION AND CRIMINAL RECORDS -- EVALUATIONS.

1. On or after July 1, 1994, with regard to new applicants for licensure or employment, if a person is being considered for licensure under this chapter, or for employment involving direct responsibility for a resident or with access to a resident when the resident is alone, or if the person considered for licensure or employment under this chapter will reside in a facility, the facility may request that the department of human services conduct criminal and child and dependent adult abuse record checks in this state and in other states, on a random basis. Beginning July 1, 1994, a facility

shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information. Additionally, on or after July 1, 1994, a facility shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" If the person has been convicted of a crime under a law of any state or has a record of founded child or dependent adult abuse, the department of human services shall perform an evaluation to determine whether the crime or founded child or dependent adult abuse warrants prohibition of licensure, employment, or residence in the facility. The evaluation shall be performed in accordance with procedures adopted for this purpose by the department of human services.

2. If the department of human services determines that a person has committed a crime or has a record of founded child or dependent adult abuse and is licensed, employed by a facility licensed under this chapter, or resides in a licensed facility, the department shall notify the licensee that an evaluation will be conducted to determine whether prohibition of the person's licensure, employment, or residence is warranted.

3. In an evaluation, the department of human services shall consider the nature and seriousness of the crime or founded child or dependent adult abuse in relation to the position sought or held, the time elapsed since the commission of the crime or founded child or dependent adult abuse, the circumstances under which the crime or founded child or dependent adult abuse was committed, the degree of rehabilitation, the likelihood that the person will commit the crime or founded child or dependent adult abuse again, and the number of crimes or founded child or dependent adult abuses committed by the person involved. The department of human services has final authority in determining whether

prohibition of the person's licensure, employment, or residence is warranted.

4. If the department of human services determines that the person has committed a crime or has a record of founded child or dependent adult abuse which warrants prohibition of licensure, employment, or residence, the person shall not be licensed under this chapter and shall not be employed by a facility or reside in a facility licensed under this chapter.

Sec. 13. Section 135H.7, Code 1993, is amended by adding the following new subsections:

NEW SUBSECTION. 4. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsections 2 and 3, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random dependent adult abuse record check conducted under this subsection.

NEW SUBSECTION. 5. Beginning July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

NEW SUBSECTION. 6. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

Sec. 14. Section 237.8, Code 1993, is amended by adding the following new subsections:

NEW SUBSECTION. 3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an

evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random check conducted under this subsection.

NEW SUBSECTION. 4. On or after July 1, 1994, a licensee shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

NEW SUBSECTION. 5. On or after July 1, 1994, a licensee shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

Sec. 15. Section 237A.5, Code 1993, is amended by adding the following new subsections:

NEW SUBSECTION. 3. In addition to the record checks required under subsection 2, the department of human services may conduct dependent adult abuse record checks in this state and may conduct these checks in other states, on a random basis. The provisions of subsection 2, relative to an evaluation following a determination that a person has been convicted of a crime or has a record of founded child abuse, shall also apply to a random dependent adult abuse record check conducted under this subsection.

NEW SUBSECTION. 4. On or after July 1, 1994, a licensee or registrant shall inform all new applicants for employment of the possibility of the performance of a record check and shall obtain, from the applicant, a signed acknowledgment of the receipt of the information.

NEW SUBSECTION. 5. On or after July 1, 1994, a licensee or registrant shall include the following inquiry in an application for employment: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?"

Sec. 16. Section 692.2, subsection 1, paragraph c, Code Supplement 1993, is amended to read as follows:

c. The department of human services for the purposes of section 135C.33, section 218.13, section 232.71, subsection 16, section 232.142, section 237.8, subsection 2, section 237A.5, section 237A.20, and section 600.8, subsections 1 and 2.

Sec. 17. Section 692.2, subsection 1, Code Supplement 1993, is amended by adding the following new paragraph:

NEW PARAGRAPH. 1. Health care facilities licensed pursuant to chapter 135C for the purposes of section 135C.33.

Sec. 18. Section 692.3, subsection 2, Code 1993, is amended to read as follows:

2. Notwithstanding subsection 1, paragraph "a", the department of human services may disseminate criminal history data obtained pursuant to section 692.2, subsection 1, paragraph "c", to persons licensed, registered, or certified under chapters 135C, 237, 237A, 238 and 600 for the purposes of section 135C.33, section 237.8, subsection 2 and section 237A.5. A person who receives information pursuant to this subsection shall not use the information other than for purposes of section 135C.33, section 237.8, subsection 2, section 237A.5, or section 600.8, subsections 1 and 2. A person who receives criminal history data pursuant to this subsection who uses the information for purposes other than those permitted by this subsection or who communicates the information to another person except for the purposes permitted by this subsection is guilty of an aggravated misdemeanor.

Sec. 19. CHILD PROTECTION TASK FORCE. The legislative council is requested to establish a task force for the 1994 interim to review federal and state laws, regulations, and policies regarding child protection, including the central child abuse registry, and to make recommendations for changes in the child protection system. The task force members shall include legislators, individuals knowledgeable concerning

child protection and prevention of child abuse, and other interested persons. The task force shall submit a report of its findings and recommendations to the general assembly on or before January 9, 1995. The department of human services shall seek federal or private funding for the costs of the task force.

Sec. 20. EFFECTIVE DATE. Section 9 of this Act takes effect July 1, 1995.

HAROLD VAN MAANEN
Speaker of the House

LEONARD L. BOSWELL
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 2261, Seventy-fifth General Assembly.

ELIZABETH ISAACSON
Chief Clerk of the House

Approved April 28, 1994

TERRY E. BRANSTAD
Governor