



Iowa General Assembly

2010 Legal Updates

Legislative Services Agency – Legal Services Division

<http://www.legis.state.ia.us/index.html>

Purpose. *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

CHILD ABUSE REGISTRY - DENIAL OF CRITICAL CARE

Filed by the Iowa Supreme Court

July 9, 2010

Jane Doe v. Iowa Department of Human Services

No. 09-0716

http://www.iowacourts.gov/Supreme_Court/Recent_Opinions/20100709/09-0716.pdf

Background Facts and Procedure. A mother, referred to in the ruling as Jane Doe, appealed from a district court ruling affirming a decision by the Department of Human Services (DHS) to place her name on the Child Abuse Registry. The DHS decision was based on a finding that Ms. Doe had denied her child critical care by failure to provide for the proper supervision of the child in 2001 and 2002 when she repeatedly exposed her child to the child's father, the perpetrator of numerous incidents of domestic abuse against Ms. Doe. This form of abuse is included in a category of abuses commonly referred to by DHS in administrative rules as "denial of critical care."

Issue on Appeal. The Supreme Court's (Court) decision was based on the appellant's contention that Iowa Code §232.71D did not authorize DHS to place Ms. Doe's name on the Child Abuse Registry for failing to provide for her child's proper supervision. Because the Court agreed with this contention, it did not consider other issues raised in the appeal.

Analysis. The Court reviewed the text of the statute and administrative rules, both before and after enactment of a major statutory amendment in 1997 of Iowa Code §232.71D and related provisions. The amendment replaced an investigation-based approach for responding to a child abuse allegation with an assessment-based approach. In addition, in place of a previous general requirement that all confirmed reports of child abuse be placed on the registry, criteria were enumerated so that less serious cases of abuse would not be placed on the registry. For the denial of critical care category, six specific criteria were listed and the amended statute provided that if denial of critical care was determined to have occurred, but any injury to the child or risk to the child's health and welfare listed in the criteria was not minor or was not isolated or is likely to reoccur, the case of abuse must be placed on the registry.

The Court noted that DHS administrative rules in place before the amendment was enacted outlined eight specific criteria for placing a person on the registry based upon denial of critical care. However, the enacted statutory amendment only included six of the criteria. The criterion in rule effective before and after the statute was amended, that was not included in the amended statute was "...failure to provide for the proper supervision of the child to the extent there is a danger of the child suffering injury or death, and which a reasonable and prudent person would exercise under similar facts or circumstances." The other criterion in rule that was not in the statute relates to failure to provide adequate clothing and was not addressed by the ruling.

The Court analyzed whether DHS rulemaking authority would allow the agency to interpret Iowa Code §232.71D. The Court reviewed Iowa Code §235A.14(1), which directs DHS to "organize and staff the registry and adopt rules for its operation." The Court stated that the practical application of this language "requires DHS to interpret Code §232.71D," indicating to the Court that the General Assembly clearly intended that interpretation of the statute is vested in the discretion of the agency. The Court then analyzed whether under Iowa Code §17A.19(10)(I) (Administrative Procedure Act), the department's interpretation of Iowa Code §232.71D to require that it place all confirmed child abusers who fail to provide adequate supervision of their children on the registry, unless the abuse is determined to be minor, isolated, and unlikely to reoccur, is "irrational, illogical, or wholly unjustifiable." The Court concluded that the DHS interpretation was irrational, illogical, and wholly unjustifiable (this is the standard the Court applies to determine whether an agency's interpretation of a statute can be reversed by the Court). In reaching its conclusion, the Court relied on statutory interpretation, stating that the omission of "failure to provide for the proper supervision of the child" from the statutory

listing of circumstances that constitute “denial of critical care” as grounds for placement on the registry shows legislative intent to exclude grounds as a basis for placement on the registry.

The Court further stated that DHS’ administrative rules requiring that all confirmed abuse be placed on the registry unless it is minor, isolated, and unlikely to reoccur are an irrational, illogical, and wholly unjustifiable interpretation of statute because such an interpretation “extends, enlarges, and otherwise changes the legislative intent of Iowa Code §232.71D.”

Conclusion. The Court reversed the district court ruling upholding DHS’s decision placing Ms. Doe’s name on the child abuse registry and remanded the case to the district court. The district court was directed to return the case to DHS and order DHS to remove Ms. Doe’s name from the registry and purge any record that her name was on the registry.

Update. DHS filed a motion on July 15, 2010, to delay the effective date of the ruling until Issuance of Precedendo (the date the Supreme Court issues the directive to the district court to implement the actions required by the ruling). DHS notes that of the 53,955 perpetrators currently listed in the Child Abuse Registry, approximately 50 percent are based on a finding of denial of critical care - lack of supervision. Also, several additional forms of abuse were enacted in Iowa Code §232.68 over the past 12 years that were not specifically enumerated in the acts or omissions that require placement on the registry pursuant to Iowa Code §232.71D and other statutes predicate the provision of services on a finding of child abuse. Given these significant impacts, DHS argued the delay would allow a petition for rehearing to be considered and allow for a more orderly implementation of the Court’s ruling. The Court granted the request to delay the effective date of the ruling, and a petition for rehearing on the ruling was submitted to the Court on July 23, 2010.

On August 5, 2010, the Court denied the DHS petition for rehearing but made the following changes to the ruling:

- A footnote was added to the Court’s description of the case noting that DHS did not contend that Ms. Doe’s challenge to the placement on the registry was untimely.
- A sentence in the Court’s disposition paragraph was rewritten to the effect that Ms. Doe’s name should not be placed on the registry solely based on the DHS interpretation of Iowa Code §232.71D that was reversed by the Court.
- A footnote was added to the analysis section of the ruling stating that the Court’s decision “... does not preclude the placement of a person who has failed to provide for the proper supervision of a child on the central child abuse registry if the requirements of another subsection of Iowa Code section 232.71D(3) have been met.”

On August 18, 2010, DHS issued an interpretation of the ruling as changed. The interpretation includes the following:

- The Court’s ruling applies to cases currently on appeal and those in which the statutory time for appeal has not run. (Under Iowa Code §235A.19, a request for correction of a child abuse assessment must be filed within six months of the date of the notice of the results of the assessment.)
- New cases and cases currently under appeal involving denial of critical care will be reviewed to determine whether the cases meet any of the specific criteria set forth in Iowa Code §232.71D requiring placement on the registry. These criteria relate directly to the case of abuse and involve the filing of criminal charges or juvenile court proceedings, the existence of a previous confirmed or founded abuse by the same perpetrator within the preceding 18 months, or a DHS determination that the perpetrator will continue to pose a danger to the child named in the case or to another child.
- If an employment-related check is performed on a person who was placed on the Child Abuse Registry for denial of critical care - failure to provide proper supervision, the case will be reviewed so that the person will not be inappropriately denied employment. The case will be reviewed for the nature and seriousness of the abuse, the time elapsed, circumstances under which it occurred, the degree of rehabilitation, and the likelihood that it will occur again. The review determination may be appealed.

DHS states it will continue to provide services to children and families as it currently does and plans to propose legislation amending Iowa Code to address the issue of alignment between Iowa Code §§232.68 and 232.71D.

LSA Monitor: John Pollak, Legal Services, (515) 281-3818.