



## Subpoenas: Frequently Asked Questions

- **Q:** Who can accept a subpoena to make it valid service?  
**A:** *Any DHS staff can potentially accept a subpoena as long as they are authorized to do so by a DHS supervisor or administrator.*
- **Q:** Can a supervisor accept a subpoena for a worker?  
**A:** *Yes, it is okay for supervisors to accept subpoenas on behalf of their workers.*
- **Q:** What makes a subpoena valid? Must the name be spelled correctly? Must it have the correct address?  
**A:** *A subpoena is deemed valid if the person accepting can reasonably discern for whom it is intended.*
- **Q:** Is there a time frame that a subpoena has to be served prior to a hearing or given deadline in order for the subpoena to be valid?  
**A:** *Yes, you should expect reasonable service. Reasonable service is 3-7 calendar days. A day prior to a hearing or a given deadline on the subpoena is not enough time. Contact the Service Help Desk to coordinate for AG assistance..*
- **Q:** Does a subpoena have to be date stamped by a clerk of court?  
**A:** *No. The subpoena must have an attorney's signature or clerk of court's signature.*
- **Q:** What is the policy/procedure if a worker has leave approved prior to receipt of a subpoena?  
**A:** *Workers are entitled to scheduled vacation. If vacation is already approved and the worker will be gone on the day a deposition or a hearing is scheduled, the court needs to know this information. A subpoena is a request for information or a summons for a person to testify. A supervisor may attend in lieu of the worker, a deposition or hearing may be delayed, or a person with knowledge of the case may appear instead i.e., the supervisor. However, if the worker is on vacation but still wants to respond and appear, that is also acceptable.*
- **Q:** If the worker is unable to attend a hearing, does the original subpoena cover the supervisors who may need to appear on their behalf or is a different subpoena needed?  
**A:** *This should be worked out with the county attorney or the parties involved in the case. Consideration should be given to their preference on how to handle the matter.*
- **Q:** Are we to provide all the documents listed on the subpoena?  
• **A:** *Generally, yes. If questionable, contact the Service Help Desk.*

## What Every CPW Needs To Know About HF 562

In the summer of 2010, the Supreme Court of Iowa issued a decision, Jane Doe v. Iowa Department of Human Services, indicating that DHS' interpretation of Iowa Code section 232.71D in rule 441-175.39, requiring that all "confirmed abuse shall be placed on the registry unless all three conditions are met" was irrational, illogical, and wholly unjustifiable.

In response to the Court's decision, House File 562 was introduced in 2011, subsequently passed by legislature, and was signed by Governor Branstad. The law went into effect on July 1, 2011. The law provides a new definition for supervision, changes the analysis required for registry placement, and provides a DV exception for caretakers who are victims of DV.

The root definition for denial of critical care in Iowa Code 232.68(2)(d)(1) has been clarified (addition is underlined) to indicate "the failure on the part of a person responsible for the care of a child to provide for the adequate food, shelter, clothing, medical or mental health treatment, supervision, or other care necessary for the child's health and welfare when financially able to do so or when offered financial or other reasonable means to do so."

Continued – HF 562

## Tip of the Month

### Question:

On page 1 of the Child Protection Assessment Summary, it asks for Safety Plan Date Completed. Do you enter the date of the initial safety plan completed or the last safety plan completed?

### Response:

The field on the Child Protective Summary is for the initial safety plan date. To fully capture history, any subsequent action should be included in the Summary and Analysis of Safety/Risk Assessments, including subsequent safety plans implemented during the time of the assessment, etc. This process is followed to allow CPS opportunity for documentation of necessary multiple safety plan dates, and rationale for changes, and the action taken to ameliorate the safety concerns, etc.

Have protective issue questions?  
Call us at the Service Help Desk.

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Sue Potter @ 515-281-7272 or [mpotter@dhs.state.ia.us](mailto:mpotter@dhs.state.ia.us),  
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SERVICE HELP DESK – 1-866-347-7782



## HF 562 (continued)

The new definition of supervision is now in Iowa Code 232.68(2)(d)(2) and indicates “For the purposes of subparagraph (1), failure to provide for the adequate supervision of a child means the person failed to provide proper supervision of a child that a reasonable and prudent person would exercise under similar facts and circumstances and the failure resulted in direct harm or created a risk of harm to the child.

As before, the conclusion of your child abuse report will involve two distinct critical decisions:

- First, you must decide whether to confirm or not confirm. Your decision must be based on having a preponderance of credible evidence.
- Second, if the report is confirmed, you must decide whether it should be placed on the Registry.

The law requires that if you confirm on one of the following categories then the name of the perpetrator must be placed on the Registry:

- mental injury;
- PIDS;
- sexual abuses (including bestiality);
- manufacturing meth;
- allowing access to a registered sex offender;
- allowing access to obscene materials;
- food;
- shelter;
- health care;
- gross failure to meet emotional needs; or
- failure to respond to an infant’s life threatening condition.

For sexual abuse cases, the report shall be placed on the Registry. HF 562 provides a differential response when placing the name of a perpetrator who is child on the Registry. The law says that if the child is 13 years old or younger their name shall not be placed on the Registry.

The name of a child who is 14 years or older shall be placed on the Registry but may be removed only by the juvenile or district court after finding good cause for removal.

The following categories of child abuse, if you confirm, may be eligible for placement on the Registry but do not require automatic placement:

- Supervision
- Physical
- Clothing

If any of the following conditions are true, you must place on the Registry a confirmed child abuse case on Supervision, Physical, or Clothing:

- The abuse is not minor, not isolated, or likely to reoccur.
- A previous child abuse by the same perpetrator has been confirmed or founded within 18 months before the current finding.
- The acts or omissions of the alleged perpetrator resulted in criminal charges.
- A delinquency or a CINA was filed.
- The Department determines that the alleged perpetrator will continue to pose a danger to the child subject or another child with whom the alleged perpetrator may come into contact.

Finally, you must consider if the alleged perpetrator was the victim of a crime related to the child abuse allegation. HF 562 amended the “child abuse” definition in law to indicate that “*shall not be construed to hold a victim responsible for failing to prevent a crime against the victim.*” Most of these cases will involve domestic violence where one of the caretakers is a victim of physical violence by a partner.

For more information and discussion of the implementation of HF 562, the child protection worker and supervisor should watch the webinar presentation CC 333 HF 562, available through Iowa Department of Human Services and Child Welfare Project – Social Worker Training Website until June 22, 2012.

## Analysis of Safety and Risk Factors – Domestic Violence (Manual 17-B(3), page 37)

“Domestic violence” is defined as a pattern of assaultive and coercive behaviors, including physical, sexual, and psychological attacks as well as economic coercion, which adults or adolescents use against their intimate partners.

Frequently child abuse and domestic violence occur in the same families. Domestic violence increases the risk of abuse to children. For that reason, information about domestic violence is included as an important part of the family assessment.

Always inquire about domestic violence, whether or not there are allegations of domestic violence in the initial child abuse report. In making this inquiry, consider the safety of the domestic violence victim and the children.

NOTE: Under Iowa law, child abuse shall not be construed to hold a victim responsible for failing to prevent a crime against the victim. The intent of this law is to protect the victim of domestic violence from a founded or confirmed child abuse report for failing to protect children from exposure to or involvement in domestic violence instances.

Possible options in such circumstances may include filing a CINA or founding on the aggressor of the domestic violence. If you need further direction on this issue, contact the Service Help Desk.