

Delaware Law

§ 902. Definitions.

As used in this chapter, the following terms mean:

(1) "Abuse" or "abused child" is as defined in § 901 of Title 10.

(2) "Baby" shall mean a child not more than 14 days old, except that for hospitals and their employees and volunteers, "baby" shall mean a child reasonably believed to be not more than 14 days old.

(3) "Child" shall mean any person who has not reached that person's own 18th birthday.

(4) "Child Protection Registry" or "Registry" means a collection of information as described in subchapter II of this chapter about persons who have been substantiated for abuse or neglect as provided in subchapter II of this chapter or who were substantiated between August 1, 1994, and February 1, 2003.

(5) "Child welfare proceeding" means any Family Court proceeding and subsequent appeal therefrom involving custody, visitation, guardianship, termination of parental rights, adoption or other related petitions that involve a dependent, neglected or abused child or a child at risk of same as determined by the Family Court.

(6) "Conviction" or "convicted" means entry of a plea of guilty or nolo contendere, regardless of whether the plea was subsequently discharged or dismissed under the first offenders domestic violence diversion program pursuant to § 1024 of Title 10, or under the first offenders controlled substances diversion program pursuant to § 4764 of this title, or of a Robinson plea, or of a probation before judgment discharge without judgment of conviction notwithstanding the provisions of § 4218(f) of Title 11, or a finding of guilt after trial, or a finding of not guilty after trial as a result of the defense of mental disease or defect pursuant to Title 11, or adjudication of delinquency for conduct which if committed by an adult, would constitute a crime; or "conviction" or "convicted" under similar proceedings of another state, territory or jurisdiction.

(7) "Director" shall mean the Director of the Division of Family Services of the Department of Services for Children, Youth and Their Families.

(8) "Division" shall mean the Division of Family Services of the Department of Services for Children, Youth and Their Families.

(9) "Family assessment and services" shall mean a case management approach by the Division of Family Services that provides for a prompt assessment of a child and the child's family and the circumstances of the reported incident (including the known history of the child and/or the alleged perpetrator) when there has been a report to the Division that the child was a victim of abuse or neglect, or at risk of maltreatment by a person responsible for that child's care, custody or control. Family assessment and services shall be used in conjunction with the investigation approach defined in paragraph (7) of this section but may not supplant it in circumstances which require an investigation.

The family assessment response shall focus on the integrity and preservation of the family and shall assess the status of the child and the family in terms of the risk of abuse and neglect and, if necessary, plan and provide for the provision of community-based services to reduce the risk and to otherwise support the family.

(10) "Good faith" shall be presumed in the absence of evidence of malice or wilful misconduct.

(11) "Internal information system" shall mean a system of maintaining information related to all reports of abuse, neglect, investigations, family assessments, services and other relevant information.

(12) "Investigation" shall mean the collection of evidence in response to a report of abuse, neglect, or risk of maltreatment by a person responsible for that child's care, custody or control in order to determine if a child has been abused, neglected, or is at risk of maltreatment. The Division shall develop protocols for its investigations that focus on ensuring the well-being and safety of the child. The Division may conduct an investigation in response to any report of abuse, neglect, or risk of maltreatment but shall conduct an investigation as enumerated under § 906(b)(3) of this title.

(13) "Neglect" or "neglected child" is as defined in § 901 of Title 10.

(14) "Report" shall mean the communication of an allegation of child abuse or neglect to the Division pursuant to § 903 or § 905 of this title;

(15) "Special Investigator" shall mean a Division employee, appointed by the Secretary, who performs abuse and neglect investigations and possesses additional qualifications and authority as defined by § 9016 of Title 29.

(16) "Substantiation" means a finding by a preponderance of the evidence that abuse or neglect has occurred.

(17) "Those responsible for the care, custody and control of the child" or "care, custody and control" is as defined in § 901 of Title 10.

60 Del. Laws, c. 494, § 1; 64 Del. Laws, c. 213, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 199, § 3; [72 Del. Laws, c. 179, § 3](#); [72 Del. Laws, c. 469, § 4](#); [73 Del. Laws, c. 187, §§ 2, 8](#); [73 Del. Laws, 73 Del. Laws, c. 412, §§ 2-5](#); [75 Del. Laws, c. 376, § 1](#); [76 Del. Laws, c. 136, §§ 14-16](#);

§ 907A. Safe Arms for Babies.

(a) The General Assembly finds and declares that the abandonment of a baby is an irresponsible act by parent(s) and places the baby at risk of injury or death from exposure, actions by other individuals, and harm from animals. However, the General Assembly does recognize that delivering a live baby to a safe place is far preferable to a baby killed or abandoned by the parent(s). The General Assembly further finds and declares that the purpose of this section is not to circumvent the responsible action of parent(s) who adhere to the current process of placing the baby for adoption, but to prevent the unnecessary risk of harm to or death of that baby by desperate parent(s) who would otherwise abandon or cause the death of that baby. The General Assembly further finds and declares that medical

information about the baby and the baby's parent(s) is critical for the adoptive parents and that every effort should be made, without risking the safe placement of the baby, to obtain that medical information and provide counseling information to those parent(s). The General Assembly further finds and declares that if this section does not result in the safe placement of such babies or is abused by parent(s) attempting to circumvent the current process of adoption, it should be repealed.

(b) A person may voluntarily surrender a baby directly to an employee or volunteer of the emergency department of a Delaware hospital inside of the emergency department, provided that said baby is surrendered alive, unharmed and in a safe place therein.

(c) A Delaware hospital shall be authorized to take temporary emergency protective custody of the baby who is surrendered pursuant to this section. The person who surrenders the baby shall not be required to provide any information pertaining to his or her identity, nor shall the hospital inquire as to same. If the identity of the person is known to the hospital, the hospital shall keep the identity confidential. However, the hospital shall either make reasonable efforts to directly obtain pertinent medical history information pertaining to the baby and the baby's family or attempt to provide the person with a postage paid medical history information questionnaire.

(d) The hospital shall attempt to provide the person leaving the baby with the following:

(1) Information about the Safe Arms program;

(2) Information about adoption and counseling services, including information that confidential adoption services are available and information about the benefits of engaging in a regular, voluntary adoption process; and

(3) Brochures with telephone numbers for public or private agencies that provide counseling or adoption services.

(e) The hospital shall attempt to provide the person surrendering the baby with the number of the baby's identification bracelet to aid in linking the person to the baby at a later date, if reunification is sought. Such an identification number is an identification aid only and does not permit the person possessing the identification number to take custody of the baby on demand.

(f) If a person possesses an identification number linking the person to a baby surrendered at a hospital under this section and parental rights have not already been terminated, possession of the identification number creates a presumption that the person has standing to participate in an action. Possession of the identification number does not create a presumption of maternity, paternity or custody.

(g) Any hospital taking a baby into temporary emergency protective custody pursuant to this section shall immediately notify the Division and the State Police of its actions. The Division shall obtain ex parte custody and physically appear at the hospital within 4 hours of notification under this subsection unless there are exigent circumstances. Immediately after being notified of the surrender, the State Police shall submit an inquiry to the Delaware Missing Children Information Clearinghouse.

(h) The Division shall notify the community that a baby has been abandoned and taken into temporary emergency protective custody by publishing notice to that effect in a newspaper of statewide circulation. The notice must be published at least 3 times over a 3-week period immediately following the surrender of the baby unless the Division has relinquished custody. The notice, at a minimum, shall contain the place, date and time where the baby was surrendered, the baby's sex, race, approximate age, identifying marks, any other information the Division deems necessary for the baby's identification, and a statement that such abandonment shall be:

(1) The surrendering person's irrevocable consent to the termination of all parental rights, if any, of such person on the ground of abandonment; and

(2) The surrendering person's irrevocable waiver of any right to notice of or opportunity to participate in any termination of parental rights proceeding involving such child, unless such surrendering person manifests an intent to exercise parental rights and responsibilities within 30 days of such abandonment.

(i) When the person who surrenders a baby pursuant to this section manifests a desire to remain anonymous, the Division shall neither initiate nor conduct an investigation to determine the identity of such person, and no court shall order such an investigation unless there is good cause to suspect child abuse or neglect other than the act of surrendering such baby.

73 Del. Laws, c. 187, §§ 3, 8; 75 Del. Laws, c. 376, § 1.;

§ 908. Immunity from liability, and special reimbursement to hospitals for expenses related to certain babies.

(a) Anyone participating in good faith in the making of a report or notifying police officers pursuant to this chapter, performing a medical examination without the consent of those responsible for the care, custody and control of a child pursuant to § 906(b)(5) of this title, or exercising emergency protective custody in compliance with § 907 of this title, shall have immunity from any liability, civil or criminal, that might otherwise exist, and such immunity shall extend to participation in any judicial proceeding resulting from the above actions taken in good faith. This section shall not limit the liability of any health care provider for personal injury claims due to medical negligence that occurs as a result of any examination performed pursuant to § 906(b)(3) of this title.

(b) A hospital, hospital employee or hospital volunteer which accepts temporary emergency protective custody of a baby pursuant to § 907A of this title is absolutely immune from civil and administrative liability for any act of commission or omission in connection with the acceptance of that temporary emergency protective custody or the provision of care for the baby when left at the hospital while said baby is in the hospital's temporary emergency protective custody except for negligence or intentional acts. If a hospital accepts temporary emergency protective custody of a baby pursuant to § 907A of this title, the State shall reimburse the hospital for eligible, medically necessary costs under the Medicaid Fee for Service Program.

16 Del. C. 1953, § 1005; 58 Del. Laws, c. 154; 60 Del. Laws, c. 494, § 1; 71 Del. Laws, c. 199, § 5; [72 Del. Laws, c. 179, § 5](#); [73 Del. Laws, c. 187, §§ 4, 5, 8](#); [75 Del. Laws, c. 376, § 1.](#);

