

CHAPTER 403  
FORMERLY  
HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 371

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO INVESTIGATING THE ABUSE OF CHILDREN.

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

Section 1. Amend § 901, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

~~It is the intent of the General Assembly that the primary purpose of the~~ The child welfare policy of this State shall be serve to ensure advance the best interests and secure the safety of the child, including while preserving the family unit whenever the safety of the child is not jeopardized. The child welfare policy of this State extends to all child victims, whether victims of intra-familial or extra-familial abuse and neglect. To that end ~~it is the purpose of this chapter to provide, among other things, (i) provides for comprehensive and protective services for abused and neglected children by mandating, (ii) mandates that reports of such child abuse or neglect be made to the appropriate authorities and by requiring the, and (iii) requires various agencies in Delaware's child protection system to seek and promote work together to ensure the safety of children who are the subject of such reports of abuse or neglect by conducting coordinated investigations or, judicial proceedings and family assessments, and by providing necessary services.~~

~~It shall further be the purpose of~~ This chapter to provide also provides for the protection of all children in facilities or organizations primarily concerned with child welfare and care that are required to be licensed under Delaware law whose primary concern is that of child welfare and care by requiring the Attorney General Delaware Department of Justice to notify any such facility in cases where an employee of such a facility, or any other person associated with such, the facility has been charged with or convicted of an offense involving child sexual abuse.

Section 2. Amend § 902, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

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 § 4767 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) "Department" shall mean the Department of Services for Children, Youth and Their Families.
- ~~(7)(8)~~ "Director" shall mean the Director of the Division of Family Services of the Department of Services for Children, Youth and Their Families.

~~(8)~~(9) “Division” shall mean the Division of Family Services of the Department of Services for Children, Youth and Their Families.

~~(9)~~(10) “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)~~13 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)~~(11) “Good faith” shall be presumed in the absence of evidence of malice or willful misconduct.

~~(11)~~(12) “Internal information system” shall mean an electronic system of maintaining information related to all reports of abuse, neglect, investigations, family assessments, services and other relevant information.

~~(12)~~(13) “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(g)(3) of this title.

(14) “Investigation Coordinator” shall mean a Department employee, appointed by the Secretary, who is responsible for tracking each reported case of alleged child abuse or neglect, and monitoring within the Department’s multidisciplinary tracking system each case involving the death of, or serious injury to, a child, or allegations of sexual abuse of a child, from inception to final criminal and civil disposition.

(15) “Multidisciplinary tracking system” shall mean an electronic system which the Investigation Coordinator utilizes to track and monitor each case involving the death of, or serious injury to, a child, or allegations of sexual abuse of a child, from inception to final criminal and civil disposition.

~~(13)~~(16) “Neglect” or “neglected child” is as defined in § 901 of Title 10.

(17) “Physical injury” as defined in § 222 of Title 11.

~~(14)~~(18) “Report” shall mean the communication of an allegation of child abuse or neglect to the Division pursuant to § 903 or § 905 of this title;

(19) “Serious physical injury” as defined in § 222 of Title 11.

(20) “Sexual abuse” as defined in § 901 of Title 10.

~~(15)~~(21) “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)~~(22) “Substantiation” means a finding by a preponderance of the evidence that abuse or neglect has occurred.

~~(17)~~(23) “Those responsible for the care, custody and control of the child” or “care, custody and control” is as defined in § 901 of Title 10.

Section 3. Amend § 905, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) The Division shall establish and maintain a 24-hour statewide toll-free telephone report line operating at all times and capable of receiving all reports of alleged abuse and neglect as defined in § 901 of Title 10.

(b) The Division shall maintain a Child Protection Registry and an internal information system as defined by § 902 of this title. Reports unsubstantiated ~~may~~ shall be kept in the internal information system by the Division ~~at its discretion.~~

(c) Every report of child abuse or neglect made to the Division shall be entered in the Division's internal information system and each such report involving the death of, serious physical injury to, or allegations of sexual abuse of a child shall also be entered in the Department's multi-disciplinary tracking system.

~~(d)~~ Although reports may be made anonymously, the Division shall in all cases, after obtaining relevant information regarding alleged abuse or neglect, request the name and address of any person making a report.

~~(e)~~ Upon receipt of a report, the Division shall immediately communicate such report to its appropriate Division staff, after a check has been made with the internal information system to determine whether previous reports have been made regarding actual or suspected abuse or neglect of the subject child, or any reports regarding any siblings, family members or the alleged perpetrator, and such information as may be contained from such previous reports. Such relevant information as may be contained in the internal information system shall also be forwarded to the appropriate Division staff.

(f) Upon receipt of a report of child abuse or neglect, the Division shall immediately notify the Investigation Coordinator of the report, in sufficient detail to permit the Investigation Coordinator to undertake the Investigation Coordinator's duties, as specified in § 906 of this chapter.

Section 4. Amend § 906, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(a) The State's child protection system shall seek to promote the safety of children and the integrity and preservation of their families by conducting investigations and/or family assessments in response to reports of child abuse or neglect. The system shall endeavor to coordinate community resources and provide assistance or services to children and families identified to be at risk, and to prevent and remedy child abuse and neglect.

(b) It is the policy of this State that the investigation and disposition of cases involving child abuse or neglect shall be conducted in a comprehensive, integrated, multi-disciplinary manner that:

(1) Provides civil and criminal protections to the child and the community;

(2) Encourages the use of collaborative decision-making and case management to reduce the number of times a child is interviewed and examined to minimize further trauma to the child; and

(3) Provides safety and treatment for a child and his or her family by coordinating a therapeutic services system.

(c) In implementing the Investigation Coordinator's role in the child protection system, the Investigation Coordinator, or the Investigation Coordinator's designee, shall:

(1) Track within the Division's internal information system each reported case of alleged child abuse or neglect;

(2) Monitor within the Department's multidisciplinary tracking system each case involving the death of, serious physical injury to, or allegations of sexual abuse of a child from inception to final criminal and civil disposition, and provide reports every thirty days on the status of each case to the Division, the Department, the Delaware Department of Justice, and the Office of Child Advocate;

(3) Within two working days of the receipt of a report concerning allegations of child abuse or neglect by a person known to be licensed or certified by a Delaware agency or professional regulatory organization, forward a report of such allegations to the appropriate Delaware agency or professional regulatory organization;

(4) Report every case involving the death or near death of a child due to abuse or neglect to the Child Death, Near Death and Stillbirth Commission pursuant to § 323(e) of Title 31; and

(5) Provide information to the Child Protection Accountability Commission ("CPAC"), as requested by CPAC, regarding the status, trends and outcomes of cases of child abuse or neglect that are reported to the Division. Reports to CPAC shall not disclose the identities of the child, alleged perpetrators, or others involved in the case(s).

(d) In implementing law enforcement's role in the child protection system, the law enforcement agency investigating a report of child abuse shall:

(1) Report every case of child abuse to the Division as required by § 903 of this title; and

(2) Provide information as necessary to the Investigation Coordinator to permit case tracking, monitoring and reporting by the Investigation Coordinator.

~~(b)~~(e) In implementing the Division's role in the child protection system, the Division shall:

(1) Receive and maintain reports pursuant to the provisions of §§ 903 and 905 of this title;

(2) Forward reports to the appropriate Division staff, who shall determine, through the use of protocols developed by the Division, whether an investigation or the family assessment and services approach should be used to respond to the allegation. The protocols for making this determination shall be developed by the Division and shall give priority to ensuring the well-being and safety of the child;

(3) The Division may investigate any report, but shall conduct an investigation involving all reports, which if true, would constitute violations against a child by a person responsible for the care, custody and control of the child of any of the following provisions of § 603, § 604, § 611, § 612, § 613, § 621, § 625, § 626, § 631, § 632, § 633, § 634, § 635, § 636, § 645, § 763, § 765, § 766, § 767, § 768, § 769, § 770, § 771, § 772, § 773, § 774, § 775, § 776, § 777, § 780, § 782, § 783, § 783A, § 791, § 1100, § 1101, § 1102, § 1107, § 1108, § 1109, § 1110, § 1111, or § 1259 of Title 11, or an attempt to commit any such crimes. The Division staff shall also contact the Delaware Department of Justice and the appropriate law-enforcement agency upon receipt of any report under this section and shall provide such agency with a detailed description of the report received. The appropriate law enforcement agency shall assist the Division in the investigation or provide the Division, within a reasonable time, an explanation detailing the reasons why it is unable to assist. Notwithstanding any provision of the Delaware Code to the contrary, to the extent the law enforcement agency with jurisdiction over the case is unable to assist, the Division may request that the Delaware State Police exercise jurisdiction over the case and upon such request the Delaware State police may exercise such jurisdiction;

(4) The assisting law-enforcement agency shall promptly conduct its own criminal investigation, and keep the Division regularly apprised of the status and findings of its investigation. Law-enforcement agencies and the Division shall develop protocols to ensure compliance with this subsection;

(5) Ensure that every case of child death, and every case of near death due to abuse or neglect, is reported to the Child Death, Near Death and Stillbirth Commission pursuant to § 323(e) of Title 31;

(6) Ensure that all cases involving allegations of child abuse or neglect by a person known to be licensed or certified by a Delaware agency or professional regulatory organization, have been reported to the appropriate Delaware agency or professional regulatory organization and the Investigation Coordinator in accordance with the provisions of this section;

~~(5)~~(7) The Division shall have authority to secure a medical examination of a child, without the consent of those responsible for the care, custody and control of the child, if the child has been reported to be a victim of abuse or neglect; provided, that such case is classified as an investigation pursuant to § 906(b)(3) of this title and the Director or the Director's designee gives prior authorization for such examination upon finding that such examination is necessary to protect the health and safety of the child;

~~(6)~~(8) The investigation shall include, but need not be limited to, the nature, extent and cause of the abuse or neglect, collection of evidence, the identity of the alleged perpetrator, the names and condition of other children and adults in the home, the home environment, the relationship of the subject child to the parents or other persons responsible for the child's care, any indication of incidents of physical violence against any other household or family member, background checks on all adults in the home, and the gathering of other pertinent information;

~~(7)~~(9) In the family assessment and services approach, assess service needs of the family from information gathered from the family and other sources. The Division shall identify and provide for services for families where it is determined that the child is at risk of abuse or neglect. The Division shall document its attempt to provide voluntary services and the reasons these services are important to reduce the risk of future abuse or neglect. If the family refuses to accept or avoids the proffered services, the Division may refer the case for investigation or terminate services;

~~(8)~~(10) Commence an immediate investigation if at any time during the family assessment and services approach the Division determines that an investigation as delineated in subsection (3) of this section is

required or is otherwise appropriate. The Division staff who have conducted the assessment may remain involved in the provision of services to the child and family;

~~(9)~~(11) Conduct a family assessment and services approach on reports initially referred for an investigation, if it is determined that a complete investigation is not required. The reason for the termination of the investigative process shall be documented;

~~(10)~~(12) Assist the child and family in obtaining services, if at any time during the investigation it is determined that the child or any member of the family needs services;

~~(11)~~(13) Identify local services and assist with access to those services for children and families where there is risk of abuse or neglect;

~~(12)~~(14) Update the internal information system at regular intervals during the course of the investigation. At the conclusion of the investigation or family assessment, the internal information system shall be updated to include a case finding;

~~(13)~~(15) When a written report is made by a person required to report under § 903 of this title, the Division shall contact the person who made such report within 48 hours of the receipt of the report in order to ensure that full information has been received and to obtain any additional information or medical records, or both, which may be pertinent;

~~(14)~~(16) Upon completion of an investigation or family assessment and services approach, if the Division suspects that the report was made maliciously or for the purpose of harassment, the Division shall refer the report and any evidence of malice or harassment to the appropriate law enforcement agency;

~~(15)~~(17) Multidisciplinary services shall be used whenever possible in conducting the investigation or family assessment and services approach, including the services of law enforcement agencies, the medical community, and other agencies, both public and private. ~~The Division and the Attorney General's Office shall cooperate with law enforcement agencies and the Family Court to develop training programs to increase the ability of Division personnel, court personnel, and law enforcement officers to investigate suspected cases of abuse and neglect;~~

~~(16)~~(18) A person required to report under § 903 of this title to the Division shall be informed by the Division of the person's right to obtain information concerning the disposition of the report. Such person shall receive, from the local office, if requested, information on the general disposition of the report at the conclusion of the investigation;

~~(17)~~(19) In any judicial proceeding involving the custody of child, the fact that a report has been made pursuant to § 903 or § 905 of this title shall not be admissible unless offered by the Division as a party or as a friend of the Court or if the Division is a party. However, nothing herein shall prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made;

~~(18)~~(20) To protect the privacy of the family and the child named in a report, the Division shall establish guidelines concerning the disclosure of information concerning the abuse and neglect involving a child. The Division may require persons to make written requests for access to records maintained by the Division. The Division shall only release information to persons who have a legitimate public safety need for such information or a need based on the health and safety of a child subject to abuse, neglect or the risk of maltreatment, and such information shall be used only for the purpose for which the information is released; and

~~(19)~~(21) Upon the receipt of a report concerning allegations of abuse or neglect against a person known by the Division to be licensed by 1 of the boards listed in § 8735 of Title 29, forward reports to the Division of Professional Regulation.

(f) In implementing the Delaware Department of Justice's role in the child protection system, it shall:

(1) Report every case of child abuse to the Division pursuant to § 903 of this title;

(2) Ensure that every case of child death and every case of near death due to abuse or neglect has been reported to the Child Death, Near Death and Stillbirth Commission pursuant to § 323(e) of Title 31;

(3) Provide information as necessary to the Investigation Coordinator to permit case tracking, monitoring and reporting by the Investigation Coordinator; and

(4) Ensure that all cases involving allegations of child abuse or neglect by a person known to be licensed or certified by a Delaware agency or professional regulatory organization, have been reported to the appropriate Delaware agency or professional regulatory organization and the Investigation Coordinator in accordance with provisions of this section.

~~(e)(g)~~ In the event that a criminal prosecution for child sexual abuse or exploitation is initiated by the Delaware Department of Justice against a person employed by or associated with a facility or organization required to be licensed or whose staff personnel are required to be licensed under Delaware law whose primary concern is that of child welfare and care, the ~~Attorney General~~ Delaware Department of Justice shall notify such employer within 48 hours;

~~(1) Upon the return of an indictment charging such person with having committed at least 1 felony offense involving an allegation of child sexual abuse; or~~

~~(2) Upon an adjudication of guilt of such person for any misdemeanor or violation, when such offense involved sexual abuse, in any degree, of a child under age 18.~~

Any violations of this subsection shall be dealt with administratively by the Attorney General and the penalty provisions of § 914 of this title shall not apply hereto.

~~(d)(h)~~ In the event that a criminal prosecution for abuse or neglect is initiated by the Delaware Department of Justice pursuant to a report under this chapter and incarceration of the person who is the subject of the report is ordered by the Court, the ~~Attorney General's office~~ Delaware Department of Justice shall keep the Division informed of actions taken by the courts which result in the release of any such individual; ~~provided that the Attorney General's office is represented at such a hearing.~~

Section 5. This Act shall become effective on October 1, 2012.

Approved August 16, 2012