

CHAPTER 187
FORMERLY
HOUSE BILL NO. 136
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND THE DELAWARE CODE RELATING TO REVIEW OF THE DEATH OR NEAR DEATH OF A CHILD.

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

Section 1. Amend § 2105, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2105. Fatal incident reviews.

(a) The Council shall have the power to investigate and review, through a review panel, the facts and circumstances of all deaths and near deaths that occur in Delaware as a result of domestic violence. "Near death" means a victim in serious or critical condition as certified by a physician. This review shall include both homicides and suicides resulting from domestic violence. The Division of Forensic Science shall submit to the Council a monthly report within 30 days of the last day of the previous month, of all the homicides and suicides that occurred in Delaware. Reviews may also include cases where the victim suffered a substantial risk of serious physical injury or death. The review of deaths or near deaths involving criminal investigations will be delayed for at least 6 months, and will under no circumstances begin until authorized by the Attorney General's office. Any case involving the death of a minor (any child under the age of 18) related to domestic violence will be reviewed jointly by ~~the appropriate regional panel of the Child Death, Near Death and Stillborn Commission~~ the Child Protection Accountability Commission and the domestic violence fatal incident review panel. The death of a minor will only be reviewed by the domestic violence fatal incident review panel where the minor's parents or guardians were involved in an abusive relationship and the minor's death is directly related to that abuse.

Section 2. Amend § 711, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 711. Confidentiality of records and information.

All information and records held by the Division of Public Health relating to known or suspected causes of STD, including infection with human immunodeficiency virus (HIV), the virus causing Acquired Immunodeficiency Syndrome (AIDS), shall be strictly confidential. Such information shall not be released or made public upon subpoena or otherwise, except that release may be made under the following circumstances:

(3) Release is made of medical or epidemiological information to medical personnel, appropriate state agencies, including ~~the Child Death, Near Death and Still Birth Commission~~ the Child Death Review Commission, or state courts to the extent required to enforce the provisions of this chapter and related rules and regulations concerning the control and treatment of STDs, or as related to child abuse investigations pursuant to Chapter 9 of this title, or as related to ~~Child Death, Near Death and Still Birth Commission~~ Child Death Review Commission investigations pursuant to subchapter II of Chapter 3 of Title 31;

Section 3. Amend § 717, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 717. Confidentiality.

(a) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV-related test is performed, or the results of such test in a manner which permits identification of the subject of the test, except to the following person:

(7) Health facility staff committees or accreditation or oversight review organizations which are conducting program monitoring, program evaluation or service reviews, including ~~the Child Death, Near Death and Still Birth Commission~~ the Child Death Review Commission conducting reviews pursuant to Title 31.

Section 4. Amend Chapter 9, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter I. Reports and Investigations of Abuse and Neglect; ~~Child Protection Accountability Commission.~~

Section 5. Amend § 902, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 902. Definitions.

As used in this chapter, ~~the following terms mean:~~

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

(16) "Near death" means a child in serious or critical condition as a result of child abuse or neglect as certified by a physician.

~~(16)~~ (17) "Neglect" is as defined in § 901 of Title 10.

~~(17)~~ (18) "Physical injury" is as defined in § 222 of Title 11.

~~(19)~~ (20) "Serious physical injury" is as defined in § 222 of Title 11.

Section 6. Amend § 906, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 906. State response to reports of abuse or neglect.

(c)(1) In implementing the Investigation Coordinator's role in the child protection system, the Investigation Coordinator, or the Investigation Coordinator's designee, shall:

d. 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~~ the Child Protection Accountability Commission under § 932(a) of this title and every case involving the death of a child to the Child Death Review Commission; and

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

(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~~ involving the death or near death of a child due to abuse or neglect is reported to the Child Protection Accountability Commission under § 932(a) of this title and every case involving the death of a child to the Child Death Review Commission;

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

(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~~ involving the death or near death of a child due to abuse or neglect is reported to the Child Protection Accountability Commission under § 932(a) of this title and every case involving the death of a child to the Child Death Review Commission;

Section 7. Amend Chapter 9, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter III. Child Protection Accountability Commission.

Section 8. Amend Chapter 9, Title 16 of the Delaware Code by transferring § 912, Title 16 to Subchapter III, Chapter 9, Title 16 and redesignating it as § 931, Title 16, and by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 931. The Child Protection Accountability Commission.

(a) The Delaware Child Protection Accountability Commission is hereby established. The Commission shall consist of 24 members with the at-large members and the Chair appointed by the Governor, ~~and shall be staffed by the Office of the Child Advocate.~~ Members of the Commission serving by virtue of position may appoint a designee to serve in their stead. The Commission shall be comprised of the following:

(1) The Secretary of the Department of Services for Children, Youth and Their ~~Families;~~ Families.

(2) The Director of the Division of Family ~~Services;~~ Services.

(3) Two representatives from the Attorney's General Office, appointed by the Attorney ~~General;~~ General.

- (4) Two members of the Family Court, appointed by the Chief Judge of the Family ~~Court;~~ Court.
- (5) One member of the House of Representatives, appointed by the Speaker of the ~~House;~~ House.
- (6) One member of the Senate, appointed by the President Pro Tempore of the ~~Senate;~~ Senate.
- (7) The Chair of the Child Placement Review ~~Board;~~ Board.
- (8) The Secretary of the Department of ~~Education;~~ Education.
- (9) The Director of the Division of Prevention and Behavioral Health ~~Services;~~ Services.
- (10) The Chair of the Domestic Violence Coordinating ~~Council;~~ Council.
- (11) The Superintendent of the Delaware State ~~Police;~~ Police.
- (12) The Chair of the ~~Child Death, Near-Death and Stillbirth Commission;~~ Child Death Review Commission.
- (13) The Investigation Coordinator, as defined in § 902 of this ~~title;~~ title.
- (14) One youth or young adult who has experienced foster care in Delaware, appointed by the Secretary of the ~~Department;~~ Department.
- (15) One representative from the Public Defender's Office, appointed by the Public ~~Defender;~~ Defender.
- (16) Seven at-large members appointed by the Governor with 1 person from the medical community, 1 person from the Interagency Committee on Adoption who works with youth engaged in the foster care system, 1 person from a law-enforcement agency other than the State Police, and 4 persons from the child protection community. The law-enforcement representative may designate a proxy as needed.

(b) ~~The Child Advocate shall serve as the Executive Director of the Commission to effectuate its purposes pursuant to Chapter 90A of Title 29. The Commission is designated as a "citizen review panel" as required under the federal Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5106a(c) and the "State task force" as required under the federal Children's Justice Act, 42 U.S.C. § 5106(c). It shall be the purpose of the Commission. The Commission's purpose is to monitor Delaware's child protection system to best ensure the health, safety, and well-being of Delaware's abused, neglected, and dependent children. To that end, the Commission shall meet on a quarterly basis and shall:~~

- (1) Examine and evaluate the policies, ~~procedures~~ procedures, and effectiveness of the child protection system and make recommendations for changes therein, focusing specifically on the respective roles in the child protection system of the Division of Family Services, the Division of Prevention and Behavioral Health Services, the Office of the Attorney General, the Family Court, the medical community, and law-enforcement ~~agencies;~~ agencies.
- (2) Recommend changes in the policies and procedures for investigating and overseeing the welfare of abused, ~~neglected~~ neglected, and dependent ~~children;~~ children.
- (3) Advocate for legislation and make legislative recommendations to the Governor and General ~~Assembly;~~ Assembly.
- (4) Access, ~~develop~~ develop, and provide quality training to ~~staff of~~ the Division of Family Services, Deputy Attorneys General, Family Court, law enforcement officers, the medical community, educators, day-care providers, and others on child protection ~~issues;~~ issues.
- (5) Review and make recommendations concerning the well-being of Delaware's abused, ~~neglected~~ neglected, and dependent children including, ~~but not limited to,~~ issues relating to foster care, adoption, mental health services, victim services, education, rehabilitation, substance ~~abuse~~ abuse, and independent ~~living;~~ and living.
- (6) Provide the following reports to the Governor:
 - a. An annual summary of the Commission's work and recommendations, including work of the Office of the Child Advocate, with copies thereof sent to the General ~~Assembly;~~ and Assembly.
 - b. A quarterly written report of the Commission's activities and findings, in the form of minutes, made available also to the General Assembly and the public.
- (7) Investigate and review deaths or near deaths of abused or neglected children.

(8) Coordinate with the Child Death Review Commission to provide statistics and other necessary information to the Child Death Review Commission related to the Commission's investigation and review of deaths of abused or neglected children.

(9) Meet annually with the Child Death Review Commission to jointly discuss the public recommendations generated from reviews conducted under § 932 of this title. This meeting shall be open to the public.

(10) Adopt rules or regulations for the administration of its duties or this subchapter, as it deems necessary.

(c) The Child Advocate shall serve as the Executive Director of the Commission, and the Office of the Child Advocate shall provide staff support to the Commission. The Office of the Child Advocate shall assist the Commission in investigating and reviewing the deaths or near deaths of abused or neglected children, in addition to performing any other duties assigned by the Commission. The Child Advocate shall hire employees or contract for services as necessary to assist the Commission in performing its duties under this subchapter, within the limitations of funds appropriated by the General Assembly or obtained from other sources.

Section 9. Amend Subchapter III, Chapter 9, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 932. Investigation and review of the death or near death of an abused or neglected child.

(a) The Attorney General, the Department of Services for Children, Youth and Their Families, and any other state or local agency with responsibility for investigating child deaths shall report to the Commission any death or near death of a child who is determined to have been abused or neglected within 14 days of that determination. Within 6 months of any such report to the Commission, the Commission shall conclude an investigation and review of the facts and circumstances of the death or near death incident. For good cause shown to the Commission, the 6 month period for the completion of an investigation and review under this subsection may be extended from 6 to 9 months. If the need for an extension under this subsection is attributable to an ongoing criminal prosecution, the extension may be for a period of up to 6 months following the completion of the prosecution. In cases in which the time for the Commission's complete investigation and review is extended under this subsection, the Commission shall issue initial recommendations if it determines that such are necessary under the circumstances.

(b) No person identified by the Attorney General's office as a potential witness in any criminal prosecution arising from the death or near death of an abused or neglected child shall be questioned, deposed, or interviewed by or for the Commission in connection with its investigation and review of such death or near death until the completion of the prosecution.

(c) Notwithstanding any requirement of § 931(b) of this title to the contrary, the Commission shall, if necessary, make system-wide recommendations arising from an investigation and review conducted under this section.

(1) The Commission shall provide these recommendations, if any, to the Governor, the General Assembly, and the public within 20 days of the approval of the recommendations made under this section.

(2) All recommendations made by the Commission under this subsection shall comply with applicable state and federal confidentiality provisions, including those set forth in § 934 of this title and § 9017(e) of Title 29.

(3) Notwithstanding any provision of this subchapter to the contrary, no recommendation made by the Commission under this subsection shall specifically identify any individual or nongovernmental agency, organization, or entity.

(4) In addition to the Commission's release of recommendations, the Commission shall release to the public summary information and findings resulting from reviews of child deaths and near deaths due to abuse and neglect as required by 42 U.S.C. § 5106a(b)(2)(B). The Commission may release summary information and findings only upon completion of the prosecution.

(d) Notwithstanding this section or § 931(b)(7) of this title, the Child Death Review Commission may review deaths of abused or neglected children, for good cause shown, as determined by the agreement of the Commission and the Child Death Review Commission.

(e) For purposes of this subsection, “completion of the prosecution” means the decision to file no information or seek no indictment, conviction or adjudication, acquittal, dismissal of an information or indictment by a court, the conditional dismissal under a program established by Delaware law or a court, or the nolle prosequi of an information or indictment by the Attorney General.

§ 933. Power and authority of investigations and reviews.

(a) In connection with any investigation and review conducted under § 931(b)(7) of this title, the Commission has power and authority to:

(1) Administer oaths and affirmations to any person related to the death or near death under review.

(2) Issue subpoenas to compel the attendance of witnesses whose testimony is related to the death or near death under review.

(3) Issue subpoenas to compel the production of records related to the death or near death under review.

(b) The Commission may delegate its power and authority in subsection (a) of this section to the Child Advocate, who may further delegate the power and authority to any attorney employed by, contracting with, or volunteering for the Office of the Child Advocate.

(c) A subpoena issued under subsection (a) of this section may be enforced or challenged only in the Family Court.

(1) All proceedings before the Family Court and all records of such proceedings conducted under subsection (c) of this section are private.

(2) In a proceeding under subsection (c) of this section, the Family Court may impose reasonable restrictions, conditions, or limitations on the access to proceedings and records of proceedings to preserve the confidentiality set forth in § 934 of this title.

§ 934. Confidentiality of records related to investigations and reviews.

(a) The records of the Commission and its staff, including original documents and documents produced in the investigation and review process with regard to the facts and circumstances of each death or near death, shall be confidential and shall not be released to any person except as expressly provided by this subchapter. Such records shall be used by the Commission and its staff only in the exercise of the proper functions of the Commission and its staff and shall not be public records and shall not be available for Court subpoena or subject to discovery. Except where constitutional provisions require otherwise, statements, records, or information shall not be subject to any statute or rule that would require those statements, records, or information to be disclosed in the course of a criminal trial or associated discovery. Aggregate statistical data compiled by the Commission or its staff, however, may be released at the discretion of the Commission or its staff.

(b) No person in attendance at a meeting of the Commission shall be required to testify as to what transpired at a meeting.

§ 935. Immunity from suit related to investigations and reviews.

(a) Members of the Commission and their agents or employees shall not be subject to, and shall be immune from, claims, suits, liability, damages, or any other recourse, civil or criminal, arising from any act, proceeding, decision, determination, or recommendation. For the immunity provided by this subsection to apply, the members of the Commission or their agents or employees must have acted in good faith and without malice in carrying out the responsibilities, authority, duties, powers, and privileges of the offices conferred upon them by this subchapter or by any other provisions of the Delaware law, federal law or regulations, or duly adopted rules and regulations of the Commission. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the immunity provided by this subsection.

(b) No organization, institution, or person furnishing information, data, reports, or records to the Commission or its staff with respect to any subject examined or treated by such organization, institution, or person,

by reason of furnishing such information, shall be liable in damages to any person or subject to any other recourse, civil or criminal.

Section 10. Amend § 1210, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1210. Definitions.

As used in this subchapter, ~~the following terms shall have the following meanings:~~

(3) “Legitimate public health purpose” means a population-based activity or individual effort primarily aimed at the prevention of injury, ~~disease~~ disease, or premature mortality or the promotion of health in the community, including:

a. Assessing the health needs of the community through public health surveillance and epidemiological research;

b. Developing public health policy;

c. Responding to public health needs and emergencies;

d. Review by ~~the Child Death, Near Death and Still Birth Commission~~ the Child Death Review Commission or the Child Protection Accountability Commission; and

e. Requests for hospital records by the Division of Long Term Care Residents' Protection pursuant to § 1212 of this title.

Section 11. Amend § 1211, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1211. Use of protected health information.

(a) Protected health information collected by the Department of Health and Social Services ~~and/or its agencies and or its agencies, by the Child Death, Near Death and Still Birth Commission~~ the Child Death Review Commission, and the Child Protection Accountability Commission shall be used solely for legitimate public health purposes.

Section 12. Amend § 1212, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1212. Disclosure of protected health information.

(d) *Disclosure without informed consent.* — Protected health information may be disclosed without the informed consent of the individual who is the subject of the information where such disclosures are made:

(6) ~~To the Child Death, Near Death and Still Birth Commission~~ the Child Death Review Commission or to the Child Protection Accountability Commission;

(i) ~~The Child Death, Near Death and Still Birth Commission is an entity~~ The Child Death Review Commission and the Child Protection Accountability Commission are charged with helping to safeguard the health and safety of children. ~~Each~~ shall be recognized as a “health oversight agency”, and as a “public health authority”, and ~~each~~ shall be recognized in the performance of its functions as a peer review organization or auditor or evaluator with respect to any aspect of healthcare delivery systems or providers.

Section 13. Amend § 5161, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5161. Rights of patients in mental health hospitals or residential centers.

(b) Any hospital or residential center that admits persons pursuant to Chapter 50, 51, or 55 of this title shall prominently post in English and Spanish the list of patients rights set forth in this subsection. In addition to the posting, the Department shall distribute a copy of the list to each patient and to other persons, as provided in Department regulations. Each patient shall have the rights listed below, which shall be liberally construed to fulfill their beneficial purposes. Furthermore, in defining the scope or extent of any duty imposed by this section, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments as well as certification standards of accrediting agencies may be considered.

(13) The hospital or residential center shall maintain a clinical record for each patient admitted. The clinical record shall contain complete information on all matters relating to the admission, legal status, care and

treatment of the patient, and shall include all pertinent documents relating to the patient. Copies of informed consent forms signed by patients or guardians pursuant to paragraph (b)(8)d. of this section shall be kept with each patient's ward chart. The Department shall, by regulation, determine the scope and method of recording information maintained on the clinical records. Those regulations shall ensure the completeness and accuracy of data pertaining to admission, legal matters affecting the patient, records and notations of the course of care and treatment, therapies, the patient's progress if in research and adverse or other reactions thereto, restrictions on the patient's rights, periodic examinations and other information required by the Department.

No information reported to the Department and no clinical records maintained with respect to patients shall be public records. Such information and records shall not be released to any person or agency outside of the Department except in conformity with existing law and as follows:

h. As requested by ~~the Child Death, Near Death and Still Birth Commission~~ the Child Death Review Commission or the Child Protection Accountability Commission pursuant to an investigation or review; and

Section 14. Amend § 4714, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4714. Commission on Forensic Science.

(d) The Commission shall undertake the following tasks:

(4) Receive and consider input from all stakeholders in the criminal justice community, including, without limitation, prosecutors, defense attorneys, the courts, law enforcement, victims' advocates, the Domestic Violence Coordinating Council, ~~the Child Death, Near Death and Stillborn Commission~~ the Child Death Review Commission, the Child Protection Accountability Commission, and other interested persons or parties;

Section 15. Amend § 9005A, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9005A. Duties of the Child Advocate.

The Child Advocate shall perform the following duties:

(1) Take all possible actions, including programs of public education and legislative advocacy, to secure and ensure the legal, ~~civil~~ civil, and special rights of the ~~children;~~ children.

(2) Review periodically relevant policies and procedures with a view toward the rights of ~~children;~~ children.

(3) Refer any person making a complaint or report required by Chapter 9 of Title 16 to the Division of Family Services, and, if warranted, to an appropriate police agency. If a complaint or report includes an allegation of misconduct against a Department employee, the complaint or report must also be referred to the Secretary of the ~~Department;~~ Department.

(4) Recommend changes in the procedures for investigating and overseeing the welfare of ~~children;~~ children.

(5) ~~To make~~ Make the public aware of the services of the Child Advocate and the Commission, its purpose, and how it can be ~~contacted;~~ contacted.

(6) ~~To apply~~ Apply for and accept grants, ~~gifts~~ gifts, and bequests of funds from other state, ~~federal~~ federal, and interstate agencies, as well as from private firms, ~~individuals~~ individuals, and foundations, for the purpose of carrying out the Commission's lawful responsibilities. The funds must be deposited with the State Treasurer in a restricted receipt account established to permit funds to be expended in accordance with the provision of the grant, ~~gift~~ gift, or ~~bequest;~~ bequest.

(7) Examine policies and procedures and evaluate the effectiveness of the child protection system, specifically the respective roles of the Division, the Attorney General's Office, the courts, the medical ~~community~~ community, and law enforcement ~~agencies;~~ agencies.

(8) Review and make recommendations concerning investigative procedures and emergency responses pursuant to this ~~chapter;~~ chapter.

(9) Develop and provide quality training to Division staff, Deputy Attorneys General, law enforcement officers, the medical community, family court personnel, educators, day care ~~providers~~ providers, and others on the various standards, ~~criteria~~ criteria, and investigative technology used in these ~~cases~~; cases.

(10) Submit an annual report analyzing the work of the office that shall be included in the ~~Child Protection Accountability Commission's annual report; and report.~~

(11) Serve as the Executive Director of the Commission.

(12) Provide staff support to the Commission, including assisting the Commission in investigating and reviewing the deaths or near deaths of abused or neglected children.

(13) Hire employees or contract for services as necessary to assist the Commission in investigating and reviewing the deaths or near deaths of abused or neglected children and performing its other duties under Subchapter III, Chapter 9, Title 16, within the limitations of funds appropriated by the General Assembly or obtained from other sources.

~~(14)~~ (14) Take whatever other actions are necessary to help the Commission accomplish its goals.

Section 16. Amend Chapter 3, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. ~~Child Death, Near Death and Stillbirth Commission~~ Child Death Review Commission.

Section 17. Amend § 320, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 320. Declaration of legislative intent.

The General Assembly hereby declares that the health and safety of the children and pregnant women of the State will be safeguarded if deaths of children under the age of 18, ~~near deaths of abused and/or neglected children,~~ and stillbirths occurring after at least 20 weeks of gestation and maternal death are reviewed, in order to provide recommendations to alleviate those practices or conditions which impact the mortality of children and pregnant women. This subchapter establishes ~~the Child Death, Near Death and Stillbirth Commission~~ the Child Death Review Commission. For the purposes of this subchapter, "Commission" means ~~the Child Death, Near Death and Stillbirth Commission~~ the Child Death Review Commission. Stillbirths occurring after at least 20 weeks of gestation shall not include stillbirths which occur as a result of an elective medical procedure.

Section 18. Amend § 321, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 321. Organization and composition.

(a) The following shall be members of the Commission: The State Attorney General, the Secretary of the State Department of Health and Social Services, the Secretary of the State Department of Services to Children, Youth and Their Families, the person appointed as the child advocate pursuant to § 9003A of Title 29, the Chair of Child Protection Accountability Commission, the State Secretary of Education, the State Medical Examiner, the Director of the Division of Public Health, the Chief Judge of the Family ~~Court~~ Court, and the Superintendent of the Delaware State Police, or the designee of any of the preceding persons. Additionally, the following shall be appointed by the Governor as members of the Commission:

(1) A representative of the Medical Society of Delaware specializing in each of pediatrics, neonatology, ~~obstetrics~~ obstetrics, and ~~perinatology~~; perinatology.

(2) A representative of the Delaware Nurses ~~Association~~; Association.

(3) A representative of the National Association of Social ~~Workers~~; Workers.

(4) A representative of the Police Chiefs' Council of Delaware who is an active law enforcement ~~officer~~; officer.

(5) A representative of the New Castle County Police ~~Department~~; and Department.

(6) 2 child advocates from state-wide non-profit organizations.

A Chairperson of each regional child death ~~and near death~~ review panel, each maternal death ~~panel~~ panel, and each Fetal and Infant Mortality Review Case Review Team established pursuant to subsections (d) and (e) ~~hereof~~ of this section shall also serve as members of the Commission. The term of members appointed by the

Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Commission. The members of the Commission, ~~the~~ regional panels, Case Review ~~Teams~~ Teams, and Community Action Teams shall serve without compensation. The Commission shall be staffed, and its staff shall include an Executive Director. The Executive Director shall be hired and supervised by the executive committee of the Commission. The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Executive Director and the staff, and for the payment of actual expenses incurred by the Commission.

(b) The Commission shall, by affirmative vote of a majority of all members of the Commission, appoint a chairperson from its membership for a term of 1 year. The Commission shall meet at least semi-annually.

(c) Meetings of the Commission, regional panels, Case Review ~~Teams~~ Teams, and Community Action Teams shall be closed to the public. The Commission shall meet at least annually with the Child Protection Accountability Commission to jointly discuss the public recommendations generated from reviews conducted ~~pursuant to § 323(e) of this title~~ under § 932 of Title 16. This meeting shall be open to the public.

(d) The Commission shall by resolution passed by a majority of its members establish at least 1 but no more than 3 regional panels authorized to review child deaths ~~and near deaths~~. ~~One of the panels shall be designated to review cases pursuant to § 323(e) of this title; however, for~~ For good cause shown to the Commission, any panel may investigate and review any death, ~~near death~~, or stillbirth entitled to review by the Commission. Members of the Commission shall appoint representatives to each regional panel such that the regional panel reflects the disciplines of the Commission. The Commission shall also appoint to each regional panel all of the following:

(1) A representative from each of the 3 police departments which investigate the majority of child deaths in the region covered by the ~~panel, and panel~~.

(2) A citizen of the region interested in child death, ~~near death~~ and stillbirth issues.

(e) The Commission shall by resolution passed by a majority of its members establish Fetal and Infant Mortality Review Case Review Teams and Community Action Teams based on the National Fetal and Infant Mortality Review Program model.

(f) Each regional panel and the Fetal and Infant Mortality Review Case Review Teams shall have the powers, ~~duties~~ duties, and authority of the Commission as delegated by the Commission. Each regional panel and Fetal and Infant Mortality Review Case Review Team shall, by affirmative vote of a majority of all members of that regional panel or team, appoint cochairpersons from its membership for a term of 1 year.

(g) The Commission shall by resolution passed by a majority of its members establish 1 regional panel authorized to review maternal deaths.

Section 19. Amend § 323, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 323. Powers and duties.

(a) The Commission shall have the power to investigate and review the facts and circumstances of all deaths ~~and near deaths~~ of children under the age of 18, except deaths of abused or neglected children which are within the jurisdiction of the Child Protection Accountability Commission under subchapter III, Chapter 9 of Title 16, and stillbirths all stillbirths, and all maternal deaths which occur in Delaware. The Commission may review deaths of abused or neglected children, for good cause shown, as determined by the agreement of the Commission and the Child Protection Accountability Commission. The review of deaths involving criminal investigations will be delayed until ~~the later of the conclusion of such investigation, or the adjudication of related criminal charges, if any~~ the completion of the prosecution. For purposes of this subsection, "completion of the prosecution" means the decision to file no information or seek no indictment, conviction or adjudication, acquittal, dismissal of an information or indictment by a court, the conditional dismissal under a program established by Delaware law or court program, or the nolle prosequi of an information or indictment by the Attorney General. The Commission shall make recommendations to the Governor and the General Assembly ~~and Child Protection Accountability Commission~~, at least annually, regarding those practices or conditions which impact the mortality of children and mothers. ~~System-wide recommendations arising from an investigation and review conducted pursuant to subsection~~

~~(e) of this section shall be made to the Governor and General Assembly and Child Protection Accountability Commission, as well as any members of the public requesting the recommendations, within 20 days of the completion of such investigation and review. In addition to the Commission's release of recommendations, the Commission shall release summary information and findings resulting from reviews of child deaths and near deaths due to abuse and neglect. Said release of information and findings shall occur at the completion of prosecution. All recommendations made pursuant to this subsection shall comply with applicable state and federal confidentiality provisions, including but not limited to those enumerated in § 324 of this title and § 9017(e) of Title 29. Notwithstanding any provision of this subchapter to the contrary, such recommendation shall not specifically identify any individual or any nongovernmental agency, organization or entity.~~

(b) The Commission shall conduct child death ~~and near death~~ reviews according to procedures promulgated by the Commission. The Commission shall conduct maternal death reviews which utilize a public health model and shall include information gathered through a clinical review and summary of medical and other subpoenaed records. The Commission may amend such procedures upon a three-quarters affirmative vote of all members of the Commission.

(c) The Commission shall conduct fetal and infant mortality reviews and facilitate the implementation of recommendations based on the National Fetal and Infant Mortality Review Program model. Utilizing a public health model, the reviews shall include information gathered through a clinical review and summary of medical and all other subpoenaed records, and maternal interviews. The Commission may amend such procedures upon a three-quarters affirmative vote of all members of the Commission.

(d) (1) In connection with any review, the Commission shall have the power and authority to:

~~(1) a. Administer oaths; and oaths.~~

~~(2) b. Compel the attendance of witnesses whose testimony is related to the death or near death under review and the production of records related to the death, near death or stillbirth under review by filing a praecipe for a subpoena, through the Attorney General or a Deputy Attorney General, with the Prothonotary of any county of this State, such a subpoena to be effective throughout the State and service of such a subpoena to be made by any sheriff of the State; failure to obey said subpoena will be punishable according to the rules of the Superior court. Issue subpoenas to compel the attendance of witnesses whose testimony is related to the death or stillbirth under review.~~

c. Issue subpoenas to compel the production of records related to the death or stillbirth under review.

(2) A subpoena issued under paragraphs (d)(1)a. through c. of this section may be enforced or challenged only in the Family Court.

(3) All proceedings before the Family Court and all records of such proceedings conducted under paragraph(d)(2) of this section are private.

(4) In a proceeding under paragraph (d)(2) of this section, the Family Court may impose reasonable restrictions, conditions, or limitations on the access to proceedings and records of proceedings to preserve the confidentiality set forth in § 324 of this title.

~~(e) Notwithstanding the above, the Commission shall investigate and review the facts and circumstances of the death or near death of an abused and/or neglected child within 6 months of a report to the Commission by the Attorney General, the Department of Services for Children, Youth and Their Families, or other state agency that the child was the victim of abuse or neglect. The Attorney General, the Department of Services for Children, Youth and Their Families, and any other state or local agency with responsibility for investigating child deaths shall report to the Commission any death or near death of a child who is determined to have been abused and/or neglected within 14 days of that determination. For good cause shown to the Commission, completion of an investigation and review under this subsection may be extended from 6 to 9 months. [Repealed]~~

~~(f) Notwithstanding any provision of this subchapter to the contrary, no person identified by the Attorney General's office as a potential witness in any criminal prosecution arising from the death or near death of an abused~~

~~or neglected child shall be questioned, deposed or interviewed by or for the Commission in connection with its investigation and review of such death or near death until the completion of such prosecution. [Repealed]~~

(g) The Commission shall coordinate with the Child Protection Accountability Commission to receive statistics and other necessary information from the Child Protection Accountability Commission related to the Child Protection Accountability Commission's investigation and review of deaths of abused or neglected children.

(h) The Commission shall adopt rules or regulations for the administration of its duties or this chapter, as it deems necessary.

Section 20. Amend § 324, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 324. Confidentiality of records and immunity from suit.

(a) The records of the Commission and of all regional ~~panels and the panels,~~ Fetal and Infant Mortality Review Case Review ~~Teams~~ Teams, and Community Action Teams, including original documents and documents produced in the review process with regard to the facts and circumstances of each death, ~~near death~~ or stillbirth, shall be confidential and shall not be released to any person except as expressly provided in subchapter II of this chapter. Such records shall be used by the Commission, and any regional panel or ~~team~~ team, only in the exercise of the proper function of the Commission, regional ~~panel~~ panel, or team and shall not be public records and shall not be available for Court subpoena or subject to discovery. Subject to constitutional requirements, statements, ~~records~~ records, or information shall not be subject to any statute or rule that would require those statements to be disclosed in the course of a criminal trial or associated discovery. Aggregate statistical data compiled by the Commission, regional ~~panels~~ panels, or teams, however, may be released at the discretion of the Commission or regional panels.

(b) Members of the Commission, regional panels, Case Review ~~Teams~~ Teams, and Community Action Teams, and their agents or employees, shall not be subject to, and shall be immune from, claims, suits, liability, ~~damages~~ damages, or any other recourse, civil or criminal, arising from any act, proceeding, ~~decision~~ decision, or determination undertaken or performed or recommendation made, provided such persons acted in good faith and without malice in carrying out their responsibilities, authority, duties, powers and privileges of the offices conferred by this law upon them or by any other provisions of the Delaware law, federal law or regulations, or duly adopted rules and regulations of the Commission or its regional panels or teams. Complainants shall bear the burden of proving malice or a lack of good faith to defeat the immunity provided ~~herein~~ by this subsection.

(c) No person in attendance at a meeting of any such Commission, regional panel, Case Review ~~Team~~ Team, or Community Action Team shall be required to testify as to what transpired ~~thereat~~ at a meeting. No organization, ~~institution~~ institution, or person furnishing information, data, ~~reports~~ reports, or records to the Commission or any regional panel or team with respect to any subject examined or treated by such ~~organizations~~ organization, institution, or person, by reason of furnishing such information, shall be liable in damages to any person or subject to any other recourse, civil or criminal.

Approved September 10, 2015