

CHAPTER 314
FORMERLY
SENATE BILL NO. 181
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE CHILD PROTECTION REGISTRY

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

Section 1. 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:

§ 922 Entry on the Child Protection Registry.

The Child Protection Registry must indicate "substantiated for abuse" or "substantiated for neglect" and the Child Protection Level as designated in § 923 of this subchapter for any person who:

(4) Is entered on the Registry by order of the Family Court in a proceeding on a Petition for Substantiation as described in § 925 or §925A of this title; or

§ 923 Child Protection Levels.

(a) A person who has been substantiated for abuse or neglect pursuant to this subchapter must be entered on the Child Protection Registry ~~at a designated Child Protection Level related to the risk of future harm to children as designated in subsection (b) of this section~~. The Division shall develop regulations that assess the risk of future harm to children from acts of abuse or neglect and designate Child Protection Levels.

(b) The following paragraphs describe the 4 child protection levels:

(1) *Child Protection Level I.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level I:

a. An incident of abuse or neglect, including emotional neglect, presenting a low risk of future harm to children; or

b. Conviction of a violation of compulsory school attendance requirements or truancy when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title.

A person who is substantiated for abuse or neglect at Child Protection Level I ~~must not be entered on the Child Protection Registry and~~ must not be reported in response to a Child Protection Registry check made pursuant to ~~§ 8563~~ Chapter 85 of Title 11 for that incident or conviction. The person is eligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 of Title 11.

(2) *Child Protection Level II.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level II:

a. An incident of abuse or neglect, including severe emotional neglect, presenting a moderate risk of future harm to children; or

b. Conviction of interference with custody when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this subchapter.

A person who is substantiated for abuse or neglect at Child Protection Level II must be reported for a period of 3 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to ~~§ 8563~~ Chapter 85 of Title 11. The person must remain on the Registry for a period of 3 years, but the person is eligible for employment in a child care facility, health care facility or public school, as those terms are defined in ~~§ 8563~~ Chapter 85 of Title 11, while the person is on the Registry at Child Protection Level II; and a prospective employer making a Child Protection Registry check must be so informed. If the person is not substantiated for abuse or neglect while on the Registry, the person on the Registry at Child Protection Level II is automatically removed from the Registry after 3 years and must not be reported in a Child Protection Registry check for that incident or conviction.

(3) *Child Protection Level III.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level III:

a. An incident of abuse or neglect presenting a high risk of future harm to children, including but not limited to: physical injury, nonorganic failure to thrive, malnutrition, or abandonment of a child 13 to 17 years of age; or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: offensive touching, menacing, reckless endangering in the second degree, assault in the third degree, child abuse in the third degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first or second degree, sexual harassment, unlawful imprisonment in the second degree, abandonment of a child, or misdemeanor endangering the welfare of a child.

A person who is substantiated for abuse or neglect at Child Protection Level III must be reported for a period of 7 years as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to ~~§ 8563~~ Chapter 85 of Title 11. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in ~~§ 8563~~Chapter 85 of Title 11, while the person is on the Child Protection Registry at Child Protection Level III. If the person is not substantiated for a different incident of abuse or neglect while on the Registry, the person entered on the Registry at Child Protection Level III is automatically removed from the Registry after 7 years and is, thereafter, eligible for employment in a child care facility, health care facility or public school, and must not be reported in a Child Protection Registry check for that incident or conviction.

(4) *Child Protection Level IV.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level IV:

a. An incident of abuse or neglect presenting the highest risk of future harm to children, including but not limited to serious physical injury, sexual abuse, torture, criminally negligent treatment, or abandonment of a child 12 years of age or younger (but not including the voluntary surrender of a baby pursuant to the Safe Arms for Babies program as provided in § 907A of this title); or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, reckless endangering in the first degree, unlawful imprisonment in the first degree, child abuse in the first degree, child abuse in the second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, felony sex offender unlawful sexual conduct against a child, felony sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree or second degree, trafficking of persons and involuntary servitude, bestiality, continuous sexual abuse of a child, possession of child pornography, unlawfully dealing in child pornography, felony endangering the welfare of a child, dangerous crime against a child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

A person who is substantiated for abuse or neglect at Child Protection Level IV must be reported as "substantiated for abuse" or "substantiated for neglect" in response to a Child Protection Registry check made pursuant to ~~§ 8563~~ Chapter 85 of Title 11. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in ~~§ 8563~~Chapter 85 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry, except as provided in §929(c) check for the incident or conviction.

(c) A person who is substantiated for an incident of abuse or neglect while on the Child Protection Registry is ineligible for automatic removal from the Registry, but may be removed from the Registry by order of the Family Court as provided in § 929 of this title. If a person is substantiated for abuse or neglect while on the Registry, the imposed conditions for each incident must be completed consecutively, with the conditions for the most restrictive Child Protection Level or Levels being completed before those for the less restrictive level or levels.

A person who has partially completed a level when assigned to a more restrictive level is given credit for that partial completion when that person has completed the conditions for the more restrictive level or levels.

§ 924 Notice of Intent to Substantiate; process.

(a) In response to a report where abuse or neglect is alleged, the Division shall conduct an investigation into the facts and circumstances of the alleged abuse or neglect as required by § 906 of this title.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter ~~the~~ an adult person on the Child Protection Registry, it shall give written notice to the person by certified mail, return receipt requested, at that person's last known address. The written notice must:

c. State the consequences of being entered on the Registry at the designated level, including whether the person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to ~~§ 8563~~ Chapter 85 of Title 11;

(3) If the Division determines from its investigation that it intends to substantiate a child and enter the child on the Child Protection Registry, it shall give written notice to the child and the child's parent, guardian, and legal custodian by certified mail, return receipt requested, at the child's last known address. The written notice must:

a. Briefly describe the alleged incident of abuse or neglect;

b. Advise the child that the Division intends to substantiate the allegations and enter the child on the Child Protection Registry for the incident of abuse or neglect at a designated Child Protection Level;

c. State the consequences of being entered on the Registry at the designated level, including whether the child will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to Chapter 85 of Title 11;

d. Inform the child that a hearing will be held in the Family Court before the child is entered on the Child Protection Registry.

e. Provide notice to the child's guardian ad litem or attorney if the child is in DSCYF custody.

(4) If the Division determines from its investigation that it intends to enter a person on the Child Protection Registry as a result of a conviction of an enumerated offense set forth in Section 923, the Division shall send a Notice of Substantiation to the person informing them of the substantiation and notifying them of the right to file a Petition for Limited Purpose Hearing. The Petition for Limited Purpose Hearing shall be filed by the person in Family Court within 30 days of the Notice of Substantiation, shall include a copy of the Notice of Substantiation, and shall set forth why the person alleges the conviction does not meet the requirements set forth in Section 922(1). A Limited Purpose Hearing shall be limited to determining whether the conviction meets the requirements of Section 922(1). If a Petition for Limited Purpose Hearing is not filed within 30 days of the Notice of Substantiation, the person shall remain automatically placed on the registry pursuant to Section 922(1).

(b) A person, other than a child, who fails to request a hearing as provided in subsection (a) of this section must, at the expiration of 30 days from the date of mailing of the notice of intent to substantiate the allegations of abuse or neglect and enter the person on the Registry, be entered on the Child Protection Registry at the Child Protection Level designated in the notice.

(c) The Division shall file a Petition for Substantiation before any child is entered on the Child Protection Registry, regardless of the written request of the child.

§ 925 Petition for Substantiation.

(a) If a person responds to the Division and requests a hearing in the Family Court before being entered on the Registry, as provided in § 924 of this title, the Division shall, unless the automatic stay provisions of § 927 of this title apply, file in the Family Court no later than ~~20~~ 45 days after receipt of the written request, or in the case of a child, no later than 45 days after the notice of intent to substantiate was sent to the child, a Petition for Substantiation which requests that the Court substantiate the abuse or neglect and enter the person on the Child Protection Registry at a Child Protection Level designated by the Court.

~~(b) The Petition for Substantiation must be filed in the county in which the alleged incident leading to the Petition occurred.~~

~~(c) The Family Court may, upon motion by the Division or sua sponte, enter an order that places the person on the Registry at a designated Child Protection Level pending a final order on the Petition for Substantiation. The Family Court shall make a written finding in the proceedings on the Petition for Substantiation as to whether the person committed abuse or neglect. If the Family Court finds that the person committed abuse or neglect, it shall, pursuant to § 923 of this title, designate the Child Protection Level at which the person must be entered on the Registry. An order of substantiation may not be stayed pending appeal. If the Family Court finds that the person has not committed an act of abuse or neglect, the person may not be entered on the Registry for that incident, and the Division shall indicate in its internal information system that the incident is unsubstantiated.~~

~~(b) If a child welfare proceeding is pending in which the Division has requested a finding of abuse or neglect against a party and entry on the Registry for the same incident, the Family Court shall decide the issues of substantiation and entry on the Registry as provided in § 926 of this title without the necessity of a response to the notice of intent to substantiate or a separate Petition for Substantiation.~~

~~(c) If the Division fails to file a Petition for Substantiation within 20 days of receipt of a person's written request for a hearing as provided in § 924 of this title and a child welfare proceeding based on the same incident of abuse or neglect is not pending, the person may not be entered on the Child Protection Registry for the incident of abuse or neglect indicated in the notice of intent to substantiate.~~

~~(d) The Family Court shall appoint counsel for any unrepresented child against whom a Petition for Substantiation has been filed.~~

925A. Grounds for Substantiation.

(a) Unless otherwise provided in this subchapter, no person shall be placed on the registry unless the Court finds by a preponderance of the evidence after a hearing on the merits, or accepts the agreement of the parties, that:

(1) the person committed an act of abuse or neglect; and

(2) the act of abuse or neglect was based on the same incident as alleged in the Notice of Intent to Substantiate.

(b) Should the elements of subsection (a) of this section be met, the Court shall also determine by a preponderance of the evidence after a hearing on the merits or accept the agreement of the parties, the risk of future harm the person poses to children and designate the person to the appropriate Child Protection Level set forth in section 923. If the person is convicted of an enumerated crime when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate, the person is automatically entered on the Child Protection Registry at the level designated by Section 923.

(c) An order of substantiation may not be stayed pending appeal.

(d) If the Family Court finds that the person has not committed an act of abuse or neglect based on the same incident as alleged in the Notice of Intent to Substantiate, the person may not be entered on the Registry for that incident, and the Division shall indicate in its internal information system that the incident is unsubstantiated.

(e) If a child welfare proceeding is pending in which the Division has requested a finding of abuse or neglect against a party and entry on the Registry for the same incident, the Family Court shall decide the issues of substantiation and entry on the Registry as provided in § 926 of this title without the necessity of a response to the notice of intent to substantiate or a separate Petition for Substantiation.

(f) If the Division fails to file a Petition for Substantiation within 45 days of receipt of a person's written request for a hearing as provided in § 924 of this title and a child welfare proceeding based on the same incident of abuse or neglect is not pending, the person may not be entered on the Child Protection Registry for the incident of abuse or neglect indicated in the notice of intent to substantiate.

§ 926 Finding of abuse ~~of~~ or neglect in child welfare proceeding; binding effect.

In every child welfare proceeding brought by the Division or in which the Division is a party and in which the Division has requested a finding of abuse or neglect and entry on the Registry, the Family Court shall ~~make a~~

~~finding, by a preponderance of the evidence, as to whether a parent or other party has abused or neglected the child. If the Court finds that a parent or party has abused or neglected the child, it shall order the parent or party to be entered on the Child Protection Registry at the Child Protection Level designated by the Court, as provided in § 923 of this title. An order of substantiation may not be stayed pending appeal~~ make findings pursuant to § 925A of this Title. The findings of the Family Court are final and binding, and work as issue or claim preclusion for the same incident of abuse or neglect in substantiation proceedings.

§ 927 Automatic stay of substantiation proceedings.

(a) Proceedings under § 925 and § 925A of this title, including the duty to file a Petition for Substantiation, are automatically stayed in any matter in which a criminal or delinquency proceeding involving the same incident of abuse or neglect is pending. The time to file a Petition for Substantiation under § 925 shall begin upon conclusion of the criminal or delinquency proceeding.

(b) Conviction of a crime involving the same incident of abuse or neglect is final, binding and determinative of the issue of abuse or neglect and of the person's entry on the Registry at the Child Protection Level designated for such offense.

(c) Upon conclusion of a criminal or delinquency proceeding involving the same allegations or facts as those alleged in the incident of abuse or neglect, if the accused is acquitted of the charge or the charge is dismissed and the Division intends to pursue substantiation, the acquittal or dismissal does not automatically work as issue or claim preclusion against a civil finding of abuse or neglect, nor does it prevent the taking of evidence, notwithstanding any other law to the contrary.

§ 928 Persons entered on the Registry between August 1, 1994, and February 1, 2003.

(c) The Division shall notify a person who does not qualify for automatic removal from the Child Protection Registry of the Child Protection Level to which the person has been designated and of the consequences of designation to that level, including whether the person will be reported as substantiated for abuse or neglect in a Child Protection Registry check pursuant to ~~§ 8563~~ Chapter 85 of Title 11.

§ 929 Removal of name from the Child Protection Registry.

(b) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III ~~and who has successfully completed a Division recommended or Family Court ordered case plan,~~ may file a Petition for Removal in the Family Court prior to the expiration of the time designated for the level. ~~Only a person who has successfully completed that person's own case plan is eligible to petition for an early removal.~~ The Family Court shall have the discretion to remove the person from the registry. In making this determination, the Court shall consider all relevant factors, including:

- (1) the nature and circumstances of the original substantiated incident;
- (2) any substantiated incidents of abuse or neglect while on the Registry;
- (3) the criminal history of the person, including whether the person's criminal record of arrest or conviction of the incident leading to placement on the Registry was expunged;
- (4) compliance with the terms of probation, if applicable;
- (5) the risk, if any, the registrant poses to the victim, the community and to other potential victims;
- (6) the impact of registration and employer notification on the victim, community and other potential victims;
- (7) The rehabilitation, if any, of the person, or successful completion of a program of evaluation and treatment including any Court-ordered or Division-recommended case plan; and
- (8) the adverse impact of registration on the person and the rehabilitative process, including the impact on employment opportunities.

(c) A person who was entered on the Child Protection Registry at any level as a child, may, at any time after their 18th birthday, file a Petition for Removal in the Family Court. The Family Court shall have the discretion to remove the person from the registry. In making this determination, the Court shall consider all relevant factors, including those in § 929 (b) of this subchapter.

~~(e)~~(d) A Petition for Removal from the Registry must be filed in the Family Court in the county in which the substantiation occurred. A copy of the petition must be served on the Division, which may file an objection or answer to the petition within 30 days after being served. In every case, the Division shall inform the Court whether or not the person applying for removal has been substantiated for abuse or neglect while on the Child Protection Registry. The Family Court may, in its discretion, dispose of a Petition for Removal without a hearing.

~~(d)~~(e) Removal from the Child Protection Registry means only that the person's name has been removed from the Registry and may no longer be reported to employers pursuant to ~~§ 8563~~ Chapter 85 of Title 11. Notwithstanding removal from the Registry, the person's name and other case information remains in the Division's internal information system as substantiated for all other purposes, including, but not limited to, the Division's use of the information for historical, treatment and investigative purposes, child care licensing decisions, foster and adoptive parent decisions, reporting pursuant to § 309 of Title 31, reporting to law enforcement authorities, or any other purpose set forth in § 906(e) of this title.

Section 2. This Act shall become effective 180 days after its enactment into law.

Approved July 15, 2014