SPONSOR: Rep. Griffith & Rep. Dorsey Walker & Sen. Gay
Reps. Baumbach, Heffernan, Smyk; Sen. Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 462
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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

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

Section 1. Amend § 908, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

(a) Any ~~person~~ person, including an agency, organization, or entity, participating in good faith in the making of a report or notifying police officers pursuant to this chapter; assisting in a multidisciplinary case as required by § 906(b)(4) of this title; performing a medical examination without the consent of those responsible for the care, custody, and control of a child ~~pursuant to~~ under § 906(e) of this title; or exercising emergency protective custody in compliance with § 907 of this title ~~has immunity~~ is immune from any liability, civil or criminal, that might otherwise exist, and such immunity extends to participation in any judicial proceeding resulting from the above actions taken in good faith. This section does not limit the liability of any health-care provider for personal injury claims due to medical negligence that occurs as a result of any examination performed pursuant to this chapter.

Section 2. Amend § 909, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 909. Privileged communication not ~~recognized; judicial proceedings; disclosure of information.~~ recognized.

(a) No legally recognized privilege, except that between attorney and client and that between priest and penitent in a sacramental confession, applies to situations involving known or suspected child abuse, neglect, exploitation, or abandonment and does not constitute grounds for failure to report as required by § 903 of this title or to give or accept evidence in any judicial proceeding relating to child abuse or neglect.

(b) ~~In any judicial proceeding involving the custody of a child, the fact that a report has been made pursuant to § 903 or § 905 of this title is not be admissible unless offered by the Department as a party or as a friend of the court. However, this subsection does not prohibit the introduction of evidence from independent sources to support the allegations that may have caused a report to have been made.~~ [Repealed.]

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(c) ~~To protect the privacy of the family and the child named in a report, the Department shall establish guidelines concerning the disclosure of information concerning the abuse and neglect involving a child. The Department may require persons to make written requests for access to records maintained by the Department. The Department may 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 may be used only for the purpose for which the information is released.~~ [Repealed.]

Section 3. Amend § 912, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 912. ~~The Child Protection Accountability Commission.~~ Confidentiality; disclosure of records.

~~Transferred to § 931 of this title by 80 Del. Laws, c. 187, § 8, effective September 10, 2015.~~

(a) To protect the privacy of the family and the child named in a report, the Department shall establish guidelines concerning the disclosure of information concerning abuse, neglect, or risk of maltreatment involving a child. The Department may require a person to make a written request for access to a record that the Department maintains. The Department may release information only to a person who has a legitimate public safety need for the information or a need based on the health and safety of a child subject to abuse, neglect, or the risk of maltreatment. The information may be used only for the purpose for which the information is released.

(b) A member of a multidisciplinary team may share all information and each record received, prepared, or maintained by or amongst members of the multidisciplinary team to carry out the responsibilities of the multidisciplinary team under law to protect children from abuse and neglect as authorized by the federal Child Abuse Prevention and Treatment Act [42 U.S.C. § 5106a(b)(2)]. A multidisciplinary team record is confidential and may be disclosed to a person, including an entity, beyond the multidisciplinary team only as authorized by law or court rule. This chapter does not preclude a member of a multidisciplinary team from asserting a privilege available under the law related to the disclosure of information or a record.

(c)(1) In a Family Court civil proceeding, excluding a juvenile delinquency proceeding, a party may access a record that a children's advocacy center creates and maintains and is related to a forensic interview and use the record in a court proceeding, but only if the Family Court has found all of the following:

a. The record is relevant under the Family Court rules governing discovery.

b. Access to the record will minimize trauma to the child.

c. Access to the record is in the best interest of the child.

(2)a. A subpoena for a record may not be served on a children's advocacy center. Access to a record under paragraph (c)(1) of this section must be requested by a written motion filed with the Family Court and properly served on each party to the action and the Department of Justice Special Victims Unit for the county in which the

action is pending. The party filing the motion may request that the motion be considered on an expedited basis in accordance with the Court's rules and procedures.

b. The Department of Justice has standing to respond to a motion filed under this section.

c. If, after review of the motion and response to the motion, if any, the Family Court finds that the party who filed the motion failed to a make a prima facie showing under paragraph (c)(1) of this section, the Court shall dismiss the motion.

d. If the Family Court determines that a prima facie showing under paragraph (c)(1) of this section has been made, the Court shall order the children's advocacy center that conducted the forensic interview to produce the record to the Court for a confidential review as the Court determines is appropriate.

e. If, after a confidential review of a requested record, the Family Court finds that the motion satisfies paragraph (c)(1) of this section by a preponderance of the evidence, the Court shall permit access to the record, subject to a protective order under paragraph (c)(4) of this section.

(3) This subsection (c) of this section does not preclude a member of a multidisciplinary team from obtaining a record under subsection (b) of this section and using the record in a Family Court civil proceeding.

(4) A Family Court order entered under this subsection (c) of this section that permits access to a record that a children's advocacy center creates or maintains and is related to a forensic interview the center conducts must include a protective order that does at least all of the following:

a. Protects the identity of the child interviewee and any other child whose identity the Court determines should be protected.

b. Protects the confidentiality of the information contained in the record.

c. Limits the dissemination of the record and the information contained in the record to the person that the Family Court authorizes to receive or review the record.

Section 4. This Act takes effect 90 days after enactment.