

DELAWARE'S CHILD PROTECTION REGISTRY

STATUTORY CHANGES -- *EFFECTIVE JANUARY 11, 2015*

IN GENERAL

What is the Child Protection Registry ("CPR")?

1. The Division of Family Services ("DFS") is Delaware's child welfare agency. Its statutory duties include the establishment of a child abuse hotline and an investigative and treatment system that responds to allegations of child abuse and neglect. 16 Del. C. §§ 905 and 906(e). When reports are made to the hotline, a structured decision making tool assists DFS in determining how to handle the report. If DFS accepts the report for investigation, it will take a series of investigative steps to assess safety and risk to the child or children and to ultimately determine if the allegations which were received by the hotline should be substantiated. 16 Del. C. §906(e).
2. For those substantiated cases, DFS is mandated to maintain a statewide registry. 16 Del. C. § 905(b). The purpose of such registry is to protect children and ensure their safety in child care, health care and public educational facilities. 16 Del. C. § 921. (See also *A Guide to Understanding the Child Protection Registry* attached as Exhibit 1 and online at http://kids.delaware.gov/fs/fs_cpr.shtml).

How does a person get on the Child Protection Registry?

1. By not requesting a civil hearing in the Family Court to contest the allegations within 30 days from receiving a Notice of Intent to Substantiate letter from the DFS worker
 - a. *Exception* -- Automatic Hearing for Minors
 - i. Section (a) above is only applicable to adults for whom the Division of Family Services (the "Division") wishes to substantiate. The Division has determined that it is in the best interest of a minor child for whom the Division intends to substantiate child abuse or neglect to be given an opportunity to hear and contest the Division's findings during a hearing in the Family Court. As of January 11, 2015, this will also be the law. 16 Del. C. § 924(c).
2. By Order of the Family Court after a hearing. (See *Sample Orders* attached as Exhibit 2).
 - a. NOTE: The Court decides which level of the registry a person is placed on unless specifically set out in statute. The regulations simply guide the decision making of DFS. (See *Child Protection Registry Regulations* attached as Exhibit 3 and online at http://kids.delaware.gov/fs/fs_cpr.shtml).
3. By plea or conviction of a crime enumerated in 16 Del. C. § 923 involving the same incident of abuse or neglect on which the substantiation is premised.
 - a. A conviction is defined as a guilty plea, finding of guilt, plea of nolo contendere, or a guilty plea with probation before judgment. Moreover, first offender programs that

may ultimately lead to a dismissal of the charge are considered a conviction. 16 Del. C. § 902.

- b. A request may be made for a limited purpose hearing to determine if the conviction involves the same incident of abuse or neglect on which the petition is premised. 16 Del. C. § 924(a)(4). *Effective January 11, 2015.*

What are the different CPR levels and what do they mean?

There are 4 levels of the Child Protection Registry. 16 Del. C. § 923. (See *Summary of CPR Levels and Crimes* attached as Exhibit 5). They are briefly as follows:

1. **Level I** – this is the lowest level and indicates a person presents a low risk of future harm to children. At this level a person is eligible to work in a child care, health care, or public education setting. Such a person is NOT reported to employers who perform a CPR check and is NOT reported on the CPR. (i.e., Employer not notified).
2. **Level II** – this is the second lowest level and indicates a person who presents a moderate risk of future harm to children. Such a person IS eligible to work in a child care, health care, or public education setting. However, such a person IS reported as being on the CPR for 3 years and is automatically removed from the CPR after 3 years if no further substantiations occur. (i.e., Employer notified but has discretion). A person may petition for early removal under § 929(b).
3. **Level III** – this is the second highest level and indicates a person who presents a high risk of future harm to children. Such a person is NOT eligible to work in a child care, health care, or public education setting and must be reported as being on the CPR for 7 years and is automatically removed after 7 years if no further substantiations occur. (i.e., Employer notified and no discretion to hire.) A person may petition for early removal under § 929(b).
4. **Level IV** – this is the highest level and indicates a person who presents the highest risk of future harm to children. Such a person is NOT eligible to work in a child care, health care, or public education setting and must be reported as being on the CPR for their lifetime unless they were placed on as a child and are now at least 18 years old. (i.e., Employer notified and no discretion to hire.) § 929(c).

SUBSTANTIATION HEARING

Substantiation Hearing – *Initiating a Substantiation Hearing*

1. A Notice of Intent to Substantiate See *Sample Notices of Intent* attached as Exhibit 4) is mailed certified, return receipt requested, to the Respondent's last known and must:
 - a. Provide a brief description of alleged incident of abuse or neglect
 - b. Notify the Respondent of the designated Child Protection Level the Division wants to place the Respondent. 16 Del. C. § 923 See *Summary of CPR Levels and Crimes* attached as Exhibit 5):
 - c. State the consequences for entry on registry
 - d. Inform a person of their right to request a hearing (*exception – minors will automatically get a hearing*).

- e. Further advise that the person will be entered on the CPR for the incident at the designated Child Protection Level unless a hearing is requested in writing within 30 days of the date of mailing of Notice of Intent to Substantiate
 - f. Contain a written form for the person to return to the Division to request a hearing
2. The Petition – DFS files a Petition for Substantiation in Family Court no later than 45 days after receipt of the written request for a hearing in the county in which the alleged incident leading to the Petition occurred. 16 Del. C. § 925 (See *Sample Petitions* attached as Exhibit 6).
3. Automatic Stay – DFS’ duty to file a petition within 45 days is automatically stayed when there is a pending criminal proceeding (charges filed) involving the same incident of abuse or neglect. 16 Del. C. § 927. 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 may result in entry on the CPR.
4. If the criminal hearing does not result in a conviction and DFS still wishes to pursue placement on the registry, the time to file begins to run upon conclusion of the criminal proceeding. 16 Del. C. § 927(a).
5. The Answer – The respondent in a substantiation proceeding shall serve an answer within 20 days after service of the DFS Petition to Substantiate. Fam. Ct. Civ. R. 12(a).
6. Components of the Answer: The respondent should rebut the allegation contained in the Petition by using numbered paragraphs that correlate to the Petition paragraphs to the extent possible. See Fam. Ct. Civ. R. 10. (See *Sample Answers* attached as Exhibit 7).

Substantiation Hearing – Preparation

1. Standard of Proof
 - a. Preponderance of the Evidence is the governing standard of proof at Substantiation Hearings. 16 Del. C. § 925A(a)
2. Grounds for Substantiation and Registry Placement
 - a. The person committed an act of abuse or neglect; and
 - b. The act was based on the same incident as alleged in the Notice of Intent to Substantiate.
 - c. If “a” and “b” are met, the Court, at the same hearing, will then determine the risk of future harm the person poses to children and the appropriate Child Protection Level. 16 Del. C. § 925A(b)
3. Discovery
 - a. The Respondent is entitled to discovery when DFS files a Petition. A discovery request can be filed in accordance with Fam. Ct. Civ. R. 26.
 - b. Typical discovery includes redacted copies of *DFS Family And Child Tracking System* (“FACTS”) notes, which should include detailed investigation notes and witness statements. See *DFS Caseworker Descriptions and Chain of Command* attached as Exhibit 12.
 - c. Police reports may be obtained by subpoena at the precinct of the arresting agency.
 - d. Medical and mental health records must be obtained by subpoena and may also require specific consents.
 - e. Be aware that DFS may serve a reciprocal discovery request on the Respondent.
4. Subpoena of Witnesses

Both DFS and the Respondent have the ability to subpoena witnesses for the substantiation hearing. Subpoenas should be sent about two weeks before hearing. Subpoena forms can be obtained from the Family Court in all three counties.

Substantiation Hearing – Trial

1. Evidence
 - a. The Delaware Rules of Evidence do apply and hearsay is not permitted during substantiation hearings. (See *Evidence Rules Summary* attached as Exhibit 8.)
 - b. Child statements may be admitted pursuant to 13 Del. C. § 724. (See *Child Witness and Out of Court Statements Summary* attached as Exhibit 9 for more detailed instructions on admission of child statements or use of child witnesses.)
2. Petitioner's case
 - a. DFS will typically provide testimonial evidence from a DFS worker or other witnesses.
 - b. Tips to Prepare for the Petitioner's case
 - i. It is important to make sure the DFS worker does not rely on hearsay when testifying. It is considered hearsay for the DFS worker to recount any statements that are not made by the Respondent. (See D.R.E. 801. Also, be aware that there are occasionally multiple DFS workers, primarily investigative workers, who may handle a given incident so it is important to know each worker's role in the investigation.)
 - ii. The Respondent or Respondent's attorney will have a chance to cross-examine the DFS worker or any other DFS witnesses.
 - iii. If DFS intends to have a child witness testify, they may request for such an interview to be conducted *in camera* out of the presence of the parties. The Respondent has the right to object to this request as well as submit questions for the judicial officer to ask. 13 Del. C. § 724
 - iv. Statements of child witnesses not present at the Court hearing may be considered hearsay and may be objected to on that ground. 13 Del. C. § 724
 - v. Be aware that DFS can call the Respondent as a witness during its case-in-chief and often calls the Respondent first. Be aware of the 5th amendment rights and object as needed. Counsel your client that anything he or she says may be used against him or her in a criminal proceeding.
 - vi. The burden is on DFS to establish by a preponderance of the evidence that the allegations in the Petition actually occurred. Look at the definitions of abuse and neglect. Remember for neglect and all abuse except sexual, DFS must demonstrate the Respondent had care, custody and control over the child/children during the prescribed time frame. Note that care, custody and control is not needed to substantiate sexual abuse that occurred between a child and Respondent.
 - vii. If the Respondent's attorney would like to discuss settlement to allow a Respondent to go on the CPR at a level lower than originally sought by DFS, Respondent's attorney should contact the assigned Deputy Attorney General (DAG). Respondent's attorney should provide the DAG with as much detailed information as possible regarding why it is appropriate to allow placement at a lower CPR level. Please note that current DFS practice

discourages negotiations even though the statute allows it. 16 Del. C. 925A *Agreement of the Parties*. Regardless of any settlement negotiations, it is important to talk to the DAG representing DFS prior to the scheduled hearing.

3. Respondent's defense
 - a. This is the Respondent's opportunity to rebut the allegations in the Petition through the presentation of testimonial or documentary evidence. The DFS attorney may cross-examine Respondent witnesses. Because the burden is on DFS, the Respondent does not have to present any evidence; however, this does not happen often.
 - b. Tips to Prepare a Defense for Respondent:
 - i. Review the FACTS notes and try to get a sense of what occurred
 - ii. Talk to Respondent to get his/her side
 - iii. Identify Defense Witnesses and issue subpoenas
 - iv. If weak case for DFS, discuss with DFS DAG if appropriate to try to get case dismissed or lower CPR level negotiated

ORDERS AND APPEALS AND PETITIONS FOR REMOVAL

1. Order from the Court
 - a. At the close of the hearing, a Commissioner may issue an oral order from the bench which will either:
 - i. Dismiss DFS's petition due to a failure to meet the burden of proof
 - ii. Substantiate the Respondent either at the Level sought by DFS or a different Level, which may be higher or lower than originally sought by DFS.
 - b. The Commissioner may also defer ruling from the bench and issue a written decision. (*See Sample Orders* attached as Exhibit 2).
2. Appealing a Court Order
 - a. A Commissioner's order may be appealed to a Family Court Judge by filing a Request for a Review of a Commissioner's Orders. (*See Request for Review* attached as Exhibit 10). The Respondent/Appellant must file written objections that set forth with particularity the basis for each objection within 30 days from the date of the Commissioner's order. See Fam. Ct. Civ. R. 53.1.
 - b. Note that during an appeal of a Commissioner's Order, DFS will still report out to employers while the appeal is pending, pursuant to 11 Del. C. § 8563.
3. Removal from the CPR
 - a. Automatic Removal
 - i. When a person is entered on the CPR at Level II or III, they are automatically removed from the Registry under 16 Del. C. § 923 (3 years for Level II and 7 years for Level III) so long as no further substantiations have occurred. A person placed as an adult on the CPR at Level IV will never be removed from the CPR. 16 Del. C. §929.
 - ii. Minors placed on the registry at ANY level may file a Petition for Removal any time after his or her 18th birthday and the Family Court has discretion to remove applying the factors set forth in 16 Del. C. § 929(b).

- b. Early Removal
 - i. A person placed on the registry as an adult and entered at Level II or III may Petition for Removal prior to the expiration of the time designated for the level. 16 Del. C. § 929(b). (See *Petition for Removal and Petition for Limited Purpose Hearing* attached as Exhibit 11).
 - ii. Petitions for Early Removal must be filed in the Family Court in the county in which the substantiation occurred. It must also be served on DFS, which then has 30 days to object or answer the Petition for Early Removal. Id.
 - iii. Factors considered for removal are listed in 16 Del. C. §929(b).
- c. Definition of Removal
 - i. Removal from the CPR only means that the Respondent's name has been removed from the Registry and may no longer be reported to employers.
 - ii. However, the Respondent's name and other information remains in DFS's internal information system and may be used by DFS for treatment cases, investigative purposes, historical information, DSCYF employee, foster and adoptive parent decisions, and child care licensing, among others. Id.

DELAWARE'S CHILD PROTECTION REGISTRY

EXHIBITS TABLE OF CONTENTS

Exhibit 1 - A Guide to Understanding the Child Protection Registry

Exhibit 2 - Sample Orders

Exhibit 3 - Child Protection Registry Regulations

Exhibit 4 - Sample Notices of Intent

Exhibit 5 - Summary of CPR Levels and Crimes

Exhibit 6 - Sample Petitions

Exhibit 7 - Sample Answers

Exhibit 8 - Evidence Rules Summary

Exhibit 9 - Child Witness and Out of Court Statements Summary

Exhibit 10 - Request for Review

Exhibit 11 - Petition for Removal and Petition for Limited Purpose Hearing

Exhibit 12 - DFS Caseworker Descriptions and Chain of Command

Exhibit 13 - Child Protection Registry Statute

EXHIBIT 1

A GUIDE TO UNDERSTANDING THE CHILD PROTECTION REGISTRY



Over the years many changes have been made to the laws regarding child abuse and neglect within the State of Delaware. Most of these changes were brought about due to federal or state legislation, such as the Child Abuse Prevention Act of 1997. However, throughout the history of these laws there has always been a requirement that the Division of Family Services (DFS) maintain a confidential record of each case of child abuse and neglect on an internal information system. The manner in which these records are maintained, though, has changed. On February 1, 2003, a new law was passed that established the Child Protection Registry.

• **What is the Child Protection Registry?**

The Child Protection Registry contains the names of individuals who have been substantiated for incidents of abuse or neglect since August 1, 1994. The primary purpose of the Child Protection Registry is to protect children and to insure the safety of children in child care, health care, and public educational facilities.

• **What the Child Protection Registry is not—**

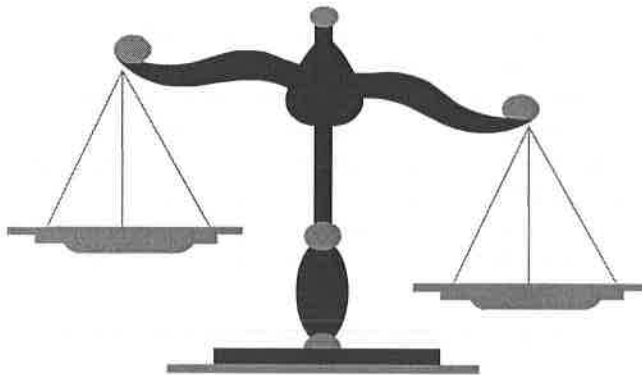
The Child Protection Registry does not include individuals substantiated for dependency, parent and child conflict, adolescent problems, or cases opened for risk of child abuse and neglect. This registry is not available through the Internet and is not the same as the Sex Offender Registry maintained by the Delaware State Police, State Bureau of Identification.

• **Who has access to Child Protection Registry information?**

The Division of Family Services, Criminal History Unit in the Office of Childcare Licensing, responds to requests from employers in childcare, health care, and public schools wishing to obtain a Child Protection Registry background check for all prospective employees. These requests can only be granted with the written consent of the individual whom they are seeking information about. In addition, this information is considered when an individual applies for employment with the Department of Services for Children, Youth, and Their Families, and in determining eligibility to become a foster or adoptive parent. The only other entities with access to this information are law enforcement agencies and the Department of Justice.

• **How do you get on the Child Protection Registry?**

Upon completion of an investigation of child abuse and neglect by DFS, there are three ways an individual can be placed on the registry: 1) by not requesting a substantiation hearing in Family Court, 2) by order of Family Court after a substantiation hearing has been held, and 3) by plea or conviction of a criminal offense based on the same incident of abuse or neglect investigated by DFS.



- **What is a Limited Purpose Hearing?**

If the Division of Family Services determines from its investigation that it intends to enter a person on the Child Protection Registry as a result of a conviction on Levels II, III, or IV, 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 in Family Court within 30 days of the Notice of Substantiation. The petition must explain why the conviction is not based on the same incident of abuse or neglect investigated by the Division.

Consider this...

Many agencies that you may already be familiar with maintain similar confidential internal information systems regarding their consumers. Examples include the Internal Revenue Service and the Social Security Administration.

- **How is child abuse and neglect defined?**

According to Title 10, Subsection 901 of the Delaware Code, child abuse and neglect are defined as follows:

“Abuse” or “abused child” means that a person:

- (a) causes or inflicts sexual abuse on a child; or
- (b) has care, custody, or control of a child, and causes or inflicts:
 - a. physical injury through unjustified force as defined in § 468 of Title 11;
 - b. emotional abuse;
 - c. torture;
 - d. exploitation; or
 - e. maltreatment or mistreatment.

“Neglect” or “neglected child” means that a person:

- (a) is responsible for the care, custody, and/or control of the child;
and
- (b) has the ability and financial means to provide for the care of the child; and
 - a. fails to provide the necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child’s emotional, physical, or mental health or safety and general well-being; or
 - b. chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child’s ability to receive care necessary for his or her safety and general well-being, or
 - c. fails to provide necessary supervision appropriate for a child when the child is unable to care for his or her own basic needs or safety, after considering such factors as the child’s age, mental ability, physical condition, the length of the caretaker’s absence, and the context of the child’s environment.

A **child** means any person who has not reached his or her 18th birthday.

• Will a person be on the Child Protection Registry forever?

There are four different levels on the Child Protection Registry that relate to physical abuse, sexual abuse, and neglect. Except for Child Protection Registry Level I, a person who is substantiated for an incident of abuse or neglect shall be placed and remain on the Registry as follows:

Level I –

- *Did you know that not sending your child to school as required by law is considered educational neglect?*

These cases do not appear on the registry. However, your name and other case information will remain a part of the Division's internal information system.

Examples include educational neglect*, mild to moderate emotional neglect, mild to moderate emotional abuse, and mild physical neglect.

* Educational neglect means that a parent or caretaker has failed to follow through with a Court-ordered activity after a conviction in Court for "Failure to Send Child to School."

If an individual is convicted of any of the following crimes when based on the same incident of abuse or neglect, he or she shall be deemed to present a low risk of future harm to children and shall be placed on Level I of the Child Protection Registry: *violation of compulsory school attendance requirements or truancy.*

Level II –

- *Did you know when your child witnesses an incident of domestic violence it is considered emotional neglect?*

When an individual is substantiated on Level II, his or her name will remain on the Registry for three years.

Neglect considered Level II includes some things many parents are not aware of such as leaving a child between the ages of 12 and 17 years alone for an extended period of time and a lack of supervision for children ages 7 to 11 years. Locking a child in or out of a space when they are between the ages of 12 and 17 is considered Level II as well. Moderate physical neglect is also placed on Level II.

Examples of physical abuse that would be on Level II are bruises, cuts, and lacerations not requiring intervention by a medical professional.

Severe emotional abuse (such as ridiculing, shunning, and isolating a child) and neglect is also placed on this level.

If an individual is convicted of the following crimes when based on the same incident of abuse and neglect, he or she shall be deemed to present a moderate risk of future harm to children and shall be placed on Level II of the Child Protection Registry: *interference with custody.*

Consider this...

The following are some things to think about before leaving a child alone:

1. Consider the child: How mature is the child? How comfortable is the child with the situation? What has the child done in the past to show you he or she is able to take on this responsibility?
2. Consider the child's knowledge and ability: Does the child know how and when to contact emergency help? Is the child able to prepare food for him or herself? Are there hazards to the child in the environment such as accessible knives, power tools, a stove or an oven?
3. Consider the situation: Where will the child be when left alone? How long is the child to be alone?

Level III –

- *Did you know that if you are capable of caring for your child and you refuse, you could be placed on the Registry for abandonment?*

Individuals placed on Level III remain on the Registry for seven years.

Substantiations of abandonment of children ages 13 to 17 years old, leaving a child ages 7 to 11 years alone, lack of supervision for children ages 6 and younger and locking in or out of children ages 7 to 11 are all considered grounds for placement at Level III of the Registry.

This level accounts for more extreme forms of physical abuse such as bizarre treatment, bruises, cuts, & lacerations requiring intervention by a medical professional, and dislocations or sprains. In addition, all substantiated cases of abuse involving a child under the age of six months are included at this level, regardless of the need for medical treatment beyond a medical examination. Verbal innuendos (inappropriate sexualized statements to a child by a parent/ caretaker intended to entice or alarm) also can place individuals at Level III. Malnutrition, non-organic failure to thrive*, non-life-threatening medical neglect, and serious physical neglect are also on this level.

If an individual is convicted of any of the following crimes when based on the same incident of abuse and neglect, he or she shall be deemed to present a high risk of future harm to children and shall be placed on the Child Protection Registry at Level III: *offensive touching, sexual harassment, menacing, reckless endangering in the second degree, assault in the third degree, terroristic threatening, unlawful imprisonment in the second degree, unlawful administration of drugs or controlled substances, abandonment of a child, indecent exposure in the first/second degree, misdemeanor endangering the welfare of a child, or child abuse in the third degree.*

Consider this...

Discipline is an opportunity to teach children and role model positive behaviors. When picking a form of discipline keep in mind that it should be developmentally appropriate, based on the age of the child, and consistent. Some examples might include time-outs for younger children or removal of privileges for older children.

*Non-organic failure to thrive means a lack of appropriate physical and emotional development that threatens the well being of the child. It can be permanently damaging to the child without being life threatening.

Level IV –

- *Did you know that you can be charged with felony endangering the welfare of a child when a child riding in your car is injured while you are driving under the influence (DUI)? This is also considered neglect and can place you on Level IV of the Registry.*

A designation of Level IV is reserved for the most severe cases of physical abuse, sexual abuse, and neglect. Individuals placed on this level remain on the Registry permanently.

Examples of physical abuse at this level include blunt force trauma, bone fractures, puncture or stab wounds, head trauma, internal injuries, “shaken baby” injuries, burns or scalds, suffocation, poisoning, and death.

Sexual abuse assigned to Level IV means any sexual contact, sexual intercourse, or sexual penetration, as those terms are defined in the Delaware Criminal Code, between a parent or caretaker and a child. Also included at this level are incidents of exploitation, pornography, and other forms of sexual abuse. Exploitation can include non-sexual acts such as instructing a child to steal, deal drugs, or even drive a car without a license.

Level IV neglect is designated as abandonment of children ages 0 to 12 years of age, leaving a child ages 6 years or younger alone, and locking in or out a child ages 0 to 6 years old. Life threatening medical neglect of a child is also placed on Level IV of the registry.

If an individual is convicted of any of the following crimes when based on the same incident of abuse or neglect he or she shall be deemed to present the highest risk of future harm to children and shall be placed on the Child Protection Registry at Level IV: *vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first or second degree, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, 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, promoting suicide, reckless endangering in the third degree, unlawful imprisonment in the first degree, child abuse in the first/ second degree, felony sex offender unlawful sexual conduct against a child, felony sexual abuse of a child by a person in a position of trust in the first/second degree, or trafficking of persons and involuntary servitude.*

Frequently Asked Questions about the Child Protection Registry...

- **How do I know if my name is on the Child Protection Registry?**

The case worker assigned to investigate a case will send a Notice of Intent to Substantiate for Abuse and Neglect and Enter on Child Protection Registry letter informing the person that the Division intends to substantiate them for an incident of abuse or neglect. The letter will specify the Child Protection Level and the consequences. In addition, individuals convicted of the previously mentioned crimes related to incidents of abuse and neglect investigated by DFS will also be placed on the Registry at the corresponding level.

- **Can an individual have her or his name removed from the Child Protection Registry?**

Removal from the Registry means only that your name may no longer be reported to child care, health care, and public schools upon their request for a Child Protection Registry check. Your name and other case information will remain as a part of the Division's internal information system and will be reported in response to inquiries related to application for employment in the Department of Services for Children, Youth, and Their Families, foster and adoptive parent decisions, child care licensing decisions, reporting pursuant to Section 309 of Title 31, or any other purpose set forth in 906 (e) of Title 16. There are three ways to have your name removed from the Registry:

- 1. Automatic Removal**

A person who is entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the Registry after the required years have been completed for that level, provided the person has not been substantiated for another incident of abuse or neglect while on the Registry.

- 2. Early Removal**

A person who is entered on the Child Protection Registry at Child Protection Level II or Level III, may file a Petition for Removal in Family Court prior to the expiration of the time designated for the Level.

The Family Court shall have the discretion to remove the person from the Child Protection 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 victim;
- (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.

3. Removal for Entry on the Child Protection Registry as a Child

A person who was entered on the Child Protection Registry at any level as a child, may, at any time after his or her eighteenth birthday, file a *Petition for Removal from Child Protection Registry For One Entered as a Juvenile* 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 Numbers 1-8 under Early Removal (Number 2 above).

- **What if an individual has had more than one case substantiated against her or him?**

If an individual is substantiated for abuse or neglect while on the Registry, the imposed conditions for each incident must be completed one after the other, with the conditions for the most restrictive Child Protection Level or Levels being completed before those for the less restrictive Level or Levels.

- **What if substantiations are on different Child Protection Levels?**

A person who has partially completed a Level when assigned to a more restrictive Level is given credit for the partial completion when he or she has completed the conditions for the more restrictive Level or Levels.

Important Delaware Numbers:

If you need to talk to someone, call

CONTACT Lifeline: 1(800) 262-9800

24/7 Crisis Helpline, Sexual Assault Counseling, Online Support

Help Me Grow: 211

For young children, links families to appropriate health or community-based programs

Prevent Child Abuse Delaware: 1(866) 925-7223

Training and public awareness to prevent and treat child abuse and neglect

If you need a referral, call

Delaware Helpline: 1(800) 464-4357

Information and referral service that connects you to state services and provides you with assistance for problems, concerns, and issues in your life

To report child abuse, call

Child Abuse Report Line 24/7 1(800) 292-9582

Delaware Division of Family Services

Online reporting is also available.

To report elder abuse, call

Delaware Adult Protective Services 1(800) 223-9074

Delaware Division of Services for Aging and Adults with Physical Disabilities

E-mail: DelawareADRC@state.de.us

To get help about domestic violence, call

Domestic Violence Hotline 24/7 NCC: (302) 762-6110

KC and SC: 1 (800) 874-2070

Child, Inc. – bilingual staff available

Peoples Place 24/7 KC and SC: (302) 422-8058

Abriendo Puertos SC: (302) 745-9874 24/7 Spanish speaking

To report animal cruelty, call

Delaware SPCA

New Castle County Chapter: (302) 998-2281

Sussex County Chapter: (302) 856-6361

Online reporting is also available

STOP

CHILD

ABUSE

SEE THE SIGNS,
MAKE THE CALL.

800-292-9582

iseethesigns.org

**The Department of Services for
Children, Youth, and Their Families**



Division of Family Services

Mission Statement

To promote the safety and well-being of children and their families through prevention, protection, and permanency.

Vision Statement

Our Children.
Our Future.
Our Responsibility.

Office of Children's Services (OCS)

Administrative Office 1.302.633.2657
1825 Faulkland Road
Wilmington, DE 19805

OCS Regional Offices

New Castle I, Beech Street- 1.302.660.3545
New Castle II, University Plaza- 1.302.451.2800
Kent III, Barratt Building- 1.302.739.4800
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EXHIBIT 2

**The Family Court of the State of Delaware
In And For Kent County**

DIVISION OF FAMILY SERVICES)

Petitioner,)

v.)

MOTHER)

Respondent.)

File No.

Petition No.

**CHILD PROTECTION
REGISTRY
SUBSTANTIATION**

The Court convened on January 5, 2012 for a hearing on a Petition for Substantiation filed by the Division of Family Services ("DFS") against Respondent ("Mother"). DFS appeared for the hearing with counsel. Mother appeared without legal representation.

Findings

Respondent is the mother of Child born 2002. Mother and Child's father ("Father") have been married for about 22 years. They live together with Child and with Child's adult brother ("Brother"). Early in May 2011, the family learned that Father was terminally ill.

On May 16, 2011, several of Father's relatives were visiting the family. Mother became extremely distraught and her behavior erratic to the point that Father was concerned for her safety. He called 911. Mother tried to grab the phone from him, knocking him down in the process. Father escaped to the garage to complete the emergency call. Brother tried to restrain Mother to protect Father. Mother bit Brother on the arm. Brother's finger was also broken in the altercation with Mother.

Mother was still in the house, screaming and cursing, when police officers arrived. Child was also there; Father told him to go upstairs to his room. The police officers took Mother outside the home and tried to persuade her to spend the night at her parents' nearby home. Mother refused and continued to be extremely argumentative and belligerent. She resisted the officers' efforts to take her into custody and actively fought with them on the sidewalk in front of the house, injuring one of the officers. Child watched at least part of Mother's behavior during her arrest from his open bedroom window.

Mother has a history of abusing prescription pain medication. Emergency responders have been called to Mother's home some eighteen times because of Mother's conduct; she has been convicted of driving under the influence; and has had numerous mental health admissions. While Mother completed an inpatient drug rehabilitation program in approximately 2009, she was using pain medication on May 16, 2011 and had drunk two beers earlier in the day.

Mother was charged with endangering the welfare of a child and other crimes as a result of the May 16 incident. She pled guilty to resisting arrest.

Legal Standards

DFS requests that Respondent be substantiated for neglect and that she be placed on the Child Protection Registry at Level III.

For purposes of the Registry, "neglect" means that a person is responsible for the care, custody or control of a child; has the ability and financial means to care for the child; and, among other things, fails to provide the care needed for the child's emotional or mental health, safety or general well-being.¹

¹ DEL. CODE ANN. tit 10, § 901(18) (1999 & supp. 2010) and DEL. CODE ANN. tit 16, § 902 (13) (2003 & supp. 2010).

DFS has adopted regulations that provide that an incident containing the elements of certain crimes (including endangering the welfare of a child) presents a high risk of future harm to children even where there has been no criminal conviction.² While the Court is bound by the statute creating the Registry, it may evaluate "...the circumstances surrounding a particular individual's act of neglect or abuse ... before assigning a [risk] level designation."³

Conclusions

The preponderance of the evidence establishes that Mother neglected Child's emotional welfare on May 16, 2011. Despite Father and Brother's efforts to protect him, Child, who was then eight-years-old, was present when Mother was screaming and cursing at his father and brother, and watched her aggressive and assaultive behavior in the front yard. There was no reasonable justification for Mother's conduct. Mother's indifference to Child's presence in the home and the effect her conduct could have on his safety and sense of well-being rises to the level of neglect.

The Court also substantiates DFS's conclusion that Mother presents a high risk of future harm to children. Mother's conduct on May 16, 2011 was not an aberration. She has an extended history of erratic, self-destructive and criminal behavior associated with her substance abuse. While Mother has received intensive treatment for her addiction, she continues to abuse medications (for example, by using alcohol at the same time).

Mother blames others for her own conduct (the police for arresting her and Father and Brother for calling 911). She also displays limited compassion for other people in her family while using her own feelings about Father's illness to justify her significant mistreatment of him and her children. All these factors support the Division's finding that Mother is a high risk to Child's future welfare.

Accordingly, the Division's request that Mother be substantiated for neglect at Protection Level III is **GRANTED**, as follows:

- (3) 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 of Title 11. The person is ineligible for employment in a childcare facility, health care facility or public school, as those terms are defined in § 8563 of Title 11, while the person is on the Registry at Child Protection Level III. If the person is not substantiated for 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.

IT IS SO ORDERED.

The parties are advised of their right to a Review of a Commissioner's Order, by filing and serving written objections within thirty (30) days of the date the written Order is Issued. This is only applicable to the party(ies) who appeared in Court.

(Signature on Court copy)

Date Written Order Issued

Commissioner Louann Vari

cc: DAG/DFS/Respondent/File

11/19/2014 msg

² 9 DE Admin. Code §§ 304.9.3 and 304.9.2.5.

³ *State v. W.G.*, 2011 WL 5530963, *3 (Del.Fam.Ct.2011). See also *DFS v. R.R.*, No. CK10-01009 (Del.Fam. Aug. 31, 2011).

The Family Court of the State of Delaware

In and For Kent County

CIVIL DISPOSITION - COMMISSIONER

Petitioner

MOTHER
Attorney
DOB

Respondent

Div. of Family Services
Attorney
Donna Thompson, Esq.
DOB

File No(s)
CPI No(s)
Nature of Proceeding PETITION FOR REMOVAL FROM CHILD PROTECTION REGISTRY
Date of Hearing 04/26/10

Before **LOUANN VARI**, Commissioner of the Family Court of the State of Delaware:

The Court convened on April 26, 2010 for a hearing on a Petition for Removal from the Child Protection Registry filed by Petitioner Mother against the Division of Family Services ("DFS"). Mother appeared for the scheduled hearing without legal representation. DFS appeared with counsel.

Mother was placed on the Registry at Level II in March 2002 for severe emotional neglect of her then three-year-old son by exposing him to domestic violence. Mother was again substantiated for neglect in November 2002 around issues of domestic violence and was placed on Level III of the Registry. Because this second substantiation happened while Mother was already on the Registry, she is not eligible for automatic removal from the Registry.¹

Mother received her certification as a nursing assistant in September 2009 and testified she has been unable to get a job in that field because she is on the Registry. The preponderance of the evidence establishes that since she was placed on the Registry, Mother has not adequately addressed the issues that resulted in her substantiations. She did not complete domestic violence counseling required as a result of criminal probation in 2003. In 2004, she declined treatment services offered by DFS regarding domestic violence.

While Mother broke off one violent relationship in 2004, she has had multiple arrests and three convictions since then, all involving domestic incidents with a new partner. Her last arrests were in May 2008 and April 2009. In both instances, Mother demonstrated that when she is angered or upset as a result of domestic arguments, she loses judgment, makes poor decisions and is unable to control her behavior (refusing to cooperate with responding police officers, for example, and during the April 2009 arrest leading to conviction, urging a dog to attack responding police officers).

¹ DEL.CODE ANN. tit. 16, § 929(a) (2003).

It is encouraging that Mother has not been arrested for a year, and that she completed CNA training. The Court also recognizes that being on the Registry restricts Mother's employment opportunities. However, the primary purpose of the Registry is to protect and ensure the safety of children.² Removing Mother from the Registry would permit her to work in child care facilities, health care facilities or public schools. Given the long-standing pattern of volatile reactions by Mother in certain situations, the Court finds that there is an ongoing risk to children who might be exposed to Mother's behaviors during those times.

Accordingly, the Petition for Removal is denied at this time. Mother may ask the Court to remove her from the Registry in the future.

IT IS SO ORDERED.

The parties are advised of their right to a Review of a Commissioner's Order, by filing and serving written objections within thirty (30) days of the date the written Order is issued. This is only applicable to the party(ies) who appeared in Court.

{Signature on Court copy}

Date Written Order Issued

COMMISSIONER LOUANN VARI

cc: Petitioner, Respondent, File

11/19/14 MSG

² DEL.CODE ANN. tit. 16, § 922 (2003).

The Family Court of the State of Delaware
In And For Kent County

DIVISION OF FAMILY SERVICES)

Petitioner,)

v.)

MOTHER,)

Respondent)

File No.

Petition No.

CHILD PROTECTION
REGISTRY
SUBSTANTIATION

AND NOW, TO WIT,

The Court held a hearing on June 7, 2010 on a Petition for Substantiation filed by the Division of Family Services ("DFS") against Respondent ("Mother"). The Petition alleges that Respondent committed an act of physical abuse against her teenaged daughter, ("Child"). DFS requests that Mother be substantiated for physical abuse and placed on the Child Protection Registry at Child Protection Level III. DFS appeared for the scheduled hearing with counsel. Mother appeared without legal representation.

Findings of Fact

It is undisputed that on October 3, 2009, Mother hit Child with a belt three to five times on her buttocks, and also hit her two to three times in the face with both a closed fist and open hand. Child was bruised on her buttocks and on her face as a result of the incident and required a medical examination. Criminal charges filed against Mother were later dropped.

Mother candidly acknowledges she was angry and disappointed with 14-year-old Child for staying out all night the previous evening without getting permission or even letting Mother know where she was.

Mother has no prior history with the Division of Family Services. She agreed to a case plan with the Division after the October 2009 incident. It required her to complete parenting classes and attend counseling to help her consistently use non-physical forms of discipline. Mother successfully completed the parenting course and continues to participate in weekly, home-based family therapy sessions, a program she and Child began before the incident. Child is also receiving individual counseling.

Mother credibly testified that Child's behavior significantly deteriorated when the family moved to Delaware in 2003. Child has been disciplined repeatedly for school based conduct, including classroom disruptions, defiance of school authority and stealing from another student, and her academic performance remains poor. Child resists Mother's attempts to discipline her, often lies to Mother, and more recently, snuck a boy into Mother's home.

Applicable Statutes

For purposes of the Child Protection Registry, "abuse" is defined to include physical injury to a child, by those responsible for the child's care, custody and control, "through unjustified force as defined in § 468 of Title 11."¹

A parent's force against a child is justified if it is: reasonable; moderate; used to safeguard or promote the child's welfare (including preventing or punishing misconduct); and intended to benefit the child.² However, force against a child is *not* justified if it includes striking with a closed fist or other acts that cause physical injury, meaning "impairment of physical condition or substantial pain."³

Conclusions

The Court concludes that Mother's treatment of Child on October 3, 2009 was intended to promote her welfare and to benefit her. Mother, however, exceeded the type and amount of physical discipline parents may justifiably impose under Delaware law when she hit her daughter with a closed fist and caused additional bruising by hitting her with a belt. At the same time, the Court concludes that Mother presents only a moderate risk of future harm to Child, noting that Mother sought help to address her daughter's behaviors before the October incident, completed a DFS case plan, continued with both family counseling and ensured individual counseling for Child, and took full responsibility for her conduct.

Accordingly, the Court substantiates Mother for abuse⁴ and places her on the Child Protection Registry at Protection Level II, which provides as follows:

- (2) 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 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 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.

IT IS SO ORDERED.

The parties are advised of their right to a Review of a Commissioner's Order, by filing and serving written objections within thirty (30) days of the date the written Order is issued. This is only applicable to the party(ies) who appeared in Court.

(Signature on Court copy)

Date Written Order Issued

Commissioner Louann Vari

cc: DAG/DFS/Respondent/File

11/19/2014 msg

¹ DEL. CODE ANN. tit. 16, § 902(1) (2003 & supp. 2008) and DEL. CODE ANN. tit. 10, § 901(1) (1999 & supp. 2008).

² DEL. CODE ANN. tit. 11, § 468(1) (2007).

³ DEL. CODE ANN. tit. 11, § 468(1)(c) (2007) and DEL. CODE ANN. tit. 11, § 222(23) (2007 & supp. 2008).

⁴ DEL. CODE ANN. tit. 16, §§ 923 and 926 (2003 & supp. 2008).

The Family Court of the State of Delaware

In and For Kent County

CIVIL DISPOSITION - COMMISSIONER

<p>Petitioner</p> <p>DFS</p> <hr/> <hr/> <hr/> <p>Attorney Islanda Finamore, Esq.</p> <p>DOB</p>	<p>Respondent</p> <hr/> <hr/> <hr/> <p>Attorney</p> <p>DOB</p>	<p>File No(s)</p> <hr/> <p>CPI No(s)</p> <hr/> <p>Nature of Proceeding PETITION FOR SUBSTANTIATION</p> <hr/> <p>Date of Hearing 11/01/2010</p>
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Before **LOUANN VARI**, Commissioner of the Family Court of the State of Delaware:

The Court convened on November 1, 2010 for a hearing on a Petition for Substantiation filed by the Division of Family Services (“DFS”) against Respondent (“Mother”). DFS requests that Respondent be substantiated for neglect and placed on the Child Protection Registry at Protection Level I. DFS appeared for the hearing with counsel. Respondent appeared without legal representation.

Legal Standards

For purposes of the Child Protection Registry, “neglect” means that a person is responsible for the care, custody or control of a child; has the ability and financial means to care of the child; and, among other things, fails to provide the care necessary for the child’s emotional and mental health.¹

Findings of Fact

Taken in a light most favorable to the Division, the evidence establishes that Mother suffers from significant mental health problems. Mother’s conditions preexisted her daughter Child’s birth in Month 2009. Child’s father (“Father”) also has mental and physical health needs that prevented him from providing adequately for an infant. The Court entered a consent Order giving Mother sole custody of Child in September 2009, and permitting the parents to mutually work out visitation agreements.

Mother continued her mental health treatment after Child was born. Mother’s medications were changed, either in type or dosage, every few weeks between June 2009 and February 2010. Mother attempted suicide and was psychiatrically hospitalized three times between late December 2009 and mid-March 2010. The only evidence that Mother was non-compliant with her mental health treatment was her objection to taking one of the medications prescribed for her after her first suicide attempt and the fact that she used some of her psychiatric medications when trying to kill herself.

¹ DEL. CODE ANN. tit 10, § 901(18) (1999 & supp. 2008) and DEL. CODE ANN. tit 16, § 902 (13) (2003 & supp. 2008). “Necessary care” is further defined as “a type and degree of personalized attention that will tend to advance a child’s physical, mental, emotional, moral and general well-being.” DEL. CODE ANN. tit 10, § 901(17) (1999 & supp. 2008).

At some point after the Court entered the Consent Order regarding custody, Mother and Father resumed living together. Child was in Father's physical care while Mother was hospitalized. During that time, Child was not cared for adequately. In May 2010, a family member was awarded temporary guardianship of Child, the Court finding that neither Mother nor Father was then capable of providing the baby's basic needs.

Conclusion

It is clear that Child did not receive the care necessary for her physical well-being in March 2010. The Division failed to establish, however, that Mother was *capable* of providing for Child given her own mental health needs and her hospitalizations during that time. As the Court has previously found, Child was dependent as the result of her parents' illnesses. The Division failed to establish that she was neglected by Mother. Accordingly, the Petition for Substantiation is dismissed.

IT IS SO ORDERED.

The parties are advised of their right to a Review of a Commissioner's Order, by filing and serving written objections within thirty (30) days of the date the written Order is issued. This is only applicable to the party(ies) who appeared in Court.

{Signature on Court copy}

Date Written Order Issued

COMMISSIONER LOUANN VARI

cc: Petitioner, Respondent, File

11/19/14 MSG

The Family Court of the State of Delaware
In And For Kent County

DIVISION OF FAMILY SERVICES)	File No.
Petitioner,)	Petition No.
)	
v.)	
)	
RESPONDENT)	CHILD PROTECTION
Respondent.)	REGISTRY
)	SUBSTANTIATION

The Court held hearings on October 12 and November 17, 2011 on a Petition for Substantiation filed by the Division of Family Services (“DFS”) against Respondent (“Respondent”). DFS appeared for the scheduled hearing with counsel. Respondent appeared without legal representation.

Findings of Fact

Respondent is the fiancé of Mother. Mother and her daughter, Child born 2007, moved in with Respondent in early January 2011. Respondent and Mother’s statements about the events of January 27 and 28, 2011 have been inconsistent. However, the credible testimony and other evidence establish the following:

On Wednesday evening, January 26, 2011, Mother gave Child a bath and noticed no injuries to her. On Thursday evening, January 27, 2011, Mother left Child in Respondent’s care to run an errand. She was gone about 20 to 30 minutes. At hearing, Mother testified that when she got home, she helped Child change into her pajamas and did not notice any injuries on her. When interviewed shortly after the incident, however, Mother said that Child was already in bed asleep when she got home, i.e., that she did not see Child undressed that evening.

In any event, by at least Friday morning, January 28, 2011, Mother had noticed bruising on Child’s shoulder near her collarbone and told Respondent about it. According to Mother and Respondent, Child told them she had gotten up during the night and fell into the washer or dryer.

Child was also sick with a cold on Friday and Mother and Respondent took her to the doctor. Neither mentioned the bruising on Child’s shoulder to the doctor or to the doctor’s staff. Mother and Respondent both testified that they did not notice Child was in any pain on Friday.

By pre-arrangement, Child spent Friday night with Mother's grandmother ("Great Grandmother"). Mother told Great-Grandmother that Child had hurt her arm running into the washer-dryer. Child was asleep when she arrived at Great Grandmother's and remained asleep until the next morning. On Saturday morning, Great Grandmother noticed that Child was holding her arm tight to her side and not moving it. Great Grandmother and other family members took Child to an emergency medical center.

Subsequent medical treatment revealed that Child had significant physical injuries, including a severe clavicle fracture and extensive bruising. The clavicle fracture was a full break, and the multiple bruises included a large bruise on Child's upper chest and shoulder area.

Until shortly before the hearing, Child consistently maintained that she broke her arm when she stumbled into a washer-dryer when she got up in the middle of the night. The configuration and arrangement of the appliances made that unlikely and compelling medical testimony establishes that Child's injuries were inconsistent with that description. In mid-October 2011, Child spontaneously revealed that Respondent broke her arm.

Respondent has a history of aggression towards others. The evidence establishes that he has previously pulled Child's hair, screamed in her ear, pulled her fingers back and flicked his fingers in her face. Respondent has a history of criminal convictions and adjudications which include assault, resisting arrest and harassment. While Mother downplays Respondent's actions, the evidence also establishes that Respondent has been violent and abusive toward Mother.

Legal Standards

DFS requests that Respondent be substantiated for abuse and placed on the Child Protection Registry at Level IV. For purposes of the Registry, "abuse" is defined to include physical injury to a child, by those responsible for the child's care, custody and control, caused by unjustified force.¹

Conclusions

The preponderance of the credible evidence supports DFS's finding that Respondent physically abused Child while caring for her, seriously injuring her. While Respondent maintains that he did not hurt Child, the only explanation he offers for her injuries (running into the washer) could not, in fact, have caused them. Taking the evidence as a whole, it is clear that Child's injuries were not accidental and that only Respondent had the opportunity to inflict them. That conclusion has now been supported by Child's recent disclosure that Respondent hurt her.

¹ DEL. CODE ANN. tit. 16, § 902(1) (2003 & supp. 2010) and DEL. CODE ANN. tit. 10, § 901(1) (1999 & supp. 2010). The use of force against a child by a person responsible for the child's general care and supervision is justified if it is: reasonable; moderate; used to safeguard or promote the child's welfare (including preventing or punishing misconduct); and intended to benefit the child. However, force against a child is not justified if it includes certain acts, including those that cause physical injury, meaning "impairment of physical condition or substantial pain."

Respondent did not seek medical treatment for Child's injuries. He has accepted no responsibility for his behaviors and received no subsequent treatment of services to address whatever circumstances caused him to abuse Child. Respondent has abused Child in the past and has been violent toward others, including Mother. Under these circumstances, the Court further concludes that Respondent represents the highest risk of future harm to children, justifying the Division's decision to place him on the Registry at Level IV.

Accordingly, the Division's request that Respondent be substantiated² for abuse and placed on the Child Protection Registry at Protection Level IV is **GRANTED**, as follows:

- (4) 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 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 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction.

IT IS SO ORDERED.

The parties are advised of their right to a Review of a Commissioner's Order, by filing and serving written objections within thirty (30) days of the date the written Order is issued. This is only applicable to the party(ies) who appeared in Court.

{Signature on Court copy}

Date Written Order Issued

Commissioner Louann Vari

cc: DAG/DFS/Respondent/File

11/19/2014 msg

² DEL. CODE ANN. tit. 16, §§ 923 and 926 (2003 & supp. 2010).

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DIVISION OF FAMILY SERVICES)

Petitioner,)

v.)

Respondent.)

File No. CN14-03573

CPI No.: 14-17264

CHILD PROTECTION

REGISTRY SUBSTANTIATION

ORDER

BEFORE THE COURT is a Petition for Substantiation. A hearing was scheduled for November 12, 2014. Present for the hearing were Jennifer Grace-Umoete for the Division of Family Services (herein "DFS") represented by Valerie Farnan, Esquire, and the Respondent, [REDACTED], (herein "Respondent"), representing herself. DFS requested that Respondent be placed on the Child Protection Registry at Level III and IV alleging that Respondent neglected her children ages 3 and 10 when she left them alone without proper supervision. Respondent opposed the Petition.

The Court announced its decision on the record. This is the Court's written decision.

The Respondent admitted that she left her children alone for 20 minutes without proper supervision. As such, the court found that Respondent committed an act of neglect.

Pursuant to 16 Del. C. §923, once an individual has been found to have committed an act of abuse or neglect, the court must assess her risk of future of harm to children.¹ In this case, the court considered the following factors relevant to the assessment of risk:

1. Respondent had no prior DFS history;

¹ *Division of Family Services v R.R.*, Del. Fam., CK10-01009, Nicholas, J. (August 31, 2011)

2. Respondent has no criminal history;
3. DFS did not remove the children from Respondent's care;
4. DFS did not open the case for treatment but simply educated the Respondent on the law in Delaware regarding leaving young children alone;
5. The parents have a plan in place to work opposite shifts and care for the children while the other parent is working. On this occasion, Father had to work late and Mother had to take a third child to catch a bus for a school trip;
6. While the Respondent's risk assessment showed a moderate risk for neglect, it appears this was a one-time incident;

The primary purpose of the Child Protection Registry statute is to assure the safety of children in child care, health care, and public educational facilities.² After assessing the facts and circumstances surrounding this case, the Court found that Respondent poses a low risk of future harm to children in public schools, licensed health care facilities, and day cares. The court substantiated the Respondent for neglect at Level 1 of the Child Protection Registry. Level I reads as follows³:

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;

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 of Title 11 for that incident or conviction. The person is eligible for employment in a childcare facility or public school, as those terms are defined in § 8563 of Title 11.

² 16 Del. C. §921.

³ 16 Del. C. §923(b)(1).

WHEREFORE, [REDACTED] is hereby substantiated at Level 1 of the Child Protection Registry.

SO ORDERED, this 12th day of November, 2014.

COMMISSIONER JANELL S. OSTROSKI

cc: File, parties, counsel

(1) 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 II:

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

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 of Title 11. The person is ineligible for employment in a childcare facility, health care facility or public school, as those terms are defined in § 8563 of Title 11, while the person is on the Registry at Child Protection Level III. If the person is not substantiated for 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

SO ORDERED, this ____ day of _____, 2014.

COMMISSIONER JENNIFER L. MAYO

Cc: File, parties, counsel

EXHIBIT 3

**TITLE 9 SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DELAWARE ADMINISTRATIVE CODE**

300 Abuse and Background Checks

304 Child Protection Registry

1.0 Legal Authorization

The legal authority for these regulations is found in the 16 **Del.C.** Ch. 9.

2.0 Purpose

The purpose of these regulations is (1) to develop regulations that assess the risk of future harm to children from acts of abuse or neglect and to designate each such act of abuse or neglect to a Child Protection Level, pursuant to 16 **Del.C.** §923; and (2) to develop regulations for classifying unsubstantiated cases of abuse or neglect within the Division of Family Services' internal information system, pursuant to 16 **Del.C.** §924.

3.0 Date of Implementation

The proposed revisions to the regulations become effective no less than ten days after publication of the final order.

7 DE Reg. 787 (12/1/03)

4.0 Applicability

These regulations apply to acts of abuse or neglect that are alleged to have occurred on or after February 1, 2003; and to the designation to Child Protection Levels of each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry, and the Central Abuse Registry) between August 1, 1994 and February 1, 2003.

5.0 Definition

"Parent/caretaker" means those responsible for the care, custody, and control of the child as that term is defined in 16 **Del.C.** §902.

6.0 Assessment of the Risk of Future Harm and Designation of Child Protection Levels

6.1 During an investigation of an incident of abuse or neglect, the Division of Family Services shall be guided by 16 **Del.C.** §906(b).

6.2 A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at one of four designated Child Protection Levels related to the risk of future harm to children arising from the incident under investigation or for which a person has been substantiated.

7.0 Child Protection Level I

7.1 The following incidents of abuse or neglect shall be deemed to present a low risk of future harm to children and shall be designated to Child Protection Level I:

7.1.1 **"Educational Neglect"** means failure by a parent/caretaker to follow through with Court-ordered activity for the child after conviction in Court for "Failure to Send Child to School."

7.1.2 **"Mild to Moderate Emotional Abuse"** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as recurrent incidents of ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict undue physical or emotional harm.

7.1.3 **"Mild to Moderate Emotional Neglect"** means mild to moderate and/or isolated incidents of isolating/shunning, rejecting, or ignoring a child. This category includes inaction by a parent/caretaker or a failure to protect the child that results in little to no harm to the child's sense of well-being and safety. Child witnessing of misdemeanor domestic violence is also at this level.

TITLE 9 SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DELAWARE ADMINISTRATIVE CODE

- 7.1.4 **“Mild Physical Neglect”** means failure by a parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and although this failure decreases the child’s general well-being, it does not present a threat to the child’s safety. The child’s general well-being may also be decreased by inaction by a parent/caretaker or a failure to protect the child.
- 7.2 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 shall be deemed to present a low risk of future harm to children and shall be designated Child Protection Level I:
- 7.2.1 violation of compulsory school attendance requirements or truancy,
- 7.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 7.2.1 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

7 DE Reg. 787 (12/1/03)**8.0 Child Protection Level II**

- 8.1 The following incidents of abuse or neglect shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:
- 8.1.1 **“Bruises, cuts and lacerations not requiring intervention by a medical professional”** means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an injury which causes an open wound (cut/laceration) of a child over the age of six months. The injuries did not require medical treatment beyond medical examination and/or were not extensive (size, quantity, and location) on the child’s body.
- 8.1.2 **“Child Left Alone, Ages 12-17/Disabled Child with Minimal Care Needs”** means a parent/caretaker left the child alone or without a substitute caretaker for an extended period of time and appropriate plans for an emergency have not been made. This category includes a disabled child of any age who requires on-site supervision and protection, but minimal assistance with activities of daily living (e.g., eating, hygiene, toiletry).
- 8.1.3 **“Lack of Supervision, ages 7 – 11”** means the parent/caretaker of a child fails to provide immediate care to ensure the well-being and safety of the child, who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as substance abuse.
- 8.1.4 **“Lock In/Out, ages 12 – 17”** occurs when a parent/caretaker deliberately locks a child for a prolonged period of time in a confined area such as a bedroom, closet, and car or locks the child out of the home.
- 8.1.5 **“Moderate Physical Neglect”** means failure by a parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure decreases the child’s safety or general well-being. This category includes inaction by a parent/caretaker or a failure to protect the child that results in moderate harm to the child.
- 8.1.6 **“Other Physical Abuse”** means actions prohibited by **Delaware Code** such as striking with a closed fist and kicking or other actions such as biting and pulling hair by a parent/caretaker of a child that have not resulted in observable injury to the child.
- 8.1.7 **“Severe Emotional Abuse”** includes, but is not limited to, behaviors by a parent/caretaker toward a child such as chronically ridiculing, demeaning, making derogatory remarks, cursing, or threatening to inflict undue physical or emotional harm.
- 8.1.8 **“Severe Emotional Neglect”** includes behaviors by a parent/caretaker such as chronically isolating/shunning, rejecting, or ignoring a child. This category includes inaction by a parent/caretaker or a failure to protect the child that results in substantial harm to the child’s sense of well-being and safety. Child witnessing of felony domestic violence is also included at this level.

- 8.1.9 **“Verbal Innuendo”** means inappropriate sexualized statements to a child by a parent/ caretaker intended to entice or alarm.
- 8.2 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 shall be deemed to present a moderate risk of future harm to children and shall be designated Child Protection Level II:
- 8.2.1 interference with custody or
- 8.2.2 indecent exposure in the second degree.
- 8.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 8.2.1 or 8.2.2 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

7 DE Reg. 787 (12/1/03)

9.0 Child Protection Level III

- 9.1 The following incidents of abuse or neglect shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:
- 9.1.1 **“Abandonment, Ages 13 – 17”** means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/ caretaker and child.
- 9.1.2 **“Bizarre Treatment”** means behavior toward a child by a parent/caretaker that is extreme, or significantly disproportionate to the precipitating event initiated by the child, or would not be perceived as a logical consequence by a reasonable person such as use of or threatened use of a deadly weapon.
- 9.1.3 **“Bruises, cuts, lacerations requiring intervention by a medical professional”** means injury caused by a parent/caretaker to the body tissue of a child causing discoloration, but without breaking the skin (bruise) or an injury which causes open wound (cut/laceration). The injury required medical treatment beyond medical examination and/or was extensive (size, quantity, and locations) on the child’s body. All children under the age of six months are included at this level, regardless of the need for medical treatment beyond medical examination or the extensiveness of the injury. Current evidence of historical injuries (perhaps appearing on an x-ray) that would have required medical treatment at the time of the injuries, but which do not necessitate current treatment, also require a finding at this level.
- 9.1.4 **“Child, Ages 7 – 11, Left Alone/Disabled Child with Moderate Care Needs”** means a parent/caretaker left the child alone or without a substitute caretaker. This category includes a disabled child of any age who requires on-site supervision and protection, as well as routine assistance with activities of daily living (e.g., eating, hygiene, toiletry).
- 9.1.5 **“Dislocation/Sprain”** means a medically diagnosed displacement of a bone or injury to a ligament or muscle caused by a parent/caretaker.
- 9.1.6 **“Lack of Supervision, Age 6 and Younger”** means the parent/caretaker of a child fails to provide immediate care to ensure the well-being and safety of the child, who is unable to care for him/herself or respond appropriately to an emergency. These are incidents in which the parent/caretaker is physically present, but is not attending to the child due to behaviors such as substance abuse.
- 9.1.7 **“Lock In/Out, Ages 7 – 11”** occurs when a parent/caretaker deliberately locks a child for a prolonged period of time in a confined area such as the bedroom, closet, and car or locks the child out of the home.
- 9.1.8 **“Malnutrition”** means a medically diagnosed condition of poor nourishment of a child resulting from insufficient food or an improper diet caused by a parent/caretaker.
- 9.1.9 **“Non-Organic Failure to Thrive”** means a lack of appropriate physical and emotional development that threatens the well-being of the child. It can be permanently damaging to the child without being life threatening.

TITLE 9 SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DELAWARE ADMINISTRATIVE CODE

- 9.1.10 **“Other Medical Neglect”** means failure by a parent/caretaker to obtain proper or necessary medical care, but the medical care is not life-threatening. This finding does not include cases governed by 16 Del. C. §913.
- 9.1.11 **“Severe Physical Neglect”** means failure by the parent/caretaker of a child to provide for the basic needs (e.g., food, clothing, shelter) of the child, for no apparent financial reason, and this failure could result in bodily harm or death. This category includes inaction by a parent/caretaker or a failure to protect the child that results in severe harm to the child.
- 9.1.12 **“Verbal Innuendo”** means inappropriate sexualized statements to a child by a parent/caretaker intended to entice or alarm.
- 9.2 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 shall be deemed to present a high risk of future harm to children and shall be designated Child Protection Level III:
- 9.2.1 abandonment of a child,
- 9.2.2 assault in the third degree,
- 9.2.3 indecent exposure in the first degree,
- 9.2.4 menacing,
- 9.2.5 misdemeanor endangering the welfare of a child or an incompetent person.
- 9.2.6 offensive touching,
- 9.2.7 reckless endangering,
- 9.2.8 sexual harassment,
- 9.2.9 terroristic threatening,
- 9.2.10 unlawful administration of drugs or controlled substances, or
- 9.2.11 unlawful imprisonment,
- 9.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 9.2.1 - 9.2.11 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

7 DE Reg. 787 (12/1/03)**10.0 Child Protection Level IV**

- 10.1 The following incidents of abuse or neglect shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level IV:
- 10.1.1 **“Abandonment 0 – 12”** means the parent/caretaker fails to assume or refuses to assume responsibility or to provide basic care for a child on a daily basis. The basic care consists of food, clothing, shelter, medical care, reasonable and consistent financial support, and the maintenance of regular communication/contact between the parent/caretaker and child. This finding does not include the voluntary surrender of a baby pursuant to the Safe Arms for Baby Act.
- 10.1.2 **“Blunt Force Trauma”** means serious or life-threatening bruises, cuts, lacerations caused by a parent/caretaker that require medical treatment beyond medical examination.
- 10.1.3 **“Bone Fracture”** means a medically diagnosed break or crack in a bone or cartilage caused by a parent/caretaker.
- 10.1.4 **“Burn/Scald”** means a medically diagnosed injury intentionally or recklessly inflicted by the parent/caretaker to a child by contacting the child’s skin/hair to a flame, hot object, hot liquid, electrical source, or a chemical source.
- 10.1.5 **“Child, Aged 6 or Younger, Left Alone/Disabled Child with Significant Care Needs”** means a parent/caretaker left the child alone or without a substitute caretaker. This category includes a disabled child of any age who requires on-site supervision and protection and whose activities of daily living (e.g., feeding, hygiene, toiletry) must be performed by the parent/caretaker.
- 10.1.6 **“Death”** means a child’s loss of life due to abuse or neglect by parent/caretaker.

- 10.1.7 **“Driving Under the Influence (DUI)”** means incidents documented by law enforcement of a parent/caretaker driving a vehicle under the influence of alcohol or drugs with a child present.
- 10.1.8 **“Exploitation”** occurs when a parent/caretaker behaves unethically toward a child, using the parent’s/caretaker’s position of power to solicit sexual acts in an attempt to obtain some type of sexual gratification. This category includes situations in which a parent/caretaker prostitutes a child or knowingly permits a child to be “used” by another party, regardless of whether the parent/caretaker receives sexual gratification or other compensation (money, drugs) or no compensation at all. Additionally, this category includes situations in which a parent/caretaker teaches, encourages, or instructs a child to engage in illegal behaviors (e.g., shoplifting, burglary, drug dealing, driving without a license).
- 10.1.9 **“Head Trauma”** means a medically diagnosed serious or life-threatening injury inflicted by a parent/caretaker to a child’s face or head.
- 10.1.10 **“Internal Injury”** means a medically diagnosed serious injury within the abdominal or chest area inflicted by a parent/caretaker.
- 10.1.11 **“Life-Threatening Medical Neglect”** means a parent’s/caretaker’s failure to obtain medical care for a child has resulted in permanent functional impairment attributable to neglect. Medical diagnosis is necessary to support this finding. This category also includes failure by a parent/caretaker to use equipment such as an apnea monitor or respirator, to provide medications for health problems such as diabetes or asthma, or to practice therapies in the home for a child such as suctioning of the airway as directed by a physician for the purpose of preventing death and sustaining life. This finding does not include cases governed by 16 Del. C. §913.
- 10.1.12 **“Lock In/Out, Ages 0-6”** occurs when a parent/caretaker deliberately locks a child in a confined area such as the bedroom, closet, and car or locks the child out of the home.
- 10.1.13 **“Operating a Vessel or Boat Under the Influence (BUI)”** means incidents documented by law enforcement of a parent/caretaker driving a vessel or boat under the influence of alcohol or drugs with a child present.
- 10.1.14 **“Poisoning”** means a parent/caretaker intentionally or recklessly over-medicates or causes a child to ingest alcohol, drugs (legal/illegal) not prescribed for that child, or other toxic substances, resulting in significant and/or enduring functional impairment.
- 10.1.15 **“Pornography”** means production or possession of visual material (e.g., pictures, films, video) by a parent/caretaker depicting a child engaged in a sexual act or a simulation of such an act. The visual material involves sexualized content, as opposed to “naked baby” pictures.
- 10.1.16 **“Puncture/Stab”** means a parent/caretaker inflicts injury, piercing the child’s body with a pointed object, which requires medical treatment beyond medical examination.
- 10.1.17 **“Sexual Abuse”** means any sexual contact, sexual intercourse, or sexual penetration, as those terms are defined in the Delaware Criminal Code, between a parent/caretaker and a child.
- 10.1.18 **“Shaken Baby”** means there has been a inflicted head injury which includes shaken baby and an impact injury. It involves some degree of intracranial injury. The most common manifestation is subdural hematoma, but it may include other types of intracranial injuries. There is a risk of serious and permanent brain damage and there may be a significant risk of death. This injury typically involves infants.
- 10.1.19 **“Suffocation”** means a parent/caretaker deliberately interferes with child’s ability to breathe, by strangling/choking, smothering or otherwise depriving the child of oxygen.
- 10.2 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 shall be deemed to present the highest risk of future harm to children and shall be designated Child Protection Level 4:
- 10.2.1 assault in the first degree,
- 10.2.2 assault in the second degree,
- 10.2.3 bestiality,

TITLE 9 SERVICES FOR CHILDREN, YOUTH AND THEIR FAMILIES
DELAWARE ADMINISTRATIVE CODE

- 10.2.4 coercion,
 - 10.2.5 continuous sexual abuse of a child,
 - 10.2.6 criminally negligent homicide,
 - 10.2.7 dangerous crime against a child,
 - 10.2.8 dealing in children,
 - 10.2.9 felony endangering the welfare of a child or an incompetent person,
 - 10.2.10 incest,
 - 10.2.11 kidnapping,
 - 10.2.12 manslaughter,
 - 10.2.13 murder,
 - 10.2.14 murder by abuse or neglect,
 - 10.2.15 possession of child pornography,
 - 10.2.16 promoting suicide,
 - 10.2.17 rape,
 - 10.2.18 sexual exploitation of a child,
 - 10.2.19 sexual extortion,
 - 10.2.20 sexual solicitation of a child,
 - 10.2.21 unlawful dealing with a child,
 - 10.2.22 unlawfully dealing in child pornography,
 - 10.2.23 unlawful sexual contact,
 - 10.2.24 vehicular assault, or
 - 10.2.25 vehicular homicide,
- 10.3 An incident of abuse or neglect containing the elements of any crime or offense listed or described in 10.2.1 - 10.2.25 without regard to the institution or result of criminal or delinquency proceedings based on such incident.

7 DE Reg. 787 (12/1/03)

11.0 Unsubstantiated Investigations

- 11.1 If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing.
- 11.2 If the Division determines from its investigation that there is no credible evidence to substantiate the person for abuse or neglect for that incident, the internal information system will indicate that the finding is "Unsubstantiated – No Evidence."
- 11.3 If the Division determines from its investigation that substantiation proceedings for that incident of abuse or neglect are not warranted or justified, but that there are reasons for concern, the internal information system will indicate that the finding is "Unsubstantiated with Concern."

7 DE Reg. 340 (9/1/03)

7 DE Reg. 787 (12/1/03)

EXHIBIT 4

NOTICE OF SUBSTANTIATION – LEVEL II

DFS LETTERHEAD

Date of Notice
(Month, Day, Year)

Name
Street Address
City, DE and Zip Code

**(Notice sent via certified mail,
return receipt requested
and First Class U.S. Mail)**

FACTS Case Number:

**NOTICE OF INTENT TO SUBSTANTIATE FOR ABUSE OR NEGLECT AND ENTER
ON CHILD PROTECTION REGISTRY**

Dear _____ :

Following an investigation, the Delaware Division of Family Services (DFS) has determined that you were responsible for an incident of abuse or neglect regarding *[child's name]*. This incident occurred on or about *[month, day, year]*, at which time DFS has determined that you *[describe the incident of abuse or neglect]*. Your case will be *[transferred/closed; if closed explain why]*.

Pursuant to the provisions of Title 16, Chapter 9 of the Delaware Code, **PLEASE TAKE NOTICE:** As a result of this investigation, DFS intends to substantiate the above-described incident of abuse or neglect and enter you on the Child Protection Registry at Child Protection Level II. A person who is on the Registry at Level II will remain on the Registry for three years, and will be reported to employers required to check the Registry for as long as their name remains on the Registry, but the employer will also be told you are eligible for employment in a child care facility, health care facility, or public school while on the Registry at Child Protection Level II. Your name will automatically be removed from the Registry on *[month, day, year]* and will no longer be reported to employers, provided you do not have additional substantiations while on the Registry, but your name and other case information will remain in the DFS internal information system and will be reported in response to inquiries related to application for employment in the Department of Services for Children, Youth and Their Families, foster and adoptive parent decisions, child care licensing decisions, reporting pursuant to Section 309 of Title 31, or any other purpose set forth in Title 16, Section 906(b) of Chapter 9.

You have a right to request a hearing in Family Court before you are entered on the Child Protection Registry. A request for a hearing before you are entered on the Registry must be made in writing within thirty (30) days of the mailing date of this notice and sent to: Division of Family Services – Substantiation Hearing Coordinator, 1825 Faulkland Road, Wilmington, DE 19805. A form for you to return to DFS to request a

hearing is included with this Notice. Upon receipt of your timely written request for a hearing before being entered on the Registry, DFS will file a Petition for Substantiation in the Family Court. If you fail to make written request for a hearing within thirty (30) days, you will be entered on the Child Protection Registry at Level II for the incident described in this Notice.

Please understand the above substantiation proceeding is not conclusive as to any criminal or civil proceeding which may be pending or subsequently filed as a result of the same or similar alleged incident.

Sincerely,

Caseworker's Name
Job Title
DFS/Investigation Unit

Supervisor's Name
Investigation Supervisor

Pc: Case Record

**NOTICE OF SUBSTANTIATION – LEVEL III
CHARGE PENDING**

DFS LETTERHEAD

Date of Notice
(Month, Day, Year)

Name
Street Address
City, DE and Zip Code

**(Notice sent via certified mail,
return receipt requested
and First Class U.S. Mail)**

FACTS Case Number:

**NOTICE OF INTENT TO SUBSTANTIATE FOR ABUSE OR NEGLECT AND ENTER
ON CHILD PROTECTION REGISTRY**

Dear _____ :

Following an investigation, the Delaware Division of Family Services (DFS) has determined that you were responsible for an incident of abuse or neglect regarding *[child's name]*. This incident occurred on or about *[month, day, year]*, at which time DFS has determined that you *[describe the incident of abuse or neglect]*. Your case will be *[transferred/closed; if closed explain why]*.

Pursuant to the provisions of Title 16, Chapter 9 of the Delaware Code, **PLEASE TAKE NOTICE:** As a result of this investigation, DFS intends to substantiate the above-described incident of abuse or neglect and enter you on the Child Protection Registry at Child Protection Level III. A person who is on the Registry at Level III will remain on the Registry for seven years and will be reported to employers required to check the Registry for as long as their name remains on the Registry. The employer will also be told you are ineligible for employment in a child care facility, health care facility, or public school while on the Registry at Child Protection Level III. Your name will automatically be removed from the Registry on *[month, day, year]* and will no longer be reported to employers, provided you do not have additional substantiations while on the Registry, but your name and other case information will remain in the DFS internal information system and will be reported in response to inquiries related to application for employment in the Department of Services for Children, Youth and Their Families, foster and adoptive parent decisions, child care licensing decisions, reporting pursuant to Section 309 of Title 31, or any other purpose set forth in Title 16, Section 906(b) of Chapter 9.

You have a right to request a hearing in Family Court before you are entered on the Child Protection Registry. A request for a hearing before you are entered on the Registry must be made in writing within thirty (30) days of the mailing date of this notice and sent to: Division of Family Services – Substantiation Hearing Coordinator, 1825

Faulkland Road, Wilmington, DE 19805. A form for you to return to DFS to request a hearing is included with this Notice. Upon receipt of your timely written request for a hearing before being entered on the Registry, DFS will file a Petition for Substantiation in the Family Court.

If you are facing a criminal charge or charges as a result of this incident, civil Child Protection Registry proceedings will be stayed following receipt of your request for a hearing until the criminal case is concluded. A plea to any criminal charge relating to this incident may subject you to being placed on a higher level on the Child Protection Registry. You may need to consult with an attorney to have the possible consequences explained. If you fail to make written request for a hearing within thirty (30) days (even if a criminal case is pending), you will be entered on the Child Protection Registry at Level III for the incident described in this Notice.

Sincerely,

Caseworker's Name
Job Title
DFS/Investigation Unit

Supervisor's Name
Investigation Supervisor

Pc: Case Record

**HEARING REQUEST
FORM**

TO: DELAWARE DIVISION OF FAMILY SERVICES SUBSTANTIATION
HEARING COORDINATOR

FACTS Case Number: _____

Date of Notice of Intent to Substantiate: _____

I request a hearing in the Family Court on the Notice of Intent to
Substantiate for Abuse or Neglect and Enter on the Child Protection Registry
before I am entered on the Registry.

Print Name

Signature of Substantiated Person

Date

This request should be mailed to:

Substantiation Hearing Coordinator
Division of Family Services
1825 Faulkland Road
Wilmington, DE 19805

Pc: Case Record

NOTICE OF SUBSTANTIATION (CRIMINAL CONVICTION BASED ON SAME CHILD ABUSE AND NEGLECT INCIDENT)

DFS LETTERHEAD

Date of Notice
(Month, Day, Year)

Name
Street Address
City, DE and Zip Code

**(Notice sent via certified mail,
return receipt requested
and First Class U.S. Mail)**

FACTS Case Number:

NOTICE OF SUBSTANTIATION FOR ABUSE OR NEGLECT AND ENTRY ON CHILD PROTECTION REGISTRY

Dear :

Following an investigation, the Delaware Division of Family Services (DFS) has determined that you were responsible for an incident of abuse or neglect regarding *[child's name]*. This incident occurred on or about *[month, day, year]*, at which time DFS has determined that you *[describe the incident of abuse or neglect]*.

Because of your conviction for *[insert charge that was pled Charge] [insert 1 - by plea or after trial]* involving the same incident of abuse or neglect investigated by the Division and described above, it is not necessary for the Division to initiate Child Protection Registry proceedings. As provided in Title 11, §8563(b) of the Delaware Code, employers that are required to do criminal background and Child Protection Registry checks will be advised that as a result of this conviction, you are **[ADD THE FOLLOWING INFORMATION IF THE CRIME FITS IN LEVELS I or II: eligible for employment in a child care facility, health care facility, or public school; ADD THE FOLLOWING INFORMATION IF THE CRIME FITS IN LEVEL III: ineligible for employment in a child care facility, health care facility, or public school for seven years after the conviction date because the offense involved a child victim; ADD THE FOLLOWING INFORMATION IF THE CRIME FITS IN LEVEL IV: ineligible for employment in a child care facility, health care facility, or public school after the conviction date because the offense involved a child victim]**.

You have a right to file a Petition for Limited Purpose Hearing that shall be limited to determining whether the above conviction meets the requirements of Title 16 §922(1). Your petition must be filed in Family Court within 30 days of the date of this Notice of Substantiation and shall include a copy of this Notice. The petition shall explain the reasons why the conviction does not meet the requirements set forth in Title

16 §922(1). If a Petition for Limited Purpose Hearing is not filed within 30 days of the date of this Notice of Substantiation, you shall remain automatically placed on the registry pursuant to Title 16 §922(1).

Finally, your name and other case information will remain in the DFS internal information system and will be reported in response to inquiries related to application for employment in the Department of Services for Children, Youth and Their Families, foster and adoptive parent decisions, child care licensing decisions, reporting pursuant to Section 309 of Title 31, or any other purpose set forth in Title 16, Section 906(b) of Chapter 9.

Sincerely,

Caseworker's Name
Job Title
DFS/Investigation Unit

Supervisor's Name
Job Title
DFS/Investigation Unit

Pc: Case Record

NO FAMILY COURT HEARING REQUEST FORM

MINOR PERPETRATOR – CIVIL OUTCOME
SELECT APPROPRIATE LETTER RE: LEVEL OF SUBSTANTIATION
NOTICE OF SUBSTANTIATION

DFS LETTERHEAD

Date of Notice
(Month, Day, Year)

Name
Street Address
City, DE and Zip Code

(Notice sent via certified mail,
return receipt requested
and First Class U.S. Mail)

FACTS Case Number:

**NOTICE OF INTENT TO SUBSTANTIATE FOR ABUSE OR NEGLECT AND
ENTER ON CHILD PROTECTION REGISTRY**

Dear Mr. and Mrs. Name of Parents/Custodians and Name of Alleged Child
Perpetrator (Do not address the child as Master/Miss):

Following an investigation, the Delaware Division of Family Services (DFS) has determined that you, *[insert child's name]*, were responsible for an incident of abuse or neglect regarding *[child's name]*. This incident occurred on or about *[month, day, year]*, at which time DFS has determined that you *[describe the incident of abuse or neglect]*. Your case will be *[transferred/closed; if closed explain why]*.

Pursuant to the provisions of Title 16, Chapter 9 of the Delaware Code, **PLEASE TAKE NOTICE:** As a result of this investigation, DFS intends to substantiate the above-described incident of abuse or neglect and enter you on the Child Protection Registry at Child Protection Level **(The second paragraph is the same as the selected Level letter).**

Since you are a minor (under age 18), the Division of Family Services has determined it is in your best interest to receive a Substantiation Hearing in Family Court. The Division will file a Petition to Substantiate in Family Court and the Court will conduct a Substantiation Hearing to decide if there is enough evidence to substantiate you and enter you on the Child Protection Registry. You will be notified to attend the hearing.

Please understand the above substantiation proceeding is not conclusive as to any criminal or civil proceeding which may be pending or subsequently filed as a result of the same or similar alleged incident.

A minor who is entered on the Child Protection Registry on any level as a result of a civil or criminal proceeding may file a Petition for Removal from Child Protection Registry for One Entered as a Juvenile any time after his/her 18th birthday. The petition must be filed in Family Court in the county where the civil substantiation or criminal proceeding occurred.

Sincerely,

Caseworker's Name
Job Title
DFS/Investigation Unit

Supervisor's Name
Investigation Supervisor

MINOR PERPETRATOR – CHARGE PENDING
NOTICE OF SUBSTANTIATION
SELECT APPROPRIATE LETTER RE: LEVEL OF SUBSTANTIATION

DFS LETTERHEAD

Date of Notice
(Month, Day, Year)

Name
Street Address
City, DE and Zip Code

**(Notice sent via certified mail,
return receipt requested
and First Class U.S. Mail)**

FACTS Case Number:

**NOTICE OF INTENT TO SUBSTANTIATE FOR ABUSE OR NEGLECT AND ENTER
ON CHILD PROTECTION REGISTRY**

Dear Mr. and Mrs. Name of Parents/Custodians and Name of Alleged Child Perpetrator
(Do not address the child as Master/Miss):

Following an investigation, the Delaware Division of Family Services (DFS) has determined that you, *[insert child's name]*, were responsible for an incident of abuse or neglect regarding *[child's name]*. This incident occurred on or about *[month, day, year]*, at which time DFS has determined that you *[describe the incident of abuse or neglect]*. Your case will be *[transferred/closed; if closed explain why]*.

Pursuant to the provisions of Title 16, Chapter 9 of the Delaware Code, **PLEASE TAKE NOTICE:** As a result of this investigation, DFS intends to substantiate the above-described incident of abuse or neglect and enter you on the Child Protection Registry at Child Protection Level **(The second paragraph is the same as the selected Level letter).**

Since you are a minor (under age 18), the Division of Family Services has determined it is in your best interest to receive a Substantiation Hearing in Family Court. The Division will file a Petition to Substantiate in Family Court and the Court will conduct a Substantiation Hearing to decide if there is enough evidence to substantiate you and enter you on the Child Protection Registry. You will be notified to attend the hearing.

If you are facing a criminal charge or charges as a result of this incident, civil Child Protection Registry proceedings will be stayed (halted) until the criminal case is concluded. A plea to any criminal charge relating to this incident may subject you to being placed on a higher level on the Child Protection Registry. You may need to consult with an attorney to have the possible consequences explained.

A minor who is entered on the Child Protection Registry on any level as a result of a civil or criminal proceeding may file a Petition for Removal from Child Protection Registry for One Entered as a Juvenile any time after his/her 18th birthday. The petition must be filed in Family Court in the county where the civil substantiation or criminal proceeding occurred.

Sincerely,

Caseworker's Name
Job Title
DFS/Investigation Unit

Supervisor's Name
Investigation Supervisor

MINOR PERPETRATOR – CRIMINAL CONVICTION

NOTICE OF SUBSTANTIATION (CRIMINAL CONVICTION BASED ON SAME CHILD
ABUSE AND NEGLECT INCIDENT)

DFS LETTERHEAD

Date of Notice
(Month, Day, Year)

Name
Street Address
City, DE and Zip Code

(Notice sent via certified mail,
return receipt requested
and First Class U.S. Mail)

FACTS Case Number:

NOTICE OF SUBSTANTIATION FOR ABUSE OR NEGLECT AND ENTRY ON CHILD
PROTECTION REGISTRY

Dear Mr. and Mrs. Name of Parents/Custodians and Name of Alleged Child Perpetrator
(Do not address the child as Master/Miss):

Following an investigation, the Delaware Division of Family Services (DFS) has determined that you were responsible for an incident of abuse or neglect regarding *[child's name]*. This incident occurred on or about *[month, day, year]*, at which time DFS has determined that you *[describe the incident of abuse or neglect]*.

Because of your conviction for *[insert charge that was pled Charge] [insert 1 - by plea or after trial]* involving the same incident of abuse or neglect investigated by the Division and described above, it is not necessary for the Division to initiate Child Protection Registry proceedings. As provided in Title 11, §8563(b) of the Delaware Code, employers that are required to do criminal background and Child Protection Registry checks will be advised that as a result of this conviction, you are **[ADD THE FOLLOWING INFORMATION IF THE CRIME FITS IN LEVELS I or II: eligible for employment in a child care facility, health care facility, or public school; ADD THE FOLLOWING INFORMATION IF THE CRIME FITS IN LEVEL III: ineligible for employment in a child care facility, health care facility, or public school for seven years after the conviction date because the offense involved a child victim; ADD THE FOLLOWING INFORMATION IF THE CRIME FITS IN LEVEL IV: ineligible for employment in a child care facility, health care facility, or public school after the conviction date because the offense involved a child victim]**. In addition, your name and other case information will remain in the DFS internal information system and will be reported in response to inquiries related to application for employment in the Department of Services for Children, Youth and Their Families, foster and adoptive

parent decisions, child care licensing decisions, reporting pursuant to Section 309 of Title 31, or any other purpose set forth in Title 16, Section 906(b) of Chapter 9.

A minor who is entered on the Child Protection Registry on any level as a result of a civil or criminal proceeding may file a Petition for Removal from Child Protection Registry for One Entered as a Juvenile any time after his/her 18th birthday. The petition must be filed in Family Court in the county where the civil substantiation or criminal proceeding occurred.

Sincerely,

Caseworker's Name
Job Title
DFS/Investigation Unit

Supervisor's Name
Job Title
DFS/Investigation Unit

Pc: Case Record

NO FAMILY COURT HEARING REQUEST FORM

EXHIBIT 5

Child Protection Accountability Commission
 Child Protection Registry (CPR) Levels and Criteria 16 Del. C., §§ 920-929

Level I	
1. Risk of Harm: person presents a low risk of future harm to children.	
2. Reported to Employers: Such a person can work in child care, health care, or public education setting. Person at this level is not reported on the CPR and is not reported to employers who do CPR checks.	
3. Discretion of employer to hire: Yes	
4. Length of time on registry: N/A	
Level I Offense	Citation
Tuancy/Violation of Compulsory School Attendance	14 Del. C. § 2721 (7)

Level II	
1. Risk of Harm: person who presents a moderate risk of future harm to children.	
2. Reported to Employers: Such a person can work in child care, health care, or public education setting.	
3. Discretion of employer to hire: Yes	
4. Length of time on registry: Person at this level is reported on the CPR for 3 years.	
5. Automatic removal after 3 years unless substantiated for another incident of abuse or neglect.	
Level II Offense	Citation
Interference with Custody	11 Del. C. § 785

Level III	
1. Risk of Harm: indicates a person who presents a high risk of future harm to children.	
2. Reported to Employers: Such a person is not eligible to work in child care, health care, or public education setting.	
3. Discretion of employer to hire: NO	
4. Length of time on registry: Person at this level is reported on the CPR for 7 years.	
5. Automatic removal after 7 years unless substantiated for another incident of abuse or neglect.	
Level III Offenses	Citation
Abandonment of a child	11 Del. C. § 1101
Assault in the third degree	11 Del. C. § 611
Child Abuse in the third degree	11 Del. C. § 1103(a)
Indecent exposure in the first or second degree	11 Del. C. § 764
Menacing	11 Del. C. § 602
Misdemeanor endangering the welfare of a child	11 Del. C. § 1102
Offensive touching	11 Del. C. § 601
Reckless endangering in the second degree	11 Del. C. § 603(a)
Sexual harassment	11 Del. C. § 763
Terroristic threatening	11 Del. C. § 621
Unlawful Administration of drugs or controlled substances	11 Del. C. § 625
Unlawful imprisonment in the second degree	11 Del. C. § 781

Level IV

Child Protection Accountability Commission
 Child Protection Registry (CPR) Levels and Criteria 16 Del. C., §§ 920-929

1. Risk of Harm: person who presents the highest risk of future harm to children.	
2. Reported to Employers: Such a person is not eligible to work in child care, health care, or public education setting.	
3. Discretion of employer to hire: NO	
4. Length of time on registry: Person at this level is reported on the CPR for their lifetime.	
5. If placed at Level IV as a minor , there is opportunity for removal – 929 (c)	
Level IV Offenses	Citation
Assault in the first and second degree	11 Del. C. §§ 612 - 613
Bestiality	11 Del. C. § 775
Child abuse in the first and second degree	11 Del. C. §§ 1103 – 1103B
Coercion	11 Del. C. § 787(a)(2)
Continuous sexual abuse of a child	11 Del. C. § 776
Criminally negligent homicide	11 Del. C. § 631
Dangerous crime against a child	11 Del. C. § 777
Dealing in children	11 Del. C. § 1100A
Felony endangering the welfare of a child	11 Del. C. § 1102
Felony sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree or second degree	11 Del. C. §§ 778 – 778A
Incest	11 Del. C. § 766
Kidnapping	11 Del. C. §§ 783 – 783A
Manslaughter	11 Del. C. § 631
Murder	11 Del. C. §§ 635 - 636
Murder by abuse or neglect	11 Del. C. §§ 633 - 634
Felony sex offender unlawful sexual contact against a child	11 Del. C. § 777A
Possession of child pornography	11 Del. C. § 1111
Promoting suicide	11 Del. C. § 645
Rape	11 Del. C. §§ 770 – 773
Reckless endangering in the first degree	11 Del. C. § 604
Sexual exploitation of a child	11 Del. C. § 1108
Sexual extortion	11 Del. C. § 774
Sexual solicitation of a child	11 Del. C. § 1112A
Trafficking of persons and involuntary servitude	11 Del. C. § 787
Unlawful dealing with a Child	11 Del. C. § 1106
Unlawful imprisonment in the first degree	11 Del. C. § 782

EXHIBIT 6

The Family Court of the State of Delaware
In and For: X New Castle Kent Sussex County

DIVISION OF FAMILY SERVICES,)

Petitioner,)
v.)

File No. _____

Petition No. _____

minor by and through his parent and natural guardian, _____,)

Respondent.)

In the Interest of: _____ (DOB: _____)

PRAECIPE IN A PETITION FOR SUBSTANTIATION ACTION

TO: Clerk of Court

Please issue a summons and copies of the petition upon the respondent(s) by personal service at the following address:

Respondent Name

Home Address

Parent and natural guardian

Hours likely to be served: Unknown

In the event that personal service on one or more of the respondents cannot be affected in Delaware, and the Court finds that personal service is unlikely, please send a summons by U.S. first class mail and U.S. registered or certified mail to the home address listed above.

Date: _____

Attorney for Petitioner

The Family Court of the State of Delaware
In and For: X New Castle Kent Sussex County

DIVISION OF FAMILY SERVICES,)

Petitioner,)
v.)

File No. _____

Petition No. _____

_____ (DOB: _____), a)
minor by and through his parent and natural)
guardian, _____)

Respondent.)

In the Interest of: _____ (DOB _____)

PETITION FOR SUBSTANTIATION

COMES NOW, the Division of Family Services (hereinafter "DFS") by and through the undersigned Deputy Attorney General, and herein requests this Honorable Court to substantiate

_____ for abuse or neglect and asserts the following in support thereof:

1. Respondent is a minor, having been born on _____ is Respondent's mother, natural guardian, and primary caregiver of the minor, and a non-party who has no conflicting interest in these proceedings.

2. On or about _____ and _____, at _____ Delaware, DFS determined that Respondent sexually abused the above-named child.

3. Respondent's abuse or neglect presents a high risk of future harm to children, and Respondent should be substantiated for abuse or neglect on the Child Protection Registry at Child Protection Level IV.

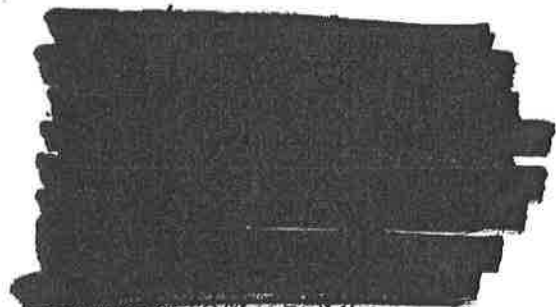
4. On _____, the Division of Family Services sent Respondent a Notice of Intent to Substantiate letter for the above incident at the designated Child Protection Level, see

Exhibit "A". DFS determined that a Hearing Request Form was not required since Respondent is a minor and it is in his best interest to receive a hearing.

WHEREFORE, the Division of Family Services prays as follows:

- a. That Respondent be served by and through his parent/natural guardian;
- b. That Respondent be substantiated for abuse or neglect;
- d. That Respondent be placed on the Child Protection Registry at Child Protection Level IV;
- c. For such other and further relief as may be proper under the circumstances.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE



Carver State Office Building
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8400
Attorney for the Division of Family Services

Dated: _____



The Family Court of the State of Delaware
In and For: X New Castle Kent Sussex County

DIVISION OF FAMILY SERVICES,)

Petitioner,)

v.)

██████████ (DOB: ██████████), a)
minor, by and through his parents and natural)
guardians, ██████████ and)
██████████,)

Respondent.)

File No. _____

Petition No. _____

In the Interest of: ██████████ (DOB: ██████████)

PRAECIPE IN A PETITION FOR SUBSTANTIATION ACTION

TO: Clerk of Court

Please issue a summons and copies of the petition upon the respondent(s) by personal service at the following address:

Respondent Name

██████████ c/o ██████████ and
██████████, parents and natural guardians

Home Address

██████████

Hours likely to be served: Unknown

In the event that personal service on one or more of the respondents cannot be affected in Delaware, and the Court finds that personal service is unlikely, please send a summons by U.S. first class mail and U.S. registered or certified mail to the home address listed above.

Date: _____

Attorney for Petitioner

The Family Court of the State of Delaware
In and For: X New Castle Kent Sussex County

DIVISION OF FAMILY SERVICES,)
)
Petitioner,)
v.)
)
[REDACTED] (DOB: [REDACTED]), a)
minor, by and through his parents and natural)
guardians, [REDACTED] and)
[REDACTED],)
)
Respondent.)

File No. _____

Petition No. _____

In the Interest of: [REDACTED] (DOB: [REDACTED])

PETITION FOR SUBSTANTIATION

COMES NOW, the Division of Family Services (hereinafter "DFS") by and through the undersigned Deputy, and herein requests this Honorable Court to substantiate [REDACTED] for abuse or neglect and asserts the following in support thereof:

1. Respondent is a minor, having been born on [REDACTED], [REDACTED] and [REDACTED] are Respondent's parents and natural guardians, and a non-party who appear to have a conflicting interest in these proceedings as [REDACTED] and [REDACTED] are also the parents of the child named above in whose interest this action is brought.

2. On or about [REDACTED] through [REDACTED], at [REDACTED], Delaware, DFS determined that Respondent sexually abused the above-named child.

3. Respondent's abuse or neglect presents a high risk of future harm to children, and Respondent should be substantiated for abuse or neglect on the Child Protection Registry at Child Protection Level IV.

4. On [REDACTED], the Division of Family Services sent Respondent a Notice of Intent to Substantiate letter for the above incident at the designated Child Protection Level, see Exhibit "A". DFS determined that a Hearing Request Form was not required since Respondent is a minor and it is in his best interest to receive a hearing.

5. A criminal investigation into the same incident alleged in this Petition is pending.

WHEREFORE, the Division of Family Services prays as follows:

- a. That Respondent be served by and through his parents / natural guardians;
- b. That the Court appoint counsel to represent Respondent in these proceedings;
- b. That Respondent be substantiated for sexual abuse;
- c. That Respondent be placed on the Child Protection Registry at Child Protection Level IV;
- d. For such other and further relief as may be proper under the circumstances.

STATE OF DELAWARE
DEPARTMENT OF JUSTICE

[REDACTED]

Carvel State Office Building
820 N. French Street, 5th Floor
Wilmington, DE 19801
(302) 577-8400
Attorney for the Division of Family Services

Date [REDACTED]

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DIVISION OF FAMILY SERVICES,

File No. [REDACTED]
Petition No. [REDACTED]

Petitioner,

v.

[REDACTED]

Respondent.

RESPONSE TO PETITION FOR SUBSTANTIATION

COMES NOW the Respondent, [REDACTED] by and through her the undersigned,

[REDACTED] Esquire, and does hereby respond to the allegations of the Petition for

Substantiation as follows:

1. Admitted.
2. Denied.
3. Denied.
4. Admitted.
5. Admitted.

WHEREFORE, the Respondent respectfully requests that the Petition for
Substantiation be dismissed..

[REDACTED SIGNATURE]

Attorney for Defendant

Date:

EXHIBIT 7

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DIVISION OF FAMILY SERVICES,

Petitioner,

v.

[REDACTED] (DOB: [REDACTED])
c/o [REDACTED]

Respondent.

)
)
) File No. [REDACTED]
) Case No. [REDACTED]
)
)
)
)
)
)

ANSWER TO PETITION FOR SUBSTANTIATION

COMES NOW the Respondent, [REDACTED] ("[REDACTED]"), by and through his attorneys, [REDACTED], and answers the above-captioned amended action stating as follows:

1. Denied.
2. Denied.
3. Admitted. By way of further response, [REDACTED] contested the Notice of Intent to Substantiate and served a request for a hearing on [REDACTED]

WHEREFORE, Respondent respectfully requests that the Court dismiss the Petition for Substantiation.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

DATED: [REDACTED]

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

DIVISION OF FAMILY SERVICES,)
)
Petitioner,)
)
v.)
)
[REDACTED] (DOJ))
c/o [REDACTED])
Respondent.)

File No.:
Petition No.:

AFFIDAVIT OF RESPONDENT

STATE OF DELAWARE)
) SS:
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this [REDACTED] day of [REDACTED] personally appeared before me, the subscriber, a Notary Public for the State and County aforesaid, [REDACTED], Respondent in the foregoing action, known to me personally to be such, and who being by me first duly sworn according to law did depose and say that he is the Respondent named in the foregoing Answer, and that the facts are true and correct as stated therein.

[REDACTED]
[REDACTED]

SWORN TO AND SUBSCRIBED before me the day and year aforesaid as witness my Hand and Seal of Office.

[REDACTED]
Notary Public
[REDACTED]

IN THE FAMILY COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

DIVISION OF FAMILY SERVICES,

Petitioner,

v.

[REDACTED] (DOB: [REDACTED])
c/o [REDACTED]

Respondent.

)
)
) File No.: [REDACTED]
) Case No.: [REDACTED]
)
)
)
)
)

CERTIFICATE OF SERVICE

I, [REDACTED] ESQUIRE, hereby certify that on the [REDACTED] day of [REDACTED]

[REDACTED] a true and correct copy of the Answer was sent to the following opposing counsel by first class mail:

[REDACTED]
Department of Justice
Carvel State Office Building
820 N. French Street, 6th Floor
Wilmington, DE 19801

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

IN THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE

DIVISION OF FAMILY SERVICES,

Petitioner,

File No.:

v.

Case No.:

Respondent.

ANSWER TO PETITION FOR SUBSTANTIATION

Respondent [REDACTED] ("Respondent") responds to the Petition for Substantiation filed by the Division of Family Services (hereinafter "DFS") as follows:

1. Admitted.
2. Denied as to all allegations of neglect and/or abuse. As to the remainder of the averment, Respondent is without knowledge or information sufficient to form a belief as to the truth of the averment regarding the finding of DFS.
3. Denied as to all allegations of neglect and/or abuse. As to the remainder of the averment, Respondent is without knowledge or information sufficient to form a belief as to the truth of the averment regarding the finding of DFS.
4. Denied.
5. Admitted but only with respect to Respondent completing and sending a Hearing Request form to DFS and, by way of further answer, Respondent caused an additional written request, attached hereto as Exhibit A, to be sent on [REDACTED] to DFS for a hearing on the *Notice of Intent to Substantiate for Abuse or Neglect and Enter on Child Protection Registry*, dated [REDACTED] before being placed on the Child Protection Registry. As to the

EXHIBIT 8

EVIDENCE: CHILD ABUSE AND NEGLECT PROCEEDINGS

Type of Evidence- Issue	Rule (Delaware Rules of Evidence), Statute, and/or Case Law	Questions to Witness (examples)
Examination of Witness- Witness “forgets”	612- <u>Writing or Object used to Refresh Memory</u> . Witness may use writing or object to refresh their memory; attorneys may examine writing or object upon request.	Do you need to review your notes in order to refresh your memory? After looking at your notes do you now recall what happened that day?
Examination of Witness- Witness contradicts prior statement	613- <u>Prior Statements of Witnesses</u> . Witness may be examined concerning a prior statement that contradicts their current testimony. Evidence need not be shown/ disclosed to witness, but must be shown to opposing counsel upon request.	Do you remember stating to Dr. Jones that...? Do you remember writing to Ms. Smith that...?
Examination of Witness- Statement by a party	801(d)(2)- <u>Admission by a party opponent</u> is <i>not</i> hearsay if statement offered against a party and is his/her own statement.	What did Ms. Smith (party) say to you about that?
Examination of Witness- Expert	702- <u>Expert qualified by knowledge, skill, experience, training or education</u> may testify in form of opinion or otherwise if the expert’s testimony is based on sufficient facts or data; reliable principles and methods; and expert has reliably applied principles/methods to facts of case.	Where are you currently employed? Describe your practice. What is your education? Are you licensed to practice...? Are you a member of a professional organization? Do you train/lecture in your field?
Examination of Witness- Bases of opinion by expert	703- <u>Bases of opinion by experts</u> may be made if the opinion is type that are reasonably relied upon by experts in a particular field in forming opinions or inferences upon the subject.	Dr. Smith please assume the following fact pattern... Assuming those facts to be true, do you have an opinion that...?
Admission of Evidence- Records, documents or photo	901- <u>Authentication</u> - Satisfied by sufficient evidence to support a finding that the matter in question is what its proponent claims it to be.	Do you recognize this document? What is it? How are you familiar with it?
Admission of Evidence- Social Media	901- <u>Authentication</u> and <i>Parker v. Delaware (2013)</i> - Judge may admit social media post when there is sufficient evidence to support a finding that the proffered evidence is what its proponent claims it to be.	Do you have a Facebook page? What is your user name? Is this printout from your Facebook account?
Admission of Evidence- Business Records	803(6)- <u>Records of Regularly Conducted Activity</u> – A report, record, or data compilation made in the regular course of business, made at or near the time of event, and reporting party had personal knowledge of entry and record is deemed authentic either through testimony or certification of record.	What is this document? Are you familiar with normal record-keeping of DFS? Who made this record? Did that person have knowledge of acts/events referred to in record? Was the record made at or near the time of those events referred to in record? Is it regular practice of DFS to make and keep such records? Was this record kept in the regular course of business of DFS?
Admission of Evidence- Child’s out of court statements	13 <u>Del.C. § 724- An out of court statement made by a child</u> may be admitted into evidence if reasonable notice is given to all parties <i>and</i> (1)child is available to be interviewed or (2) the statement is shown to possess particularized guarantees of trustworthiness and the child is unavailable to be interviewed.	Did you interview Michael after he was removed from his father’s custody? What did Michael tell you about what his father did to him?

EXHIBIT 9

OFFICE OF THE CHILD ADVOCATE (OCA)

POLICY AND PROCEDURE CHILD WITNESS AND CHILD OUT OF COURT STATEMENTS

PURPOSE:

This is a comprehensive tool designed to aid the AGAL or CASA through getting child witness and child out of court statements admitted into evidence.

POLICY:

Delaware Code defines the ways that the Family Court can interview children as well as the acceptable ways to get child out of court statements admitted into evidence.

LEGISLATIVE AUTHORITY:

13 Del. C. § 724

CHILD WITNESS

Family Court and Child Interaction - Interviews

The Family Court may interview the child in the courtroom, but separately from other parties.

1. The interview will be recorded.
2. Family Court has the discretion to allow individuals to be present during the interview.
 - a. Family Court will determine if the presence of any individuals will be harmful to the child.
 - b. Family Court will determine the necessity of the presence of counsel.
3. Upon request, parties may submit questions for the Judge to ask the child.

CHILD OUT OF FAMILY COURT STATEMENTS

The Family Court may allow child out of court statements into evidence. This statute provides ways that child out of court statements may be admitted into evidence. The Family Court may consider but is not limited to the factors listed in the statute. In order to have the statements admitted into evidence certain factors need to be met:

1. REASONABLE NOTICE

Reasonable notice must be given and one of the options from child availability below. In order to follow best practice for giving notice, the attorney should present the reasonable notice in letter form to all parties with specifics regarding the statements.

AND

2. CHILD AVAILABILITY

1. Child is available to be interviewed (see *Interviews* section above)

OR

2. Child is unavailable. Reasons for unavailability may include:
 - a. Death
 - b. Absent from the jurisdiction
 - c. Total failure of memory
 - d. Refusal to be interviewed by Family Court
 - e. Physical or mental disability
 - f. Child disclosed information in a privileged conversation
 - g. The child is incompetent to be interviewed
 - i. Child is unable to communicate because of fear or similar reason
 - ii. Child would suffer emotional trauma

GUARANTEE OF TRUSTWORTHINESS PURSUANT TO 13 DEL. C. § 724(e)

If the child is unavailable, his or her statement must also be proven to be trustworthy. The following guidelines are outlined by the statute and offered to the Family Court to aid in the determination of trustworthiness. The Family Court may consider but is not limited to the following factors.

1. Child's knowledge of the event;
2. Age and maturity of the child;
3. Court's confidence that the statement was made including the credibility of the person who is testifying about the statement;
4. Any obvious motive that the child may have to falsify or distort the event including:
 - a. Bias;
 - b. Corruption;
 - c. Coercion;
5. Timing of the statement;
6. More than one person heard the statement;
7. The child was suffering pain or distress when making the statement;
8. The child's young age makes the likelihood of the graphic, detailed account unlikely that the child is fabricating the statement;
9. The statement has the quality of truth;
10. The statement has consistency, coherence and uses language that is appropriate for the child's age;
11. The statement is spontaneous or directly responsive to questions;
12. The statement is suggestive because of improperly guided questions.

EXHIBIT 10

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

REQUEST FOR REVIEW OF A COMMISSIONER'S ORDER

Petitioner

v. Respondent

Name	Name	File Number
Street Address	Street Address	
Apt. or P.O. Box Number	Apt. or P.O. Box Number	Petition Number
City State Zip Code	City State Zip Code	
Attorney Name and Phone Number	Attorney Name and Phone Number	

(If party seeking the Review of a Commissioner's Order is the Original Petitioner in a **PROTECTION FROM ABUSE** action, please **DO NOT DISCLOSE YOUR ADDRESS** above, as a copy of this request must be mailed to the Respondent.)

1. I am the original Petitioner Respondent in this action.

2. Nature of Proceedings:

3. _____, Petitioner herein, appeals the Order Entered by
_____ Commissioner and dated _____

4. Objections to the Commissioner's Order (*Please set forth specific objections to the Commissioner's Order, and describe in detail the basis for each objection*):

5. I hereby request that a transcript of the proceedings before the Commissioner be prepared

- I certify that I will pay all costs associated with the preparation of the transcript.
- I certify that I have completed and attached an Affidavit to Proceed In Forma Pauperis and Motion to Waive Transcript Fees

Date

Petitioner/Petitioner's Attorney

VERIFICATION

STATE OF DELAWARE)
) ss.:
COUNTY OF _____)

_____, being duly sworn, says:

I _____, Affirm that a true and correct copy of this Request for Review of a Commissioner's Order was placed in the U.S. Mail on the _____ day of _____, and sent to the last known address of the other party or attorney, being _____, first class postage prepaid.

Subscribed and sworn before me on this date,

Movant/Attorney/Court Staff

Date

Notary Public

NOTE: IN PROTECTION FROM ABUSE CASES ONLY, THE AFFIDAVIT OF MAILING ONLY APPLIES WHEN THE REQUEST FOR REVIEW OF COMMISSIONER'S ORDER IS BEING FILED BY THE ORIGINAL PETITIONER. IF THE REQUEST FOR REVIEW OF COMMISSIONER'S ORDER IS BEING FILED BY THE ORIGINAL RESPONDENT IN THIS ACTION, A TRUE AND CORRECT COPY OF THE MOTION WILL BE SENT TO THE ORIGINAL PETITIONER BY COURT STAFF.

into a concrete bridge abutment. Bunting testified that he believed he saw a baby thrown from the back seat to the front seat of the vehicle. He then saw what appeared to be [REDACTED] placing the baby in the back seat. When Bunting approached the vehicle, he heard an infant crying. He saw trash bags strewn around the back seat. Bunting found [REDACTED] underneath the trash bags, lying across her car seat instead of inside the seat. Bunting testified he uncovered [REDACTED], picked her up, and placed her in the front, where she remained with [REDACTED] until the ambulance arrived. Bunting did not observe any injuries on [REDACTED]. When [REDACTED] tried to flee the scene, Bunting called 911, and the Call Board notified the police and dispatched an ambulance to the scene. Bunting told [REDACTED] and [REDACTED] that he was not leaving until [REDACTED] received medical attention.

Peter DeRepentigny ("DeRepentigny"), an investigative worker for the Division, testified that on September 23, 2009, the Division received a hotline call regarding the accident involving [REDACTED], [REDACTED], and [REDACTED]. Based on the allegations of possible abuse and neglect suffered by [REDACTED], he conducted an investigation regarding the care [REDACTED] was receiving at the time of the accident. As a result of his investigation, it was determined that a petition for substantiation of neglect should be filed by the Division against mother.

[REDACTED] testified at the trial that [REDACTED] was sitting in her [REDACTED] lap in the front seat with a seatbelt strapped over the two of them when the accident occurred. [REDACTED] further testified that it was [REDACTED] who placed [REDACTED] in the car seat in the back of the vehicle immediately after the car hit the abutment. She denied placing trash bags over [REDACTED]. [REDACTED] admitted to using muscle relaxers the night before the accident, which she and [REDACTED] had purchased on the street.

█████, █████'s father, testified he did not go to work the night before the accident. He denied taking any muscle relaxers that night. █████ testified he fell asleep at the wheel of the car because he was tired. He claimed he and █████ never placed any trash bags over █████.

REVIEW OF COMMISSIONER'S ORDER

The *Delaware Code* confers upon this Court appellate jurisdiction over a Commissioner's Order. Specifically, the Code provides that, "[a]ny party, except a party in default of appearance before a Commissioner, may appeal a final order of a Commissioner to a judge of the Court."¹ From an appeal of a Commissioner's Order, this Court must make a *de novo* determination based on the record below.²

OBJECTIONS TO ORDER

The Division argues the Commissioner erred as a matter of law in denying the Division's Petition for Substantiation, and requests that the Commissioner's Order of January 20, 2011 be reversed and Johnson be substantiated for child neglect and placed on the Child Abuse Registry at Child Protection Level III.

REVIEW OF THE PROCEEDINGS BELOW

Title 16, Section 902(13) of the *Delaware Code*, containing general definitions applicable to Chapter 9, Abuse of Children, states that the term "neglect" or "neglected child" is as defined in Title 10, Section 901, which provides:

- (18) "Neglect" or "neglected child" means that a person:
- a. Is responsible for the care, custody, and/or control of the child; and
 - b. Has the ability and financial means to provide for the care of the child; and
 1. Fails to provide necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being; or
 2. Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's

¹ Del. Code Ann. tit. 10, § 915(d)(1) (1999).

² Del. Fam. Ct. Civ. R. 53.1(e).

ability to receive care necessary for that child's safety and general well-being, or

3. Fails to provide necessary supervision appropriate for a child when the child is unable to care for that child's own basic needs or safety, after considering such factors as the child's age, mental ability, physical condition, the length of the caretaker's absence, and the context of the child's environment.

In making a finding of neglect under this section, consideration may be given to dependency, neglect, or abuse history of any party.³

Further, Title 21, Section 4803 of the *Delaware Code*, Child Restraint in Motor Vehicles, provides in pertinent part:

(a) Every person shall be responsible, when transporting a child through the age of 7 and up to and including the weight of 65 pounds in a motor vehicle operated on the roadways, streets or highways of this State, for providing protection of the child by properly securing the child in all seating positions, according to manufacturer's instruction, in a child safety seat or booster seat meeting federal motor vehicle safety standards, and that is appropriate for the child's weight and height...

(b) (1) No child who is 65 inches or less in height and who is under 12 years of age shall occupy the front passenger seat of any vehicle equipped with a passenger-side airbag that has not been deliberately rendered inoperable in conformity with federal law...⁴

(2) It shall not be a violation of this section for a child 65 inches or less in height and under 12 years of age to occupy the front passenger seat of a vehicle equipped with a passenger-side airbag that has not been deliberately rendered inoperable in conformity with federal law if such vehicle does not have a rear passenger seat or if all rear passenger seats are occupied by other children 65 inches or less in height and under 12 years of age. A violation of this subsection shall be considered a secondary offense, and no motor vehicle shall be stopped by a police officer solely for failure to comply with this subsection.

It is not disputed that [REDACTED] because of her age and weight, should have been properly restrained in a safety seat, pursuant to Section 4803(a). [REDACTED] did not raise the defense contained in Section 4803(b)(2).

Based on the record, the Court is satisfied that [REDACTED] neglected [REDACTED] when she did not restrain her in a car seat, thereby failing to provide her with the necessary care and supervision

³ Del. Code Ann. tit. 10, § 901.

⁴ Del. Code Ann. tit. 21 § 4803.

appropriate for the physical health, safety, and well-being of a two and a half (2 ½) month old child.

CHILD PROTECTION REGISTRY

The Division is required, by Title 16, Section 921, et. seq., of the *Delaware Code*, ("the Act"), to maintain a Child Protection Registry. "The primary purpose of the Child Protection Registry is to protect children and to ensure the safety of child in child care, health care and public education facilities."⁵

Section 924 of the Act requires the Division to investigate any report of an alleged incident of abuse or neglect. Following its investigation, if the Division decides to substantiate the person for abuse or neglect and enter that person on the Child Protection Registry, it shall provide the individual with written notice of its intent.⁶ If the individual responds to the Division and requests a hearing in the Family Court before being entered on the registry, the Division has 20 days to file a Petition for Substantiation with the Court, requesting 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.⁷

As a result of the September 23, 2009 incident, involving ██████████, the Division undertook an investigation. Based on its findings, the Division notified ██████████ of its intent to substantiate her for neglect. ██████████ timely notified the Division of her desire for a hearing. Accordingly, the Court held a hearing on January 19, 2011. A Commissioner of this Court thereafter denied the Division's petition to substantiate ██████████ for abuse. After reviewing the record in this case, this Court finds ██████████ was neglectful in not having ██████████ securely restrained at the time of the accident.

⁵ Del. Code Ann. tit. 16, § 921.

⁶ Del. Code Ann. tit. 16, § 924(a)(2).

⁷ Del. Code Ann. tit. 16, § 925(a).

A person who has been substantiated for abuse or neglect must be entered on the Child Protection Registry at a designated Child Protection Level related to the risk of future harm to children.⁸ Section 923 of the Act sets forth four (4) Child Protection Levels. The Division has requested that [REDACTED] be placed on the Registry at Child Protection Level III, as the Division argues she presents a high risk of future harm to children.⁹

Because the Commissioner did not substantiate [REDACTED] for neglect, the Court did not hear evidence or argument as to which Child Protection Level she should be placed on for purposes of the Registry. [REDACTED] requested a hearing on this matter initially, and has now been found to have neglected [REDACTED]. The two fundamental elements of due process are notice and a

⁸ Del. Code Ann. tit. 16, § 923.

⁹ §923, Child Protection Levels.

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

(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, assault 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, 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 of Title 14. The person is ineligible for employment in a child care facility, health care facility or public school, as those terms are defined in § 8563 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.

hearing.¹⁰ Accordingly, due process requires that [REDACTED] be afforded a hearing on the issue of which level to designate her on the Registry.¹¹

CONCLUSION

[REDACTED]'s action of September 23, 2009, in failing to properly restrain [REDACTED] in a safety seat, is an act of neglect. The Commissioner's Order of January 20, 2011 is reversed and remanded for the purposes of placing [REDACTED] on the child abuse registry at the level consistent with the offense.


Kenneth M. Millman, Judge

KMM/dew

cc: James S. Reichert, Esquire
[REDACTED]
Ms. Kriston Lowry-Sims
The Honorable Sonja T. Wilson
File

MAILED MAR 24 2011

¹⁰ *Moore v. State*, No. 471, 2010, 2011 WL 922336 at *5 (Del. 2011) citing *Vincent v. Eastern Shore Markets*, 970 A.2d 160, 164 (Del. 2009); *Formosa Plastics Corp. v. Wilson*, 504 A.2d 1083, 1089 (Del. 1986) ("Before a party can be deprived of life, liberty, or property, it has the right to notice and a hearing in a meaningful time and a meaningful manner.");

¹¹ *Division of Family Services v. V.S.*, No. CS06-02289, 2007 WL 5658758 at *4 (Del. Fam. Ct. 2007).

THE FAMILY COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY



In the Matter of:

[REDACTED]

Petitioner,

v.

Division of Family Services,

Respondent.

File No.: CS11-03013

Petition No.: 11-33656

**REQUEST FOR REVIEW OF A
COMMISSIONER'S ORDER**

ORDER

Pending before the Court is a Request for Review of a Commissioner's Order filed by [REDACTED] ("Petitioner") on January 30, 2012, pursuant to *Family Court Rule of Civil Procedure* 53.1.¹ Petitioner requests the Court review an Order denying a Petition for Removal from the Child Protection Registry issued by a Commissioner of this Court on January 4, 2012. The Division of Family Services ("the Division") has not filed a response to Petitioner's Request. On April 17, 2012, the Court held a hearing on Petitioner's request and took testimony from Petitioner, the Division's treatment worker assigned to Petitioner's case and the Division's investigative worker.

FACTS

On October 28, 2011, Petitioner filed a Petition for Removal from the Child Protection Registry. Petitioner requested that she be removed from the registry two years early so as to move forward with her education and career.² Petitioner attached to her petition her plea agreement which indicated that she pled guilty to Assault in the Third Degree, which resulted in her being placed on the Child Protection Registry at level III. She also included a copy of the Family Services Plan established with the Division. According to this plan Petitioner and her

¹ DEL. FAM. CT. R. CIV. P. 53.1.

² Petitioner is receiving a degree in Respiratory Therapy from Delaware Technical & Community College in May 2012 and wishes to pursue employment in hospitals.

husband were to not use any form of physical discipline with their children, work with an Intensive Home-based Family Counselor on alternate forms of discipline, and Petitioner was to comply with the conditions of her probation.

On November 21, 2011, the Division filed an Answer to Petitioner's request for removal. The Division agreed with Petitioner that she had provided proof of completion of probation and a parenting class. However, the Division averred that Petitioner and her family only worked with the Intensive Home-based Family Counselor for approximately four months and then stated that they no longer needed those services. The division alleged that this caused Petitioner to not successfully complete her case plan and thus, she was ineligible for early removal from the registry.

On January 4, 2012, a hearing was held on the pending Petition. Petitioner testified that her case plan with the division was closed unsuccessfully because she decided not to continue with their services.³ Petitioner alleged that it was her husband, not she who had declined to continue with the counselor provided by the Division. She also stated her husband decided this because the children were seeing a different counselor and he did not want them to change.⁴ Petitioner claimed that as she is not the children's biological parent, she could not sign the children up for counseling without her husband's permission. Petitioner then provided the Court with her discharge letter from probation and a copy of her certificate of completion from the Child Inc. parental education course.

The Division then presented testimony from [REDACTED], the Division investigative worker on Petitioner's case. Ms. [REDACTED] stated that the only information she had on Petitioner indicated that her case was closed for refusal of services in May 2007.⁵

Based upon the testimony and evidence presented, a Commissioner of this Court denied Petitioner's Removal from the Child Protection registry on January 4, 2012, because Petitioner failed to provide documentation demonstrating that she had successfully completed her case plan as required by 16 Del. C. §929(b). The Court stated that the evidence presented indicated that the case plan was closed in May 2007 as unsuccessful, due to failure to cooperate with services.

On January 30, 2012, Petitioner filed the pending Request for Review of a Commissioner's Order. Petitioner again alleges that she is seeking removal from the registry two years early so as to move forward with her career.

The Division did not file a response to Petitioner's Request for Review of a Commissioner's Order.

On April 17, 2012, the Court held a hearing on Petitioner's Request. Petitioner appeared *pro se* and the Division was represented by John Eberly, Esquire. The Division presented testimony from [REDACTED], the treatment worker assigned to Petitioner's case.

³ Tr. at 5, line 14-16, January 4, 2012.

⁴ Tr. at 5, line 17-23, January 4, 2012.

⁵ Tr. at 11, line 17-25, January 4, 2012; Tr. at 12, line 9-12, January 4, 2012.

Ms. [REDACTED] testified that the case plan provided to Petitioner stated that Petitioner and her husband were not to use physical discipline and were to cooperate with the services provided by the Division. Ms. Ronnet stated that she remembered meeting with Petitioner a couple of times and that there were concerns that Petitioner was overwhelmed. When asked by the Court how many times Petitioner had met with her counselor, Ms. [REDACTED] stated that she did not know because she was never provided with the counseling notes by Children and Families First, the counseling center Petitioner was attending. Ms. [REDACTED] testified that the Division began providing services to Petitioner on February 5, 2007 and that in March 2007, Petitioner or her husband stated that they did not want any further services from the Division. Ms. [REDACTED] stated that a closing letter was sent to Petitioner on May 15, 2007, which stated that her case plan was closed unsuccessfully and that Petitioner never responded to this letter.

[REDACTED] the investigative worker for Petitioner's case, also testified that the Division was concerned that Petitioner had not admitted fault in the initial Assault in the Third Degree charge that led to Petitioner being placed on the Registry. Ms. [REDACTED] also testified that the Division had conducted 5 subsequent investigations⁶ into Petitioner and her husband due to concerns of use of inappropriate physical discipline against the children. These investigations have all been unsubstantiated.

Petitioner testified that she met weekly with counselors until March 22, 2007. She admitted that on March 26, 2007, there was a meeting between her, her husband and Ms. [REDACTED] but stated that she did not remember the content of this meeting because she was on prescribed Percocet and 800 milligrams of Motrin at the time. Petitioner stated that at this meeting, her husband refused to continue counseling with Children and Families First because his sons were already in counseling with Diana Karpavage, LCPC, and he felt it was better to continue with Ms. Karpavage. Petitioner testified that at the time she probably did agree with her husband's decision.

Petitioner refuted Ms. [REDACTED]'s testimony that she did not respond to the closure letter. She testified that she called Ms. Ronnet within weeks of receiving the letter. During that conversation Petitioner testified that Ms. [REDACTED] told her an unsuccessful closure meant that she would be placed on the Child Protection Registry. Petitioner stated that she accepted this and did not become concerned with being on the registry until two and a half years ago when she entered into school. Petitioner also refuted Ms. [REDACTED]'s testimony, stating that she readily admitted for years that she messed up, that she knew she messed up and that she would like nothing more than to take it back.

Petitioner concluded by requesting that the Court give her a second chance and an opportunity to obtain a good job.

⁶ See Petitioner's Exh 1

LEGAL STANDARD

The Delaware Code confers upon this Court appellate jurisdiction over a Commissioner's Order. Specifically, the Code provides, "[a]ny party, except a party in default of appearance before a Commissioner, may appeal a final order of a Commissioner to a judge of the Court."⁷ From an appeal of a Commissioner's Order, this Court must make a *de novo* determination based on the record below, but the Court is not required to accept any additional evidence offered by the appealing party.⁸ The Court may only accept such evidence after finding that "it is newly discovered evidence which by due diligence could not have been discovered in time to offer it before . . . the commissioner's order or . . . the circumstances are such as would justify reopening the record in the interest of justice."⁹

A Commissioner's Order may be appealed to a judge of the Court by filing written objections that set forth with particularity the basis of each objection.¹⁰ The party that wishes to appeal a Commissioner's Order must file a request with the Court within thirty days from the date of the Commissioner's Order.¹¹ The other party shall have ten days to file and serve a written response to the objections.¹² Once the period for filing a response has ended, the judge assigned to hear the appeal shall promptly decide the appeal, or if one is to be held, promptly schedule a hearing in the matter.¹³ The party filing written objections to the Commissioner's Order shall be responsible for the preparation of a transcript of the proceeding before the commissioner, either in whole or in pertinent part, unless all parties agree to a statement of facts.¹⁴ A judge deciding an appeal from a Commissioner's Order may accept, reject, or modify in whole or in part, the Commissioner's Order.¹⁵ A party appealing an order of a commissioner who fails to comply with the provisions of this rule or with the direction of the Court as to the appeal shall be subject to dismissal of said appeal.¹⁶

Removal from the Child Protection Registry

Section 929(b) of Title 16 of the *Delaware Code* states:

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.¹⁷

⁷ DEL. CODE ANN. TIT. 10, § 915(d)(1) (1999).

⁸ DEL. FAM. CT. R. CIV. P. 53.1(e).

⁹ *Id.*

¹⁰ DEL. FAM. CT. R. CIV. P. 53.1(b).

¹¹ *Id.*

¹² DEL. FAM. CT. R. CIV. P. 53.1(d).

¹³ *Id.*

¹⁴ DEL. FAM. CT. R. CIV. P. 53.1(c).

¹⁵ DEL. FAM. CT. R. CIV. P. 53.1(f).

¹⁶ DEL. FAM. CT. R. CIV. P. 53.1(l).

¹⁷ Del. Code Ann. tit. 16, § 929 (West).

FINDINGS

Petitioner's central argument in opposition to the January 4, 2012 Order is that she has changed her life for the better and that she needs the Court to grant her petition so that she can work at a hospital.

As set forth above, when considering a Request for Review of a Commissioner's Order, this Court conducts its review *de novo*. Hearings were held on this matter on January 4, 2012 and April 17, 2012. The Court has reviewed the hearing transcripts, Petitioner and the Division's filings, the Commissioner's Order, and all exhibits entered into evidence within the Court's record in order to make its determination.

Based upon the evidence provided by each party, the Court finds Petitioner failed to provide documentation of successful completion of her case plan. The Court finds that it was impossible for Petitioner to complete three months of counseling between February 5, 2007 and March 26, 2007, when Petitioner refused further counseling services. The Court does not find that Petitioner herself refused these services. However, the Court does note that after Petitioner's case plan was closed as unsuccessful on May 15, 2007, Petitioner did not alert the Division that she still wished to complete services on her own. Therefore, Petitioner did not complete counseling as she was required to under her case plan. Thus, Petitioner is ineligible for early release from the Child Protection Registry because she does not meet the threshold requirements of Section 929(b) of Title 16 of the *Delaware Code*.

The Court cautions the Division on three issues which arose within this case that were not determinative in its outcome, but could be within a future case. First, the Court has not been provided with a sufficient legal reason as to why Petitioner's Husband, a third party who was not criminally found guilty of any abuse, was included within Petitioner's case plan. The Court sees this as an improper sanction on a third party whom is not listed on the registry. Secondly, the Court is unsure of how the Division may legally require a person to enroll a child, over whom they have no legal authority, into counseling. This provision of the case plan also appears to be invalid as it requires the Petitioner to compel a third party to commit actions which are beyond her legal control. Thirdly, the Court cautions the Division to only take refusal of services from the party for whom the case plan was enacted. In this case, it appears that Petitioner's husband was the person who indicated to Ms. Ronnet that Petitioner would not be continuing with services. Even if Petitioner confirmed this statement at that time, the Court is concerned that she may not have had the mental capacity to refuse services at that time, due to her being on Percocet and Motrin. As stated above, this refusal of services was later confirmed by Petitioner's non-action and thus, was not determinative within this case. However, in the future the Division should ensure that all refusals of services come directly from the party for whom the case plan was enacted.

Despite the flaws within the case plan, it appears from the evidence that Petitioner did not successfully complete her case plan provisions. Therefore for the foregoing reasons, the Court **affirms** the Commissioner's Order of January 4, 2012, and **denies** Petitioner's Request for Review of a Commissioner's Order.


IT IS SO ORDERED this 9th day of May, 2012.



Chief Judge Chandice Johnson Kuhn

CJK:amc

cc: Commissioner Sonja Wilson


John Eberly, Esquire for Division of Family Services
Victoria Kelly, Director of the Division of Family Services
Rodney Brittingham, Deputy Director of the Division of Family Services
Vivian Rapposelli, Cabinet Secretary for DSCYF
Patricia Dailey Lewis, Esquire, Director of the Family Division at the Delaware
Department of Justice
File

E-MAILED

MAY 14 2012

DATE

MAY 15 2012

MAILED

EXHIBIT 11

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

PETITION FOR REMOVAL FROM CHILD PROTECTION REGISTRY

Petitioner

v. Respondent

Name
Street Address (include Apt)
P.O. Box Number
City/State/Zip Code
Phone Number D.O.B.
Attorney Name
Interpreter needed? <input type="checkbox"/> Yes <input type="checkbox"/> No Language

Name Division of Family Services
<input type="checkbox"/> 1825 Faulkland Road Wilmington, DE 19805
<input type="checkbox"/> Suite 200 821 Silver Lake Blvd Dover, DE 19904
<input type="checkbox"/> Georgetown Service Center 546 South Bedford Street Georgetown, DE 19947
Attorney Department of Justice

File Number
Petition Number

Petitioner alleges the following facts (check all that apply)

- a. Petitioner was entered on the Child Protection Registry at Child Protection Level II or III on _____
 - b. Petitioner has successfully completed a Division recommended or Family Court ordered case plan; and
 - c. Petitioner has not been substantiated for any subsequent acts of abuse or neglect since the date listed in paragraph a.
- (Additional Information)

WHEREFORE, the Petitioner requests that this honorable Court order that Petitioner's name be removed for the Child Protection Registry.

Petitioner's Signature

Sworn to subscribed before me this _____ day of _____

Clerk of Court/ Notary Public Date

The Family Court of the State of Delaware

In and For New Castle Kent Sussex County

PETITION FOR LIMITED PURPOSE HEARING

Petitioner

v. Respondent

Name	Name Division of Family Services	File Number
Street Address (include Apt)	<input type="checkbox"/> 1825 Faulkland Road Wilmington, DE 19805	
P.O. Box Number	<input type="checkbox"/> Suite 200 821 Silver Lake Blvd Dover, DE 19904	Petition Number
City/State/Zip Code	<input type="checkbox"/> Georgetown Service Center 546 South Bedford Street Georgetown, DE 19947	
Phone Number D.O.B.		
Attorney Name		
Interpreter needed? <input type="checkbox"/> Yes <input type="checkbox"/> No Language		

Attorney
Department of Justice

Petitioner alleges the following facts (check all that apply)

- a. Petitioner has received a Notice of Substantiation based on a conviction of an enumerated offense set forth in 16 Del.C. § 923.
- b. Petitioner has filed this Petition within 30 days of the Notice of Intent to Substantiate and has attached a copy of the Notice hereto.
- c. For the following reasons Petitioner alleges the conviction does not meet the requirements set forth in 16 Del. C. § 922(1) that the conviction be based on the same incident of abuse or neglect on which the substantiation proceeding is premised.

(Additional Information)

WHEREFORE, the Petitioner requests that this honorable Court hold a Limited Purpose Hearing.

Petitioner's Signature

Sworn to subscribed before me this _____ day of _____, _____

Clerk of Court/ Notary Public

Date

EXHIBIT 12

DIVISION OF FAMILY SERVICES CASEWORKER DESCRIPTIONS

FAIR (Family Assessment and Intervention Response) Caseworker – DFS employee responsible for conducting family assessments about reports made to DFS alleging child abuse, neglect or dependency. The employee may also directly provide or coordinate ongoing services, as needed, beyond the family assessment period for a maximum of ninety days. The caseworker may be classified as a Family Services Specialist, Senior Family Services Specialist, Master Family Services Specialist, or Family Crisis Therapist (FCT). The FAIR caseworker may be assisted by a Family Service Assistant. FAIR services may also be provided by DFS contract.

Foster Home Coordinator – DFS employee responsible for the recruitment, development, and support of foster parents. The Coordinator matches children that enter out-of-home care to foster parents. The Coordinator visits the foster home on a monthly basis and supports the foster parent in general. The Coordinator investigates quality of care complaints that do not rise to the level of abuse or neglect. An annual review of each foster home is also conducted by the Coordinator. The caseworker may be classified as a Family Services Specialist, Senior Family Services Specialist or Master Family Services Specialist.

Investigation Caseworker – DFS employee responsible for investigating reports made to DFS alleging child abuse, neglect or dependency. The caseworker may be classified as a Family Services Specialist, Senior Family Services Specialist, Master Family Services Specialist, or Family Crisis Therapist (FCT). The Investigation caseworker may be assisted by a Family Service Assistant.

Report Line Caseworker – DFS employee responsible for receiving reports made to the 24/7 Child Abuse Report Line. There are three shifts during the week and weekend/holiday staff. The Second, Third, and Weekend/Holiday Shift staff also respond to Priority One reports in the field. The caseworker may be classified as a Family Services Specialist, Senior Family Services Specialist, Master Family Services Specialist, or Family Crisis Therapist (FCT). Weekday Report Line workers are not eligible to be FCTs because they do not respond to reports.

Institutional Abuse (IA) Caseworker - DFS employee responsible for the investigation of allegations of physical and sexual abuse in out-of-home care settings. These settings include transitional living programs, residential child care facilities (group homes), foster homes, licensed child day care facilities (child care homes, child care centers), shelters, correctional and detention facilities, day treatment programs, all facilities at which a reported incident involves a child(ren) in the custody of DSCYF, and all facilities operated by the DSCYF. The caseworker may be classified as a Family Services Specialist, Senior Family Services Specialist or Master Family Services Specialist.

Treatment caseworker – DFS employee responsible for the provision of case management services to a family that has been substantiated or has been identified at risk for child abuse, neglect or dependency. The services may be provided directly by the Treatment caseworker or involve the coordination of services provided by a DFS contracted provider, community-based provider, Division of Prevention and Behavioral Health Services (DPBHS), the Division of Youth Rehabilitative Services (DYRS), or another State agency. The caseworker may be classified as a Family Services Specialist, Senior Family Services Specialist, Master Family Services Specialist, or Family Crisis Therapist (FCT). The Treatment caseworker may be assisted by a Family Service Assistant (FSA).

**DIVISION OF FAMILY SERVICES
OFFICE OF CHILDREN'S SERVICES (OCS)**

CHAIN OF COMMAND

The Division recommends you address your concerns using the following steps. The Division prefers to resolve issues at the lowest possible levels.

Step 1 - Contact your client's **Supervisor**. If the supervisor is unable to resolve your complaint;

Step 2 - Contact the **Assistant Regional Administrator (ARA)** where the caseworker and supervisor are employed. The regional office telephone numbers are as follows:

- New Castle I, Beech Street 302.660.3545
- New Castle II, University Plaza 302.451.2800
- Kent County III, Barratt Building 302.739.4800
- Sussex County IV, Thurman Adams State Service Center 302.856.5450

Step 3 – Contact the **Regional Administrator** where the caseworker, supervisor, and ARA are employed at the numbers above.

Step 4 - Contact the Office of Children's Services (**OCS**) **Administrator** at 302.633.2654.

EXHIBIT 13

TITLE 16
Health and Safety
Regulatory Provisions Concerning Public Health
CHAPTER 9. ABUSE OF CHILDREN
Subchapter II. Child Protection Registry

§ 921 Child Protection Registry; purpose.

The Division shall maintain a Child Protection Registry which contains information about persons who have been substantiated for abuse or neglect as provided in this subchapter or who were substantiated between August 1, 1994, and February 1, 2003. The primary purpose of the Child Protection Registry is to protect children and to ensure the safety of children in child care, health care and public educational facilities. This subchapter must be liberally construed so that these purposes may be realized.

73 Del. Laws, c. 412, § 7.;

§ 922 Entry on the Child Protection Registry [Effective until Jan. 11, 2015]

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:

- (1) Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any offense specified in the laws of another state, the United States or any territory of the United States which is the same as or equivalent to any of the offenses set out in § 923 of this title;
- (2) Has been found by the Family Court, in a child welfare proceeding brought by the Division or in which the Division is a party, by a preponderance of the evidence to have abused or neglected a child;
- (3) Fails to make a timely written request for a hearing as provided in § 924(a)(2) of this title after being given notice by the Division of its intent to substantiate the person for abuse or neglect and enter the person on the Registry;

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

(5) Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003.

73 Del. Laws, c. 412, § 7.;

§ 922 Entry on the Child Protection Registry [Effective Jan. 11, 2015]

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:

(1) Based on the same incident of abuse or neglect on which the substantiation proceeding is premised, has been convicted of any criminal offense set out in § 923 of this subchapter or any offense specified in the laws of another state, the United States or any territory of the United States which is the same as or equivalent to any of the offenses set out in § 923 of this title;

(2) Has been found by the Family Court, in a child welfare proceeding brought by the Division or in which the Division is a party, by a preponderance of the evidence to have abused or neglected a child;

(3) Fails to make a timely written request for a hearing as provided in § 924(a)(2) of this title after being given notice by the Division of its intent to substantiate the person for abuse or neglect and enter the person on the Registry;

(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

(5) Was substantiated for abuse or neglect between August 1, 1994, and February 1, 2003.

73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.;

§ 923 Child Protection Levels [Effective until Jan. 11, 2015]

(a) A person who has been substantiated for abuse or neglect 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 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 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 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, assault 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, 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 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 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, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, 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 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 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry 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.

73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1.;

§ 923 Child Protection Levels [Effective Jan. 11, 2015]

(a) A person who has been substantiated for abuse or neglect pursuant to this subchapter must be entered on the Child Protection Registry. 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 reported in response to a Child Protection Registry check made pursuant to 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 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 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 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 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 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 Chapter 85 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction, except as provided in § 929(c) of this title.

(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.

73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 314, § 1.;

§ 924 Notice of Intent to Substantiate; process [Effective until Jan. 11, 2015]

(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.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter the 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:

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

- b. Advise the person that the Division intends to substantiate the allegations and enter the person 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 person will be reported as substantiated for abuse or neglect in response to a Child Protection Registry check made pursuant to § 8563 of Title 11;
- d. Inform the person of that person's own right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;
- e. Further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;
- f. Contain a written form for the person to return to the Division to request a hearing.

(b) A person 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.

73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1.;

§ 924 Notice of Intent to Substantiate; process [Effective Jan. 11, 2015]

(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.

(1) If the Division determines from its investigation not to substantiate the person for abuse or neglect, the person may not be entered on the Child Protection Registry for that reported incident. The Division shall indicate in its internal information system that the incident is unsubstantiated, and so notify the person in writing. The Division shall develop regulations for classifying unsubstantiated cases in its internal information system.

(2) If the Division determines from its investigation that it intends to substantiate the person for abuse or neglect and enter 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:

- a. Briefly describe the alleged incident of abuse or neglect;
- b. Advise the person that the Division intends to substantiate the allegations and enter the person 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 person 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 person of that person's own right to request a hearing in the Family Court before the person is entered on the Child Protection Registry;
- e. Further advise that the person will be entered on the Registry for the incident at the designated Child Protection Level unless, within 30 days of the date of mailing of the notice, the person responds to the Division in writing, requesting a hearing in the Family Court on the Division's intent to substantiate the person for abuse or neglect and enter the person on the Registry;
- f. Contain a written form for the person to return to the Division to request a hearing.

(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 § 923 of this title, 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 § 922(1) of this title. A Limited Purpose Hearing shall be limited to determining whether the conviction meets the requirements of § 922(1) of this title. 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 § 922(1) of this title.

(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.

73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 314, § 1.;

§ 925 Petition for Substantiation [Effective until Jan. 11, 2015]

(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 days after receipt of the written request 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. The Petition for Substantiation must be filed in the county in which the alleged incident leading to the Petition occurred. 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.

73 Del. Laws, c. 412, § 7.:

§ 925 Petition for Substantiation [Effective Jan. 11, 2015]

(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 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.

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

73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.;

§ 925A Grounds for substantiation [Effective Jan. 11, 2015]

(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 § 923 of this title. 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 § 923 of this title.

(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.

79 Del. Laws, c. 314, § 1.;

§ 926 Finding of abuse of neglect in child welfare proceeding; binding effect [Effective until Jan. 11, 2015]

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. 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.

73 Del. Laws, c. 412, § 7.;

§ 926 Finding of abuse or neglect in child welfare proceeding; binding effect [Effective Jan. 11, 2015]

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 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.

73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.;

§ 927 Automatic stay of substantiation proceedings [Effective until Jan. 11, 2015]

- (a) Proceedings under § 925 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.
- (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.

73 Del. Laws, c. 412, § 7.;

§ 927 Automatic stay of substantiation proceedings [Effective Jan. 11, 2015]

- (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 of this title 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.

73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.;

**§ 928 Persons entered on the Registry between August 1, 1994, and February 1, 2003
[Effective until Jan. 11, 2015]**

(a) The Division shall review each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry and the Central Abuse Registry) between August 1, 1994, and the effective date of this subchapter and designate each case to a Child Protection Level in accordance with the regulations developed pursuant to § 923 of this title.

(b) A person who has been entered on the Child Protection Registry for the time prescribed in the designated Child Protection Level for the person's incident of abuse or neglect must be automatically removed from the Child Protection Registry, provided that the person has not been substantiated for an incident of abuse or neglect while on the Child Protection Registry. The Division shall notify the person of the removal.

(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 of Title 11.

73 Del. Laws, c. 412, § 7.;

**§ 928 Persons entered on the Registry between August 1, 1994, and February 1, 2003
[Effective Jan. 11, 2015]**

(a) The Division shall review each case substantiated for abuse or neglect that was placed on the Central Registry (also known as the Central Child Abuse Registry, the Child Abuse Registry and the Central Abuse Registry) between August 1, 1994, and the effective date of this subchapter and designate each case to a Child Protection Level in accordance with the regulations developed pursuant to § 923 of this title.

(b) A person who has been entered on the Child Protection Registry for the time prescribed in the designated Child Protection Level for the person's incident of abuse or neglect must be automatically removed from the Child Protection Registry, provided that the person has not been substantiated for an incident of abuse or neglect while on the Child Protection Registry. The Division shall notify the person of the removal.

(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 Chapter 85 of Title 11.

73 Del. Laws, c. 412, § 7; 79 Del. Laws, c. 314, § 1.;

§ 929 Removal of name from the Child Protection Registry [Effective until Jan. 11, 2015]

(a) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the Registry under § 923 of this title, provided that the person has not been substantiated for an incident of abuse or neglect while on the 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.

(c) 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) 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 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.

73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 403, § 4.;

§ 929 Removal of name from the Child Protection Registry [Effective Jan. 11, 2015]

(a) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III will be automatically removed from the Registry under § 923 of this title, provided that the person has not been substantiated for an incident of abuse or neglect while on the Registry.

(b) A person who has been entered on the Child Protection Registry at Child Protection Level II or Level III may file a Petition for Removal in the Family Court prior to the expiration of the time designated for the level. 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 his or her eighteenth 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 title.

(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.

(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 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.

73 Del. Laws, c. 412, § 7; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 403, § 4; 79 Del. Laws, c. 314, § 1;