

State of Delaware Child Death Review Legislation

Delaware Statute § 320 (1995)

Link: <http://www.delcode.state.de.us/title31/c003/sc02/index.htm>

TITLE 31

Welfare

In General

CHAPTER 3. CHILD WELFARE

Subchapter II. Child Death, Near Death and Stillbirth Commission

§ 320. Declaration of legislative intent.

The General Assembly hereby declares that the health and safety of the children of the State will be safeguarded if deaths of children under the age of 18, near deaths of abused and/or neglected children, and stillbirths occurring after at least 20 weeks of gestation are reviewed, in order to provide recommendations to alleviate those practices or conditions which impact the mortality of children. This subchapter establishes the Child Death, Near Death and Stillbirth Commission. For the purposes of this subchapter, "Commission" means the Child Death, Near Death and Stillbirth Commission. Stillbirths occurring after at least 20 weeks of gestation shall not include stillbirths which occur as a result of an elective medical procedure. (70 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 331, §§ 2, 3; 74 Del. Laws, c. 376, § 3; 75 Del. Laws, c. 269, § 1.)

§ 321. Organization and composition.

(a) The following shall be members of the Commission: The State Attorney General, the Secretary of the State Department of Health and Social Services, the Secretary of the State Department of Services to Children, Youth and Their Families, the person appointed as the child advocate pursuant to § 9003A of Title 29, the Chair of Child Protection Accountability Commission, the State Secretary of Education, the State Medical Examiner, the Director of the Division of Public Health, the Chief Judge of the Family Court and the Superintendent of the Delaware State Police, or the designee of any of the preceding persons. Additionally, the following shall be appointed by the Governor as members of the Commission: (i) A representative of the Medical Society of Delaware specializing in each of pediatrics, neonatology, obstetrics and perinatology; (ii) a representative of the Delaware Nurses Association; (iii) a representative of the National Association of Social Workers; (iv) a representative of the Police Chiefs' Council of Delaware who is an active law enforcement officer; (v) a representative of the New Castle County Police Department; and (vi) 2 child advocates from state-wide non-profit organizations. A Chairperson of each regional child death and near death review panel and each Fetal and Infant Mortality Review Case Review Team established pursuant to subsections (d) and (e) hereof shall also serve as members of the Commission. The term of members appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Commission. The members of the Commission, the regional panels, Case Review Teams and Community

Action Teams shall serve without compensation. The Commission shall be staffed, and its staff shall include an Executive Director. The General Assembly may annually appropriate such sums as it may deem necessary for the payment of the salary of the Executive Director and the staff, and for the payment of actual expenses incurred by the Commission.

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

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

(d) The Commission shall by resolution passed by a majority of its members establish at least 1 but no more than 3 regional panels authorized to review child deaths and near deaths. One of the panels shall be designated to review cases pursuant to § 323(e) of this title; however, for good cause shown to the Commission, any panel may investigate and review any death, near death, or stillbirth entitled to review by the Commission. Members of the Commission shall appoint representatives to each regional panel such that the regional panel reflects the disciplines of the Commission. The Commission shall also appoint to each regional panel (i) a representative from each of the 3 police departments which investigate the majority of child deaths in the region covered by the panel, and (ii) a citizen of the region interested in child death, near death and stillbirth issues.

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

(f) Each regional panel and the Fetal and Infant Mortality Review Case Review Teams shall have the powers, duties and authority of the Commission as delegated by the Commission. Each regional panel and Fetal and Infant Mortality Review Case Review Team shall, by affirmative vote of a majority of all members of that regional panel or team, appoint co-chairpersons from its membership for a term of 1 year. (70 Del. Laws, c. 256, § 1; 72 Del. Laws, c. 327, § 1; 73 Del. Laws, c. 65, § 43; 73 Del. Laws, c. 331, §§ 4, 5; 74 Del. Laws, c. 376, §§ 4-7, 14; 75 Del. Laws, c. 269, §§ 2-6.)

§ 322. Voting.

Except as expressly provided herein, an affirmative vote of 60% of all members of the Commission, any regional panel, Case Review Team or Community Action Team shall be required to adopt any findings or recommendations of the Commission or such regional panel or team. (70 Del. Laws, c. 256, § 1; 75 Del. Laws, c. 269, § 7.)

§ 323. Powers and duties.

(a) The Commission shall have the power to investigate and review the facts and circumstances of all deaths and near deaths of children under the age of 18 and stillbirths

which occur in Delaware. The review of deaths involving criminal investigations will be delayed until the later of the conclusion of such investigation, or the adjudication of related criminal charges, if any. The Commission shall make recommendations to the Governor and the General Assembly and Child Protection Accountability Commission, at least annually, regarding those practices or conditions which impact the mortality of children. System-wide recommendations arising from an investigation and review conducted pursuant to subsection (e) of this section shall be made to the Governor and General Assembly and Child Protection Accountability Commission, as well as any members of the public requesting the recommendations, within 20 days of the completion of such investigation and review. All recommendations made pursuant to this subsection shall comply with applicable state and federal confidentiality provisions, including but not limited to those enumerated in § 324 of this title and § 9017(d) of Title 29. Notwithstanding any provision of this subchapter to the contrary, such recommendation shall not specifically identify any individual or any nongovernmental agency, organization or entity.

(b) The Commission shall conduct child death and near death reviews according to procedures promulgated by the Abuse Intervention Committee of the State Attorney General's Office, which procedures shall be adopted in writing prior to the 1st review. The Commission may amend such procedures upon a three-quarters affirmative vote of all members of the Commission.

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

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

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

(e) Notwithstanding the above, the Commission shall investigate and review the facts and circumstances of the death or near death of an abused and/or neglected child within 3 months of a report to the Commission by the Attorney General, the Department of Services for Children, Youth and Their Families, or other state agency that the child was the victim of abuse or neglect. The Attorney General, the Department of Services for Children, Youth and Their Families, and any other state or local agency with responsibility for investigating child deaths shall report to the Commission any death or near death of a child who is determined to have been abused and/or neglected within 14 days of that determination. For good cause

shown to the Commission, completion of an investigation and review under this subsection may be extended from 3 to 6 months.

(f) Notwithstanding any provision of this subchapter to the contrary, no person identified by the Attorney General's office as a potential witness in any criminal prosecution arising from the death or near death of an abused or neglected child shall be questioned, deposed or interviewed by or for the Commission in connection with its investigation and review of such death or near death until the completion of such prosecution. (70 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 331, §§ 6, 7; 73 Del. Laws, c. 386, §§ 1, 2, 6; 74 Del. Laws, c. 376, §§ 8-11; 75 Del. Laws, c. 269, §§ 8-10.)

§ 324. Confidentiality of records and immunity from suit.

(a) The records of the Commission and of all regional panels and the Fetal and Infant Mortality Review Case Review Teams and Community Action Teams, including original documents and documents produced in the review process with regard to the facts and circumstances of each death, near death or stillbirth, shall be confidential and shall not be released to any person except as expressly provided in Chapter 3, Subchapter II of this title. Such records shall be used by the Commission, and any regional panel or team only in the exercise of the proper function of the Commission, regional panel or team and shall not be public records and shall not be available for Court subpoena or subject to discovery. Subject to constitutional requirements, statements, records or information shall not be subject to any statute or rule that would require those statements to be disclosed in the course of a criminal trial or associated discovery. Aggregate statistical data compiled by the Commission, regional panels or teams, however, may be released at the discretion of the Commission or regional panels.

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

(c) No person in attendance at a meeting of any such Commission, regional panel, Case Review Team or Community Action Team shall be required to testify as to what transpired thereat. No organization, institution or person furnishing information, data, reports or records to the Commission or any regional panel or team with respect to any subject examined or treated by such organizations, institution, or person, by reason of furnishing such information, shall be liable in damages to any person or subject to any other recourse, civil or criminal. (70 Del. Laws, c. 256, § 1; 73 Del. Laws, c. 386, §§ 3, 4; 74 Del. Laws, c. 376, § 12; 75 Del. Laws, c. 269, §§ 11-13.)