

CHAPTER 133K

NEW JERSEY SAFE HAVEN INFANT PROTECTION ACT PROCEDURES AND REQUIREMENTS

Authority

N.J.S.A. 30:4C-4(h) and 30:4C-15.1 and 15.5 et seq.

Source and Effective Date

R.2007 d.287, effective August 10, 2007.
See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c(2), Chapter 133K, New Jersey Safe Haven Infant Protection Act Procedures and Requirements, expires on February 6, 2015. See: 46 N.J.R. 1927(a).

Chapter Historical Note

Chapter 133K, New Jersey Safe Haven Infant Protection Act Procedures and Requirements, was adopted as R.2002 d.72, effective March 4, 2002. See: 33 N.J.R. 647(a), 34 N.J.R. 1016(a).

Chapter 133K, New Jersey Safe Haven Infant Protection Act Procedures and Requirements, was readopted as R.2007 d.287, effective August 10, 2007. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 133K, New Jersey Safe Haven Infant Protection Act Procedures and Requirements, was scheduled to expire on August 10, 2014. See: 43 N.J.R. 1203(a).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. PROCEDURES AND REQUIREMENTS

- 10:133K-1.1 Purpose
- 10:133K-1.2 Scope
- 10:133K-1.3 Definitions
- 10:133K-1.4 Role of the State Central Registry for safe haven infants cases
- 10:133K-1.5 Leaving an infant at a police station or hospital emergency department considered an affirmative defense to prosecution for abandonment, unless the infant was abused or neglected
- 10:133K-1.6 Anonymity of the parent or other person acting on behalf of the parent permitted, provision of information strictly voluntary
- 10:133K-1.7 Actions taken by police pursuant to the Act when infant brought to the police station
- 10:133K-1.8 Actions taken by hospital staff when infant brought to the hospital by the police pursuant to the Act
- 10:133K-1.9 Actions taken by hospital staff when safe haven infant brought directly to the hospital
- 10:133K-1.10 Police officers and hospital staff gather information, record in police incident report and infant's medical chart
- 10:133K-1.11 Action taken by the Division upon receipt of a referral of a safe haven infant
- 10:133K-1.12 Division not required to search for or identify parents or reunify birth family
- 10:133K-1.13 Actions taken when identification of safe haven infant's parent or family is determined
- 10:133K-1.14 Police officers and hospital staff acting in good faith immune from liability

SUBCHAPTER 1. PROCEDURES AND REQUIREMENTS

10:133K-1.1 Purpose

The purpose of this chapter is to provide instruction and guidance for the implementation of the New Jersey Safe Haven Infant Protection Act, N.J.S.A. 30:4C-15.6 et seq. These rules ensure that a parent or parents who want to permanently give up parental rights to an infant will have a safe place to leave the live infant, rather than abandoning the infant in a life-threatening situation where the infant could be harmed or die. These rules permit the parent to remain anonymous and provide the parent with an affirmative defense against prosecution for abandonment under specified circumstances.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Substituted "N.J.S.A. 30:4C-15.6 et seq." for "P.L. 2000, c.58."

10:133K-1.2 Scope

The provisions of this chapter shall apply to each safe haven infant, a parent who wishes to permanently give up parental rights to his or her infant, a person acting on behalf of the parent, police officers and hospital staff who have before them an infant who may be a safe haven infant, and employees of the Department of Children and Families and the Division of Youth and Family Services.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Substituted "Children and Families" for "Human Services".

10:133K-1.3 Definitions

(a) The definitions in N.J.A.C. 10:133-1.3, Definitions, are hereby incorporated into this chapter by reference. A definition in (b) below applies to this chapter if any word or term is defined in both (b) below and N.J.A.C. 10:133-1.3.

(b) The words and terms used in this chapter shall have the following meanings unless the context clearly indicates otherwise.

"Act" means the New Jersey Safe Haven Infant Protection Act, P.L. 2000, c.58, amending N.J.S.A. 30:4C-15.1 et seq.

"Non-identifying information" means information about an infant which is not intended to identify his or her parents or birth family.

"Parent" means an infant's mother or father.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Added (a) and inserted designation (b); in (b), deleted definitions "Adoption Resource Center", "Hospital" and "Police Station"; in definition "Safe Haven for Infants Hotline", substituted "and operated in the State Central Registry of" for "by" and "Children and Families" for "Human Services", and deleted "housed within and operated by the Division of Youth and Family Services".

Amended by R.2010 d.108, effective June 21, 2010.

See: 42 N.J.R. 120(a), 42 N.J.R. 1204(a).

In (b), deleted definitions "Infant", "Safe Haven infant" and "Safe Haven for Infants Hotline".

10:133K-1.4 Role of the State Central Registry for safe haven infants cases

(a) The State Central Registry maintains the 24-hour, toll-free hotline for accepting calls related to safe haven for infants pursuant to N.J.S.A. 30:4C-15.9.

(b) The hotline shall be known as the Safe Haven for Infants Hotline, and can be reached by dialing 1-877-839-2339.

(c) The hotline shall serve the following purposes related to the Safe Haven Infant Protection Act:

1. To provide information, support and guidance to persons who may be considering giving up or abandoning a newborn or an unborn child;

2. To receive and process a call from a hospital emergency department, when a live infant is brought there from a police station, or when a live infant is brought directly to the hospital emergency department by a parent or other person acting on behalf of the parent pursuant to the Act. Upon receipt of the call from a hospital emergency department, a hotline representative shall document the incident in writing;

3. To provide education and information to the public to:

i. Promote safe placement alternatives for newborn infants;

ii. Explain procedures established by the Act, including the confidentiality offered to parents pursuant to N.J.S.A. 30:4C-15.7g, and that the Act provides for an affirmative defense to prosecution for abandonment pursuant to N.J.S.A. 30:4C-15.7e;

iii. Explain adoption procedures applicable under New Jersey State law; and

iv. Refer adoption inquiries to the appropriate office or agency in the Department of Children and Families; and

4. To monitor the handling of safe haven infant inquiries and calls.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Section was "Hotline established by Department of Human Services, operated by Division of Youth and Family Services". In (a), substituted "State Central Registry maintains the" for "Department of Human Services shall establish and maintain a" and inserted "for accepting calls related to safe haven for infants"; in the introductory paragraph of (c), inserted "related to the Safe Haven Infant Protection Act"; rewrote (c)2; in (c)3iv, substituted "Children and Families" for "Human Services"; and in (c)4, substituted "calls" for "referrals".

10:133K-1.5 Leaving an infant at a police station or hospital emergency department considered an affirmative defense to prosecution for abandonment, unless the infant was abused or neglected

(a) Pursuant to N.J.S.A. 30:4C-15.7e, it shall be an affirmative defense to a charge of infant abandonment if a parent, or a person acting on behalf of the parent, voluntarily brings a live infant, to, and leaves the infant with, an officer at a police station or an employee of a hospital emergency department, without expressing an intent to return for the infant.

(b) Nothing in this section shall be construed to create a defense to any prosecution arising from an act of abuse or neglect committed against the infant before he or she was brought to and left at a police station or hospital emergency department.

(c) Nothing in this section shall preclude the Division of Youth and Family Services or the police from conducting a child protection investigation, if the Division or the police have reason to believe that the infant was abused or neglected.

(d) Nothing in this section shall be construed to create a defense to prosecution arising from any conduct other than the act of bringing a live infant to, and leaving the infant with, an officer at a police station or an employee of a hospital emergency department. A person who abandons an infant or an older child under circumstances not governed by this Act shall not have an affirmative defense against prosecution under the Act.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

In (a), substituted "brings" for "brought" and "leaves" for "left"; in (c), substituted "protection" for "abuse and neglect".

10:133K-1.6 Anonymity of the parent or other person acting on behalf of the parent permitted, provision of information strictly voluntary

(a) A parent or other person who brings an infant to, and leaves the infant at, a police station or hospital emergency department pursuant to N.J.S.A. 30:4C-15.7 shall not be required to disclose his or her name or the name of the parent, provide any identifying or non-identifying information about the infant or birth family, or provide any background or medical information about the infant or birth family.

(b) A parent or other person who brings an infant to, and leaves the infant at, a police station or hospital emergency department pursuant to N.J.S.A. 30:4C-15.7 may voluntarily disclose identifying or non-identifying information to assist in planning for the infant's care and treatment pursuant to N.J.S.A. 30:4C-15.7g.

(c) A parent or other person who brings an infant to, and leaves the infant at, a police station or hospital emergency department pursuant to N.J.S.A. 30:4C-15.7 shall be provided with the Safe Haven for Infants Hotline telephone number in case he or she wants to provide additional information about the infant at a later date or has any questions regarding the status of the infant.

Amended by R.2007 d.287, effective September 4, 2007.
See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Section was "Anonymity of the parent or person acting on behalf of the parent permitted, provision of information strictly voluntary". Inserted "other" throughout the section.

10:133K-1.7 Actions taken by police pursuant to the Act when infant brought to the police station

(a) When a person appears at a police station with an infant and demonstrates, by action or in words, that he or she wishes to leave the infant behind, a police officer shall initiate action, as necessary, in an attempt to determine:

1. Whether the person is acting voluntarily, on his or her own volition; and
2. If the person intends to return for the infant or seeks to permanently give up all rights to the infant.

(b) If the police officer determines that the person appears to be acting voluntarily, on his or her own volition, and has no intent to return for the infant, the police officer shall:

1. Advise the person of the right to remain anonymous in accordance with N.J.A.C. 10:133K-1.6(a);
2. Advise the person that he or she may voluntarily disclose information in accordance with N.J.A.C. 10:133K-1.6(b); and
3. Transport the infant or arrange for the infant's safe transport to a local hospital emergency department pursuant to N.J.S.A. 30:4C-15.7a.

(c) If the infant is injured or appears to be abused or neglected, the police shall immediately notify the Division of Youth and Family Services in accordance with N.J.S.A. 9:6-8.10, and consult the county prosecutor in accordance with local protocols.

(d) A police officer shall record in the police incident report and shall share with hospital staff any identifying and non-identifying information about the infant that was voluntarily provided by the person who brought the infant to the police station.

(e) The Division of State Police shall assist the Division representative to search listings of missing children pursuant to N.J.S.A. 30:4C-15.7c in accordance with N.J.A.C. 10:133K-1.11(a)2, to determine if the infant has been reported missing to the authorities.

1. A State Police detective shall contact the county prosecutor's office to advise the county prosecutor that a child who appears to be a safe haven infant has been brought to, and left at, a hospital in his or her jurisdiction.

Amended by R.2007 d.287, effective September 4, 2007.
See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

In (c), deleted the last sentence; in (d), substituted "A" for "To assist the Division of Youth and Family Services in planning for the care of the safe haven infant, in accordance with N.J.A.C. 10:133K-1.10, a" and substituted "that" for "which"; and rewrote (e).

10:133K-1.8 Actions taken by hospital staff when infant brought to the hospital by the police pursuant to the Act

(a) When the police bring a safe haven infant to the hospital emergency department pursuant to N.J.S.A. 30:4C-15.7, hospital staff shall:

1. Take physical custody of the infant from the police officer;
2. Examine the infant;
3. Advise the police immediately and the State Central Registry pursuant to N.J.S.A. 9:6-8.10, if, upon examination, the infant appears to have been abused or neglected;
4. Admit the infant and take any action necessary to protect the infant's physical health and safety;
5. Obtain information from the police officer and document it in the infant's medical chart in accordance with N.J.A.C. 10:133K-1.10, including all identifying and non-identifying information about the infant, his or her parents and birth family, where available, and details regarding the full circumstances of the infant's appearance at the police station;
6. Notify the Safe Haven for Infants Hotline in accordance with N.J.A.C. 10:133K-1.4(c)2, no later than the first business day after taking possession of the infant from the police, pursuant to N.J.S.A. 30:4C-15.7b(3);

7. Administer routine tests and treatment as would be provided to any newborn delivered at, or brought to a New Jersey hospital within 30 days of birth;

8. Comply with any court order obtained by the Division, including deoxyribonucleic acid (DNA) profiling and human immunodeficiency virus (HIV) testing and other medical testing of the infant; and

9. Notify the Division of the infant's anticipated discharge date, to enable the Division to identify and prepare a selected adoptive home for the infant, if a suitable home is available which can meet the infant's needs.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

In (a)3, substituted "State Central Registry" for "Division of Youth and Family Services"; and in (a)8, substituted "deoxyribonucleic acid (DNA)" for "DNA" and "human immunodeficiency virus (HIV) testing and other" for "HIV and".

10:133K-1.9 Actions taken by hospital staff when safe haven infant brought directly to the hospital

(a) When a person appears at a hospital emergency department with an infant and demonstrates, by action or in words, that he or she wishes to leave the infant behind, hospital staff shall initiate action, as necessary, in an attempt to determine:

1. Whether the person is acting voluntarily, on his or her own volition; and

2. If the person intends to return for the infant, or seeks to permanently give up the rights to the infant.

(b) If the hospital staff determines that the person appears to be acting voluntarily, on his or her own volition, and has no intent to return for the infant, the hospital staff shall take physical custody of the infant pursuant to N.J.S.A. 30:4C-15.7b(1), and shall:

1. Examine the infant;

2. Contact the police immediately and the State Central Registry pursuant to N.J.S.A. 9:6-8.10 if, upon examination, the infant appears to be abused or neglected;

3. Admit the infant and take any action necessary to protect the infant's physical health and safety pursuant to N.J.S.A. 30:4C-15.7b(2);

4. Advise the person of the right to remain anonymous in accordance with N.J.A.C. 10:133K-1.6(a), pursuant to N.J.S.A. 30:4C-15.7g;

5. Advise the person that he or she may voluntarily disclose information in accordance with N.J.A.C. 10:133K-1.6(b), pursuant to N.J.S.A. 30:4C-15.7g;

6. Record information in the infant's medical chart in accordance with N.J.A.C. 10:133K-1.10, if identifying or non-identifying information about the infant and birth fam-

ily is voluntarily offered by the person who brought the infant to the hospital emergency department;

7. Offer the person services, medical care or a referral for services, as appropriate;

8. Notify the Safe Haven for Infants Hotline, in accordance with N.J.A.C. 10:133K-1.4(c)2, no later than the first business day after taking possession of the infant pursuant to N.J.S.A. 30:4C-15.7b(3);

9. Administer routine tests and treatment as would be provided to any newborn infant delivered at, or brought to a New Jersey hospital within 30 days of birth;

10. Comply with any court order obtained by the Division, including deoxyribonucleic acid (DNA) profiling and human immunodeficiency virus (HIV) testing and other medical testing of the infant; and

11. Notify the Division of the infant's anticipated discharge date, to enable the Division to identify and prepare a selected adoptive home for the infant, if a suitable home is available which can meet the infant's needs.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

In (b)2, substituted "State Central Registry" for "Division of Youth and Family Services"; and in (b)10, substituted "deoxyribonucleic acid (DNA)" for "DNA" and "human immunodeficiency virus (HIV) testing and other" for "HIV and".

10:133K-1.10 Police officers and hospital staff gather information, record in police incident report and infant's medical chart

(a) To assist the Division of Youth and Family Services in planning for the care of the safe haven infant, the police or hospital staff shall gather and record identifying and non-identifying information about the infant, if voluntarily provided by the person who brought the infant to, and left the infant at, the police station or hospital emergency department.

(b) In accordance with N.J.A.C. 10:133K-1.6(a), before gathering or recording any information, the police officer or hospital employee shall advise the person who brought the infant to the police station or hospital emergency department of his or her right to remain anonymous pursuant to N.J.S.A. 30:4C-15.7g.

(c) If the parent or other person who brought the infant to the police station demonstrates a willingness to provide background or health information, a police officer shall record the information, to the extent such information is voluntarily provided, in the police incident report and shall share the information with a hospital employee. A hospital employee shall record background or health information in the infant's medical chart, if provided by the police officer or when provided by the parent or other person who brought an infant directly to the hospital, to the extent such information is voluntarily provided. The information to record includes, but is not limited to, the following:

1. Information about the infant's present health, including whether the infant has any physical or developmental disabilities, problems or limitations;

2. Information about the infant's ethnicity, race and religion of origin;

3. Information about the composition of the infant's birth family, including but not limited to the age of each parent and whether the infant has any siblings;

4. Whether the infant was given a name, and, if so, what name;

5. Information about the infant's date and place of birth;

6. Information about the infant's pre-natal history and care, whether the infant was full term, and the infant's birth weight;

7. Information about the physical and mental health of each parent, and whether either parent had any hospitalizations;

8. Whether either parent is human immunodeficiency virus (HIV) positive, has acquired immune deficiency syndrome (AIDS), or has any other serious medical problems or conditions;

9. Whether the birth mother used drugs, took medication or consumed alcohol while pregnant;

10. Information about why the parent or parents want to permanently give up the infant; and

11. Whether the birth father and extended family members are aware of the birth of the infant and the mother's plan to give up the infant.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

In the introductory paragraph of (c), inserted "other" twice; and in (c)8, substituted "human immunodeficiency virus (HIV)" for "HIV" and "acquired immune deficiency syndrome (AIDS)" for "AIDS".

10:133K-1.11 Action taken by the Division upon receipt of a referral of a safe haven infant

(a) The hotline representative shall assign each referral of a safe haven infant an immediate response.

(b) Upon receipt of a referral from the Safe Haven for Infants Hotline pursuant to N.J.A.C. 10:133K-1.4(c)2i, the Division representative shall:

1. Notify the Division of State Police that a referral of a safe haven infant has been received, and work cooperatively with that agency to enable the State Police to make a thorough search of all listings of missing children in accordance with N.J.A.C. 10:133K-1.7(d), pursuant to N.J.S.A. 30:4C-15.7c, to determine if the infant has been reported as a missing child;

2. Notify the police department that is responsible for the jurisdiction in which the hospital is located that a referral of a safe haven infant has been received, unless the infant was brought first to, and left at, that police station;

3. Assume care, custody and control of the infant as an emergency removal without court order or parental consent pursuant to N.J.S.A. 9:6-8.29 and 8.30, and thereby petition the Family Court, by no later than two court days, for an order which shall include:

i. Custody of the infant; and

ii. Authorization to perform deoxyribonucleic acid (DNA) profiling and human immunodeficiency virus (HIV) and other medical testing of the infant;

4. Comply with the provisions of the court order;

5. Arrange appropriate placement when the infant is medically cleared for discharge from the hospital, placing the infant in a selected adoptive home, if a suitable home is available which can meet the infant's needs;

6. Request a copy of the infant's medical chart, including any written identifying and non-identifying information about the safe haven infant recorded therein pursuant to N.J.A.C. 10:133K-1.10;

7. Request a copy of the police incident report, if the safe haven infant was brought to a police station before being transported to the hospital; and

8. File for a termination of parental rights in accordance with N.J.A.C. 10:133J, Termination of Parental Rights, and pursuant to the Act at N.J.S.A. 30:4C-15.1b(3), no later than 21 days after assuming care, custody and control of the infant, if no parent or relative has come forward by that date who is willing and able to care for the infant, except as specified at N.J.A.C. 10:133K-1.13.

Amended by R.2007 d.287, effective September 4, 2007.

See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).

Section was "Action taken by the Division upon receipt of a report of a safe haven infant". Added new (a); recodified former (a) as new (b) and rewrote the subsection; and deleted former (b).

10:133K-1.12 Division not required to search for or identify parents or reunify birth family

(a) If an exception to the requirement for reasonable efforts to reunify the infant with a parent is established pursuant to N.J.S.A. 30:4C-11.3, a Division representative shall not be required to initiate action to search for or otherwise identify the parent or birth family of a safe haven infant or attempt to reunify pursuant to N.J.S.A. 30:4C-15.8. The Division shall place the infant with a potential adoptive parent as soon as possible.

(b) If the Division becomes aware of the identity of the infant's parent, birth family or the person who brought the infant to, and left the infant at, the police station or hospital emergency department pursuant to the Act, a Division rep-

representative shall consult the Deputy Attorney General to determine a course of action, as specified at N.J.A.C. 10:133K-1.13.

10:133K-1.13 Actions taken when identification of safe haven infant's parent or family is determined

(a) If the Division becomes aware of the identity of a safe haven infant's parent, birth family or the person who brought the infant to, and left the infant at, the police station or hospital emergency department before the parental rights of the infant's parent or parents are terminated, the Division representative shall consult the Deputy Attorney General in order to make a determination, on a case-by-case basis, whether to attempt to contact the parent or parents or to notify members of the birth family of the existence of the safe haven infant, to thereby work with the parent or parents or family in developing a permanent plan for the infant, or to pursue another course of action. When making a determination, the factors to consider shall include, but shall not be limited to, the following:

1. The safety and protection of the infant;
2. The safety of each parent;

3. The intent or apparent intent of the parent, or other person acting on behalf of the parent, who brought the infant to the police station or hospital emergency department under the protections provided by the Act;

4. The parental rights of the other parent, including the rights of the birth father and the legal father; and

5. The infant's rights to a permanent home, including the infant's right to reside with and be raised by a parent or another member of his or her birth family, whenever possible.

Amended by R.2007 d.287, effective September 4, 2007.
See: 39 N.J.R. 1224(a), 39 N.J.R. 3742(a).
In (a)3, inserted "other".

10:133K-1.14 Police officers and hospital staff acting in good faith immune from liability

Each police officer and the governmental jurisdiction employing that police officer and each employee of a hospital emergency department and the hospital employing that individual shall incur no civil or criminal liability for any good faith acts or omissions performed in accordance with the Act, pursuant to N.J.S.A. 30:4C-15.7f.