

CRIMES CODE (18 PA.C.S.) AND DOMESTIC RELATIONS CODE (23 PA.C.S.) - AMEND
NEWBORN PROTECTION

Act of Dec. 9, 2002, P.L. 1549, No. 201

Cl. 18

Session of 2002

No. 2002-201

SB 654

AN ACT

Amending Titles 18 (Crimes and Offenses) and 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, providing for newborn protection.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

§ 4306. Newborn protection.

(a) **General rule.--A parent of a newborn shall not be criminally liable for any violation of this title solely for leaving a newborn in the care of a hospital pursuant to 23 Pa.C.S. Ch. 65 (relating to newborn protection) providing that the following criteria are met:**

(1) **The parent expresses, either orally or through conduct, the intent to have the hospital accept the newborn pursuant to 23 Pa.C.S. Ch. 65.**

(2) **The newborn is not a victim of child abuse or criminal conduct.**

(b) **Definition.--As used in this section, the term "newborn" shall have the meaning given to it in 23 Pa.C.S. § 6502 (relating to definitions) and "child abuse" shall be as defined in 23 Pa.C.S. § 6303 (relating to definitions).**

Section 2. Section 6303(a) of Title 23 is amended by adding definitions to read:

§ 6303. Definitions.

(a) **General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:**

* * *

"Child." Includes a newborn.

* * *

"Newborn." As defined in section 6502 (relating to definitions).

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Section 3. Section 6315(a) and (c) of Title 23 are amended to read:

§ 6315. Taking child into protective custody.

(a) **General rule.--A child may be taken into protective custody:**

(1) **As provided by 42 Pa.C.S. § 6324 (relating to taking into custody).**

(2) **By a physician examining or treating the child or by the director, or a person specifically designated in writing by the director, of any hospital or other medical institution where the child is being treated if protective custody is**

immediately necessary to protect the child under this chapter.

(3) By a physician or the director, or a person specifically designated by the director, of a hospital pursuant to Chapter 65 (relating to newborn protection) if the child is a newborn.

* * *

(c) Notice of custody.--[An]

(1) Except as provided in paragraph (2), an individual taking a child into protective custody under this chapter shall immediately, and within 24 hours in writing, notify the parent, guardian or other custodian of the child of the whereabouts of the child, unless prohibited by court order, and the reasons for the need to take the child into protective custody and shall immediately notify the appropriate county agency in order that proceedings under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) may be initiated, if appropriate.

(2) In the case of a newborn taken into protective custody pursuant to subsection (a) (3), the county agency shall within 24 hours make diligent efforts to notify a parent, guardian, custodian or other family member of the whereabouts of the newborn, unless prohibited by court order, and the reasons for the need to take the newborn into protective custody.

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Section 4. Section 6316(b) of Title 23 is amended and the section is amended by adding a subsection to read:

§ 6316. Admission to private and public hospitals.

* * *

(a.1) Newborns.--A newborn taken into protective custody pursuant to section 6315(a) (3) (relating to taking child into protective custody) shall be admitted to, treated and maintained in facilities of public and private hospitals on the basis of medical need and shall not be refused or deprived in any way of proper medical treatment and care. Once a newborn is taken into protective custody pursuant to section 6315(a) (3), the newborn shall be considered immediately eligible for Medicaid for payment of medical services provided. Until otherwise provided by court order, the county agency shall assume the responsibility for making decisions regarding the newborn's medical care.

(b) Failure of hospital to admit child or newborn.--The failure of a hospital to admit and properly treat and care for a child pursuant to subsection (a) or (a.1) shall be cause for the department to order immediate admittance, treatment and care by the hospital which shall be enforceable, if necessary, by the prompt institution of a civil action by the department. The child, through an attorney, shall also have the additional and independent right to seek immediate injunctive relief and institute an appropriate civil action for damages against the hospital.

Section 5. Sections 6365(a) and 6383(a) of Title 23 are amended to read:

§ 6365. Services for prevention, investigation and treatment of child abuse.

(a) Instruction and education.--Each county agency shall

make available among its services for the prevention and treatment of child abuse instruction and education for parenthood and parenting skills, protective and preventive social counseling, **outreach and counseling services to prevent newborn abandonment**, emergency caretaker services, emergency shelter care, emergency medical services and the establishment of self-help groups organized for the prevention and treatment of child abuse, part-day services, out-of-home placement services, therapeutic activities for child and family directed at alleviating conditions that present a risk to the safety and well-being of a child and any other services required by department regulations.

* * *

§ 6383. Education and training.

(a) Duties of department and county agencies.--The department and each county agency, both jointly and individually, shall conduct a continuing publicity and education program for the citizens of this Commonwealth aimed at the prevention of child abuse and child neglect, **including the prevention of newborn abandonment**, the identification of abused and neglected children and the provision of necessary ameliorative services to abused and neglected children and their families. The department and each county agency shall conduct an ongoing training and education program for local staff, persons required to make reports and other appropriate persons in order to familiarize those persons with the reporting and investigative procedures for cases of suspected child abuse and the rehabilitative services that are available to children and families. In addition, the department shall, by regulation, establish a program of training and certification for persons classified as protective services workers. The regulations shall provide for the grandfathering of all current permanent protective services workers as certified protective services workers. Upon request by the county agency and approval of the department, the agency may conduct the training of the county's protective services workers.

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Section 6. Title 23 is amended by adding a chapter to read:

CHAPTER 65

NEWBORN PROTECTION

Sec.

6501. Short title of chapter.

6502. Definitions.

6503. Nonliability.

6504. Accepting newborns.

6505. Reporting acceptance of newborns.

6506. Failure to report acceptance of newborns.

6507. Immunity granted to health care providers and hospitals.

6508. Duty of hospital.

6509. Duties of department.

§ 6501. Short title of chapter.

This chapter shall be known and may be cited as the Newborn Protection Act.

§ 6502. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Child abuse." Child abuse as defined in section 6303(b) (relating to definitions).

"County agency" or "agency." County agency as defined in section 6303(a) (relating to definitions).

"Department." The Department of Public Welfare of the Commonwealth.

"Health care provider." A person who is licensed or certified by the laws of this Commonwealth to administer health care in the ordinary course of business or practice of a profession. For purposes of accepting a newborn as provided in section 6504(a)(1) (relating to accepting newborns) and for immunity provided pursuant to section 6507 (relating to immunity granted to health care providers and hospitals), the term includes administrative, managerial and security personnel and any other person employed by a hospital.

"Hospital." An institution having an organized medical staff which is primarily engaged in providing to inpatients, by or under the supervision of physicians, diagnostic and therapeutic services or rehabilitation services for the care or rehabilitation of people who are injured, disabled, pregnant, diseased, sick or mentally ill. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific medical specialties, but not facilities caring exclusively for people with mental illness or those facilities primarily engaged in providing rehabilitation services or long-term care.

"Newborn." A child less than 28 days of age as reasonably determined by a physician.

§ 6503. Nonliability.

A parent of a newborn shall not be criminally liable under any provision of Title 18 (relating to crimes and offenses) if the criteria set forth in 18 Pa.C.S § 4306 (relating to newborn protection) are met.

§ 6504. Accepting newborns.

(a) General rule.--A health care provider at a hospital shall do all of the following relating to a newborn accepted under this chapter:

(1) Take the newborn into protective custody as provided in section 6315(a)(3) (relating to taking child into protective custody).

(2) Perform a medical evaluation as well as perform any act necessary to care for and protect the physical health and safety of the newborn.

(3) Notify the county agency and the local municipal police department or the Pennsylvania State Police where no municipal police jurisdiction exists as provided in section 6505 (relating to reporting acceptance of newborns).

(b) Accepting newborns.--When accepting a newborn pursuant to this chapter, a parent may provide a health care provider with information about the newborn's medical history and any identifying information.

§ 6505. Reporting acceptance of newborns.

A health care provider at a hospital shall in all cases notify the county agency and the local municipal police department or the Pennsylvania State Police where no municipal police jurisdiction exists immediately by telephone regarding a newborn accepted by a hospital under this chapter. A written

report shall be submitted to the county agency and local municipal police department or the Pennsylvania State Police within 48 hours after the oral report. For purposes of this section, the term "health care provider" shall include administrative, managerial and security personnel employed by a hospital.

§ 6506. Failure to report acceptance of newborns.

A health care provider at a hospital who intentionally or knowingly fails to report the acceptance by a hospital of a newborn as required by this chapter commits a summary offense. A second or subsequent failure to report such acceptance is a misdemeanor of the third degree.

§ 6507. Immunity granted to health care providers and hospitals.

Except for a violation of section 6506 (relating to failure to report acceptance of newborns), no hospital or health care provider at a hospital shall be subject to civil liability or criminal penalty solely by reason of complying with the provisions of this chapter.

§ 6508. Duty of hospital.

A hospital shall insure that its officers, health care providers and employees are familiar with the provisions of this chapter, section 6315(a)(3) (relating to taking child into protective custody) and other applicable provisions of Chapter 63 (relating to child protective services) that relate to newborn protection and shall insure that the appropriate officers, health care providers and employees, as the case may be, receive educational materials provided by the department as established under section 6509 (relating to duties of department). Information concerning this chapter, section 6315(a)(3) and other applicable provisions of Chapter 63 that relate to newborn protection and regulations adopted by the department shall be made part of the training at each hospital. Each hospital shall adopt a written policy in accordance with the provisions of this chapter, section 6315(a)(3) and other applicable provisions of Chapter 63 that relate to newborn protection.

§ 6509. Duties of department.

The department shall provide educational materials for use by hospitals, health care providers and employees at hospitals regarding this chapter, section 6315(a)(3) (relating to taking child into protective custody) and other applicable provisions of Chapter 63 (relating to child protective services) that relate to newborn protection. The department shall promulgate such regulations as may be necessary to implement this chapter, section 6315(a)(3) and other applicable provisions of Chapter 63 that relate to newborn protection. The department shall also provide health care providers and hospitals with an informational pamphlet regarding this chapter, section 6315(a)(3) and other applicable provisions of Chapter 63 that relate to newborn protection which may be distributed to the public. In addition, the department shall comply with the provisions regarding infant abandonment in sections 6365 (relating to services for prevention, investigation and treatment of child abuse) and 6383 (relating to education and training). A report shall be made annually to the General Assembly on the number and disposition of newborns accepted in

accordance with this chapter, section 6315(a)(3) and other applicable provisions of Chapter 63 that relate to newborn protection.

Section 7. This act shall take effect in 60 days.

APPROVED--The 9th day of December, A. D. 2002.

MARK S. SCHWEIKER