

**CHILDREN AND FAMILIES**

**DIVISION OF CHILD PROTECTION AND PERMANENCY**

**New Jersey Safe Haven Infant Protection Act Procedures and Requirements**

**Proposed Readoption with Amendments: N.J.A.C. 10:133K**

Authorized By: Allison Blake, Ph.D., L.S.W., Commissioner, Department of Children and Families.

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

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2014-148.

Submit written comments by November 14, 2014, to:

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The agency proposal follows:

**Summary**

As the Division of Child Protection and Permanency (Division) has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Pursuant to N.J.S.A. 52:14B-5.1.b, N.J.A.C. 10:133K will expire on August 10, 2014. Since the notice of proposed readoption with amendments has been filed with the Office of Administrative Law prior to August 10, 2014, the expiration date of this chapter is extended 180 days to February 6, 2015, pursuant to N.J.S.A. 52:14B-5.1.c(2). The Division has reviewed these rules and has determined they continue to be necessary, proper, and reasonable for the purpose for which they were originally promulgated, as required by Executive Order No. 66 (1978).

The Division of Child Protection and Permanency proposes to readopt with amendments the rules governing the Division's procedures and requirements regarding the New Jersey Safe Haven Infant Protection Act (Act).

The Division proposes amendments to change the name of the division from "Division of Youth and Family Services" in N.J.A.C. 10:133K-1.2, 1.5(c), 1.7(c), and 1.10(a) to the "Division of Child Protection and Permanency." The proposed amendments reflect the current and standard language used by the Division since the creation of the Division on June 29, 2012, pursuant to N.J.S.A. 9:3A-9.

The Division proposes to amend the heading of N.J.A.C. 10:133K-1.5 by removing the following words: "Leaving an infant at a police station or hospital emergency department considered an ... for abandonment, unless the infant was abused or neglected." The proposed heading reads as follows: "Affirmative defense to prosecution." The proposed amendment simplifies the heading and avoids the confusion likely to result from paraphrasing the entirety of the rule that follows in the heading.

A summary of the rules proposed for readoption follows:

N.J.A.C. 10:133K-1.1 states the purpose of Chapter 133K, which is to provide procedures, requirements, instruction, and guidance for implementation of the New Jersey Safe Haven Infant Protection Act.

N.J.A.C. 10:133K-1.2 states the scope of Chapter 133K.

N.J.A.C. 10:133K-1.3 provides the definitions used in Chapter 133K.

N.J.A.C. 10:133K-1.4 states the role of the State Central Registry for safe haven infants.

N.J.A.C. 10:133K-1.5 states the affirmative defense to prosecution for abandonment.

N.J.A.C. 10:133K-1.6 details anonymity for a parent or other persons acting on behalf of the parent who brings an infant to and leaves the infant at a police station or hospital emergency department.

N.J.A.C. 10:133K-1.7 outlines the actions taken by the police pursuant to the Act when an infant is brought to the police station.

N.J.A.C. 10:133K-1.8 outlines the actions taken by hospital staff when an infant is brought to the hospital by the police pursuant to the Act.

N.J.A.C. 10:133K-1.9 outlines the actions taken by hospital staff when a safe haven infant is brought directly to the hospital.

N.J.A.C. 10:133K-1.10 outlines procedures taken by police and hospital staff gathering voluntary identifying and non-identifying information about the infant from the person who brought the infant to the police or hospital emergency department.

N.J.A.C. 10:133K-1.11 outlines the actions taken by the Division upon receipt of a referral of a safe haven infant.

N.J.A.C. 10:133K-1.12 states that the Division is not required to search for or identify parents or reunify the birth family.

N.J.A.C. 10:133K-1.13 describes the actions to be taken by the Department when the identity of a safe haven infant becomes known.

N.J.A.C. 10:133K-1.14 provides immunity for police officers and hospital staff acting in good faith in safe haven cases.

### **Social Impact**

The rules proposed for readoption with amendments will benefit an infant who appears to be no more than 30 days old and whose parent or parents wish to give up their parental rights to him or her, by providing a safe place for the parent or a person acting on behalf of the parent to bring the live infant. The intent of the Act and this chapter is to save infants' lives by providing a safe place for unwanted infants to be left and to expedite permanency for the infant, consistent with the Federal Adoption and Safe Families Act. See P.L. 1999 c. 53.

Another positive social impact of the rules proposed for readoption with amendments is that they help to explain the coordination of the Safe Haven for Infants Hotline and the State Central Registry, so that individuals or other public agencies can understand how to navigate the system and how the Department handles the case of a safe haven infant. Since 2012, the Division has received on average three to four safe haven calls per year.

### **Economic Impact**

Since the safe haven population is expected to be limited in size, the rules proposed for readoption with amendments should not have a negative economic or administrative impact on State, county, and municipal police departments, the Division, hospitals, or the courts.

### **Federal Standards Statement**

The rules proposed for readoption with amendments are consistent with, but do not exceed, Federal regulations implementing the Federal Adoption and Safe Families Act (ASFA). Specifically, in situations in which a child has been abandoned, 45 CFR 1356.21(b)(3) permits a State child protection agency to seek an exception to the requirements to provide reasonable

efforts toward family reunification. Also, 45 CFR 1356.21(i) requires the Division, as the State child protection agency, to promptly seek termination of parental rights for abandoned children.

### **Jobs Impact**

The Division anticipates no generation or loss of jobs will result if the rules proposed for readoption with amendments are adopted.

### **Agriculture Industry Impact**

The rules proposed for readoption with amendments will have no impact on the agriculture industry.

### **Regulatory Flexibility Statement**

The rules proposed for readoption with amendments do not impose reporting, recordkeeping, or compliance requirements on small businesses, as that term is defined in N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption with amendments provide information on how the Division handles referrals under the Safe Haven Infant Protection Act and apply to governmental entities and hospitals. Since hospitals are not considered small businesses, as they have more than 100 full-time employees, the rules proposed for readoption with amendments do not impose reporting, recordkeeping, or compliance requirements on small businesses. Therefore, a regulatory flexibility analysis is not necessary.

### **Housing Affordability Impact Analysis**

The rules proposed for readoption with amendments will have no impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change

in the average costs associated with housing because the rules pertain to the Division's implementation of the Safe Haven Infant Protection Act.

### **Smart Growth Development Impact Analysis**

The rules proposed for readoption with amendments have no impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules pertain to the Division's implementation of the Safe Haven Infant Protection Act.

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:133K.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

#### SUBCHAPTER 1. PROCEDURES AND REQUIREMENTS

##### 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] **Child Protection and Permanency**.

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

(a)-(b) (No change.)

(c) Nothing in this section shall preclude the Division of [Youth and Family Services] **Child Protection and Permanency** 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) (No change.)

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

(a)-(b) (No change.)

(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] **Child Protection and Permanency** in accordance with N.J.S.A. 9:6-8:10, and consult the county prosecutor in accordance with local protocols.

(d)-(e) (No change.)

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] **Child Protection and Permanency** 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)-(c) (No change.)