

**9 Del. Admin. Code 301-1.0**  
Alternatively cited as DE ADC 9 300 301

**301-1.0. Legal Base**

1.1 The legal base for these regulations is in 31 **Del.C.** § 309.

**9 Del. Admin. Code 301-2.0**  
Alternatively cited as DE ADC 9 300 301

**301-2.0. Purpose**

2.1 The overall purpose of these regulations is the protection of children who are in the care or custody of the Department. To this end, persons in residential child care facilities and/or employees or volunteers of the Department or a Department contractor will have their criminal history checked prior to employment or during a conditional period of employment. In addition, foster/respite/adoptive parents will have their criminal history checked prior to approval or during a period of provisional approval with the Department or contracted providers. Each employer may use his/her own employment/acceptance criteria which may be stricter than those described herein.

**9 Del. Admin. Code 301-3.0**  
Alternatively cited as DE ADC 9 300 301

**301-3.0. Definitions**

**“Child Care Person”** means any person who seeks employment for compensation, volunteers to provide direct child care service, or, for any reason, has regular direct access to children and/or adolescents under the age of 18 years. This definition shall include any employee or volunteer of the Department of Services for Children, Youth and Their Families or one of its contractors who has regular direct access to children and/or adolescents under the age of 18 years and foster parents.

**“Conditional Child Care Person”** means a child care person who has been offered a position or has agreed to volunteer with the Department or one of its contractors or in a residential child care facility. Under the provisions of the law, a child care person may be hired on a temporary basis until the determination of suitability is made by the Department. Foster parents may be provisionally approved prior to the results of the criminal background check and in accordance with the Division of Family Services policy. If a determination of unsuitability is made, the child care person will be dismissed and in the case of foster parents the conditional placement will be rescinded.

**“Criminal History Supervisor”** means the Department staff member, located in the Office of Child Care Licensing, who is responsible for the implementation of the criminal history policies, procedures, and regulations.

**“Criminal History Specialist”** means the Department staff member, located in the Office of Child Care Licensing,

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who is responsible for processing and reviewing criminal history information consistent with Departmental policies, procedures and regulations.

**“Department”** means the Department of Services for Children, Youth and Their Families.

**“Direct Access”** means the opportunity to have personal contact with persons receiving care.

**“Employer”** means any of the following:

- The Divisions within the Department of Services for Children, Youth and Their Families (PLEASE NOTE: The Divisions within the Department do not “employ” foster/adoptive parents or volunteers, but for purposes of this document, the Divisions are referred to as employer.)
- Any Delaware contractor who operates a program that provides regular direct access to children.
- Any Delaware contractor who provides foster care or adoption services.

**“Foster Parents”** means foster/respite/adoptive parents and all household members 18 years of age or older.

**“Residential Child Care Facility”** means any facility that provides care or treatment for children overnight or is a 24 hour facility. This facility is State owned and operated or is licensed by the Department to provide services.

**“Volunteer”** means any person who has direct access to children in the performance of unpaid duties and who will be in a facility or in the service of the Department for five (5) or more days in a fiscal year. Student interns, regularly scheduled volunteers, and volunteer counselors will be required to have a criminal history check under these regulations. (For limited, occasional, sporadic, one-time volunteer efforts that last less than five (5) days or 40 hours, employers must ensure that these volunteers will be supervised during any activities with children.)

**9 Del. Admin. Code 301-4.0**  
**Alternatively cited as DE ADC 9 300 301**

**301-4.0. Individuals Subject To The Law**

4.1 Generally, child care persons subject to a criminal history record check shall be:

4.1.1 persons employed or volunteering in a residential child care facility; or

4.1.2 persons employed or volunteering with the Department; or

4.1.3 foster/adoptive parents; or

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4.1.4 persons employed or volunteering at an agency that contracts with the Department; who are in a position which involves:

4.1.4.1 The opportunity to have direct access to or contact with a child without the presence of other employees or adults.

4.2 Residential Child Care Facilities and Department Contractors

4.2.1 Criminal history record checks shall be conducted on the following child care persons of licensed residential child care facilities and Department contractors. This list is not necessarily all-inclusive, due to the various titles used in different facilities.

4.2.1.1 Child care workers;

4.2.1.2 Child care supervisors;

4.2.1.3 Maintenance, transportation, kitchen, clerical workers;

4.2.1.4 Teachers, aides, principals;

4.2.1.5 Administrators, coordinators, directors, and administrative staff;

4.2.1.6 Volunteers as defined in 3.0;

4.2.1.7 Social Workers;

4.2.1.8 Recreation staff;

4.2.1.9 Medical staff.

4.3 Foster/Adoptive Parents as defined in 3.0

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4.3.1 Criminal history record checks shall be conducted on:

4.3.1.1 Applicants for foster/respite care within the Department and in licensed child placing agencies providing foster care.

4.3.1.2 Applicants for adoption within the Department and in licensed child placing agencies providing adoption services.

4.3.1.3 Petitioners in relative adoptions.

4.3.1.4 Interstate applicants for adoption or foster placement when a child is from another state and is being placed in Delaware and when a Delaware child is being placed in another state.

4.4 Department Employees

4.4.1 Criminal history record checks shall be conducted on all Department employees and volunteers.

4.5 Individuals subject to the law shall be those individuals who are hired or apply for the status described in 4.1 to 4.4 on or after September 1, 1990 or have less than one year service prior to that date.

**9 Del. Admin. Code 301-5.0**  
**Alternatively cited as DE ADC 9 300 301**

**301-5.0. Criminal History Record Check Process**

5.1 The employer shall require each individual subject to the law, either as soon as that individual has accepted a position, or has agreed to serve as a volunteer, or no later than the fifth working day to complete the Criminal History Record Request form and be fingerprinted. In the case of foster parents, the Criminal History Record Request form and fingerprinting must be completed prior to completion of pre-service training or the home study process.

5.2 The child care person or foster parent goes to a designated Delaware State Police Troop and has two sets of fingerprints taken.

5.3 The Delaware State Police follow established State Bureau of Identification procedures to obtain criminal

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history information from the State Bureau of Identification and Federal Bureau of Investigation. A report of the child care person's or foster parent's criminal history record or a statement that there is no criminal history information relating to that person is forwarded to the Criminal History Unit.

5.4 Simultaneously, the Criminal History Specialist conducts a review of the Child Protection Registry to determine if the child care person is named as a perpetrator in a substantiated report of child abuse or neglect.

5.5 When the Criminal History Specialist receives the information from the State Bureau of Identification, Child Protection Registry, and Federal Bureau of Investigation she/he reviews that information, along with the Criminal History Record Request form. This review is guided by the criteria specified in Regulations 6.1-7.2.

5.6 When there is no record, the Criminal History Specialist provides notification to the appropriate Division Director, who notifies the employer or child placing agency and the child care person or foster parent.

5.7 When there is a criminal history, the Criminal History Specialist provides a written summary of the findings of the check with a recommendation to the appropriate Division Director.

5.8 The appropriate Division Director makes the determination of suitability for employment, volunteering or foster parenting and notifies the child care person or foster parent and employer or child placing agency, with a copy of the findings attached.

5.9 In the event that the child care person or foster parent has reason to provide additional information regarding the information in her/his criminal history check, an administrative review will be held, as delineated in regulations 9.1-9.10.

**9 Del. Admin. Code 301-6.0**  
**Alternatively cited as DE ADC 9 300 301**

**301-6.0. Criteria For Prohibited Offenses**

6.1 Child care persons or foster parents convicted of a sexually related offense(s) or other offenses against children shall be prohibited from employment, volunteering, or foster care/adoption without consideration of other criteria.

6.2 The Adoption and Safe Families Act of 1997 prohibits individuals from becoming foster or adoptive parents if they have the following felony convictions:

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6.2.1 Child abuse or neglect, spousal abuse, crimes against children (including child pornography), and crimes involving violence including rape, sexual assault and homicide committed at any time.

6.2.2 Physical assault, battery and drug related offenses committed within the past five years.

**9 Del. Admin. Code 301-7.0**  
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**301-7.0. Criteria For Unsuitability**

7.1 Information received from the criminal history record and Child Protection Registry checks shall be reviewed by the Criminal History Specialist and Division Director on the basis of the following criteria for a determination of suitability for employment, volunteering, or foster care/ adoption.

7.1.1 Types of criminal conviction(s) and/or substantiation(s)

7.1.1.1 Criminal convictions other than those that are prohibited shall be reviewed in consideration of other criteria below. Other convictions for offenses which may make a child care person unsuitable for employment or volunteering, or may make a prospective foster parent unsuitable for foster parenting, are those in the Delaware Code, Titles 11 and 16 which may contain (but are not limited to) the following characteristics:

7.1.1.1.1 Criminal conviction(s) against the person where physical harm or death has taken place

7.1.1.1.2 Criminal conviction(s) involving weapons, explosive devices or threat of harm

7.1.1.1.3 Criminal conviction(s) involving public indecency and obscenity which may have been the result of plea bargain situations

7.1.1.1.4 Criminal conviction(s) that show a disregard of others, such as reckless endangering, arson

7.1.1.1.5 Criminal conviction(s) cruelty to animals or deviant behavior such as abusing a corpse

7.1.1.1.6 Criminal conviction(s) against the Uniform Controlled Substances Act

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7.1.1.2 The criminal conviction(s) contained in section 7.1.1.1. and/or existence of a substantiated case of child abuse or neglect involving the child care person or foster parent as perpetrator shall be reviewed in consideration of other criteria below.

7.1.2 Frequency of conviction(s)/substantiation(s)

7.1.3 Length of time since the conviction(s)/substantiation(s)

7.1.4 Age at the time of the conviction(s)/substantiation(s)

7.1.5 Severity of the conviction(s)/substantiation(s)

7.1.6 Record since the conviction(s)/substantiation(s)

7.1.7 Relationship of the conviction(s)/substantiation(s) to the type of job assignment and/or responsibilities of the child care person or foster parent

7.1.8 Policies of the Department

7.2 Failure by a child care person or foster parent to disclose relevant criminal history or child protection registry information on the Criminal History Record Request form that is subsequently disclosed as a result of the criminal history record check may be grounds for immediate termination of an employee or denial of approval for foster or adoptive care.

**9 Del. Admin. Code 301-8.0**  
Alternatively cited as DE ADC 9 300 301

**301-8.0. Sanctions**

8.1 Sanctions against employers (division/facility/ agency) shall be applied and enforced in the following circumstances:

8.1.1 An employer fails to require criminal history record checks for affected employees, volunteers, or applicants for foster care or adoption.

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8.1.2 An employer knowingly hires or approves a child care person who is prohibited from employment or foster care or adoption as a result of a conviction for a prohibited offense.

8.1.3 An employer does not comply with the final recommendation of an administrative review.

8.2 Sanctions applied to contracted agencies, residential facilities, and child placing agencies for violation of the law or the regulations may include:

8.2.1 Amendment or dissolution of any agreements with the Department to provide the contracted service

8.2.2 Removal of children from placement

8.2.3 Suspension of future child referrals

8.2.4 Revocation of licensure

8.3 Sanctions against Department Divisions for violation of the law or regulations shall be applied to responsible staff by the Secretary on a case-by-case basis and may include:

8.3.1 Involuntary reassignment

8.3.2 Discipline up to and including dismissal

**9 Del. Admin. Code 301-9.0**  
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**301-9.0. Administrative Review**

Criminal history is only one factor being considered in the hiring or approval process. If the employer makes an adverse judgment based on any criterion other than criminal history, this administrative review process does not apply.

9.1 Any child care person or foster parent who is denied, recommended for termination, terminated from employment, volunteering or foster care as a result of an adverse judgment made on the basis of a criminal history record check shall be entitled to an administrative review.

Current with amendments included in the Delaware Register of Regulations, Volume 17, Issue 11, dated May 1, 2014.



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9.2 The child care person will be notified of the right to an administrative review when a determination of unsuitability has been made.

9.3 If the child care person believes the criminal history information is incorrect or incomplete, she/he shall submit a request for a review of the facts of the criminal history to the Criminal History Specialist in writing or reduced to writing within five (5) working days of the receipt of the decision for denial/recommending termination/ termination of employment, volunteering, foster care or adoption resulting from a determination of unsuitability. When the corrected information is obtained by the child care person, it will be reviewed by the Criminal History Specialist's Supervisor and the Criminal History Specialist. A recommendation will be issued to the appropriate Division Director based on the corrected information. The Division Director makes a final decision and notifies the child care person, foster or adoptive parent and copies the employer or child placing agency and the Criminal History Specialist.

9.4 If the child care person believes that additional information regarding the circumstances of the particular offense(s) would clarify the situation, she/he shall submit a written or reduced to writing request for an administrative review and the written documentation to be considered in the review to the appropriate Division Director with a copy to the employer and the Criminal History Specialist. This shall be submitted within 10 working days of the receipt of the decision for denial, recommendation to terminate employment, volunteering, foster care, or adoption resulting from a determination of unsuitability. The Division Director makes a final decision and notifies the child care person or foster parent and copies the employer or child placing agency and the Criminal History Specialist.

9.5 If the individual had previously requested a review of the facts of the criminal history, the request for an administrative review shall be submitted within five (5) working days of the receipt of the decision based on the results of that review.

9.5.1 The child care person may also request to give an oral presentation at her/his administrative review.

9.6 When a child care person has requested a review of the facts of the criminal history and/or an administrative review, the following shall apply:

9.6.1 The child care person shall be removed from direct access to children or provisions made for on-site supervision of the person during working hours pending the results of the review.

9.6.2 In the case of foster parents, children may be removed from the home or no further placements shall be made pending the results of the review.

9.6.3 In the case of adoptive parents, the application shall remain active, but children may be removed from the

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home pending results of the review.

9.6.4 The employer shall notify the Criminal History Specialist of the action taken with the child care person pending the results of the administrative review. (This notification is in addition to following established procedures already governing state personnel or individual facilities or agencies.)

9.7 In the case of a review of a decision involving a Department operated facility or Department staff, the Division Director (or designee) shall conduct the review in conjunction with Personnel and within the context of these regulations, merit rules/labor agreements and the employment status of the child care person. The Criminal History Specialist shall be present as a witness.

9.8 When the review involves a Division of Family Services approved foster parent, the Director of the Division of Family Services (or designee) shall conduct the review with the County Foster Home Coordinator staffing the review and the Criminal History Specialist present as a witness.

9.9 In the case of a review of a decision involving a contracted facility or child placing agency, the Director (or designee) of the contracting Division shall conduct the review with the employer staffing the review and the Criminal History Specialist present as a witness.

9.10 The employer and the child care person shall be bound by the final decision of the administrative review which is made by the Division Director or designee. If the employer does not accept the decision, sanctions shall apply.

**9 Del. Admin. Code 301-10.0**  
**Alternatively cited as DE ADC 9 300 301**

**301-10.0. Employer Responsibilities**

10.1 The employer (division/facility/agency) shall ensure that a Criminal History Record Request has been completed as specified by law and that the employer copy is maintained in the personnel/application file. Employers shall direct child care persons to the State Police to have fingerprints taken and shall ensure the completion of this process.

10.1.1 The employer whenever possible, will notify the Criminal History Specialist if a child care person is terminated prior to completion of the criminal history check process.

10.1.2 The employer shall require all child care persons and foster parents to notify the employer of any subsequent arrests or charges as a condition of continued employment or approval.

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10.2 When the employer is notified of a history of prohibited convictions/substantiations, the employer shall immediately take steps to terminate the child care person. A copy of this letter shall be sent to the Criminal History Specialist and a copy maintained in the personnel/application file.

10.3 In the event that a child care person requests an administrative review, the employer shall notify the Criminal History Specialist of the action taken to remove the child care person from direct access to children pending the results of the review. The employer shall abide by the decision of the administrative review. Copies of written documentation related to the administrative review shall be maintained in the personnel/application file.

**9 Del. Admin. Code 301-11.0**  
**Alternatively cited as DE ADC 9 300 301**

**301-11.0. Confidentiality**

**Title 11, subsection 8513 (c) (1) of the Delaware Code** permits the State Bureau of Identification to furnish information pertaining to the identification and conviction data of any person of whom the Bureau has record individuals and agencies for the purpose of employment of the person whose record is sought, provided the use of the conviction data is limited to the purpose for which it was given.

11.1 The Department shall ensure that written and electronically recorded criminal history record information shall be stored in a systematic manner, to provide for the security and confidentiality of records and to protect against any anticipated threats to their security and integrity.

11.2 The Department shall ensure that the use of the criminal history record information is restricted to its purpose of determining suitability for employment or approval to provide child care services for child care persons or foster parents as defined in these regulations.

11.3 The Department shall not release to employers as defined in these regulations copies of actual Federal Bureau of Investigation criminal history records.

11.4 The Department shall provide to employers and child care persons or foster parents written summaries of criminal record information for a child care person or foster parent whose criminal history record check results in a finding of prohibited offense(s), other arrests and convictions, or information that the individual is named in the Child Protection Registry as the perpetrator of a substantiated report of child abuse or neglect.

11.5 The following procedure shall be established to permit the review of criminal history record files by the child care person or foster parent:

11.5.1 An individual shall submit a request in writing to the Criminal History Specialist for the on-site review

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of his/her criminal history record file.

11.5.2 An appointment shall be made for the individual to review the record in the offices of the Office of Child Care Licensing. Identification will be required at the time of the review.

11.5.3 The record shall be reviewed in the presence of the Criminal History Specialist.

11.5.4 Written documentation of the date and time of the review and the name of the reviewer shall be filed in the criminal history record file for the child care person or foster parent.

11.5.5 The Department shall ensure that criminal history record files (written and computer-generated) shall not be removed from the secure files for any purpose other than to permit review by the named child care person or foster parent.

11.6 Criminal history record information shall not be disseminated to any persons other than the child care person or foster parent whose record is being sought and his/ her employer, the Division Director or Foster Home Coordinator, in compliance with 11 **Del.C.** § 8513(d).

**9 Del. Admin. Code 302-1.0**  
Alternatively cited as DE ADC 9 300 302

**302-1.0. Legal Base**

The legal base for these regulations is in 11 **Del.C.** § 8563.

**9 Del. Admin. Code 302-2.0**  
Alternatively cited as DE ADC 9 300 302

**302-2.0. Purpose**

The overall purpose of these regulations is the protection for the “vulnerable” population in child care, public schools and health care facilities. To this end, persons seeking employment in a licensed child care facility, public school or health care facility shall submit to a Child Protection Registry check. A search of the Child Protection Registry will be conducted to determine if the person is a perpetrator in any substantiated cases of child abuse or neglect.

**9 Del. Admin. Code 302-3.0**  
Alternatively cited as DE ADC 9 300 302

**302-3.0. Definitions**

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**“Child Protection Registry”** means a central registry of information about persons the Division of Family Services has found cause to believe, or a court has substantiated through court adjudication, have committed child abuse or neglect since August 1, 1994.

**“Child Protection Registry Check”** means a computer search of the Child Protection Registry to determine if a person is a perpetrator in any substantiated cases of child abuse or neglect.

**“Child Care Facility”** means any child care facility which is required to be licensed by The Department of Services for Children, Youth and Their Families.

**“Child Care Person”** means any person seeking employment in a child care facility with regular direct access to children in care. This definition shall also include any person applying for a license to operate a child care facility.

**“Conditional Child Care Person”** means a child care person who has been offered a position or has agreed to volunteer in a child care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.

**“Conditional Health Care Person”** means a health care person who has been offered a position or has agreed to volunteer in a health care facility. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.

**“Conditional Public School Person”** means a public school person who has been offered a position or has agreed to volunteer in a public school. Under the provisions of the law, employment shall be conditional and contingent upon the receipt of the child protection registry check by the employer.

**“Criminal History Unit”** means the Unit located in the Division of Family Services that is responsible for conducting the Child Protection Registry checks for child care, public school and health care persons.

**“Department”** means the Department of Services for Children, Youth and Their Families or any of the Divisions.

**“Direct Access”** means the opportunity to have personal contact with persons receiving care during the course of one’s assigned duties.

**“Division of Family Services”** means the Division that maintains the Child Protection Registry.

**“Employer”** means any child care facility, public school or health care facility as defined.

**“Health Care Facility”** means any custodial or residential facility where health, nutritional, or personal care is provided for persons including nursing homes, hospitals, home health care agencies and adult day care facilities.

**“Health Care Person”** means any person seeking employment in a health care facility.

**“Person Seeking Employment”** means any person applying for employment in a public school or public school district, any person applying for employment in a health care facility or child care facility, or a person applying for licensure to operate a child care facility. This definition also includes volunteers.

**“Person Seeking Employment With a Public School”** means any person seeking employment for compensation with a public school or with an agency that supplies contracted services to students of a public school or any other person who for any reason has regular direct access to children at any public school, as that term is defined in this section, including substitute teachers.

**“Public School”** means any public school and includes any board of education, school district, reorganized school district, special school district, or charter school, and any person acting as an agent thereof.

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**“Volunteer”** means any person who has direct access to persons receiving care during the performance of unpaid duties.

**9 Del. Admin. Code 302-4.0**  
**Alternatively cited as DE ADC 9 300 302**

**302-4.0. Persons Subject to the Law**

4.1 Persons subject to the law shall be those persons who are hired or apply for the status described below on or after February 1, 2003.

4.1.1 Child care, public school and health care persons subject to the Child Protection Registry check shall be persons seeking employment in a child care, public school or health care facility who have direct access to persons receiving care.

**9 Del. Admin. Code 302-5.0**  
**Alternatively cited as DE ADC 9 300 302**

**302-5.0. Employer Responsibilities**

5.1 No employer who operates a child care facility, public school or health care facility shall hire any person without requesting a Child Protection Registry check for that person. The Child Protection Registry check shall relate to substantiated cases of child abuse or neglect reported after August 1, 1994.

5.2 The employer shall obtain a full release from each person subject to the law. The release must be completed and signed in order for the employer to obtain the information provided pursuant to the Child Protection Registry check. The release is a form developed by the Department.

5.3 Any person hired prior to the employer receiving the results of the Child Protection Registry check, must be informed in writing, and must acknowledge in writing that employment is conditional and contingent upon the receipt and evaluation of the Child Protection Registry check.

**9 Del. Admin. Code 302-6.0**  
**Alternatively cited as DE ADC 9 300 302**

**302-6.0. Child Protection Registry Check Process**

6.1 The child care, public school or health care person completes and signs a release form in order for a Child Protection Registry check to be conducted.

Current with amendments included in the Delaware Register of Regulations, Volume 17, Issue 11, dated May 1, 2014.

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6.2 Upon verification of the signed release, the Criminal History Unit will conduct a Child Protection Registry check to determine if the person is named as a perpetrator in any substantiated cases of child abuse or neglect.

6.3 When the person is not listed in the Child Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the appropriate employer.

6.4 When the person is listed in the Child Protection Registry as a perpetrator of child abuse or neglect, notification of the results will be provided to the employer along with details on how to obtain further information pertaining to the substantiated case(s) of child abuse or neglect.

**9 Del. Admin. Code 302-7.0**  
**Alternatively cited as DE ADC 9 300 302**

**302-7.0. Review of Department Records**

7.1 When a person is listed in the Child Protection Registry as a perpetrator, that person will be allowed the opportunity to review the record information maintained by the Division of Family Services.

7.2 The following procedures shall be established to permit the review of record information:

7.2.1 The person shall submit a request in writing to the Child Protection Registry Substantiation Hearing Coordinator provided as part of the results of the Child Protection Registry check.

7.2.2 Upon receipt of the request, an appointment shall be scheduled for the person to review the record information.

7.2.3 The review shall take place in the presence of a Division of Family Services staff member.

**9 Del. Admin. Code 302-8.0**  
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**302-8.0. Voluntary Child Protection Registry Checks**

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8.1 Any person or organization whose primary concern is that of child welfare and care, including any nonpublic school, and which is not otherwise required to do so under the provisions of this regulation may voluntarily submit to the provisions of this regulation at such person's or organization's expense pursuant to procedures established by the Department of Services for Children, Youth and Their Families. The provisions of 11 **Del.C.** § 8562 do not apply to such persons or organizations.

**9 Del. Admin. Code 302-9.0**  
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**302-9.0. Confidentiality**

The Department shall ensure that confidentiality regarding case file reviews and the dissemination of information is followed according to Department policy.

**9 Del. Admin. Code 302-10.0**  
Alternatively cited as DE ADC 9 300 302

**302-10.0. Penalty**

Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty of not less than \$1,000.00 nor more than \$5,000.00 for each violation.

**9 Del. Admin. Code 303-1.0**  
Alternatively cited as DE ADC 9 300 303

**303-1.0. Legal Authorization**

1.1 The legal authority for these regulations is found in the **Delaware Code: Title 10, Chapters 9 and 10; Title 11, Chapters 5 and 85; Title 16, Chapter 9; and Title 31, Chapter 3.**

**9 Del. Admin. Code 303-2.0**  
Alternatively cited as DE ADC 9 300 303

**303-2.0. Purpose**

2.1 The purpose of these regulations is to provide a process for notice and opportunity for hearing prior to a person's entry on the Central Child Abuse Registry.

**9 Del. Admin. Code 303-3.0**  
Alternatively cited as DE ADC 9 300 303

**303-3.0. Date of Implementation**

Current with amendments included in the Delaware Register of Regulations, Volume 17, Issue 11, dated May 1, 2014.



3.1 These regulations become effective ten days after publication in final form in the Delaware Register of Regulations.

**9 Del. Admin. Code 303-4.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-4.0. Individuals Subject to the Law**

4.1 Persons, adults or children, substantiated on or after April 1, 2001 to have committed child abuse or neglect, except that the opportunity for administrative expungement shall be provided for substantiated cases before or after April 1, 2001 unless a disqualifying factor applies.

**9 Del. Admin. Code 303-5.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-5.0. Definitions**

**“Abuse”** as defined in 16 **Del.C.**, § 902 (1) means any physical injury to a child by those responsible for the care, custody, and control of the child, through unjustified force as defined in 11 **Del.C.**, § 468, emotional abuse, torture, criminally negligent treatment, sexual abuse, exploitation, or mistreatment.

**“Administrative Expungement”** as defined in 16 **Del.C.**, § 902A (g) means that the individual’s name shall no longer be reported to employers pursuant to 11 **Del.C.** § 8563(b) in a Central Child Abuse Registry check as a substantiated case from the central registry. Notwithstanding the granting of a request for administrative expungement under this section, the individual’s name and other case information shall remain on the central registry as substantiated for all other purposes, including, but not limited to, the Division’s use of such information for historical, treatment and investigative purposes, child care licensing decisions, reporting pursuant to 31 **Del.C.** § 309, reporting to law enforcement authorities, or any other purpose set forth in 16 **Del.C.** § 906(b).

**“Central Registry”** as defined in 16 **Del.C.**, § 902(2) means a registry of information about persons the Division of Family Services has substantiated to have committed child abuse and neglect. Substantiation may be made through civil or criminal proceedings or through civil administrative decision or proceedings where the burden of proof is at a minimum a preponderance of the evidence. The persons shall have been responsible for the care, custody, and control of the child as defined in 16 **Del.C.** § 902 (13).

**“Department”** means the Department of Services for Children, Youth and Their Families.

**“Disqualifying Factors”** means items that disqualify an individual from the opportunity for notice and a substantiation hearing or the opportunity for administrative expungement.

**“Division”** means the Division of Family Services.

**“Good Cause”** means discretionary factors that justify not reporting a substantiated case of child abuse or neglect to an employer. It depends upon the circumstances of the individual case and the finding of it lies in the discretion of the decision-maker to which the decision is committed.

**“Neglect”** as defined in 16 **Del.C.**, § 902 means the failure to provide, by those responsible for the care, custody, and control of the child, the proper or necessary: education as required by law; nutrition; or medical, surgical, or any other care necessary for the child’s well-being.

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**“Intent to Substantiate”** means a person for whom the Division of Family Services intends to substantiate for child abuse or neglect, but whose name has not been entered on the registry.

**“Preponderance of the Evidence”** is a standard of proof that is met when a party’s evidence indicates that the fact “is more likely than not” what the party alleges it to be. Evidence which, as a whole, shows the fact to be proved is more probable than not.

**“Substantiated”** means that the Division of Family Services after an investigation has concluded by a preponderance of the evidence that child abuse or neglect occurred. In addition, substantiation may occur through civil or criminal judicial proceedings, failure to request a Substantiation Hearing within the specified time frame, or by decision of a hearing officer.

**“Substantiation Hearing”** means a hearing held by a hearing officer to determine whether or not an individual committed child abuse or neglect.

**“Substantiated Person”** means a person who has been substantiated by the Division of Family Services as having committed child abuse or neglect and has been entered on the Central Child Abuse Registry.

**9 Del. Admin. Code 303-6.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-6.0. Substantiation Hearing**

6.1 Notice to Substantiated Persons Pending Entry on the Central Child Abuse Registry

6.2 At the conclusion of an investigation the Division shall send written notice, by certified mail, return receipt requested to the person’s last known address, of its intent to place a person on the Central Registry for having committed child abuse or neglect, and shall advise the individual of the opportunity to request a Substantiation Hearing. The person can also be notified by personal delivery and accepting service of the notice in writing.

6.3 A person substantiated for child abuse or neglect, or an attorney acting on his or her behalf, shall have twenty (20) calendar days from the date the notice was mailed to request a Substantiation Hearing. The request for a Substantiation Hearing shall be in writing and shall be received by the Division Director, or designee, within 20 days of the date the notice was mailed.

6.4 Though the Division shall still issue its notice and the individual may request a Substantiation Hearing within twenty (20) days, when such Substantiation Hearing is timely requested, such hearing shall be stayed if civil or criminal proceedings regarding the same allegations of child abuse or neglect are pending. He or she shall be eligible to reschedule a Substantiation Hearing following the resolution of the criminal or delinquency charges or other civil court proceeding, unless the same conditions in Regulation 10.0 apply for the same child abuse or neglect incident investigated by the Division.

6.5 A person substantiated for child abuse or neglect may waive in writing his or her right to a Substantiation Hearing and request an Administrative Expungement in writing to the Division Director, or designee.

**9 Del. Admin. Code 303-7.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-7.0. Disqualifying Factors**

7.1 See circumstances identified in Regulation 10.0.

**9 Del. Admin. Code 303-8.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-8.0. Procedures**

8.1 Unless postponed or stayed, within twenty (20) calendar days of receiving a request for a hearing by the person found to have committed child abuse or neglect (appellant), a Substantiation Hearing date shall be set, and such hearing shall be held by the hearing officer within sixty (60) calendar days of the receipt of such request.

8.2 The burden of proof at the hearing shall be upon the Division, which shall be required to prove by a preponderance of the evidence that abuse or neglect occurred.

8.3 The appellant and the Division may have legal representation during the hearing. The parties may also present witnesses and other evidence on their behalf.

8.4 The hearing officer shall have the authority to:

8.4.1 issue subpoenas for witnesses and other sources of evidence, either at the request of the Division or at the request of the appellant;

8.4.2 administer oaths to witnesses;

8.4.3 exclude irrelevant, immaterial, insubstantial, cumulative and privileged evidence;

8.4.4 limit proof, rebuttal and cross-examination if they are repetitive; and

8.4.5 hold pre-hearing conferences for the settlement or simplification of issues by consent, for the disposal of procedural requests or disputes and to regulate and expedite the course of the hearing.

8.5 An audio tape recording shall be made of the hearing. Copies of the tape or request for a transcript of same may be made at the request of and expense of the appellant.

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8.6 Following the Substantiation Hearing, the hearing officer shall issue a written decision to the appellant by certified mail, return receipt requested and by regular mail to the Division no later than sixty (60) calendar days from the last day of the conclusion of the hearing and arguments.

8.7 The decision shall include a brief summary of evidence and findings of fact based upon the evidence and conclusions of law. The appellant should be advised of the right to request an appeal of the decision to Family Court.

**9 Del. Admin. Code 303-9.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-9.0. Appeal to Family Court Following Substantiation Hearing Decision**

9.1 The appellant or the Division may request a review by Family Court within thirty (30) days of the date of the hearing officer's decision.

9.2 The Family Court review shall be limited in scope to whether there is substantial evidence to support the findings of fact or whether any error of law was made.

9.3 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 **Del.C.**, Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 **Del.C.** § 906 (b)(18).

**9 Del. Admin. Code 303-10.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-10.0. Entry on to the Central Child Abuse Registry**

10.1 A person found to have committed child abuse or neglect shall be entered on the Central Registry when he or she:

10.1.1 fails to make timely request in writing for a Substantiation Hearing in response to a notice as specified in law and regulation or failed to make a timely written request to appeal a similar notice issued prior to the enactment of this law;

10.1.2 fails to appear at a scheduled Substantiation Hearing without prior approval of the hearing officer or fails to show that good cause existed to postpone the hearing within ten (10) calendar days after the scheduled hearing date of the reason for his or her absence from the hearing;

10.1.3 has been afforded a hearing and the substantiation was upheld;

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10.1.4 has been convicted or pled guilty to a criminal offense contained in **Subchapters II or V of Chapter 5 of Title 11** including those taken nolo contendere or subsequently discharged or dismissed under a First Offenders program pursuant to 10 **Del.C.** § 1024 and the plea or conviction is for the same incident substantiated by the Division;

10.1.5 has been adjudicated delinquent as a juvenile for any of the comparable criminal offenses listed for adults for the same incident investigated by the Division; and

10.1.6 has been substantiated for abuse or neglect at a civil court hearing or administrative hearing at which the minimum standard of proof was preponderance of the evidence for the same incident investigated by the Division.

10.1.7 has been substantiated as provided in 16 **Del.C.** § 902A(f)(1).

**9 Del. Admin. Code 303-11.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-11.0. Administrative Expungement of Substantiated Cases**

11.1 An application for administrative expungement of a substantiated case may be made by any individual whose name is entered on the Central Child Abuse Registry unless there is one or more disqualifying factors. Expungement may be granted only for good cause, and at the discretion of the Division considering, but not limited to, the factors below:

11.1.1 the nature of the substantiation with respect to safety of the children who may come into the individual's direct care;

11.1.2 compliance with a DFS recommended or court-ordered treatment plan;

11.1.3 history of substantiated or unsubstantiated reports of child abuse and neglect;

11.1.4 any evidence of acts involving weapons, explosive devices, or threats of harm;

11.1.5 any evidence of domestic violence involving assaults, stalking, or cruelty to animals;

11.1.6 any evidence of addiction to drugs or alcohol that presents a significant and current threat of harm to children;

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11.1.7 untreated or treated medical conditions that present a significant and current threat of harm to children;

11.1.8 length of time since the child abuse or neglect incident;

11.1.9 seriousness of the child abuse or neglect incident;

11.1.10 number of child abuse or neglect incidents;

11.1.11 indication of remorse; and changed behavior.

11.1.12 The Division may consider any other factors relevant to the substantiated individual's application for expungement.

**9 Del. Admin. Code 303-12.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-12.0. Disqualifying Factors**

12.1 The entire criminal history of a person, including all convictions, is required to be reported for any person seeking employment with a licensed child care provider (11 **Del.C.** § 8561) and for a person seeking employment in a nursing home, hospital, or other entity licensed pursuant to Chapter 11 of Title 16 of the Delaware Code (16 **Del.C.** § 1141), thus an individual shall not be eligible for Administrative Expungement when he or she has been convicted, pled guilty, or has been adjudicated delinquent via plea or adjudication of any criminal offense contained in **Subchapters II or V of Chapter 5 of Title 11**, or of the same offenses if charged or delinquent in which the person was responsible for the care, custody, and control of the child at the time of the offense.

**9 Del. Admin. Code 303-13.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-13.0. Procedures**

13.1 A person placed on the Central Child Abuse Registry may submit a written request for Administrative Expungement to the Division Director, or designee, with the reasons therefor.

13.2 Within sixty (60) days of receiving the written request for Administrative Expungement, the Division shall send its decision by certified mail, return receipt requested to the person requesting expungement. The decision shall

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include notice of the right to appeal to a hearing officer for a hearing on the issue of administrative expungement.

13.3 A person placed on the Central Child Abuse Registry, or an attorney acting on his or her behalf, shall have thirty (30) calendar days of the Division's decision to request an Administrative Expungement hearing before a hearing officer. The request shall be made in writing to the hearing officer.

13.4 The procedures for an Administrative Expungement hearing shall be the same as for the Substantiation Hearing before a hearing officer. (See Regulations 8.3-8.7).

**9 Del. Admin. Code 303-14.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-14.0. Appeal to Family Court Following Administrative Expungement Decision**

14.1 Within thirty (30) days of the date of the hearing officer's decision, either the Division or the person requesting expungement, or an attorney acting on his or her behalf, may file a written appeal to Family Court.

14.2 Such reviews, hearings and decisions, audio tapes, transcripts, and records on appeal to Family Court shall be confidential and not open to the public. Neither the Administrative Procedures Act 29 **Del.C.**, Ch.101 nor the Freedom of Information Act shall apply to such hearings, any record thereof, or any evidence or documents produced or introduced at such hearings. The Division shall have the discretion to release records, the decision, and hearing evidence pursuant to 16 **Del.C.** § 906 (b)(18).

**9 Del. Admin. Code 303-15.0**  
**Alternatively cited as DE ADC 9 300 303**

**303-15.0. Cases Substantiated Prior to April 1, 2001**

15.1 A substantiated person can request a Substantiation Hearing unless they have already been notified by the Division of the right to appeal and failed to appeal, have already been given a hearing regarding the substantiation, or he or she have the circumstances described in Regulation 10.0 or in 16 **Del.C.** § 902A(f)(1).

15.2 A substantiated person can request an Administrative Expungement unless a disqualifying factor applies.

**9 Del. Admin. Code 304-1.0**  
**Alternatively cited as DE ADC 9 300 304**

**304-1.0. Legal Authorization**

The legal authority for these regulations is found in the Delaware Code: **Title 16, Chapter 9.**

**9 Del. Admin. Code 304-2.0**  
**Alternatively cited as DE ADC 9 300 304**

Current with amendments included in the Delaware Register of Regulations, Volume 17, Issue 11, dated May 1, 2014.

### 304-2.0. 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.

### 9 Del. Admin. Code 304-3.0 Alternatively cited as DE ADC 9 300 304

#### 304-3.0. Date of Implementation

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

### 9 Del. Admin. Code 304-4.0 Alternatively cited as DE ADC 9 300 304

#### 304-4.0. 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.

### 9 Del. Admin. Code 304-5.0 Alternatively cited as DE ADC 9 300 304

#### 304-5.0. Definition

**“Parent/caretaker”** means those responsible for the care, custody, and control of the child as that term is defined in § 902 of Title 16 of the Delaware Code.

### 9 Del. Admin. Code 304-6.0 Alternatively cited as DE ADC 9 300 304

#### 304-6.0. 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.



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9 Del. Admin. Code 304-7.0  
Alternatively cited as DE ADC 9 300 304

304-7.0. 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.

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.

9 Del. Admin. Code 304-8.0  
Alternatively cited as DE ADC 9 300 304

304-8.0. Child Protection Level II

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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.

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8.1.8 **“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.

**9 Del. Admin. Code 304-9.0**  
**Alternatively cited as DE ADC 9 300 304**

**304-9.0. 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.

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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.

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,

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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.

**9 Del. Admin. Code 304-10.0**  
**Alternatively cited as DE ADC 9 300 304**

**304-10.0. 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:

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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.

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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

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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,

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,



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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.

**9 Del. Admin. Code 304-11.0**  
**Alternatively cited as DE ADC 9 300 304**

**304-11.0. 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.

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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.”