



## Safe Delivery of Newborns Act (SDNA)

Best Practices for Establishing a Record in Protective Proceedings Involving Emergency Responders

The SDNA permits a parent to surrender custody of a newborn and leave the newborn with an emergency service provider without expressing any intent of returning for the newborn. See [MCL 712.1\(2\)\(n\)](#). The court has jurisdiction over a surrendered newborn and may appoint a lawyer-guardian ad litem to represent the newborn. [MCL 712.2\(1\)](#). This benchcard outlines the chronology of an SDNA case.

<b>Newborn (NB)</b>	<b>AT SURRENDER:</b> <b>Scenario 1: NB born <i>outside</i> of hospital and surrendered to ESP.</b> <b>Scenario 2: NB born <i>inside</i> hospital and birth witnessed by ESP.</b>
A newborn is “a child who a physician reasonably believes to be not more than 72 hours old.” <a href="#">MCL 712.1(2)(k)</a> .	<b>STEP 1:</b> ESP must assume child is a NB and immediately take temporary custody of the child. ESP need not have a court order to accept a surrendered child. <a href="#">MCL 712.3(1)</a> .
<b>Emergency Service Provider (ESP)</b>	<b>STEP 2:</b> ESP must make reasonable effort to do <u>all</u> of the following: <ul style="list-style-type: none"> <li>• take action necessary to protect physical health and safety of NB;</li> <li>• inform SP that he/she is releasing NB to child placing agency for adoptive placement;</li> <li>• inform SP that he/she has 28 days to petition court to regain custody of NB; and</li> <li>• provide SP with DHHS-approved <a href="#">written materials</a> providing information on SDNA process, which must include statements informing SP that he/she is releasing NB for adoption, he/she has 28 days to petition for return of custody, court will hold a hearing after the 28-day period to determine and terminate parental rights over NB, public notice will be issued for this hearing but will not contain SP’s name even if known, SP will not receive personal notice of the hearing, and any information SP provides to ESP will not be made public. <a href="#">MCL 712.3(1)(a)-(d)</a>.</li> </ul>
An emergency service provider is “a uniformed or otherwise identifiable employee or contractor of a fire department, hospital, or police station when that individual is inside the premises and on duty” OR a paramedic or emergency medical technician responding to a 9-1-1 emergency call. <a href="#">MCL 712.1(2)(f)</a> .	<b>STEP 3:</b> ESP must make reasonable attempt to do <u>all</u> of the following: <ul style="list-style-type: none"> <li>• encourage SP to provide any relevant <a href="#">family or medical information</a>;</li> <li>• provide SP with <a href="#">pamphlet</a> and inform SP that he/she can receive counseling or medical attention.</li> <li>• inform SP that information provided will not be made public;</li> <li>• ask SP to identify himself/herself;</li> <li>• inform SP that in order for adoptive placement, the state must make a reasonable attempt to identify the other parent, and then ask SP to identify NSP;</li> <li>• inform SP that child placing agency taking temporary protective custody of NB can provide confidential services to SP; and</li> <li>• inform SP that he/she may sign a <a href="#">release</a> for use in the TPR hearing. <a href="#">MCL 712.3(2)(a)-(g)</a>.</li> </ul>
<b>Surrendering Parent* (SP)</b>	<b>STEP 4:</b> If NB was not surrendered to a hospital, ESP must transfer NB to a hospital. Hospital must accept NB and immediately take temporary protective custody of NB. <a href="#">MCL 712.5(1)</a> .
A surrendering parent is a parent who surrenders a newborn to an emergency service provider.	<b>STEP 5:</b> Hospital must have NB examined by a physician. If physician suspects abuse or neglect or believes child is not a NB, physician must immediately report to DHHS. <a href="#">MCL 712.5(2)</a> . If no abuse or neglect suspected and child is believed to be a NB, hospital must inform a child placing agency that it has taken a NB into temporary protective custody. <a href="#">MCL 712.5(3)</a> . ESP must relay to child placing agency any information provided by SP. <a href="#">MCL 712.7(e)(iii)</a> .
<b>Nonsurrendering Parent* (NSP)</b>	<i>Birth certificate for NB surrendered under SDNA must list the parents as “unknown” and NB as “Baby Doe”. <a href="#">MCL 333.2822(1)(c)</a>; In re Miller, 322 Mich App 497, 501 n 1 (2018).</i>
A nonsurrendering parent is the other parent of a surrendered newborn.	
<b>Prospective Adoptive Parent (PAP)</b>	<b>CHILD PLACING AGENCY STEPS IN:</b> <b>STEP 1:</b> Unless birth was witnessed by ESP, child placing agency must immediately request assistance from law enforcement officials to investigate and determine through various registries whether NB is a missing child. <a href="#">MCL 712.7(d)</a> .
A prospective adoptive parent is an adoptive parent who has an approved preplacement assessment. See <a href="#">MCL 712.1(2)(m)</a> ; <a href="#">MCL 712.7(d)</a> .	<b>STEP 2:</b> Once notified by hospital of a surrendered NB, child placing agency must do <u>all</u> of the following: <ul style="list-style-type: none"> <li>• immediately assume care, control, and temporary protective custody of NB;</li> <li>• if either parent is known and willing, immediately meet with that parent;</li> <li>• temporarily place NB with a PAP (or a licensed foster care parent if petition for custody under <a href="#">MCL 712.10</a> is filed);</li> <li>• within 48 hours of NB’s transfer of physical custody to the PAP, <a href="#">petition</a> court in county where PAP resides to provide authority to place and provide care for NB; and</li> <li>• within 28 days of surrender, make reasonable effort to identify, locate, and notify NSP of NB’s surrender and file written report with court indicating efforts made to identify, locate, and notify NSP. If identity and address of NSP are unknown, provide notice of surrender by publication in newspaper in county of surrender. <a href="#">MCL 712.7</a>.</li> </ul> <b>STEP 3:</b> Court issues <a href="#">order</a> placing surrendered NB with PAP.
<b>Court</b>	
“‘Court’ means the family division of circuit court.” <a href="#">MCL 712.1(2)(b)</a> .  <i>*SDNA does not define the terms parent, surrendering parent, or nonsurrendering parent. In re Miller, 322 Mich App 497, 503 (2018).</i>	

**PETITION FOR CUSTODY OF SURRENDERED NB IS FILED:  
SP or NSP may file a petition for custody of the surrendered NB. [MCL 712.10\(1\)](#).**

**STEP 1:** SP must file a [petition](#) for custody within 28 days after NB was surrendered. NSP must file not more than 28 days after published notice of surrender. Petition for custody filed by NSP *before* NB's birth as part of complaint for divorce does not constitute petition for custody contemplated by MCL 712.10(1). *In re Baby Boy Doe*, \_\_\_ Mich \_\_\_, \_\_\_ (2022). Language in MCL 712.10 reflects Legislature's intent that petition for custody of NB be filed *after* child is born. *Baby Boy Doe*, \_\_\_ Mich at \_\_\_. Petition must be filed in county where NB is located, if known; if NB's county is unknown, where NB was surrendered to ESP; if NB's or surrendering county is unknown, where filing parent is located. [MCL 712.10\(1\)](#). If the petition for custody is filed in a court that did not issue the order placing NB, it must locate and transfer the proceeding to that court. [MCL 712.10\(2\)](#).

**STEP 2:** Within 7 days of the filed custody petition and before holding a custody hearing, court must conduct a hearing to determine NB's biological parents. [MCL 712.10\(3\)](#).

**STEP 3:** Court must [order](#) NB and each party claiming paternity or maternity to submit to DNA testing. [MCL 712.11\(1\)-\(2\)](#). A party claiming maternity need not submit to DNA testing if an ESP witnessed the birth and sufficient documentation exists to support maternity. [MCL 712.11\(2\)](#).

**STEP 4:** If the probability of paternity or maternity is determined to be 99% or higher through DNA testing and the DNA profile and report are admissible, then paternity or maternity must be presumed. [MCL 712.11\(3\)](#). If DNA testing is admissible and reveals that the custody petitioner could not be NB's biological parent, court must dismiss the custody petition. [MCL 712.11\(5\)](#).

**STEP 5:** After a petition for custody is filed and court enters an [order](#) determining NB's biological parents, court must hold a hearing to determine custody. [MCL 712.10\(3\)](#); [MCL 712.11\(3\)](#).

**STEP 6:** Court must determine custody based on NB's best interests. [MCL 712.14\(1\)](#). With goal of achieving permanence for NB at earliest possible date, court must consider, evaluate, and make a finding on *each* of the following factors:

- “(a) The love, affection, and other emotional ties existing between the newborn and the parent.
- (b) The parent's capacity to give the newborn love, affection, and guidance.
- (c) The parent's capacity and disposition to provide the newborn with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.
- (d) The permanence, as a family unit, of the existing or proposed custodial home.
- (e) The parent's moral fitness.
- (f) The parent's mental and physical health.
- (g) Whether the parent has a history of domestic violence.
- (h) If the parent is not the parent who surrendered the newborn, the opportunity the parent had to provide appropriate care and custody of the newborn before the newborn's birth or surrender.
- (i) Any other factor considered by the court to be relevant to the determination of the newborn's best interest.” [MCL 712.14\(2\)](#).

**STEP 7:** Court must issue an [order](#) that does one of the following:

- grants a parent legal or physical custody (or both) of NB and retains or relinquishes jurisdiction;

**NO PARENTAL REQUEST FOR CUSTODY FILED:  
If SP does not file a petition for custody within 28 days of the surrender, SB is presumed to have knowingly released his/her parental rights to NB. [MCL 712.10\(1\)](#); [MCL 712.17\(1\)](#).**

**STEP 1:** If SP does not file a request for custody within 28 days of NB's surrender, child placing agency with authority to place NB must immediately [petition](#) court to accept SP's release and terminate SP's parental rights over NB. [MCL 712.17\(2\)](#). If NSP does not file a request for custody within 28 days after notice of NB's surrender is published, child placing agency must immediately [petition](#) court to terminate NSP's parental rights over NB. [MCL 712.17\(3\)](#).

**STEP 2:** Court must schedule hearing within 14 days of receiving child placing agency's petition. [MCL 712.17\(4\)](#).

**STEP 3:** At hearing, child placing agency must present evidence that demonstrates that SB released NB and that child placing agency made efforts to identify, locate, and notify NSP. [MCL 712.17\(4\)](#).

**STEP 4:** Court must issue [order](#) that terminates SP's and NSP's parental rights if it finds by a preponderance of the evidence that the child placing agency demonstrated *all* of the following:

- SP knowingly released his/her rights to NB;
- reasonable efforts were made to locate NSP; and
- no custody action was filed. [MCL 712.17\(5\)](#).

*In termination proceedings, SDNA applies to surrendered child's mother and legal father. In re Miller, 322 Mich App 497, 506 (2018). The legal father is presumed to be the husband of the surrendering mother until that presumption is defeated. Id. at 505-506.*