

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 9:2-3 et al

(Child custody--
amendments)

LAW S OF: 1990

CHAPTER: 26

Bill No: A1181

Sponsor(s): Kalik

Date Introduced: Pre-filed

Committee: Assembly: Judiciary, Law and Public Safety

Senate: -----

Amended during passage: No

Date of Passage: Assembly: April 26, 1990

Senate: April 30, 1990

Date of Approval: May 21, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: No

Fiscal Note: No

Veto Message: No

Message on signing: ~~No~~ Yes

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

KBG/SLJ

P.L.1990, CHAPTER 26, approved May 21, 1990
1990 Assembly No. 1181

1 AN ACT concerning the care and custody of children and revising
2 parts of the statutory law.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. R.S.9:2-3 is amended to read as follows:

7 9:2-3. When the parents of [minor children] a minor child live
8 separately, or are about to do so, the Superior Court, in an action
9 brought by either parent, shall have the same power to make
10 judgments or orders concerning [their] care, custody, education
11 and maintenance as concerning [children] a minor child whose
12 parents are divorced. [The minor child when in the actual care
13 and custody of the mother in such cases, shall not be taken by the
14 father of such child forcibly or against the will of the mother
15 from her custody, and the court having jurisdiction in the
16 premises shall have authority to make such orders and judgments
17 as will protect the mother in the maintenance of such control and
18 custody until otherwise ordered by the court having jurisdiction.]
19 Until the court determines the final custody of the minor child
20 and unless the parties agree otherwise, the court shall determine
21 temporary custody based upon the best interests of the child with
22 due regard to the caretaking arrangement that previously
23 existed. No child shall be taken forcibly or against the will of the
24 parent having custody by the other parent without a court order.

25 If the [minor] child [or minor children have] has not, at the time
26 of the commencement of the action, reached the age of 16 years,
27 and if it is represented to the court by affidavit or under oath
28 that evidence will be adduced involving the moral turpitude of
29 either parent, or of [such] the minor child [or children], or that
30 evidence will be adduced which may reflect upon the good
31 reputation or social standing of the child [or children], then the
32 court shall admit to the hearing of such case only such persons as
33 are directly interested in the matter then being heard. The
34 records of such proceedings, including all papers filed with the
35 court, shall be withheld from indiscriminate public inspection, but
36 shall be open to inspection by the parents, or their attorneys, and
37 to no other person [or persons] except by order of the court made
38 for that purpose.

39 (cf: P.L.1953, c.9, s.3)

40 2. R.S.9:2-4 is amended to read as follows:

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill) is not enacted and is intended to be omitted in the law

Matter underlined thus is new matter.

1 of the children pending a controversy between their parents, or in
2 regard to their final possession, the rights of both parents, in the
3 absence of misconduct, shall be held to be equal, and they shall
4 be equally charged with their care, nurture, education and
5 welfare, and the happiness and welfare of the children shall
6 determine the custody or possession. If a child is of sufficient
7 age and capacity to reason so as to form an intelligent preference
8 as to custody, the court shall consider and give due weight to his
9 wishes in making an award of custody or modification thereof.

10 The court may make the necessary orders and judgments from
11 time to time in relation to such custody or possession, but the
12 father, as such, shall not have preference over the mother as to
13 the award of custody of such minor child if the best interests of
14 the child otherwise may be protected, and in no case shall the
15 court having jurisdiction in this State over the person and custody
16 of any minor permit such child to be removed from this State
17 where the mother or father resides in this State and is the
18 suitable person who should have the custody of such child for its
19 best welfare.]

20 The Legislature finds and declares that it is in the public policy
21 of this State to assure minor children of frequent and continuing
22 contact with both parents after the parents have separated or
23 dissolved their marriage and that it is in the public interest to
24 encourage parents to share the rights and responsibilities of child
25 rearing in order to effect this policy.

26 In any proceeding involving the custody of a minor child, the
27 rights of both parents shall be equal and the court shall enter an
28 order which may include:

29 a. Joint custody of a minor child to both parents, which is
30 comprised of legal custody or physical custody which shall
31 include: (1) provisions for residential arrangements so that a
32 child shall reside either solely with one parent or alternatively
33 with each parent in accordance with the needs of the parents and
34 the child; and (2) provisions for consultation between the parents
35 in making major decisions regarding the child's health, education
36 and general welfare;

37 b. Sole custody to one parent with appropriate visitation for
38 the noncustodial parent; or

39 c. Any other custody arrangement as the court may determine
40 to be in the best interests of the child.

41 In making an award of custody, the court shall consider but not
42 be limited to the following factors: the parents' ability to agree,
43 communicate and cooperate in matters relating to the child; the
44 parents' willingness to accept custody and any history of
45 unwillingness to allow visitation not based on substantiated abuse;
46 the interaction and relationship of the child with its parents' and
47 siblings; the history of domestic violence, if any; the safety of
48 the child and the safety of either parent from physical

1 abuse by the other parent; the preference of the child when of
2 sufficient age and capacity to reason so as to form an intelligent
3 decision; the needs of the child; the stability of the home
4 environment offered; the quality and continuity of the child's
5 education; the fitness of the parents; the geographical proximity
6 of the parents' homes; the extent and quality of the time spent
7 with the child prior to or subsequent to the separation; the
8 parents' employment responsibilities; and the age and number of
9 the children. A parent shall not be deemed unfit unless the
10 parents' conduct has a substantial adverse effect on the child.

11 The court, for good cause and upon its own motion, may
12 appoint a guardian ad litem or an attorney or both to represent
13 the minor child's interests. The court shall have the authority to
14 award a counsel fee to the guardian ad litem and the attorney and
15 to assess that cost between the parties to the litigation.

16 d. The court shall order any custody arrangement which is agreed
17 to by both parents unless it is contrary to the best interests of
18 the child.

19 e. In any case in which the parents cannot agree to a custody
20 arrangement, the court may require each parent to submit a
21 custody plan which the court shall consider in awarding custody.

22 f. The court shall specifically place on the record the factors
23 which justify any custody arrangement not agreed to by both
24 parents.

25 (cf: P.L. 1974, c.143,s.1)

26 3. Section 1 of P.L.1955, c.232 (C.9:2-13) is amended to read
27 as follows:

28 1. For the purposes of this act, the following words and
29 phrases, unless otherwise indicated, shall be deemed to have the
30 following meanings:

31 (a) The phrase "approved agency" means a legally constituted
32 agency having its principal office within or without this State,
33 which has been approved, pursuant to law, to place children in
34 New Jersey for purposes of adoption.

35 (b) The word "child" means any person under [21] 18 years of
36 age.

37 (c) The word "custody" means continuing control and authority
38 over the person of a child, established by natural parenthood, by
39 order or judgment of a court of competent jurisdiction, or by
40 written surrender to and approved agency pursuant to law.

41 (d) The phrase "forsaken parental obligations" means willful
42 and continuous neglect or failure to perform the natural and
43 regular obligations of care and support of a child.

44 (e) The phrase "mentally incompetent" means inability to
45 understand and discharge the natural and regular obligations of
46 ~~care and support of a child by reason of mental disease,~~
47 feebleness of mind, or habitual intemperance.

48 (f) The word "parent," when not otherwise described by the

1 context, means a natural parent or parent by previous adoption,
2 but the word parent shall not include the father of an illegitimate
3 child].

4 (g) The word "may" shall be construed to be permissive and
5 the word "shall" shall be construed to be mandatory.

6 (cf: P.L.1955, c.232,s.1)

7 4. Section 7 of P.L.1955, c.232 (C.9:2-19) is amended to read
8 as follows:

9 7. If the court shall determine that custody of the child has
10 been surrendered as provided in Article II of this act, the court
11 may declare that the person making such surrender shall have no
12 further right to custody of the child. If the court shall determine
13 that a parent of the child is dead, or mentally incompetent, or
14 has forsaken parental obligation, [or has been divorced by the
15 other parent on grounds of adultery, desertion or extreme
16 cruelty,] the court may declare that such parent shall have no
17 further right to custody of the child. [If the court shall
18 determine that the child is illegitimate, the court shall declare
19 that the father, and the husband of the mother if she be married,
20 shall have no right to custody of the child.] If the court shall
21 determine that a custodian or guardian has been appointed for the
22 child, but that such custodian or guardian has willfully and
23 continuously neglected or failed to discharge the responsibilities
24 of such appointment, the court may declare that such custodian
25 or guardian shall have no further control and authority over the
26 person of the child.

27 (cf: P.L.1955, c.232,s.7)

28 5. R.S.9:6-3 is amended to read as follows:

29 9:6-3. Any parent, guardian or person having the care, custody
30 or control of any child, who shall abuse, abandon, be cruel to or
31 neglectful of such child, or any person who shall abuse, be cruel
32 to or neglectful of any child shall be deemed to be guilty of a
33 [misdemeanor and, upon conviction thereof, shall be fined not
34 exceeding five hundred dollars (\$500.00) or by imprisonment with
35 or without hard labor, as the court may direct, for a term not
36 exceeding three years, or both] crime of the fourth degree. If a
37 fine be imposed, the court may direct the same to be paid in
38 whole or in part to the [wife] parent, or to the guardian,
39 custodian or trustee of such minor child or children; provided,
40 however, that whenever in the judgment of the court it shall
41 appear to the best interest of the child to place it in the
42 temporary care or custody of a society or corporation, organized
43 or incorporated under the laws of this State, having as one of its
44 ~~an~~ objects the prevention of cruelty to children, and the society or
45 corporation is willing to assume such custody and control, the
46 court may postpone sentence and place the child in the custody of
47 such society or corporation, and may place defendant on
48 probation, either with the county probation officers or an officer

1 of the society or corporation to which the child is ordered, and
2 may order the parent, guardian or person having the custody and
3 control of such child to pay to such society or corporation a
4 certain stated sum for the maintenance of such child. When,
5 however, a child is so placed in the custody of such society or
6 corporation, and defendant fails to make the payments as ordered
7 by the court, the court shall cause the arrest and arraignment
8 before it of such defendant, and shall impose upon [him] ~~the~~
9 defendant the penalty provided in this section.

10 (cf: P.L.1944, c.196,s.1)

11 6. R.S.9:10-3 is amended to read as follows:

12 9:10-3. A county school of detention shall be arranged and
13 conducted so far as practicable for the safe custody of the
14 inmates and so far as duration of commitment permits for their
15 training for good citizenship and self-support. There shall be
16 ample ground for farming or gardening and shops or other means
17 for industrial training and the institution shall be maintained or
18 conducted as a home.

19 To this end a superintendent and such teachers, matrons,
20 masters, farmers and other employees shall be employed by the
21 board of directors as in their judgment may be necessary for the
22 proper maintenance of the school and grounds and the proper
23 care, instruction and training of the children.

24 ~~The superintendent shall be a competent [male or female]
25 person of good moral character and shall reside in the school.~~

26 ~~The superintendent or principal teacher shall prepare and adopt a
27 course of study and training for the pupils of the school subject to
28 approval of the board of directors and the State Board of
29 Education. The teachers shall have the qualifications and
30 certificates of public school teachers in the public schools of this
31 State. The principal teacher shall be the supervising principal
32 and the school shall be entitled to apportionment of school moneys
33 as a school district under the supervision of a supervising
34 principal. The teachers and principals shall make such reports
35 and keep such records as are required in other school districts in
36 the county.~~

37 The superintendent shall employ, subject to the approval of the
38 board of directors, such additional help as may be necessary for
39 the maintenance of buildings and grounds. The compensation and
40 terms of service of superintendent and other employees shall be
41 fixed by the board of directors. Whatever sum in addition to
42 money received from the State is necessary to operate the school
43 shall be appropriated by the [board of chosen freeholders]
44 governing body of the county. All bills shall be paid by the
45 custodian of the school's moneys on order signed by the president
46 and secretary of the board of directors.

47 ~~(cf: R.S.9:10-3)~~

48 7. R.S.9:11-1 is amended to read as follows:

1 9:11-1. The judges of the [County] Superior Court [of] sitting
2 in a county of the first class, except in counties of the first class
3 having a population of more than 800,000 inhabitants, whenever
4 in their judgment it shall be necessary or proper shall so certify
5 to the [board of chosen freeholders] governing body of the county
6 and upon their approval of the need, the judges may appoint five
7 persons [at least one of whom shall be a woman,] who, together
8 with such judges and the judge of the [juvenile and domestic
9 relations court] Family Part of the Chancery Division of the
10 Superior Court, ex officio, shall constitute a board to be known as
11 the Board of Trustees of the Youth House of the county
12 of . Such appointees shall be formally approved by
13 the [board of chosen freeholders] governing body of the county
14 before they enter upon the discharge of their duties. They shall
15 hold office for three years and until their successors are
16 appointed. They shall receive no compensation.

17 In counties of the first class having a population of more than
18 800,000 inhabitants, in which there is now established a parental
19 school, under the provisions of the act to which this act is an
20 amendment, and in all other counties of the first class having a
21 population of more than 800,000 inhabitants, whenever in its
22 judgment it shall be necessary or proper, the [board of chosen
23 freeholders] governing body of the county shall appoint eight
24 persons[. at least one of whom shall be a woman,] who, together
25 with the judges of the [juvenile and domestic relations court]
26 Family Part of the Chancery Division of the Superior Court, ex
27 officio, shall constitute a board to be known as the Board of
28 Trustees of the Youth House of the county of
29 They shall serve without compensation and shall hold office for a
30 term of four years and until their successors are appointed,
31 ~~except that of the eight members first appointed, two shall hold~~
32 ~~office for four years, two shall hold office for three years, two~~
33 ~~shall hold office for two years, and two shall hold office for one~~
34 ~~year. The holding of any other public office by any member of~~
35 ~~said board of trustees shall not be held to be incompatible with~~
36 ~~[his or her] the office as member of such board of trustees. A~~
37 ~~vacancy caused by death, resignation or otherwise shall be filled~~
38 ~~by the [board of chosen freeholders] governing body of the county~~
39 ~~for the unexpired term.~~

40 (cf: P.L.1957, c.46,s:1)

41 8. Section 25 of P.L.1953, c.9 (C.9:12A-1) is amended to read
42 as follows:

43 25. The [board of chosen freeholders] governing body of any
44 county may establish, equip and maintain a home for the
45 temporary detention of children, separated entirely from any
46 ~~place of confinement of adults, to be known as "The Children's~~
47 ~~Shelter of~~ County," which shall be conducted as an
48 agency for the purposes of caring for the children of the county

1 whose cases are pending before the [juvenile and domestic
2 relations court] Family Part of the Chancery Division of the
3 Superior Court of the county or who are homeless or abandoned,
4 abused, neglected or cruelly treated or who, being under 18 years
5 of age, are witness before such court or some other court.

6 — The [board] governing body of the county may appropriate
7 sufficient funds for the purchase of property and the building or
8 buildings and the furnishing of supplies and equipment therefor
9 from the annual appropriations, or if they consider the amount
10 too great to add to the annual appropriation, they may issue
11 bonds for such purpose.

12 The building may be built on property owned by the county or
13 the [board] governing body of the county may acquire the same by
14 gift, purchase or condemnation.

15 The [board] governing body of the county may appoint a
16 committee of seven citizens of the county[, at least two of whom
17 shall be women,] who together with the judge of the [juvenile and
18 domestic relations court] Family Part of the Chancery Division of
19 the Superior Court of the county and [the director] a member of
20 the [board of chosen freeholders] governing body of the county as
21 ex officio members shall constitute the board of trustees of the
22 children's shelter. The board of trustees shall make the rules and
23 regulations for the management of the children's shelter and the
24 groupings of the children therein.

25 In any county in which a children's shelter is or shall be
26 established and operated pursuant to this section, solely for
27 children who are homeless or abandoned, abused, neglected or
28 cruelly treated, the [board of chosen freeholders] governing body
29 of the county may, by resolution, determine to operate and
30 manage such childrens shelter instead of appointing a board of
31 trustees for such purpose, in which case the [board of chosen
32 freeholders] governing body of the county shall have and may
33 exercise all the powers of a board of trustees as provided in this
34 section.

35 The shelter shall be in the charge of a superintendent, and the
36 board of managers, or the [board of chosen freeholders] governing
37 body of the county, as the case may be, shall have authority to
38 appoint the superintendent, and other employees in like manner
39 as other county employees are appointed; the [board of chosen
40 freeholders] governing body of the county shall provide the funds
41 for carrying on the shelter and for the betterments,
42 improvements and replacements that may be required, in the
43 annual appropriations, but money for new buildings and the
44 equipment thereof and other permanent improvements may be
45 raised by bond issue.

46 (cf: P.L.1958, c.100.s.1)

47 9. R.S. 9:2-6 is repealed.

48 10. This act shall take effect on the 90th day after enactment.

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STATEMENT

This bill establishes an order of preference for the awarding of child custody upon the dissolution or termination of a marriage. The overriding test is the best interests of the child. The court then would have to evaluate the decision in light of a presumption that joint custody is in the best interests of the child. The first preference for an award of custody is to both parents jointly. Next preference is for either parent. In the absence or unsuitability of either parent, then the court should consider any person who has already been caring for and providing a home for the child. Finally, the court may award custody to any other suitable person.

The bill provides that parties who share custody are under an obligation to exchange information and confer with one another. The parties may between themselves or by court decree allocate these responsibilities. A parent who is not the custodial parent has a right to records and information about the child. The joint custody order may be modified or terminated at any time. If one parent opposes this action the court must state its reasons on the record. The bill is based on a model bill promulgated by the Joint Custody Association.

DOMESTIC RELATIONS

Amends and repeals portions of the laws governing child custody and supervision.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1181

STATE OF NEW JERSEY

DATED: APRIL 5, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 1181.

This The bill amends various sections of Title 9 concerning child custody. The major provisions of this bill are as follows:

1. The bill provides that it is New Jersey's public policy to assure minor children of frequent and continuing contact with both parents after a divorce and that it is in the public interest to encourage parents to share child rearing rights and responsibilities.

2. In any proceeding involving custody, the rights of both parents are deemed equal.

3. In determining custody, a court, is authorized to award (1) joint custody to both parents; (2) sole custody to one parent with visitation rights to the other parent or (3) any other arrangement which the court finds to be in the best interest of the child.

4. Joint custody is comprised of legal or physical custody including residential arrangements so that a child resides either solely with one parent or alternatively with each parent and provision for consultation between the parents in making major decisions concerning the child.

5. In making custody determinations, a court is required to consider a list of factors including the parents' ability to cooperate in matters relating to the child; the preference of the child; the fitness of the parents; any past history of abuse or domestic violence and the relationship of the child to his parents and siblings.

6. A court must order any custody arrangement agreed to by both parents unless it is against the best interest of the child.

7. A court is permitted in any case where the parents don't agree to joint custody to require each parent to submit a custody plan for consideration by the court.

8. A court is required to place on the record the factors which justify any custody arrangement not agreed to by both parties.

9. In a custody proceeding, a court is authorized to appoint a guardian ad litem or attorney or both to represent the interests of the child.

10. Until a court determines final custody, the court shall determine temporary custody based upon the best interest of the child with due regard to the caretaking arrangement that previously existed.

11. The definition of "parent" is changed to include the father of an illegitimate child.

12. The bill amends various sections of Title 9 to eliminate sex-biased references and updates certain references to reflect the enactment of the criminal code and the establishment of the family court.

13. The bill repeals R.S.9:2-6 concerning prohibitions on a father's right to care and custody of a child if he has not supported the child in the last 5 years.

This bill is identical to Senate Bill No. 2079 of 1990.

This bill was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed. Please note that the prefiled bill pending technical review had an incorrect statement included on it which did not accurately reflect the content of the bill.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

May 21, 1990

GOVERNOR'S STATEMENT

Assembly Bill No. 1181

The purpose of this bill is to ensure that minor children have frequent and continuing contact with both parents following a separation or divorce. The rights of each parent shall be equal. This law does not create a presumption or a preference for joint custody; rather, a joint custody arrangement is one of several custodial options which the court may order. The overriding test and primary concern is always the best interest of the child or children.

/s/ James J. Florio

GOVERNOR

[seal]

Attest:

/s/ John A. Sweeney

Counsel to the Governor



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
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TRENTON, N.J. 08625
Release: MON. 5/21/90

A D V I S O R Y

Governor Jim Florio today signed the following three bills:

A-1181/S-2079 sponsored by Assemblywoman Barbara Kalik, Assemblyman Thomas Shusted and Senator Wynona Lipman.

The purpose of this bill is to ensure that minor children have frequent and continuing contact with both parents following a separation or divorce. The rights of each parent shall be equal. This law does not create a presumption or a preference for joint custody; rather, a joint custody arrangement is one of several custodial options which the court may order. The overriding test and primary concern is always the best interest of the child or children.

S-2162/A-2882 sponsored by Senator Wynona Lipman and Assemblywoman Dolores Cooper and Assemblyman Anthony J. Cimino.

The bill provides that employees of the following authorities and/or autonomous agencies are eligible for membership under the Public Employees Retirement System (PERS): Casino Reinvestment Development Authority, the New Jersey Urban Development Corporation, the South Jersey Food Distribution Authority, the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, and the Catastrophic Illness in Children Relief Fund Commission.

The bill also provides that if no provision has been made for PERS participation for employees of any new State autonomous authority or for an alternate pension system, the authority shall apply to the State Treasurer for approval to participate in PERS. Further, employees of a State autonomous authority approved for participation in PERS would be able to purchase for credit all their prior eligible service with the authority.

Finally, it also provides that a State autonomous authority may not establish or change a retirement or deferred compensation plan without the approval of the State Treasurer.

A-2895 Sca/S-2312 Sca sponsored by Assemblymen Thomas Foy and Joseph Patero, and Senator Thomas Paterniti.

Currently, the Prevailing Wage Law requires payment of prevailing wages on every contract in excess of \$2,000 for any public work to which any public body is a party. This amended bill expands the

definition of "public work" under the law to include work on property is 55% or more of that property is leased or will be leased by the State. ~~The legislation applies only when the leased property measures more than 20,000 square feet.~~ The bill applies to all contracts over \$2,000 whether or not the work is paid from public funds.