

9:3-2 to 9:3-11

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Adoption of minors)

NJSA: 9:3-2 to 9:3-11

LAWS OF: 1938 CHAPTER: 355

BILL NO: S276

SPONSOR(S) Powell

DATE INTRODUCED: March 29, 1938

COMMITTEE: ASSEMBLY: Printing
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: ASSEMBLY: May 31, 1938
SENATE: May 2, 1938

DATE OF APPROVAL: June 14, 1938

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: No
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

Do Not
Delete
NJ State Law Library

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 276

(Revised Statutes, Title 9, subtitle 2, chapter 3.)

STATE OF NEW JERSEY

INTRODUCED MARCH 29, 1938

By Mr. POWELL

Referred to Committee on Judiciary

AN ACT concerning minors, their adoption, custody and maintenance, and the descent, distribution and inheritance of their property and the property of their natural and adopting parents, and amending sections 9:3-2, 9:3-3, 9:3-4, 9:3-5, 9:3-6, 9:3-8 and 9:3-11 of the Revised Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State of New*
2 *Jersey:*

1 1. Section 9:3-2 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-2. The adopting parent shall be at least ten years older than the
4 adopted child, but this provision shall not affect adoptions properly granted
5 prior to July fourth, one thousand nine hundred and two. The said adopting
6 parent must have attained the age of twenty-one years, must be a citizen of
7 the United States or have officially declared his or her intention of becoming
8 a citizen, and these facts shall be set forth in the petition; *provided, how-*
9 *ever,* that no adoption heretofore granted shall be deemed void or voidable
10 because the adopting parent was not of the age or status of citizenship
11 required by this chapter.

1 2. Section 9:3-3 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-3. The petition for adoption shall be presented in duplicate, except
4 when the consent for adoption is given by the Department of Institutions
5 and Agencies or any agency thereof, or by an orphanage, children's home
6 or society incorporated under the laws of this State for the care of children.
7 The petition for adoption shall be verified by the petitioner and shall state
8 the name, age and residence of the petitioner and of the child; the name by
9 which the child shall be known; a verification, by dates, of the period of time
10 that the child has been under constant care in the home of the petitioner;
11 whether the child possesses property and the full description of such prop-
12 erty; whether either or both the parents of the child are living; and the
13 names and residences of the living parents of the child unless proven to be
14 unknown to the petitioner.

15 If a written consent is not presented to the court with the petition for
16 adoption, as required by section 9:3-4 of this chapter, this fact, and the
17 reasons therefor, shall be stated in the petition.

18 When an orphanage, children's home or society has the custody and con-
19 trol of the child, the name, location of the principal office, the year of incor-
20 poration, and State where incorporated shall be set forth in the petition;
21 *provided, however,* that if the principal office of such orphanage, children's
22 home or society is not within this State, legal proof of the fact of incorpora-
23 tion shall be annexed to the petition.

1 3. Section 9:3-4 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-4. A written consent, acknowledged or proved in the manner re-
4 quired by law for deeds to real estate, shall be presented to the court with
5 the petition for adoption, such consent to be obtained from:

6 a. The child sought to be adopted if above the age of fourteen years,
7 and, in any event, the consent of

8 b. The parents of the child; or

9 c. One parent if the other is dead, unknown or mentally incompetent, or
10-11 has forsaken parental obligations or been divorced from the father or mother

12 of the child because of his or her adultery or desertion or extreme cruelty;
13 *provided, however,* that when the consent of one parent is not presented with
14 the petition by reason of divorce, if the court granting the divorce has made
15 an award of the custody of the child, consent of such court to the adoption
16 must be presented with the petition; or

17 d. The legal guardian of the child where both parents are dead, un-
18 known, or mentally incompetent, or have forsaken parental obligations;
19 *provided, however,* that evidence of guardianship shall be presented to the
20-21 court with the petition; or

22 e. The Department of Institutions and Agencies, or any orphanage,
23 children's home or society incorporated under the laws of this State for the
24 care of children, appointed by the court as next friend if there
25 is no guardian in the circumstances described in paragraph "d,"
26 such appointment to be made forthwith upon presentation of the petition; or

27 f. Any orphanage or children's home or society incorporated under the
28 laws of this State to care for children, or the New Jersey State Board of
29 Children's Guardians, which has acquired the custody and control of the
30 child, by grant of the parents for the full term of minority or by other legal
31 means. A consent under this paragraph shall be under the common seal
32 of the orphanage, children's home or society, or the New Jersey State Board
33 of Children's Guardians, and signed by the president and secretary thereof.

34 g. A parent shall be deemed to be mentally incompetent within the mean-
35 ing of this chapter when by reason of mental disease, feebleness of mind, or
36 habitual intemperance, he or she is unable to understand and discharge the
37 natural and regular obligations of care and support of the child.

38 h. A person shall be deemed to have forsaken parental obligations
39 within the meaning of this chapter when he or she shall have willfully and
40 continuously either neglected or failed to perform the natural and regular
41 obligations of care and support of the child.

42 i. When an orphanage, children's home, society or agency outside of this
43 State has custody and control of the child, such agency shall furnish its

44 consent to the adoption and submit a verified copy of the release or other
45 legal document by which they obtained such custody and control. Such con-
46 sent is to be under the common seal of that orphanage, children's home,
47 society or agency and signed by the responsible official thereof.

48 j. Whenever the consent of either or both of the parents of the child is
49 not presented with the petition, the court shall require that proof, by docu-
50 mentary evidence or oral testimony, of the reason for the failure to present
51 such consent shall be given at the hearing.

1 4. Section 9:3-5 of the Revised Statutes is hereby amended to read as
2 follows:

3-14 9:3-5. A decree of adoption shall not be granted unless the
15 child has been living continuously in the home of the petitioner
16 or petitioners for not less than one year previous to the hearing of the peti-
17 tion; *provided, however*, that the court, if it finds that the best interests of
18 the child so require, may in its discretion grant a decree of adoption after
19 the child has so lived in the home for a minimum period of six months.

20 At the time of the hearing the court shall require at least one witness,
21 other than the petitioner, to attest to the fact that the child has resided in
22 the home of the petitioner for the required time. When the child has been
23 under the custody and control of an orphanage, children's home or society
24 incorporated under the laws of this State for the care of children, or the
25 New Jersey State Board of Children's Guardians, the testimony of such
26 agency to this fact shall also be required.

1 5. Section 9:3-6 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-6. Upon presentation of the petition for adoption to the court the
4 same shall be filed with the clerk thereof, and thereupon, or, if a next
5 friend is appointed, as provided by section 9:3-4 "e" of this chapter,
6 upon such appointment, the court shall fix a day for hearing the petition
7 and examining interested parties under oath; *provided, however*, that the
8 court shall order an investigation of all petitions for adoption except when

9 con
10 Ag
11 inc
12
13 pa
14 or
15 an
16 in
17 di
18 pe
19 th
20 a
21 to
22 p
23 p
24 t
25
26 t
27 l
28
29
30
31
32
33
34
35
36
37
38
39

9 consent to the adoption is given by the Department of Institutions and
10 Agencies or any agency thereof, or an orphanage, children's home or society
11 incorporated under the laws of this State for the care of children.

12 Such investigation as required by this section shall be made by the De-
13 partment of Institutions and Agencies or by an orphanage, children's home
14 or society incorporated under the laws of this State for the care of children
15 and having the facilities for such investigation, as the court may direct, hav-
16 ing due regard for the religious background of the child. The agency
17 directed to make such investigation shall receive the duplicate copy of the
18 petition, as required to be filed by this chapter, and shall be represented at
19 the hearing. The nature of the investigation shall be such as to verify the
20 allegations of the petition and reveal such facts as may be necessary to de-
21 termine the condition and antecedents of the child and of the adopting
22 parents, in order that it may be ascertained whether the said child is a
23 proper subject for adoption, and whether the petitioner or petitioners and
24 their home are suitable for the proper rearing of the child.

25 The report of such investigation shall be made in writing and returned
26 to the court on the day fixed by the court for the hearing, which shall be not
27 less than thirty days nor more than sixty days after the filing of the peti-
28 tion, subject to adjournment as hereinafter provided. No decree of adoption
29 shall be granted until such report be returned but, if such report is not re-
30 turned on the day ordered, without fault of the petitioner or petitioners, the
31 court may grant a decree of adoption upon a later day to be fixed, with due
32 notice thereof being given to the agency directed to make such report.

33 When consent to the adoption is given by the Department of Institu-
34 tions and Agencies or any agency thereof, or an orphanage, children's home
35 or society incorporated under the laws of this State for the care of children,
36 the day fixed for the hearing shall be not less than ten nor more
37 than thirty days from the time of filing the petition or **appointment**
38 of a next friend as the case may be, on which day such **agency shall**
39 file with the court a written summary of the case, and the court may adjourn
40 the hearing and examination from time to time as the case may require.

41 At the time of the hearing the court shall require at least one witness,
42 other than the petitioner, to testify to the character of the petitioner, the resi-
43 dence of the petitioner or the child, and any other facts which the court
44 may require with respect to the welfare of the interested parties.

45 The entry of a decree of adoption shall be conclusive evidence of the
46 sufficiency of the consent or consents annexed to the petition for such adop-
47 tion and of the rights, duties and obligations established by such decree,
48 pursuant to the provisions of this chapter, in any suit, action or proceeding
49 not commenced within five years from the date of entry of such decree.

1 6. Section 9:3-8 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-8. a. The petition, proceedings, testimony and decree, except the re-
4 port of investigation made pursuant to the order of the court, shall be
5 recorded at length in a book kept for that purpose and properly indexed,
6 but testimony taken orally or without subscription by witnesses need not be
7 recorded. The book shall become part of the records of the surrogate's
8 office of the county wherein the court is located, and for such recording the
9 surrogate shall receive the same fees as for recording a will.

10 b. All reports of the investigation submitted hereunder shall be filed
11 separately and apart from all other papers in the case, and shall not at any
12 time be opened to inspection, except by the parties to the adoption and their
13 attorneys, unless the court, for good cause shown, shall otherwise order.

14 c. Upon application of the adopting parent or parents, the clerk of the
15 court where the decree of adoption was entered shall certify to the Bureau
16 of Vital Statistics of this State the date of entrance of the decree, the names
17 of the natural parent or parents of the child, if the same appear in the
18 decree of adoption, the names of the adopting parent or parents, the prior
19 name of the child, and the new name of the child as changed by the decree
20 of adoption.

1 7. Section 9:3-11 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-11. The expense of a proceeding pursuant to this chapter shall be
4 borne by the petitioner, including the report of investigation when
5 directed by the court; *provided, however*, that in such cases a statement of
6 the expense incurred in the investigation shall be annexed to the report.

1 8. This act shall take effect January first, one thousand nine hundred
2 and thirty-nine.

13 attorneys, unless the court, for good cause shown, shall otherwise order.

14 e. Upon application of the adopting parent or parents, the clerk of the
15 court where the decree of adoption was entered shall certify to the Bureau
16 of Vital Statistics of this State the date of entrance of the decree, the names
17 of the natural parent or parents of the child, if the same appear in the
18 decree of adoption, the names of the adopting parent or parents, the prior
19 name of the child, and the new name of the child as changed by the decree
20 of adoption.

1 7. Section 9:3-11 of the Revised Statutes is hereby amended to read as
2 follows:

3 9:3-11. The expense of a proceeding pursuant to this chapter shall be
4 borne by the petitioner [.] including the report of investigation when
5 directed by the court; provided, however, that in such cases a statement of
6 the expense incurred in the investigation shall be annexed to the report.

1 8. This act shall take effect January first, one thousand nine hundred
2 and thirty-nine.

S-276

STATEMENT

The purpose of this act is to amend the provisions of the law concerning the adoption of minors. It aims to clarify certain provisions and to prevent too hasty adoptions, and to obtain the aid of the Department of Institutions and Agencies in that and other respects. It also attempts to relieve situations in which there have been final adoptions and circumstances have transpired which might make it for the best interests of the child or the adopting parents that such adoption be revoked or annulled. This bill has been drafted after conferences and consultations by welfare agencies in this State and the Department of Institutions and Agencies.