

9:6-3.1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 9:6-3.1 et al (Child abuse-- strengthen and clarify investigative process within institutions)

LAWS OF: 1987 **CHAPTER:** 341

Bill No: A2575

Sponsor(s): Franks and Crecco

Date Introduced: May 8, 1986

Committee: **Assembly:** Health and Human Resources

Senate: -----

Amended during passage: Yes Amendments denoted by asterisk according to Governor's recommendations.

Date of Passage: **Assembly:** October 27, 1986 Re-enacted 11-30-87

Senate: August 6, 1987 Re-enacted 12-17-87

Date of Approval: December 24, 1987

Following statements are attached if available:

Sponsor statement: Yes **Attached:** Assembly amendments, adopted 10-22-87 (with statement)

Committee statement: **Assembly** Yes

Senate No

Fiscal Note: No

Veto Message: Yes

Message on Signing: No

Following were printed:

Reports: No

Hearings: Yes

See newspaper clipping file, "N.J.- cruelty to children-1987" in New Jersey Reference Department.

974.90 New Jersey. Legislature. Senate. Institutions, Health and Welfare Committee
C536 Public hearing on child abuse and sexual abuse of children in day and
1984d residential facilities held 10-3-84,
Trenton, 1984.

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 2575

STATE OF NEW JERSEY

INTRODUCED MAY 8, 1986

By Assemblymen FRANKS and Assemblywoman CRECCO

AN ACT concerning child abuse or neglect, amending R. S. 9:6-1, R. S. 9:6-2, P. L. 1971, c. 437 and amending and supplementing P. L. 1974, c. 119.

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

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

2 9:6-1. Abuse, abandonment, cruelty and neglect of child; what
3 constitutes. Abuse of a child shall consist in any of the following
4 acts: (a) disposing of the custody of a child contrary to law; (b)
5 employing or permitting a child to be employed in any vocation or
6 employment injurious to its health or dangerous to its life or limb,
7 or contrary to the laws of this State; (c) employing or permitting
8 a child to be employed in any occupation, employment or vocation
9 dangerous to the morals of such child; (d) the habitual use by the
10 parent or by a person having the custody and control of a child, in
11 the hearing of such child, of profane, indecent or obscene language;
12 (e) the performing of any indecent, immoral or unlawful act or
13 deed, in the presence of a child, that may tend to debauch or en-
14 danger or degrade the morals of the child **[or]**; (f) permitting or
15 allowing any other person to perform any indecent, immoral or
16 unlawful act in the presence of the child that may tend to debauch
17 or endanger the morals of such child; *****[or]***** (g) *****using**
18 *excessive physical restraint on the child under circumstances which*
19 *do not indicate that the child's behavior is harmful to himself,*
20 *others or property; or (h)*** in an institution as defined in section*
21 *1 of P. L. 1974, c. 119 (C. 9:6-8.21), willfully isolating the child*

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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly committee amendments adopted September 18, 1986.

**—Assembly amendment adopted October 23, 1986.

***—Assembly amendments adopted November 23, 1987.

22 *from ordinary social contact under circumstances which indicate*
 23 *emotional or social deprivation******]; or using excessive physical**
 23A *restraint on the child under circumstances which do not indicate*
 23B *that the child's behavior is harmful to himself, others or prop-*
 23C *erty*].***

24 Abandonment of a child shall consist in any of the following acts
 25 by anyone having the custody or control of the child: (a) willfully
 26 forsaking a child; (b) failing to care for and keep the control and
 27 custody of a child so that the child shall be exposed to physical or
 28 moral risk without proper and sufficient protection; (c) failing to
 29 care for and keep the control and custody of a child so that the
 30 child shall be liable to be supported and maintained at the expense
 31 of the public, or by child caring societies or private persons not
 32 legally chargeable with its or their care, custody and control.

33 Cruelty to a child shall consist in any of the following acts: (a)
 34 inflicting unnecessarily severe corporal punishment upon a child;
 35 (b) inflicting upon a child unnecessary suffering or pain, either
 36 mental or physical; (c) habitually tormenting, vexing or afflicting
 37 a child; (d) any willful act of omission or commission whereby
 38 unnecessary pain and suffering, whether mental or physical, is
 39 caused or permitted to be inflicted on a child; (e) or exposing a
 40 child to unnecessary hardship, fatigue or mental or physical strains
 41 that may tend to injure the health or physical or moral well-being
 42 of such child.

43 Neglect of a child shall consist in any of the following acts, by
 44 anyone having the custody or control of the child: (a) willfully
 45 failing to provide proper and sufficient food, clothing, maintenance,
 46 regular school education as required by law, medical attendance or
 47 surgical treatment, and a clean and proper home, or (b) failure to
 48 do or permit to be done any act necessary for the child's physical or
 49 moral well-being. *Neglect also means the continued inappropriate*
 50 *placement of a child in an institution, as defined in section 1 of P. L.*
 51 *1974, c. 119 (C. 9:6-8.21), with the knowledge that the placement*
 52 *has resulted and may continue to result in harm to the child's mental*
 53 *or physical well being.*

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

2 9:6-2. "Parent" and "custodian" defined. "Parent", as used in
 3 this chapter, shall include the stepfather and stepmother *and the*
 4 *adoptive or foster parent.* "The person having the care, custody
 5 and control of any child", as used in this chapter, shall mean any
 6 person who has assumed the care of a child, or any person with
 7 whom a child is living at the time the offense is committed, *and shall*

8 *include a teacher, employee or volunteer, whether compensated or*
 9 *uncompensated, of an institution as defined in section 1 of P. L.*
 10 *1974, c. 119 (C. 9:6-8.21) who is responsible for the child's welfare,*
 11 *and a person who legally or voluntarily assumes the care, custody,*
 12 *maintenance or support of the child. Custodian also includes any*
 13 *other staff person of an institution regardless of whether or not*
 14 *the person is responsible for the care or supervision of the child.*
 15 ****Custodian also includes a teaching staff member or other em-*
 16 *ployee, whether compensated or uncompensated, of a day school*
 17 *as defined in section 1 of P. L. 1974, c. 119 (C. 9:6-8.21)****

1 3. Section 2 of P. L. 1971, c. 437 (C. 9:6-8.9) is amended to read
 2 as follows:

3 2. For purposes of this act:

4 "Abused child" means a child under the age of 18 years whose
 5 parent, guardian, or other person having his custody and control:
 6 a. Inflicts or allows to be inflicted upon such child physical in-
 7 jury by other than accidental means which causes or creates a sub-
 8 stantial risk of death, or serious or protracted disfigurement, or
 9 protracted impairment of physical or emotional health or pro-
 10 tracted loss or impairment of the function of any bodily organ;

11 b. Creates or allows to be created a substantial or ongoing risk
 12 of physical injury to such child by other than accidental means
 13 which would be likely to cause death or serious or protracted dis-
 14 figurement, or protracted loss or impairment of the function of any
 15 bodily organ; or

16 c. Commits or allows to be committed an act of sexual abuse
 17 against the child;

18 d. Or a child whose physical, mental, or emotional condition has
 19 been impaired or is in imminent danger of becoming impaired as
 20 the result of the failure of his parent or guardian, or such other per-
 21 son having his custody and control, to exercise a minimum degree
 22 of care (1) in supplying the child with adequate food, clothing,
 23 shelter, education, medical or surgical care though financially able
 24 to do so or though offered financial or other reasonable means
 25 to do so, or (2) in providing the child with proper supervision or
 26 guardianship, by unreasonably inflicting or allowing to be inflicted
 27 harm, or substantial risk thereof, including the infliction of ex-
 28 cessive corporal punishment or ***[willfully isolating the child
 29 from ordinary social contact under circumstances which indicate
 30 emotional or social deprivation in an institution as defined in sec-
 31 tion 1 of P. L. 1974, c. 119 (C. 9:6-8.21)]*** ***using excessive
 32 physical restraint under circumstances which do not indicate that

32A *the child's behavior is harmful to himself, others or property***:*
 32B *or by any other act of a similarly serious nature requiring the aid*
 32C *of the court; [or]*

33 e. **[Who]** *Or a child who has been willfully abandoned by his*
 34 *parent or guardian, or such other person having his custody and*
 35 *control;*

36 *f. Or a child who is in an institution as defined in section 1 of*
 37 *P. L. 1974, c. 119 (C. 9:6-8.21) and (1) has been so placed inappro-*
 38 *priately for a continued period of time with the knowledge that the*
 39 *placement has resulted and may continue to result in harm to the*
 40 *child's mental or physical well being or (2) ***[upon whom exces-*
 41 *sive physical restraint has been used under circumstances which do*
 42 *not indicate that the child's behavior is harmful to himself, others*
 43 *or property]*** ***has been willfully isolated from ordinary social*
 44 *contact under circumstances which indicate emotional or social*
 45 *deprivation***.*

46 ****A child shall not be considered abused pursuant to subsection*
 47 *f. of this section if the acts or omissions described therein occur in*
 48 *a day school as defined in section 1 of P. L. 1974, c. 119 (C.*
 49 *9:6-8.21).****

1 4. Section 3 of P. L. 1971, c. 437 (C. 9:6-8.10) is amended to read
 2 as follows:

3 3. Any person having ***[a]** reasonable ***[suspicion]** ***cause**
 4 *to believe* **[cause to believe]** that a child has been subjected to
 5 child abuse or acts of child abuse shall report the same **[promptly]**
 6 *immediately* to the **[Bureau of Children's] Division of Youth and**
 7 *Family Services* by telephone or otherwise. Such reports, where
 8 possible, shall contain the names and addresses of the child and
 9 his parent, guardian, or other person having custody and control
 10 of the child and, if known, the child's age, the nature and possible
 11 extent of the child's injuries, abuse or maltreatment, including any
 12 evidence of previous injuries, abuse or maltreatment, and any other
 13 information that the person believes may be helpful with respect
 14 to the child abuse and the identity of the perpetrator.

1 5. Section 6 of P. L. 1971, c. 437 (C. 9:6-8.13) is amended to
 2 read as follows:

3 6. Anyone acting pursuant to this act in the making of a report
 4 under this act shall have immunity from any liability, civil or
 5 criminal, that might otherwise be incurred or imposed. Any such
 6 person shall have the same immunity with respect to testimony
 7 given in any judicial proceeding resulting from such report.

8 *A person who reports or causes to report in good faith an allega-*
 9 *tion of child abuse or neglect pursuant to section 3 of P. L. 1971,*

10 c. 437 (C. 9:6-8.10) and as a result thereof is discharged from em-
 11 ployment or in any manner discriminated against with respect to
 12 compensation, hire, tenure or terms, conditions or privileges of em-
 13 ployment, may file a cause of action for appropriate relief in the
 14 family part of the Chancery Division of the Superior Court in the
 15 county in which the discharge or alleged discrimination occurred
 16 or in the county of the person's primary residence.

17 If the court finds that the person was discharged or discriminated
 18 against as a result *of* the person's reporting an allegation of child
 19 abuse or neglect, the court may grant reinstatement of employ-
 20 ment with back pay or other legal or equitable relief.

1 6. Section 1 of P. L. 1974, c. 119 (C. 9:6-8.21) is amended to read
 2 as follows:

3 1. As used in this act, unless the specific context indicates other-
 4 wise:

5 a. "Parent or guardian" means any natural parent, adoptive
 6 parent, foster parent, stepparent, or any person, who has assumed
 7 responsibility for the care, custody or control of a child or upon
 8 whom there is a legal duty for such care. Parent or guardain in-
 9 cludes a teacher, employce or volunteer, whether compensated or
 10 uncompensated, of an institution who is responsible for the child's
 11 welfare***[a person who legally or voluntarily assumes the care,
 12 custody, maintenance or support of the child]*** and any other
 13 staff person of an institution regardless of whether or not the
 14 person is responsible for the care or supervision of the child.

14A ***Parent or guardian also includes a teaching staff member or
 14B other employee, whether compensated or uncompensated, of a day
 14C school as defined in section 1 of P. L. 1974, c. 119 (C. 9:6-8.21).***

15 b. "Child" means any child alleged to have been abused or
 16 neglected.

17 c. "Abused or neglected child" means a child less than 18 years
 18 of age whose parent or guardian, as herein defined, (1) inflicts
 19 or allows to be inflicted upon such child physical injury by other
 20 than accidental means which causes or creates a substantial risk
 21 of death, or serious or protracted disfigurement, or protracted
 22 impairment of physical or emotional health or protracted loss or
 23 impairment of the function of any bodily organ; (2) creates or
 24 allows to be created a substantial or ongoing risk of physical injury
 25 to such child by other than accidental means which would be likely
 26 to cause death or serious or protracted disfigurement, or protracted
 27 loss or impairment of the function of any bodily organ; [or] (3)
 28 commits or allows to be committed an act of sexual abuse against
 29 the child; (4) or a child whose physical, mental, or emotional con-

30 dition has been impaired or is in imminent danger of becoming
 31 impaired as the result of the failure of his parent or guardian,
 32 as herein defined, to exercise a minimum degree of care (a) in
 33 supplying the child with adequate food, clothing, shelter, educa-
 34 tion, medical or surgical care though financially able to do so or
 35 though offered financial or other reasonable means to do so, or
 36 (b) in providing the child with proper supervision or guardianship,
 37 by unreasonably inflicting or allowing to be inflicted harm, or sub-
 38 stantial risk thereof, including the infliction of excessive corporal
 39 punishment; or by any other acts of a similiarly serious nature
 40 requiring the aid of the court; [or] (5) *or a child who has been*
 41 *willfully abandoned by his parent or guardian, as herein defined;*
 42 ****[or]*** (6) ***or a child upon whom excessive physical re-*
 43 *straint has been used under circumstances which do not indicate*
 44 *that the child's behavior is harmful to himself, others or property;*
 45 *or (7)*** or a child who is in an institution and (a) has been placed*
 46 *there inappropriately for a continued period of time with the*
 47 *knowledge that the placement has resulted or may continue to re-*
 48 *sult in harm to the child's mental or physical well being ***[(b)*
 49 *upon whom excessive physical restraint has been used under cir-*
 50 *cumstances which do not indicate that the child's behavior is harm-*
 50A *ful to himself, others or property, or (c)]*** ***or (b)*** who has*
 50B *been willfully isolated from ordinary social contact under circum-*
 50C *stances which indicate emotional or social deprivation.*
 50D ****A child shall not be considered abused or neglected pursuant*
 50E *to paragraph (7) of subsection c. of this section if the acts or omis-*
 50F *sions described therein occur in a day school as defined in this*
 50G *section.****

51 No child who in good faith is under treatment by spiritual means
 52 alone through prayer in accordance with the tenets and practices of
 53 a recognized church or religious denomination by a duly accredited
 54 practitioner thereof, shall for this reason alone be considered to be
 55 abused or neglected.

56 d. "Law guardian," means an attorney admitted to the practice
 57 of law in this State, regularly employed by the Department of the
 58 Public Advocate, and designated under this act to represent minors
 59 in alleged cases of child abuse or neglect. The Public Advocate may,
 60 by regulations, provide that certain classes of cases may be handled
 61 by the Office of the Public Defender.

62 e. "Attorney" means an attorney admitted to the practice of
 63 law in this State who shall be privately retained; or, in the instance
 64 of an indigent parent or guardian, an attorney from the Depart-
 65 ment of the Public Advocate who shall be appointed in order to

66 avoid conflict between the interests of the child and the parent or
67 guardian in regard to representation. The Public Advocate may,
68 by regulation, provide that certain classes of cases may be handled
69 by the Office of the Public Defender.

70 f. "Division" means the Division of Youth and Family Services
71 in the Department of **[Institutions and Agencies] Human Services**
72 unless otherwise specified.

73 g. "Institution" means a public or private facility in the State
74 which provides children with out of home care, supervision or
75 maintenance. Institution includes, but is not limited to, a correc-
76 tional facility, detention facility, treatment facility, day care center,
77 *****[day school.]***** residential school, shelter and hospital.

78 *****h. "Day school" means a public or private school which pro-**
79 **vides general or special educational services to day students in**
80 **grades kindergarten through 12. Day school does not include a**
81 **residential facility, whether public or private, which provides care**
82 **on a 24-hour basis.*****

1 7. (New section) a. A teacher, employee, volunteer or staff person
2 of an institution as defined in P. L. 1974, c. 119 (C. 9:6-8.21) who is
3 alleged to have committed an act of child abuse or neglect as defined
4 in R. S. 9:6-1, section 2 of P. L. 1971, c. 437 (C. 9:6-8.9) and section
5 1 of P. L. 1974, c. 119 (C. 9:6-8.21) shall be temporarily suspended
6 *****by the appointing authority***** from his position at the institu-
7 tion with pay, or reassigned to other duties which would remove
8 the risk of harm to the child under the person's custody or control,
9 if there is reasonable cause *****for the appointing authority***** to
10 ***[suspect]* *believe*** that the life or health of the alleged victim
11 or other children at the institution is in imminent danger due to
11A continued contact between the alleged perpetrator and a child at
11B the institution.

11C ****A ***[person]*** ***public employee*** suspended pursuant**
11D **to this subsection shall be accorded and may exercise due process**
11E **rights, including ***[the right to a hearing.]*** ***notice of the**
11F **proposed suspension and a presuspension opportunity to respond**
11G **and any other due process rights provided under the laws of this**
11H **State governing public employment and under any applicable in-**
11I **dividual or group contractual agreement. A private employee sus-**
11J **pending pursuant to this subsection shall be accorded and may**
11K **exercise due process rights*** provided for under the laws of this**
11L **State governing ***[public and]*** private employment and under**
11M **any applicable individual or group employee contractual agree-**
11N **ment. ***[If the person requests a hearing, the hearing shall be**
11O **held and a decision rendered within 10 days of the date of the**
11P **person's suspension.***]**

12 b. If the child abuse or neglect is the result of a single act occur-
 13 ring in an institution, within 30 days of receipt of the report of
 14 child abuse or neglect, the division may request that the chief
 15 administrator of the institution formulate a plan of remedial action.
 16 The plan may include, but shall not be limited to, action to be taken
 17 with respect to a teacher, employee, volunteer or staff person of
 18 the institution to assure the health and safety of the alleged victim
 19 and other children at the institution and to prevent future acts of
 20 abuse or neglect. Within 30 days of the date the division requested
 21 the remedial plan, the chief administrator shall notify the division
 22 in writing of the progress in preparing the plan. The chief
 23 administrator shall complete the plan within 90 days of the date the
 24 division requested the plan.

25 c. If the child abuse or neglect is the result of several incidents
 26 occurring in an institution, within 30 days of receipt of the report
 27 of child abuse or neglect, the division may request that the chief
 28 administrator of the institution make administrative, personnel or
 29 structural changes at the institution. Within 30 days of the date the
 30 division made its request, the chief administrator shall notify the
 31 division of the progress in complying with the terms of the division's
 32 request. The division and chief administrator shall determine a time
 33 frame for completion of the terms of the request.

34 d. If a chief administrator of an institution does not formulate
 35 or implement a remedial plan or make any changes requested by the
 36 division, the division may recommend to the authority which
 37 licenses, oversees, approves or authorizes the operation of the
 38 institution that appropriate sanctions or actions be enforced or
 39 taken against the institution.

40 ***8. The Commissioner of the Department of Education shall,
 41 in cooperation and consultation with the Commissioner of the De-
 42 partment of Human Services, adopt rules and regulations, pursuant
 43 to the "Administrative Procedure Act," P. L. 1968, c. 410 (C.
 44 52:14B-1 et seq.), concerning the relationship, rights and respon-
 45 sibilities of the Division of Youth and Family Services in the De-
 46 partment of Human Services and local school districts regarding
 47 the reporting and investigation of allegations of child abuse.***

1 ***[8.]*** ***9.*** This act shall take effect immediately.

CHILDREN

Strengthens and clarifies the investigative process of child abuse
 in institutions.

17 with respect to a teacher, employee, volunteer or staff person of
18 the institution to assure the health and safety of the alleged victim
19 and other children at the institution and to prevent future acts of
20 abuse or neglect. Within 30 days of the date the division requested
21 the remedial plan, the chief administrator shall notify the division
22 in writing of the progress in preparing the plan. The chief
23 administrator shall complete the plan within 90 days of the date the
24 division requested the plan.

25 c. If the child abuse or neglect is the result of several incidents
26 occurring in an institution, within 30 days of receipt of the report
27 of child abuse or neglect, the division may request that the chief
28 administrator of the institution make administrative, personnel or
29 structural changes at the institution. Within 30 days of the date the
30 division made its request, the chief administrator shall notify the
31 division of the progress in complying with the terms of the division's
32 request. The division and chief administrator shall determine a time
33 frame for completion of the terms of the request.

34 d. If a chief administrator of an institution does not formulate
35 or implement a remedial plan or make any changes requested by the
36 division, the division may recommend to the authority which
37 licenses, oversees, approves or authorizes the operation of the
38 institution that appropriate sanctions or actions be enforced or
39 taken against the institution.

1 8. This act shall take effect immediately.

STATEMENT

This bill proposes comprehensive changes to the State child abuse and neglect laws to clarify and strengthen the investigative process of institutional child abuse cases. Since the late 1970's, the Division of Youth and Family Services (DYFS) has formally investigated allegations of child abuse or neglect occurring in out-of-home settings, such as day care centers, detention centers, public and private schools and residential facilities, although Title 9 of the Revised Statutes does not explicitly provide this authority.

This legislation clarifies the legal authority for the investigation and reporting of institutional child abuse cases. The bill is in response to the increase in institutional child abuse complaints reported in the State. In 1982, for example, 469 allegations of institutional child abuse were reported to DYFS; by 1984, the number of reported cases increased to 1,073. The increase in these reports is attributable to several factors which include, greater public awareness of child abuse issues and prompt intervention

and public education and training by the Institutional Abuse Investigations Unit in DYFS.

The bill amends the definitions of "abuse" and "neglect" to add three new categories of abuse or neglect related to institutional settings, that is, willful isolation, continued inappropriate placement in an institution and excessive restraint. The bill also expands the terms "parent" and "person having care, custody and control of a child" to include all persons employed in institutions.

The bill amends current law to change the standard for reporting suspected child abuse to require reporting on the basis of a reasonable "suspicion." Also, rather than reporting "promptly," under this bill a person would be required to report "immediately."

The bill also strengthens the immunity section of the child abuse law and prohibits the discharge or discrimination in employment as reprisal against a person who reports in good faith an allegation of child abuse or neglect. Further, the bill permits the person to file a petition in court to seek appropriate relief and gives the court authority to grant reinstatement of employment or legal or equitable relief. The bill also permits the temporary removal, suspension or reassignment of an alleged perpetrator from employment where there is reasonable cause to suspect that a child's life or health is in imminent danger by continued contact with the alleged perpetrator. Finally, the bill provides DYFS with the authority to request an institution to formulate a remedial plan when abuse has occurred at the institution.

CHILDREN

Strengthens and clarifies the investigative process of child abuse in institutions.

**ASSEMBLY HEALTH AND HUMAN RESOURCES
COMMITTEE**

STATEMENT TO

ASSEMBLY, No. 2575

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: SEPTEMBER 18, 1986

The Assembly Health and Human Resources Committee reports favorably Assembly Bill No. 2575 with committee amendments.

As amended by the committee, this bill amends and supplements chapter 6 of Title 9 of the Revised Statutes to clarify and strengthen the investigative authority of the Division of Youth and Family Services (DYFS) in the Department of Human Services with respect to allegations of child abuse or neglect occurring in institutions that provide children with out of home care, supervision or maintenance. These include, but are not limited to: correctional facilities, detention facilities, treatment facilities, day care centers, day schools, residential schools, shelters and hospitals. The bill also clarifies the legal authority for the reporting of institutional child abuse cases.

The bill amends the definitions of "abuse" and "neglect" to add three new categories of abuse or neglect in an institution as defined in section 1 of P. L. 1974, c. 119 (C. 9:6-8.21): willful isolation of a child from ordinary social contact, continued inappropriate placement in an institution, and excessive physical restraint. The bill also expands the terms "parent" and "person having care, custody and control of a child" to include all persons employed in institutions, whether or not they are responsible for the care or supervision of the child.

The bill amends section 3 of P. L. 1971, c. 437 (C. 9:6-8.10) to require that a person report child abuse "immediately," rather than "promptly" as required under the current law.

The bill also strengthens the immunity provisions of section 6 of P. L. 1971, c. 437 (C. 9:6-8.13) with respect to reporting allegations of child abuse or neglect, and prohibits the discharge from, or discrimination in, employment against a person for reporting in good faith an allegation of child abuse or neglect. The person may file a petition in court to seek appropriate relief, and the court may grant reinstatement of employment with back pay or other legal or equitable relief.

In addition, the bill permits the temporary removal, suspension or reassignment of an alleged perpetrator of child abuse or neglect in an institution from employment if there is reasonable cause to suspect that the life or health of the alleged victim or other children at the institution is in imminent danger due to continued contact with the alleged perpetrator.

Finally, the bill provides DYFS with the authority to request the chief administrator of an institution to formulate a plan of remedial action when a single act of abuse or neglect has occurred at the institution, and to request the chief administrator to make administrative, personnel or structural changes at the institution when several such incidents have occurred. If the chief administrator does not respond to these requests, DYFS may recommend to the authority which licenses, oversees, approves or authorizes the operation of the institution that appropriate sanctions or actions be enforced or taken against the institution.

The committee amended the bill at the sponsor's request to retain the standard in the current law for reporting allegations of child abuse under section 3 of P. L. 1971, c. 437 (C. 9:6-8.10) based upon a reasonable "cause to believe," rather than "suspicion."

The amended bill is similar to Senate Bill No. 2116 (DiFrancesco), currently pending in the Senate Institutions, Health and Welfare Committee.

ADMITTED
OCT 27 1986

ASSEMBLY FLOOR Amendments
sponsored by Assemblyman Franks

to

ASSEMBLY Bill No. 2575 OCR
sponsored by Assemblyman Franks and
Assemblywoman Crecco

Amend:

Page	Sec.	Line	
6	7	11A	After "institution." Insert new paragraph as follows: <p style="margin-left: 40px;">"A person suspended pursuant to this subsection shall be accorded and may exercise due process rights, including the right to a hearing, provided for under the laws of this State governing public and private employment and under any applicable individual or group employee contractual agreement. If the person requests a hearing, the hearing shall be held and a decision rendered within 10 days of the date of the person's suspension."</p>

STATEMENT

This amendment provides that a person who is suspended from employment at an institution pending an investigation of abuse may request a hearing, which hearing shall be held within 10 days of the suspension. The amendment further provides that the decision of the hearing also shall be rendered within the 10 day period.

... control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

November 23, 1987

ASSEMBLY BILL NO. 2575 (2nd OCR)

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Assembly Bill No. 2575 (2nd OCR) with my objections for reconsideration.

Over the last several years, the reports of abuse in facilities such as schools, institutions and day care centers have been rapidly increasing. In response to this increase, Assembly Bill No. 2575 (2nd OCR) would amend the current child abuse law to confirm and strengthen the authority of the Division of Youth and Family Services in the Department of Human Services to investigate allegations of abuse of children in institutions.

To address the problem of child abuse in institutional settings, Assembly Bill No. 2575 (2nd OCR) would add to the child abuse law three new categories of abuse and neglect applicable in an institution: 1) the willful isolation of a child from ordinary social contact under circumstances which indicate emotional or social deprivation; 2) the inappropriate placement of a child for a continued period of time with knowledge that the placement has resulted in harm to the child; and 3) the use of excessive restraint upon a child under circumstances which do not indicate that the child is harmful to himself, others or property. "Institution" is defined in the bill as a public or private facility which provides children with out-of-home care, supervision or maintenance including, but not limited to, a correctional facility, detention facility, treatment facility, day care center, day school, residential school, shelter and hospital.

I heartily applaud the intent of this legislation. I have long been concerned with the incidence of child abuse and neglect, a critical public problem which endangers not only the present health and safety of children but their future welfare as well. Children in institutions are particularly vulnerable.

While I strongly support the concept expressed in Assembly Bill No. 2575 (2nd OCR), I cannot sign the bill because of concerns raised by the Department of Education regarding its implementation in certain schools as well as other substantive problems which would seriously impair the bill as an effective instrument to prevent child abuse and neglect. Therefore, I must return

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Assembly Bill No. 2575 (2nd OCR) with the recommendation that it be amended as set forth herein.

Assembly Bill No. 2575 (2nd OCR) provides that the new categories of child abuse and neglect shall apply not only in correctional and residential facilities but regular public and private schools as well. The Department of Education is alarmed by the possibility that two of the new categories of child abuse and neglect may be applied inappropriately in regular school settings, thus hindering the functioning of our schools. For instance, application of the "willful isolation" category in a regular public school could seriously restrict the use of in-school suspension, a major strategy for temporarily dealing with disruptive students by removing them from the regular classroom environment. This term could also be construed to encompass such routine disciplinary procedures as detention and denial of prom or graduation ceremony privileges. The "inappropriate placement" category could have a devastating effect on school district assignment of students, particularly special education students, in cases where parents do not agree with district program or class assignments.

The Department of Human Services has informed me that regular public and private schools were never considered part of the problem which these new categories of child abuse and neglect were intended to address. In fact, the "willful isolation" and "inappropriate placement" categories were intended to apply only to children in other types of institutions such as correctional and residential treatment facilities. Accordingly, I recommend that, for purposes of the child abuse laws, day schools be treated separately from other types of institutions so that these two categories of child abuse and neglect will apply only to facilities other than day schools. I also recommend the addition of provisions to clarify that the "willful isolation" and "inappropriate placement" standards will not apply in a day school setting.

I recognize that there is a need to clarify that incidents of child abuse in day schools must be reported to the Division of Youth and Family Services and that the Division of Youth and Family Services has the authority to investigate such allegations. Apparently, there have been situations in which school boards, upon the advice of counsel, have determined that the current child abuse law does not encompass teachers, whose dealings with a child amount to

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less than 24-hour care and, therefore, that allegations of child abuse in the school need not be reported to the Division of Youth and Family Services.

I believe it advisable, therefore, that the bill clarify that New Jersey's child abuse law applies to any teaching staff member or other employee of a day school. The bill should also contain a definition of the term "day school" to include any day public or private school providing general or special educational services to students from grades kindergarten through 12. It must be made clear that all persons charged with the care of children, in whatever capacity, are answerable for acts of abuse or neglect.

I have been advised that the Departments of Education and Human Services have been discussing the terms of a model for an affiliation agreement by local school districts and the Division of Youth and Family Services on the reporting and investigation of child abuse. The agreement is intended to assist in the development of a liaison relationship between the schools and the Division of Youth and Family Services and to provide guidelines to facilitate corrective action recommended as a result of a child abuse investigation. I commend the efforts of the Departments of Education and Human Services to develop this protocol to govern investigations of abuse.

However, because of the sensitivity with which child abuse must be investigated, I believe it preferable to have one uniform set of guidelines rather than an individual agreement in each school district. Therefore, I recommend that the Commissioner of Education be required, in consultation with the Commissioner of Human Services, to adopt rules and regulations concerning the relationship, rights and responsibilities of the Division of Youth and Family Services and day schools regarding the reporting and investigation of allegations of child abuse.

Finally, I recommend certain technical changes to the provision concerning the suspension of an employee in an institution alleged to have committed an act of child abuse or neglect. This provision fails to delineate the respective roles of the appointing authority and the Division of Youth and Family Services in making a determination that there is reasonable cause to believe that the life or health of the alleged victim or other children in the institution is in imminent danger due to continued contact with the alleged perpetrator, and

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consequently, that grounds for suspension exist. Therefore, I am suggesting certain technical modifications to this provision to clarify that the appointing authority shall be responsible for determining whether there is reasonable cause to suspend such an employee.

In such circumstances, Assembly Bill No. 2575 (2nd OCR) would require that a presuspension hearing be held and a decision rendered within ten days of the date of suspension. While I understand the gravity of an allegation of child abuse, I believe that the bill's current time frame may pose an impossible administrative burden, especially if an employee waits a week or more to request a hearing. Accordingly, I recommend modification of the bill's hearing provision in order to allow employers some flexibility with regard to presuspension procedures, consistent with the requirements of due process.

With these modifications, Assembly Bill No. 2575 (2nd OCR) would, I believe, confirm and enhance the authority of the Division of Youth and Family Services with regard to child abuse in institutions and schools. Moreover, the bill would clarify the role of the Division of Youth and Family Services while removing the possibility that the "willful isolation" and "inappropriate placement" standards will be utilized inappropriately to interfere with normal school routines.

Therefore, I herewith return Assembly Bill No. 2575 (2nd OCR) and recommend that it be amended as follows:

Page 1, Section 1, Line 17: After ";" Delete "or"; after "(g)" Insert "using excessive physical restraint on the child under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (h)"

Page 1-2, Section 1, Lines 20-23: After "deprivation" Delete the remainder of line 20; Delete lines 21-22 in their entirety; Delete "others or property" on line 23

Page 3, Section 2, Line 14: After "child." Insert "Custodian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L. 1974, c. 119 (C. 9:6-8.21)."

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Page 3, Section 3, Lines 28-31: On line 28 Delete "willfully isolating the child from"; Delete lines 29 and 30 in their entirety; on line 31 Delete "of P.L. 1974, c. 119 (C. 9:6.8.21)" Insert "using excessive physical restraint under circumstances which do not indicate that the child's behavior is harmful to himself, others or property"

Page 4, Section 3, Lines 40-43: After "(2)" Delete the remainder of line 40; Delete lines 41 and 42 in their entirety; on line 43 Delete "property"; Insert "has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation"

Page 4, Section 3, After Line 43: Insert new paragraph as follows:

"A child shall not be considered abused pursuant to subsection f. of this section if the acts or omissions described therein occur in a day school as defined in section 1 of P.L. 1974, c. 119 (C. 9:6-8.21)."

Page 5, Section 6, Lines 11-12: After "welfare" Delete the remainder of line 11; on line 12 Delete "custody, maintenance or support of the child"

Page 5, Section 6, Line 14: After "child." Insert "Parent or guardian also includes a teaching staff member or other employee, whether compensated or uncompensated, of a day school as defined in section 1 of P.L. 1974, c. 119 (C. 9:6-8.21)."

Page 5, Section 6, Line 41: Delete "or"

Page 5, Section 6, Line 42: After "(6)" Insert "or a child upon whom excessive physical restraint has been used under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or (7)"

Page 5-6, Section 6, Lines 45-48: After "well being" on line 45 Delete the remainder of the line; Delete lines 46 and 47 in their entirety; on line 48 Delete "property, or (c)"; Insert "or (b)"

Page 6, Section 6, After Line 50: Insert new paragraph as follows:

"A child shall not be considered abused or neglected pursuant to paragraph (7) of subsection c. of this section if the acts or omissions described therein occur in a day school as defined in this section."

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Page 6, Section 6, Line 77: Delete "day school,"

Page 6, Section 6, After Line 77: After line 77 Insert new subsection
"h." to read as follows:

"h. "Day school" means a public or private school which provides general or special educational services to day students in grades kindergarten through 12. Day school does not include a residential facility, whether public or private, which provides care on a 24-hour basis."

Page 6, Section 7, Line 5: After "suspended" Insert "by the appointing authority"

Page 6, Section 7, Line 8: After "cause" Insert "for the appointing authority"

Page 7, Section 7, Line 11B: Delete "person" Insert "public employee"

Page 7, Section 7, Lines 11C-11D: Delete "the right to a hearing," Insert "notice of the proposed suspension and a presuspension opportunity to respond and any other due process rights provided under the laws of this State governing public employment and under any applicable individual or group contractual agreement. A private employee suspended pursuant to this subsection shall be accorded and may exercise due process rights"

Page 7, Section 7, Line 11E: Omit "public and"

Page 7, Section 7, Lines 11F-11H: After "agreement." Delete the remainder of line 11F; Delete lines 11G-11H in their entirety

Page 7, Section 7, After Line 39: After line 39 Insert new section "8."
to read as follows:

"8. The Commissioner of the Department of Education shall, in cooperation and consultation with the Commissioner of the Department of Human Services, adopt rules and regulations, pursuant to the "Administrative Procedure Act," P.L. 1968, c. 410 (C. 52:14B-1 et seq.), concerning the relationship, rights and responsibilities of the Division of Youth and

ADMITTED
OCT 27 1986

ASSEMBLY FLOOR Amendments
sponsored by Assemblyman Franks

to

ASSEMBLY Bill No. 2575 OCR
sponsored by Assemblyman Franks and
Assemblywoman Crecco

Amend:

Page	Sec.	Line	
6	7	11A	After "institution." Insert new paragraph as follows: <p style="margin-left: 40px;">"A person suspended pursuant to this subsection shall be accorded and may exercise due process rights, including the right to a hearing, provided for under the laws of this State governing public and private employment and under any applicable individual or group employee contractual agreement. If the person requests a hearing, the hearing shall be held and a decision rendered within 10 days of the date of the person's suspension."</p>

STATEMENT

This amendment provides that a person who is suspended from employment at an institution pending an investigation of abuse may request a hearing, which hearing shall be held within 10 days of the suspension. The amendment further provides that the decision of the hearing also shall be rendered within the 10 day period.

... control and custody of a child so that the child shall be liable to be supported and maintained at the expense of the public, or by child caring societies or private persons not legally chargeable with its or their care, custody and control.