

3A:2A-41

LEGISLATIVE HISTORY CHECKLIST

NJSA: 3A:2A-41; 26:8-40; 26:8-40.11

(Illegitimate children—  
eliminate certain sex-based  
discrimination provisions from  
statutes)

LAWS OF: 1983

CHAPTER: 10

Bill No.: S889

Sponsor(s): Lipman and DiFrancesco

Date Introduced: Feb. 1, 1982

Committee: Assembly: Judiciary, Law, Public Safety & Defense

Senate: Judiciary

Amended during passage: /// No

Date of Passage: Assembly: Nov. 29, 1982

Senate: June 28, 1982

Date of Approval: Jan. 19, 1983

Following statements are attached if available:

Sponsor statement: Yes //

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: /// No

Veto Message: /// No

Message on Signing: /// ~~No~~ **Yes**

Following were printed:

Reports: Yes //

Hearings: /// No

Report, referred to in sponsors' statement:

- 974.90 New Jersey. Commission on Sex Discrimination in the Statutes.
  - W872 Sex discrimination in marriage and family law. September, 1981.
  - 1981b Trenton, 1981.
- (See especially pp 34-36; appendix G)

OCT 1983

SENATE, No. 889

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Senators LIPMAN and DiFRANCESCO

Referred to Committee on Judiciary

AN ACT concerning children born out-of-wedlock, amending P. L. 1977, c. 412, R. S. 26:8-40 and P. L. 1960, c. 142.

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

1 1. Section 44 of P. L. 1977, c. 412 (C. 3A:2A-41) is amended to  
2 read as follows:

3 44. If, for purposes of intestate succession, a relationship of  
4 parent and child must be established to determine succession by,  
5 through, or from a person **[.]**,

6 a. The relationships and rights of an adopted minor child shall be  
7 those as provided by section 14 of P. L. 1977, c. 367 (C. 9:3-50),  
8 and the relationships and rights of an adopted adult shall be as  
9 provided in N. J. S. 2A:22-3.

10 b. In cases not covered by *subsection a.*, a person **[born out of**  
11 **wedlock is a child of the mother. That person is also a child of the**  
12 **father, if:**

13 (1) The natural parents, before or after the birth of the child,  
14 participated in a ceremonial marriage or shall have consummated  
15 a common-law marriage where such marriage is recognized as  
16 valid in the manner authorized by the law of the place where such  
17 marriage took place, even though the attempted marriage is void;  
18 or

19 (2) The paternity is established by an adjudication before the  
20 death of the father or is established thereafter by clear and con-  
21 vincing proof, except that the paternity established under this  
22 subparagraph is ineffective to qualify the father or his kindred to  
23 inherit from or through the child unless the father has openly  
24 treated the child as his, and has not refused to support the child **]**  
25 *is the child of its natural parents regardless of their marital status.*  
26 *The parent and child relationship may be established by proof*

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

27 *that parentage has been adjudicated under prior law, under the*  
 28 *laws governing probate, by an order of a court in another state*  
 29 *or pursuant to the "New Jersey Parentage Act," P. L. . . . . ,*  
 30 *c. . . . . (C. . . . . ) (now pending before the Legislature as*  
 31 *Senate Bill No. 888 of 1982).*

1 2. R. S. 26:8-40 is amended to read as follows:

2 26:8-40. [When a child born out of the bonds of matrimony has  
 3 been legitimated by the marriage of its natural parents as pre-  
 4 scribed by law and there shall be submitted to the State registrar  
 5 proof of the marriage of the parents, the State registrar shall be  
 6 authorized to accept from the father of the child a correction or  
 7 amendment to the original birth record giving the child the father's  
 8 surname and adding to the record the information concerning the  
 9 father, now required by law upon birth certificates. Such correction  
 10 or amendment shall be made under oath by the father. If the  
 11 father is deceased and documentary proof of such decease is sub-  
 12 mitted, the correction or amendment may be accepted if made under  
 13 oath by the mother provided that the mother was unmarried at  
 14 the time of the birth or, if married, that a court of competent  
 15 jurisdiction has ruled that the child was not a child of said  
 16 marriage, and further provided that there is submitted acceptable  
 17 proof that during his lifetime the husband publicly or in writing  
 18 recognized the child as his issue. After the acceptance of such a  
 19 correction or amendment no information regarding the illegitimacy  
 20 shall be disclosed.]

21 *a. The State registrar shall amend the original birth record of*  
 22 *a child born out of wedlock to change its surname on the request*  
 23 *of both natural parents or the child who is 18 years of age or older*  
 24 *and on proof under oath of the marriage of its natural parents.*  
 25 *If one of the parents of the child is deceased, the State registrar*  
 26 *shall amend the record on proof, under oath, by the surviving*  
 27 *parent or guardian or the child who is 18 years of age or older:*  
 28 *(1) of the death of the other parent and (2) that the male parent*  
 29 *was presumed to be the child's natural father pursuant to the*  
 30 *"New Jersey Parentage Act," P. L. . . . . , c. . . . . (C. . . . . )*  
 31 *(now pending before the Legislature as Senate Bill No. 888 of 1982).*

32-33 *b. When parentage is adjudicated by any court, the State regis-*  
 34 *trar shall amend the birth record to conform it to the court decree*  
 35 *or make any other necessary changes pursuant to a request by the*  
 36 *parent to whom custody has been awarded, the child's guardian*  
 37 *or the child who is 18 years of age or older. A request for amend-*  
 38 *ment shall be made under oath by the parent, guardian or child*  
 39 *and shall be accompanied by a copy of the court decree.*

1 3. Section 1 of P. L. 1960, c. 142 (C. 26:8-40.11) is amended to  
2 read as follows:

3 1. Whenever the mother of a child born out of wedlock, *who has*  
4 *the same surname as the mother, and who has no presumed natural*  
5 *father pursuant to the "New Jersey Parentage Act," P. L. . . . . ,*  
6 *c. . . . . (C. . . . .) (now pending before the Legislature as*  
7 *Senate Bill No. 888 of 1982), or the presumed father does not*  
8 *oppose the name change, marries a person who is not the father*  
9 *of said child, the surname of said child may be changed to the*  
10 *surname of the husband of the mother by submitting proof of such*  
11 *marriage to the State Registrar of Vital Statistics or to any local*  
12 *registrar of vital statistics accompanied by a declaration, signed*  
13 *by said mother and her husband and acknowledged or proved in*  
14 *the manner required by law for deeds to real estate, setting forth*  
15 *that they desire the surname of said child to be changed to that of*  
16 *the husband of said mother and a declaration signed by the pre-*  
17 *sumed father setting forth his approval of the name change. Upon*  
18 *the receipt of such proof and [declaration] declarations the*  
19 *surname of said child shall be so changed and the State Registrar*  
20 *and any local registrar of vital statistics is authorized to accept*  
21 *from the said mother and her husband a correction or amendment*  
22 *to the original birth record giving the child the said husband's*  
23 *surname. Any declaration submitted to the State Registrar or to*  
24 *any local registrar pursuant to this section shall be filed with the*  
25 *original birth record of said child.*

1 4. This act shall take effect 90 days following enactment.

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STATEMENT

Statutes concerning the legal treatment of out-of-wedlock children are amended under this bill. Section one of the bill defines a person as the child of its natural parents regardless of their marital status for purposes of intestate succession. The parent and child relationship may be established by proof that parentage has been adjudicated by a court in another state, under the laws governing probate or under prior law, or pursuant to the "New Jersey Parentage Act" (now pending before the Legislature as Senate Bill No.888 of 1982). A procedure is established under section two so that the State registrar shall amend the original birth record of a child born out of wedlock to change its surname on the request of both natural parents, or the child 18 years of age or older, if the natural parents subsequently marry. If one of the natural parents is deceased, the State registrar shall amend the record on proof submitted by the surviving parent, guardian or child who is 18

years of age or older (1) of the death of the other parent and (2) that the male parent was presumed to be the child's natural father.

In section three the mother of an out-of-wedlock child who has the same surname as the mother may change the child's surname if she marries a man who is not the father of the child, provided, however, that the child has no presumed father under the "New Jersey Parentage Act," or that the presumed father does not oppose the name change.

These revisions are proposed on the recommendation of the Commission on Sex Discrimination in the Statutes to eliminate certain sex-based provisions in the existing law concerning out-of-wedlock children and their parents and to provide for the best interests of the child.

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1 3. Section 1 of P. L. 1960, c. 142 (C. 26:8-40.11) is amended to  
2 read as follows:

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4 *the same surname as the mother, and who has no presumed natural*  
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6 *c. . . . . (C. . . . . ) (now pending before the Legislature as*  
7 *Senate Bill No. 888 of 1982), or the presumed father does not*  
8 *oppose the name change,* marries a person who is not the father  
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10 surname of the husband of the mother by submitting proof of such  
11 marriage to the State Registrar of Vital Statistics or to any local  
12 registrar of vital statistics accompanied by a declaration, signed  
13 by said mother and her husband and acknowledged or proved in  
14 the manner required by law for deeds to real estate, setting forth  
15 that they desire the surname of said child to be changed to that of  
16 the husband of said mother *and a declaration signed by the pre-*  
17 *sumed father setting forth his approval of the name change.* Upon  
18 the receipt of such proof and **[declaration]** *declarations* the  
19 surname of said child shall be so changed and the State Registrar  
20 and any local registrar of vital statistics is authorized to accept  
21 from the said mother and her husband a correction or amendment  
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23 surname. Any declaration submitted to the State Registrar or to  
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S 889 (1983)

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ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND  
DEFENSE COMMITTEE

STATEMENT TO  
**SENATE, No. 889**

**STATE OF NEW JERSEY**

DATED: OCTOBER 7, 1982

This bill which amends three separate statutes and is a companion measure to Senate Bill No. 888, the New Jersey Parentage Act. One statute, N. J. S. 3A:2A-41, deals with the legal treatment of out-of-wedlock children under the law governing intestate succession. The other two, N. J. S. 26:8-40 and N. J. S. 26:8-40.11, deal with the procedures for amending the birth certificates of children born out-of-wedlock.

**N. J. S. 3A:2A-41**

As presently worded, N. J. S. 3A:2A-41 provides that for purposes of intestate succession (inheritance without a will) a person born out-of-wedlock is a child of its mother. The person is also a child of its father (1) if the natural parents participated in a ceremonial marriage or a consummated common-law marriage or (2) if the father's paternity is established through adjudication.

Senate Bill No. 889, following the policy established in Senate Bill No. 888, states that a person born out-of-wedlock is a child of its natural parents regardless of their marital status. This would permit the person to inherit automatically from both parents. Under the proposed language of the bill, the parent-child relationship may be established by a prior adjudication; under the laws governing probate; by order of an out-of-state court; or under the New Jersey Parentage Act.

Additionally, the bill deletes language of present 3A:2A-41 indicating that a father of a child born out-of-wedlock cannot inherit through that child unless the father has openly treated the child as his and has not refused to support the child.

**N. J. S. 26:8-40**

Presently, under N. J. S. 26:8-40, if the natural parents of an out-of-wedlock child are subsequently married, the State registrar is authorized to amend the original birth certificate and give the child the father's surname. If the father is deceased, the mother, upon proof that the father publicly or in writing recognized the child, may have the original birth certificate amended to reflect the father's surname.



Senate Bill No. 889 would permit both of the natural parents of a child born out-of-wedlock or the child upon reaching age 18 to change the surname on a birth certificate if proof of the marriage can be shown. If one of the parents is deceased, the surviving parent or the child upon reaching 18 may have the surname changed if the male parent was presumed to be the child's natural father under the "New Jersey Parentage Act." Senate Bill No. 889 also provides that when parentage is adjudicated by any court, upon request by the parent having custody, the child's guardian or the child, if 18 or older, the State registrar shall amend the birth record to reflect that adjudication.

N. J. S. 26:8-40.11

Under present 26:8-40.11, if the mother of a child born out-of-wedlock married a person not the father of the child, the mother may request that the surname on the child's birth certificate be changed to her husband's surname.

Senate Bill No. 889 would provide that a request as described above be granted only if the child has no presumed natural father under the New Jersey Parentage Act or if the presumed father does not oppose the name change.

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SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 889

**STATE OF NEW JERSEY**

DATED: JUNE 21, 1982

This bill which amends three separate statutes, is a companion measure to Senate Bill No. 888, the New Jersey Parentage Act. One statute, N. J. S. 3A:2A-41, deals with the legal treatment of out-of-wedlock children under the law governing intestate succession. The other two, N. J. S. 26:8-40 and N. J. S. 26:8-40.11, deal with the procedures for amending the birth certificates of children born out-of-wedlock.

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OFFICE OF THE GOVERNOR

RELEASE: IMMEDIATE

CONTACT: KATHERINE BROKAW

JANUARY 20, 1983

Governor Thomas H. Kean today signed the following bills:

SJR-19, sponsored by Senator James W. Bornheimer (D-Middlesex), designates Square Dancing as the official American Folk Dance of New Jersey. The square dance was made t National Folk Dance of the United States by the Federal government earlier this year.

S-1598, sponsored by Senator Wayne Dumont (R-Warren), allows boards of education to make two-year contracts to buy materials which are needed on a recurring basis. The contracts can be renewed every year for up to three years after the initial contract has expired, but the cost of the new contract may not be increased by more than 20 percent over the three-year period. This bill is one of several meant to carry out the recommendations of a report issued in July 1982 by the Commission on Business Efficiency of the Public Schools.

S-889, sponsored by Senator Wynona Lipman (D-Essex), amends statutes which deal with inheritance by children born out of wedlock. The bill defines a person as the child of his or her natural parents whether or not they were married, and is intended to clarify the laws governing inheritance by illegitimate children.

S-1952, sponsored by Senator Garrett W. Hagedorn (R-Bergen), establishes a special exemption from the municipal cap law for Ridgewood, because of legal expenses which the municipality will incur during a lawsuit against the Hackensack Water Company. The exemption only lasts for the calender year 1983, and will allow the town to fit the legal fees into its budget.

S-1448, sponsored by Senator John F. Russo (D-Ocean), allows municipalities to collect garbage on private streets or to pay for such service; the bill is designed to permit towns to collect garbage from places like senior citizen communities and planned-unit developments.

S-981, sponsored by Senator Wayne Dumont (R-Warren), allows for military service to be given to a teacher who had been wrongly listed as a substitute teacher before his military service; military service credits apply only to permanent teachers.

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