

9.6-8.21 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 9.6-8.21 et al

Laws of 1977 Chapter 209 (Child Abuse-Variou
amendments)

Bill No. S635

Sponsor(s) Dodd

Date Introduced Pre-filed

Committee: Assembly Institution, Health and Welfare

Senate Institution, Health and welfare

Amended during passage Yes ~~No~~ Amendments during passage
denoted by asterisks

Date of passage: Assembly Oct 28, 1977

Senate Nov 13, 1976

Date of approval September 7, 1977

Following statements are attached if available:

Sponsor statement No

Committee Statement: Assembly No

Senate Yes

Fiscal Note No

Veto message No

Message on signing Yes

Following were printed:

Reports No

Hearings No

10/4/76

CHAPTER 209 LAWS OF N. J. 1977
APPROVED 9-7-77

[OFFICIAL COPY REPRINT]

SENATE, No. 635

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1976 SESSION

By Senator DODD

AN ACT to amend "An act concerning the manner of disposition of cases of child abuse or neglect, revising parts of the statutory law and providing for an appropriation," approved October 10, 1974 (P. L. 1974, c. 119).

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

1 1. Section 1 of P. L. 1974, c. 119 (C. 9:6-8.21) is amended to
2 read 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 of a child or upon whom there is a legal
8 duty for such care.

9 b. "Child" means any child alleged to have been abused or
10 neglected.

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

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

24 dition has been impaired or is in imminent danger of becoming
 25 impaired as the result of the failure of his parent or guardian,
 26 as herein defined, to exercise a minimum degree of care (a) in
 27 supplying the child with adequate food, clothing, shelter, educa-
 28 tion, medical or surgical care though financially able to do so or
 29 though offered financial or other reasonable means to do so, or
 30 (b) in providing the child with proper supervision or guardianship,
 31 by unreasonably inflicting or allowing to be inflicted harm, or sub-
 32 stantial risk thereof, including the infliction of excessive corporal
 33 punishment; or by any other acts of a similarly serious nature
 34 requiring the aid of the court; or (5) who has been willfully aban-
 35 doned by his parent or guardian, as herein defined.

35A *No child who in good faith is under treatment by spiritual means
 35B alone through prayer in accordance with the tenets and practices of
 35C a recognized church or religious denomination by a duly accredited
 35D practitioner thereof, shall for this reason alone be considered to be
 35E abused or neglected.*

36 d. "Law guardian," means an attorney admitted to the practice
 37 of law in this State, regularly employed by the [Office] Department
 38 of the Public [Defender] Advocate, and designated under this act
 39 to represent minors in alleged cases of child abuse or neglect. *The*
 40 *Public Advocate may, by regulation, provide that certain classes*
 41 *of cases may be handled by the Office of the Public Defender.*

42 e. "Attorney" means an attorney admitted to the practice of
 43 law in this State who shall be privately retained; or, in the instance
 44 of an indigent parent or guardian, [a pool] an attorney from the
 45 [Office] Department of the Public [Defender] Advocate who shall
 46 be appointed in order to avoid conflict between the interests of the
 47 child and the parent or guardian in regard to representation. *The*
 48 *Public Advocate may, by regulation, provide that certain classes*
 49 *of cases may be handled by the Office of the Public Defender.*

50 f. "Division" means the Division of Youth and Family Services
 51 in the Department of Institutions and Agencies unless otherwise
 52 specified.

1 2. Section 2 of P. L. 1974, c. 119 (C. 9:6-8.22) is amended to
 2 read as follows:

3 2. The juvenile and domestic relations court in each county shall
 4 have jurisdiction over all *noncriminal* proceedings involving al-
 5 leged cases of child abuse or neglect, and shall be charged with the
 6 immediate protection of said children. All *noncriminal* cases in-
 7 volving [alleged cases of] child abuse shall be commenced in or
 8 transferred to this court from other courts as they are made known

9 to the other courts. [Cases] *Commencement of cases* of child abuse
10 or neglect must be the first order of priority in the juvenile and
11 domestic relations court.

1 3. Section 4 of P. L. 1974, c. 119 (C. 9:6-8.24) is amended to
2 read as follows:

3 4. Jurisdiction. a. Notwithstanding any other law to the con-
4 trary, the juvenile and domestic relations court has exclusive orig-
5 inal jurisdiction over *noncriminal* proceedings under this act
6 alleging the abuse or neglect of a child.

7 b. In determining the jurisdiction of the court under this act,
8 the age of the child at the time the proceedings are initiated is
9 controlling.

10 c. In determining the jurisdiction of the court under this act, the
11 child need not be currently in the care or custody of his parent or
12 guardian, as defined herein.

13 d. If the matter in regard to the parent or guardian is referred
14 to the county prosecutor *by the juvenile and domestic relations*
15 *court or otherwise* the juvenile and domestic relations court may
16 continue the proceeding under this act in regard to the child after
17 such referral. If the proceeding in regard to the child is continued,
18 the juvenile and domestic relations court [may] *shall* enter any
19 preliminary order necessary to protect the interests of the child
20 pending a final order from the criminal courts.

1 4. Section 5 of P. L. 1974, c. 119 (C. 9:6-8.25) is amended to
2 read as follows:

3 5. Transfer to and from the domestic relations court. a. [The
4 juvenile and domestic relations court may refer such proceeding,
5 in regard to the parent or guardian, to the appropriate county
6 prosecutor, if it concludes upon further hearing that the processes
7 of the juvenile and domestic relations court are inappropriate or
8 insufficient. The juvenile and domestic relations court may continue
9 the proceeding under this act with regard to the child after such
10 referral, and if the proceeding is continued with regard to the
11 child the said court may enter any preliminary order necessary to
12 protect the interest of the child, pending a final order of disposition
13 from the criminal court.] *Notice to the prosecutor. Immediately*
14 *upon receipt of a complaint, the juvenile and domestic relations*
15 *court shall forward a copy of such complaint to the county prosecu-*
16 *tor, after which the prosecutor shall take whatever action he deems*
17 *necessary under all of the circumstances.*

18 b. Any criminal complaint charging facts amounting to abuse
19 or neglect under this act may be transferred by the county prose-

20 cutor or the criminal court in which the complaint was made, to
21 the juvenile and domestic relations court, in the county in which
22 the former court is located, unless said juvenile and domestic
23 relations court has transferred the proceedings to such court].
24 If [the] any police officer, county prosecutor or criminal court
25 [receive] receives a complaint which amounts to child abuse or
26 neglect [and decide to retain that complaint for criminal prosecu-
27 tion], the police officer, county prosecutor or criminal court shall
28 [refer the proceeding with regard to the child to the juvenile and
29 domestic relations court. The Juvenile and domestic relations
30 court shall then, upon hearing, determine what further action is
31 appropriate.] report to the division pursuant to P. L. 1971, c. 437,
32 section 3 (C. 9:6-8.10). If [the] any police officer, county prosecutor
33 or the criminal court refers a matter with regard to the parent or
34 guardian, or child, and there appears to be no basis for action in
35 the juvenile and domestic relations court, the proceeding may be
36 terminated. If the juvenile and domestic relations court determines
37 a complaint should be filed, proceedings under this act shall be
38 commenced immediately.

39 c. Nothing in this act shall be interpreted to preclude the county
40 prosecutor from bringing criminal action against the parent or
41 guardian or any other person even though the child involved is
42 initially or ultimately the subject of proceedings in the juvenile
43 and domestic relations court.

1 5. Section 6 of P. L. 1974, c. 119 (C. 9:6-8.26) is amended to
2 read as follows:

3 6. Venue. Proceedings under this act [may be originated in the
4 county in which the child resides or is domiciled at the time of the
5 filing of the complaint, or in the county in which the person having
6 custody of the child resides or is domiciled.] shall be brought in
7 accordance with the Rules of Court.

1 6. Section 7 of P. L. 1974, c. 119 (C. 9:6-8.27) is amended to
2 read as follows:

3 7. Temporary removal with consent. a. A [peace] police officer
4 or an agency[,] or institution or individual may temporarily re-
5 move a child from the place where he is residing with the consent of
6 his parent or other person legally responsible for his care, if [the
7 child is determined to be an abused or neglected child under this
8 act], there is reasonable cause to suspect that the child's life or
9 health is in imminent danger. If the child is not returned within
10 3 working days from the date of removal, the procedure required
11 pursuant to this act shall be applied immediately. b. However, if

12 the Division of Youth and Family Services removes a child with
13 the written consent of the parent or guardian, the proceedings
14 under this act shall not apply, unless the division files a complaint
15 to commence proceedings under this act.

1 7. Section 8 of P. L. 1974, c. 119 (C. 9:6-8.28) is amended to
2 read as follows:

3 8. Preliminary orders of court before **[complaint filed]** *pre-*
4 *liminary hearing held.* a. The juvenile and domestic relations court
5 may enter an order directing the temporary removal of a child
6 from the place where he is residing before **[the filing of a com-**
7 **plaint]** *a preliminary hearing* under this act, if (1) the parent
8 or other person legally responsible for the child's care is absent
9 or, though present, was asked and refused to consent to the tem-
10 porary removal of the child and was informed of an intent to
11 apply for any order under this section; and (2) the child appears
12 so to suffer from the abuse or neglect of his parent or guardian
13 that his immediate removal is necessary to avoid imminent danger
14 to the child's life or health; and (3) there is not enough time to
15 **[file a complaint and]** hold a preliminary hearing.

16 b. The order shall specify the facility to which the child is to
17 be brought. **[Except for good cause shown or unless the child is**
18 **sooner returned to the place where he was residing, a complaint**
19 **shall be filed under this act within 3 days of the issuance of the**
20 **order.]**

21 c. The juvenile and domestic relations court may enter an order
22 authorizing a physician or hospital to provide emergency medical
23 or surgical procedures before **[the filing of a complaint]** *a pre-*
24 *liminary hearing is held* under this act if (1) such procedures are
25 necessary to safeguard the life or health of the child; and (2) there
26 is not enough time to **[file a complaint and]** hold a preliminary
27 hearing under section 11 hereof.

28 d. Any person who originates a proceeding **[under]** *pursuant to*
29 *section 14 of this act* may apply for through the Division of Youth
30 and Family Services or the court on its own motion may issue, an
31 order of temporary removal. The division shall make every reason-
32 able effort to inform the parent or guardian of any such application,
33 confer with a person wishing to make such an application and make
34 such inquiries as will aid the court in disposing of such application.
35 Within 24 hours the Division of Youth and Family Services shall
36 report such application to the central registry of the division.

37 e. Any person acting under the authority of this act may request
38 and shall receive appropriate assistance from local and State law
39 enforcement officials.

1 8. Section 9 of P. L. 1974, c. 119 (C. 9:6-8.29) is amended to
2 read as follows:

3 9. Emergency removal without court order. a. A [peace] police
4 officer or a designated employee of a county department of proba-
5 tion or a designated employee of the division may remove a child
6 from the place where he is residing, or any such person or any
7 physician treating such child may keep a child in his custody with-
8 out an order pursuant to section 8 thereof and without the consent
9 of the parent or guardian regardless of whether the parent or
10 guardian is absent, if the child is in such condition that his con-
11 tinuance in said place or residence or in the care and custody of
12 the parent or guardian presents an imminent danger to the child's
13 life or health, [;] *and there is insufficient time to apply for a court*
14 *order pursuant to section 8, or any physician or hospital treating*
15 *such child may keep a child in custody pursuant to P. L. 1973, c. 147*
16 *(C. 9:6-8.16 et seq.), and*

17 b. If a person authorized by this section removes or keeps custody
18 of a child, he shall (1) inform the division immediately; (2) bring
19 the child immediately to a place designated by the division for this
20 purpose, [unless the person is a physician treating the child and
21 the child is or will be presently admitted to a hospital,] and (3)
22 make every reasonable effort to inform the parent or guardian of
23 the facility to which he has brought the child.

24 c. Any person or institution acting in good faith in the removal
25 or keeping of a child pursuant to this section shall have immunity
26 from any liability, civil or criminal, that might otherwise be in-
27 curred or imposed as a result of such removal or keeping.

28 d. Any person acting under the authority of this act may request
29 and shall receive appropriate assistance from local and State law
30 enforcement officials.

1 9. Section 10 of P. L. 1974, c. 119 (C. 9:6-8.30) is amended to
2 read as follows:

2A 10. Action by the division upon emergency removal. a. The divi-
3 sion when informed that there has been an emergency removal of
4 a child from his home without court order shall make every rea-
5 sonable effort to communicate immediately with the child's parent
6 or guardian *that such emergency removal has been made and the*
7 *location of the facility to which the child has been taken, and advise*
8 *the parent or guardian to appear in the appropriate juvenile and*
9 *domestic relations court on the next court day. The division shall*
10 *also advise the party making the removal to appear. *For the*
10A *purposes of this section, "facility" means a hospital, shelter or*
10B *child care institution in which a child may be placed for temporary*
10C *care, but does not include a foster home.**

11 b. The division shall cause a complaint to be filed under this act
12 immediately or on the first court day after such removal takes
13 place. [The filing of the complaint and the commencement of the
14 hearing regarding the removal may be concurrent.]

15 *c. *Whenever a child has been removed pursuant to section 7 or*
16 *9 of this act, the division shall arrange for immediate medical*
17 *examination of the child and shall have legal authority to consent*
18 *to such examination. Consent by the division pursuant to this sub-*
19 *section shall be deemed legal and valid for all purposes with respect*
20 *to any person, hospital or other health care facility examining such*
21 *child in accordance with and in reliance upon such consent. Medical*
22 *reports resulting from such examination shall be released to the*
23 *division for the purpose of aiding in the determination of whether*
24 *the child has been abused or neglected. Any person or health care*
25 *facility acting in good faith in the examination of a child or in the*
26 *release of medical records shall have immunity from any liability,*
27 *civil or criminal, that might otherwise be incurred or imposed as a*
28 *result of such act.**

1 10. Section 11 of P. L. 1974, c. 119 (C. 9:6-8.31) is amended to
2 read as follows:

3 11. Preliminary orders after filing of complaint. a. In any case
4 where the child has been removed without court order, *except where*
5 *action has been taken pursuant to P. L. 1973, c. 147 (C. 9:6-8.16*
6 *et seq.)* the juvenile and domestic relations court shall hold a hear-
7 ing on the next court day to determine whether the child's interests
8 require protection pending a final order of disposition. In any
9 other case under this act, any person who may originate a proceed-
10 ing may apply for, or the court, on its own motion, may order a
11 hearing at any time after the complaint is filed to determine
12 whether the child's interests require protection pending a final
13 order of disposition.

14 b. Upon such hearing, if the court finds that continued removal
15 is necessary to avoid an ongoing risk to the child's life or health,
16 it shall affirm the removal of the child to an appropriate place or
17 place him in the custody of a suitable person.

18 c. Upon such hearing the court may, for good cause shown, issue
19 a preliminary order of protection which may contain any of the
20 provisions authorized on the making of an order of protection
21 under section 35 hereof.

22 d. Upon such hearing, the court may, for good cause shown,
23 release the child to the custody of his parent or guardian from
24 whose custody or care the child was removed, pending a final order
25 of disposition, in accord with section 33 hereof.

26 e. Upon such hearing, the court may authorize a physician or
27 hospital to provide medical or surgical procedures if such pro-
28 cedures are necessary to safeguard the child's life or health.

29 f. If the court grants or denies a preliminary order requested
30 pursuant to this section, it shall state the grounds for such deci-
31 sion.

32 g. In all cases involving abuse or neglect the court shall order an
33 examination of the child by a physician [appointed or designated
34 for the purpose by the division] *appointed or designated for the*
35 *purpose by the division*. As part of such examination, the physician
36 shall arrange to have [colored] *color* photographs taken as soon
37 as practical of any areas of trauma visible on such child and may
38 if indicated, arrange to have a radiological examination performed
39 on the child. The physician, on the completion of such examination,
40 shall forward the results thereof together with the color photo-
41 graphs to the court ordering such examination. [The court may
42 dispense with such examination in those cases which were com-
43 menced on the basis of a physical examination by a physician.
44 Unless colored photographs have already been taken or unless
45 there are no areas of visible trauma, the court shall arrange to
46 have colored photographs taken even if the examination is dis-
47 pensed with.]

1 11. Section 12 of P. L. 1974, c. 119 (C. 9:6-8.32) is amended to
2 read as follows:

3 12. Application to return child temporarily removed. Upon the
4 application of the parent or guardian *of a child* temporarily
5 removed under this act [for an order returning the child], the
6 court shall hold a hearing to determine whether the child should
7 be returned; a. if there has not been a hearing on the removal of
8 the child at which the parent or guardian was present or had an
9 adequate opportunity to be present; or b. upon good cause shown.
10 Except for good cause shown, such hearing shall be held within
11 3 court days of the application. Upon such hearing, the court shall
12 grant the application, unless it finds[: (1) where a complaint has
13 not been filed, that the return presents an imminent risk to the
14 child's life or health; or (2) where a complaint has been filed, that
15 there is a substantial probability that the child will be found to be
16 abused or neglected under this act, and that the final order of
17 disposition will be an order of placement under section 34 hereof,
18 or that, pending entry of a final order of disposition, temporary
19 removal is necessary to avoid an imminent risk to the child's life
20 or health] *that such return presents an imminent risk to the child's*
21 *life or health*.

1 12. Section 13 of P. L. 1974, c. 119 (C. 9:6-8.33) is amended to read
2 as follows:

3 13. Originating proceeding to determine abuse or neglect. a. A
4 proceeding under this act is originated by the filing of a complaint
5 in which facts sufficient to establish that a child is an abused or
6 neglected child under this act are alleged.

7 b. Where more than one child is the responsibility of the parent
8 or guardian it may be alleged in the same complaint that one or
9 more children are abused or neglected children.

10 c. In cases of emergency, in addition to the removal of one child,
11 any other child residing in the home may also be removed, even
12 though there is not an allegation of abuse or neglect in reference
13 thereto if his immediate removal is necessary to avoid imminent
14 danger to his life or health.

1 13. Section 14 of P. L. 1974, c. 119 (C. 9:6-8.34) is amended to
2 read as follows:

3 14. Persons who may originate proceedings. The following per-
4 sons may originate a proceeding under this act:

5 a. A parent or other person interested in the child.

6 b. A duly authorized agency, association, society, or institution
7 or the division.

8 c. A peace police officer.

9 d. Any person having knowledge or information of a nature
10 which convinces him that a child is abused or neglected.

11 e. A person on the court's direction.

12 f. The county prosecutor.

13 g. In cases where a private individual is unwilling or reluctant
14 to file a complaint, he may request the division to initiate a com-
15 plaint in his stead.

1 14. Section 15 of P. L. 1974, c. 119 (C. 9:6-8.35) is amended to
2 read as follows:

3 15. Preliminary procedure. The division may:

4 a. Confer with any person seeking to file a complaint, the
5 potential respondent, and other interested persons concerning the
6 advisability of filing a complaint under this act; and

7 b. Attempt to adjust suitable cases before a complaint is filed
8 over which the court apparently would have jurisdiction.

9 c. The division shall not prevent any person or agency who
10 wishes to file a complaint under this act from having access to the
11 court for that purpose.

12 d. Efforts at adjustment under this section may not extend for
13 a period of more than 30 days without an order of a judge of the
14 court, who may extend the period for an additional 30 days.

15 e. **[The]** *Such adjustment may include a preliminary conference*
 16 *held by the division at its discretion upon written notice to the*
 17 *parent or guardian and the potential complainant for the purpose*
 18 *of attempting such adjustment, provided however that the division*
 19 shall not be authorized under this section to compel any person
 20 to appear at any conference, produce any papers, or visit any place.

21 f. The juvenile and domestic relations court and the division
 22 shall deal with cases involving imminent physical harm or actual
 23 physical harm on a priority basis.

1 15. Section 16 of P. L. 1974, c. 119 (C. 9:6-8.36) is amended to
 2 read as follows:

3 16. Admissibility of statements made during a preliminary con-
 4 ference. No statement made *by the potential respondent* during a
 5 preliminary conference held pursuant to section 15 hereof may be
 6 admitted into evidence at a fact-finding hearing under this act or
 7 in a court of criminal jurisdiction at any time prior to conviction.

1 16. Section 17 of P. L. 1974, c. 119 (C. 9:6-8.37) is amended to
 2 read as follows:

3 17. Issuance of summons. On the filing of a complaint involving
 4 abuse or neglect under this act, unless a warrant is issued pursuant
 5 to section 19 hereof, the court shall cause a copy of the complaint
 6 and a summons to be issued forthwith, **[clearly marked on the face**
 7 **thereof, "Child Abuse-Neglect Case,"]** requiring the parent or
 8 guardian with whom the child is residing to appear at the court
 9 within 3 court days regarding the complaint. The court shall also,
 10 unless dispensed with for good cause shown, require the person
 11 thus summoned to produce the child at the time and place named.

1 17. Section 18 of P. L. 1974, c. 119 (C. 9:6-8.38) is amended to
 2 read as follows:

3 18. Service of summons. a. In cases involving abuse, or neglect
 4 the complaint and summons shall be served within 2 court days
 5 after their issuance. If they cannot be served within that time,
 6 such fact shall be reported to the court with the reasons therefor
 7 within 3 court days after their issuance and the court shall there-
 8 after issue a warrant in accordance with the provisions of section
 9 19 of this act. The court shall also, unless dispensed with for good
 10 cause shown, direct that the child be brought before the court.

11 b. Service of a summons and complaint shall be made by de-
 12 livery of a true copy thereof to the person summoned at least 24
 13 hours before the time stated therein for appearance.

14 c. If after reasonable effort, personal service is not made, the
 15 court may at any stage in the proceedings make an order providing

16 for substituted service in the manner provided for substituted
17 service in [civil process] *accordance with the Rules of Court.*

1 18. Section 19 of P. L. 1974, c. 119 (C. 9:6-8.39) is amended to
2 read as follows:

3 19. Issuance of warrant and reports. a. The court may issue a
4 warrant directing the parent or guardian with whom the child is
5 residing to be brought before the court, when a complaint is filed
6 with the court under this act and it appears that (1) the summons
7 cannot be served; or (2) the summoned person has refused to obey
8 the summons; or (3) the parent or guardian is likely to leave the
9 jurisdiction; or (4) a summons, in the court's opinion, would be
10 ineffectual; or (5) the safety of the child is endangered.

10A b. When issuing a warrant under this section, the court may
10B also direct that the child be brought before the court.

11 c. [In any case involving abuse, or neglect the warrant shall be
12 clearly marked on the face thereof "Child Abuse-Neglect Case."]
13 If a warrant is not executed within 2 court days of its issuance
14 such fact shall be reported to the court within 3 court days of its
15 issuance.

1 19. Section 20 of the P. L. 1974, c. 119 (C. 9:6-8.40) is amended to
2 read as follows:

3 20. Records involving abuse or neglect. When the division
4 receives a report or complaint that a child may be abused or
5 neglected; or when the division receives a request from the juvenile
6 and domestic relations court to investigate such allegations, the
7 division may request of any and all public or private institutions,
8 or agencies including law enforcement agencies, or any private
9 practitioners, their records past and present pertaining to that
10 child and other children under the same care, custody and control.
11 [These records will be released] *Records kept pursuant to P. L.*
12 *1973, c. 306 (C. 2A:4-42 et seq.) may be obtained by the division,*
13 *upon issuance by a court of an order on good cause shown direct-*
14 *ing these records to be released to the division for the purpose of*
15 *aiding in evaluation to determine if the child is abused or*
16 *neglected. In the release of the aforementioned records, the source*
17 *shall have immunity from any liability, civil or criminal.*

1 20. Section 22 of the P. L. 1974, c. 119 (C. 9:6-8.42) is amended to
2 read as follows:

3 22. Effect of absence of parent or guardian. If the parent or
4 guardian is not present, the court may proceed to [head] *hear* a
5 complaint under this act only if the child is represented by a law
6 guardian. If the parent or guardian thereafter makes a motion

7 to the court that a resulting disposition be vacated and asks for a
8 rehearing, the court shall grant the motion on an affidavit showing
9 such relationship or responsibility unless the court finds that the
10 parent or guardian willfully refused to appear at the hearing in
11 which case the court may deny the motion.

1 21. Section 23 of the P. L. 1974, c. 119 (C. 9:6-8.43) is amended
2 to read as follows:

3 23. Notice of rights. a. The court shall advise the parent or
4 guardian of his right to have an adjournment to retain counsel and
5 consult with him. The court shall advise the respondent that if he
6 is indigent, he may apply for an attorney through the [Office]
7 Department of the Public [Defender] Advocate. [The court shall
8 also inform the child of his right to be represented by a law guar-
9 dian.] *The court shall appoint a law guardian for the child as*
10 *provided by this act.*

11 b. The general public may be excluded from any hearing under
12 this act, and only such persons and the representatives of
13 authorized agencies may be admitted thereto as have an interest
14 in the case.

1 22. Section 26 of the P. L. 1974, c. 119 (C. 9:6-8.46) is amended
2 to read as follows:

3 26. Evidence. a. In any hearing under this act (1) proof of the
4 abuse or neglect of one child shall be admissible evidence on the
5 issue of the abuse or neglect of any other child of, or the responsi-
6 bility of, the parent or guardian and (2) proof of injuries
7 sustained by a child or of the condition of a child of such a nature
8 as would ordinarily not be sustained or exist except by reason of
9 the acts or omissions of the parent or guardian shall be prima facie
10 evidence that a child of, or who is the responsibility of such person
11 is an abused or neglected child, and (3) any writing, record or
12 photograph, whether in the form of an entry in a book or other-
13 wise, made as a memorandum or record of any condition, act,
14 transaction, occurrence or event relating to a child in an abuse or
15 neglect proceeding of any hospital or any other public or private
16 institution or agency shall be admissible in evidence in proof of
17 that condition, act, transaction, occurrence or event, if the judge
18 finds that it was made in the regular course of the business of any
19 hospital or any other public or private institution or agency, and
20 that it was in the regular course of such business to make it, at
21 the time of the condition, act, transaction, occurrence or event, or
22 within a reasonable time thereafter, shall be prima facie evidence
23 of the facts contained in such certification. A certification by some-

24 one other than the head of the hospital or agency shall be
25 accompanied by a photocopy of a delegation of authority signed by
26 both the head of the hospital or agency and by such other em-
27 ployees. All other circumstances of the making of the memorandum,
28 record or photograph, including lack of personal knowledge of the
29 making, may be proved to affect its weight, but they shall not affect
30 its admissibility and (4) previous statements made by the child
31 relating to any allegations of abuse or neglect shall be admissible
32 in evidence; provided, however, that no such statement, if uncor-
33 roborated, shall be sufficient to make a fact finding of abuse or
34 neglect [and (5) neither the privilege attaching to confidential
35 communications between husband and wife, nor the physician-
36 patient and related privileges, nor the social worker client privilege,
37 shall be a ground for excluding evidence which otherwise would
38 be admissible].

39 b. In a fact-finding hearing (1) any determination that the child
40 is an abused or neglected child must be based on a preponderance
41 of the evidence and (2) [except as otherwise provided by this act,]
42 only competent, material and relevant evidence may be admitted.

43 c. In a dispositional hearing and during all other stages of a
44 proceeding under this act, [except a fact-finding hearing,] only
45 material and relevant evidence may be admitted.

1 23. Section 27 of P. L. 1974, c. 119 (C. 9:6-8.47) is amended to
2 read as follows:

3 27. Sequence of hearings. a. Upon completion of the fact-finding
4 hearing, the dispositional hearing may commence immediately after
5 the required findings are made.

6 b. Reports prepared by the probation department or the division
7 for use by the court at any time for the making of an order of
8 disposition shall be deemed confidential information furnished to
9 the court which the court in a proper case may, in its discretion,
10 [withhold from or] disclose in whole or in part to the law guardian,
11 attorney as defined herein, or other appropriate person. Such re-
12 ports may not be furnished to the court prior to the completion of a
13 fact-finding hearing, but may be used in a dispositional hearing.

1 24. Section 30 of P. L. 1974, c. 119 (C. 9:6-8.50) is amended to
2 read as follows:

1 30. Sustaining or dismissing complaint. a. If facts sufficient to
2-4 sustain the complaint are established [in accordance with article 4
5 of this act], the court shall[, subject to the provisions of sub-
6 section c. hereof,] enter an order finding that the child is an abused
7 or neglected child and shall state the grounds for said findings.

8 b. If the proof does not conform to the specific allegations of the
9 complaint, the court may amend the allegations to conform to the
10 proof; provided, however, that in such case the respondent shall be
11 given reasonable time to prepare to answer the amended allegations.

12 c. If facts sufficient to sustain the complaint under this act are
13 not established, or the court concludes that its assistance is not
14 required on the record before it, the court shall dismiss the com-
15 plaint and shall state the grounds for the dismissal.

16 d. If the court makes a finding of abuse or neglect, it shall
17 determine, based upon the facts adduced during the fact-finding
18 hearing, and upon any other facts presented to it, whether a pre-
19 liminary order pursuant to section 11 hereof is required to protect
20 the child's interests pending a final order of disposition. The court
21 shall state the grounds for its determination. In addition, a child
22 found to be abused or neglected may be removed and remanded to
23 a place designated by the court or be placed in the custody of a
24 suitable person, pending a final order of disposition, if the court
25 finds that there is a substantial probability that the final order of
26 disposition will be an order of placement under the section 34
27 hereof.

28 *e. If the court finds that the child is an abused or neglected child*
29 *as defined in this act, it may refer any aspect of the matter, including*
30 *anything related to the child and the parent or guardian, to the*
31 *division, ordering that the division provide such services as are*
32 *deemed appropriate to the ends of protecting the child and rehabili-*
33 *tating and improving family life, wherever possible. In the event*
34 *of such referral, the court may suspend any dispositional hearing*
35 *indefinitely. The division shall report the status of the case so*
36 *referred to the court annually in writing, a copy to be served upon*
37 *the parent or guardian and the law guardian. The division shall*
38 *also report its intent to terminate services in a case so referred*
39 *to the court in writing.*

1 25. Section 32 of P. L. 1974, c. 119 (C. 9:6-8.52) is amended to
2 read as follows:

3 32. Suspended judgment. a. The court shall define permissible
4 terms and conditions of a suspended judgment. These terms and
5 conditions shall relate to the acts [or omissions] of *commission or*
6 *omission* of the parent or guardian.

7 b. The maximum duration of any term or condition of a sus-
8 pended judgment shall be 1 year, unless the court finds at the
9 conclusion of that period, upon a hearing, that exceptional circum-
10 stances required an extension thereof for an additional year.

1 26. Section 34 of P. L. 1974, c. 119 (C. 9:6-8.54) is amended to
2 read as follows:

3 34. Placement. a. For the purpose of section 31 hereof, the
4 court may place the child in the custody of a relative or other
5 suitable person or the division for the placement of a child.

6 b. Placements under this section may be for an initial period of
7 18 months and the court, in its discretion, may at the expiration
8 of that period, upon a hearing make successive extensions for addi-
9 tional periods of 1 year each. The place in which or the person
10 with which the child has been placed under this section shall submit
11 a report at the end of the [year] *term* of placement, making recom-
12 mendations and giving such supporting data as is appropriate.
13 The court on its own motion may, at the conclusion of any period
14 of placement, hold a hearing concerning the need for continuing
15 the placement.

16 c. No placement may be made or continued under this section
17 beyond the child's eighteenth birthday without his consent [and in
18 no event past his twenty-first birthday].

19 d. If the parent or person legally responsible for the care of any
20 such child or with whom such child resides receives public assist-
21 ance and care, any portion of which is attributable to such child, a
22 copy of the order of the court providing for the placement of such
23 child from his home shall be furnished to the appropriate county
24 welfare board, which shall reduce the public assistance and care
25 furnished to such parent or other person by the amount attribu-
26 table to such child.

1 27. Section 36 of P. L. 1974, c. 119 (C. 9:6-8.56) is amended to
2 read as follows:

3 36. Probation supervision. The court may place the respondent
4 under the supervision of the probation department and the court
5 shall define permissible terms and conditions of said supervision.
6 The maximum duration of any such term or condition shall not
7 exceed a period of 2 years, unless the court finds at the conclusion
8 of that period that exceptional circumstances [required] *require*
9 an extension thereof for an additional year.

1 28. Section 39 of P. L. 1974, c. 119 (C. 9:6-8.59) is amended to
2 read as follows:

3 39. Staying, modifying, setting aside or vacating orders. For
4 good cause shown and after due notice, the court on its own motion,
5 or that of the county prosecutor, the law guardian, [or] the re-
6 spondent's attorney, *or the division* may stay execution of arrest,
7 set aside, modify or vacate any order issued in the course of a

8 proceeding under this act. The court must state the grounds for
9 this action.

1 29. Section 41 of P. L. 1974, c. 119 (C. 9:6-8.61) is amended to
2 read as follows:

3 41. Service of petition; answer. A copy of a petition under sec-
4 tion 40 hereof shall promptly be served *pursuant to the Rules of*
5 *Court* upon the division or the individual having custody of the
6 child under section 34 whose duty it shall be to file an answer to the
7 petition within 5 days.

1 30. Section 45 of P. L. 1974, c. 119 (C. 9:6-8.65) is amended to
2 read as follows:

3 45. If under section 34, custody of the child is given to a party
4 other than the division, and that party is no longer able to continue
5 custody of the child, the court may authorize the division to
6 arrange for the child's care by another person or assume [guardian-
7 ship] *custody* of the child.

1 31. Section 50 of P. L. 1974, c. 119 (C. 9:6-8.70) is amended to
2 read as follows:

3 50. Appealable orders. An appeal may be taken as of right from
4 any *final* order of disposition and from any other *final* order made
5 pursuant to this act. An appeal from [an intermediate or] a final
6 order or decision in a case involving child abuse may be taken as of
7 right to the Appellate Division of the Superior Court [and shall
8 have preference over all other matters]. Pending the determination
9 of such appeal, such order or decision shall be stayed where the
10 effect of such order or decision would be to discharge the child,
11 if the juvenile and domestic relations court or the court before
12 which such appeal is pending finds that such a stay is necessary to
13 avoid imminent risk to the child's life or health.

1 32. This act shall take effect immediately.

SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE

STATEMENT TO

SENATE, No. 635

STATE OF NEW JERSEY

DATED: APRIL 26, 1976

This bill makes numerous technical and some substantive changes in the child abuse law to aid the Division of Youth and Family services in its handling of child abuse and child neglect cases. Amendments proposed by the bill would: 1) Require the division to inform parents where their children have been taken when such children are removed from their homes without court order; 2) Reinstate the privilege of confidentiality in communications between husband and wife, physician and patient, social worker and client so that these parties can refuse to give testimony concerning such communications; and 3) Allow the court to suspend dispositional hearings in certain child abuse cases indefinitely provided that the division annually reports to the court on the status of these cases.

The committee reported the bill favorably, with three amendments. One of these prohibits a finding of "child neglect" for the sole reason that a parent is legitimately practicing religious beliefs which do not provide for medical treatment. Another committee amendment provides that natural parents not be informed of the precise location of the foster home where their child has been taken, so as to protect the privacy of the foster family. Finally, the committee amended the bill to authorize the division to consent to the medical examination of children who have been temporarily removed from their homes because of evident child abuse or neglect. Even though children may need immediate medical care, some hospitals have refused to treat children brought to them by the division unless there is parental consent or a court order for such treatment.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 635

STATE OF NEW JERSEY

ADOPTED APRIL 26, 1976

Amend page 2, section 1, line 35, after “.”, insert new paragraph as follows:

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

Page 6, section 9, line 10, after “.”, insert “For the purposes of this section, ‘facility’ means a hospital, shelter or child care institution in which a child may be placed for temporary care, but does not include a foster home.”.

Amend page 7, section 9, line 14, after “.”, insert new subsection as follows:

“c. Whenever a child has been removed pursuant to section 7 or 9 of this act, the division shall arrange for immediate medical examination of the child and shall have legal authority to consent to such examination. Consent by the division pursuant to this subsection shall be deemed legal and valid for all purposes with respect to any person, hospital or other health care facility examining such child in accordance with and in reliance upon such consent. Medical reports resulting from such examination shall be released to the division for the purpose of aiding in the determination of whether the child has been abused or neglected. Any person or health care facility acting in good faith in the examination of a child or in the release of medical records shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed as a result of such act.”.

9714901
GL1

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

SEPTEMBER 7, 1977

5635 - PAGE 2

ANNE BURNS

Governor Brendan Byrne today signed four bills into law. They are known as the "Childrens' Rights Bills."

A-541, sponsored by Assemblyman Albert Burstein (D-Bergen) amends the statutes governing the adoption of adults.

Prior to this legisaltion the law provided that the adopting parent or parents be at least 15 years older than the person being adopted. A-541 changed the age requirement to 10 years older.

In addition, this bill includes a provision that a court may waive the age requirement and the provision that the adoptee file a written statement that he requests the adoption and if desired, he can change his name, if the court is satisfied that the best interests of the adoptee would be served by granting the adoption.

S-900, sponsored by Senator Alexander Menza (D-Union) amends the present law governing the adoption of children to provide that where the child sought to be adopted is 10 years of age or over, the child's wishes concerning the adoption be solicited by the court. The bill requires the court to consider the child's views provided that the child is of sufficient age and capacity to form an intelligent preference regarding the adoption.

The bill also provides that where, in a preliminary hearing, the court determines that the best interests of the child would not be promoted by adoption, that it not make a disposition of custody unless it has considered and given due weight to the child's wishes regarding custody.

S-889, sponsored by Senator Menza, supplements the existing statutes governing child abuse or neglect to provide that the Division of Youth and Family Services immediately report all instances of suspected child abuse and neglect to the county prosecutor of the county in which the child resides.

-more-

Suspected child abuse and neglect will be defined in regulations developed jointly by the Division and the county prosecutors. They will be approved by the Attorney General and promulgated by the Commissioner of Human Services.

S-635, sponsored by Senator Frank J. Dodd, makes numerous technical amendments to the Child Abuse Act of 1974.

1. Clarifies that juvenile and domestic relations courts have jurisdiction only over the noncriminal aspects of a child abuse case.
2. Requires the juvenile and domestic relations court, upon receipt of a child abuse complaint, to immediately notify the county prosecutor of the complaint.
3. Requires that police officers, as well as county prosecutors and criminal courts, report a child abuse complaint to DYFS.
4. Clarifies that a police officer, agency, or institution may remove a child from the place where he is residing with the consent of his parent or other legally responsible person if there is reasonable cause to suspect that the child's life or health is in imminent danger.
5. Requires a complaint to be filed before a juvenile and domestic relations court enters temporary removal orders. The statute continues to provide that such removal can occur without the need for a hearing.
6. Provides for emergency removal without court order and without parental approval where there is insufficient time to file a complaint.
7. Requires the parent to be notified of the emergency removal of a child and the facility in which the child has been placed. The parent need not, however, be informed of the location if the child has been placed in a foster home.
8. Authorizes immediate medical examination for a child and release of medical reports resulting from such release to DYFS for purposes of determining whether the child has been abused or neglected. Any person so releasing records is given immunity from civil or criminal liability.
9. Requires the return of the child temporarily removed unless the court finds that such return presents an imminent risk to the child's life or health.
10. Provides that if one child is removed under the act, other children may be removed from a home if necessary to avoid imminent danger to his life, or health.
11. Under the current statute, records of a child subject of a child abuse complaint must be given to DYFS by public and private institutions, private individuals, and law enforcement officers without court order. This bill would require a court order for such release.

12. Deletes the provision in the current statute which voided the inter-spousal privilege, the physician-patient privilege and the social worker privilege in the presentation of evidence in child abuse cases.
13. Authorizes the court to suspend a dispositional hearing indefinitely and require DYFS to provide appropriate services.
14. Continues authority for DYFS to place a child beyond his twenty-first birthday with his consent.
15. Appeal as of right from court order is limited to final court orders.
16. Prohibits a finding of child neglect on the sole basis that a parent is legitimately practicing religious beliefs which do not provide for medical treatment.