

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 2A:4-30.45 ("Parenting")

LAWS OF: 1997 CHAPTER: 299

BILL NO: A68

SPONSOR(S): Kavanaugh

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary
SENATE: ---

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First reprint enacted by superscript numbers

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SENATE: December 11, 1997

DATE OF APPROVAL: January 8, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

Report mentioned in statements:

974.90 New Jersey. Commission To Study the Law of Divorce.
M359 Report...April 18, 1995. Trenton, 1995.
1995a [see recommendation #6--p.23]

974.90 New Jersey. Commission To Study the Law of Divorce.
M359 Preliminary report...March 15, 1995. Trenton, 1995.
1995 [see recommendation #6--p.28]

974.90 New Jersey. Commission To Study the Law of Divorce.
M359 Public meeting, held 3-31-94. Trenton, 1994.
1994 [see esp. pp. 5-12 & appendix 1X-2X]

See newspaper clipping--attached:

"Divorce reform heads list of new laws," 1-9-98, Star Ledger.

KBP:pp

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P.L. 1997, CHAPTER 299, *approved January 8, 1998*
Assembly, No. 68 (*First Reprint*)

1 AN ACT concerning divorce and revising various sections of the
2 statutory law.

3

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

6

7 1. Section 22 of P.L.1981, c.243 (C.2A:4-30.45) is amended to
8 read as follows:

9 22. Rules of evidence. In any hearing for the civil enforcement of
10 this act the court is governed by the rules of evidence applicable in a
11 civil court action in the Superior Court. If the action is based on a
12 support order issued by another court a certified copy of the order
13 shall be received as evidence of the duty of support, subject only to
14 any defenses available to an obligor with respect to paternity (section
15 26) or to a defendant in an action or a proceeding to enforce a foreign
16 money judgment. The determination or enforcement of a duty of
17 support owed to one obligee is unaffected by any interference by
18 another obligee with rights of custody or **[visitation]** parenting time
19 granted by a court.

20 (cf: P.L.1981, c.243, s.22)

21

22 2. Section 2 of P.L.1990, c.104 (C.2A:34-31.1) is amended to read
23 as follows:

24 2. After the issuance of any temporary or permanent order
25 determining custody or **[visitation]** parenting time of a minor child, a
26 law enforcement officer having reasonable cause to believe that a
27 person is likely to flee the State with the child or otherwise by flight
28 or concealment evade the jurisdiction of the courts of this State may
29 take a child into protective custody and return the child to the parent
30 having lawful custody, or to a court in which a custody hearing

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

Matter underlined thus is new matter.

Matter enclosed in superscript numcrals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 10, 1996.

1 concerning the child is pending.

2 (cf: P.L.1990, c.104, s.2)

3

4 3. Section 3 of P.L.1990, c.104 (C.2A:34-31.2) is amended to read
5 as follows:

6 3. Every order of a court involving custody or **[visitation]**
7 parenting time shall include a written notice, in both English and
8 Spanish, advising the persons affected as to the penalties provided in
9 N.J.S.2C:13-4 for violating that order.

10 (cf: P.L.1990, c.104, s.3)

11

12 4. Section 9 of P.L.1979, c.124 (C.2A:34-36) is amended to read
13 as follows:

14 9. a. If the petitioner for an initial decree has wrongfully taken the
15 child from another state or has engaged in similar reprehensible
16 conduct the court may decline to exercise jurisdiction if this is just and
17 proper under the circumstances.

18 b. Unless required in the interest of the child, the court shall not
19 exercise its jurisdiction to modify a custody decree of another state if
20 the petitioner, without consent of the person entitled to custody, has
21 improperly removed the child from the physical custody of person
22 entitled to custody or has improperly retained the child after **[a visit]**
23 the scheduled parenting time has elapsed or other temporary
24 relinquishment of physical custody. If the petitioner has violated any
25 other provision of a custody decree of another state the court may
26 decline to exercise its jurisdiction if this is just and proper under the
27 circumstances.

28 c. In appropriate cases a court dismissing a petition under this
29 section may assess, and if not paid enter a judgment against the
30 petitioner for necessary travel and other expenses, including attorneys'
31 fees, incurred by other parties or their witnesses. Payment shall be
32 made to the clerk of the court for remittance to the proper party, or in
33 the event of a judgment shall be collected in accordance with the
34 normal procedures for the collection of judgments.

35 (cf: P.L.1979, c.124, s. 9)

36

37 5. Section 10 of P.L.1979, c.124 (C.2A:34-37) is amended to read
38 as follows:

39 10. a. Every party in a custody proceeding in his first pleading or
40 in an affidavit attached to that pleading shall give information under
41 oath as to the child's present address, the places where the child has
42 lived within the last 5 years, and the names and present addresses of
43 the persons with whom the child has lived during that period. In this
44 pleading or affidavit every party shall further declare under oath
45 whether:

46 (1) He has participated (as a party, witness, or in any other

1 capacity) in any other litigation concerning the custody of the same
2 child in this or any other state;

3 (2) He has information of any custody proceeding concerning the
4 child pending in a court of this or any other state; and

5 (3) He knows of any person not a party to the proceedings who has
6 physical custody of the child or claims to have custody or **[visitation]**
7 **parenting time** rights with respect to the child.

8 b. If the declaration as to any of the above items is in the
9 affirmative the declarant shall give additional information under oath
10 as required by the court. The court may examine the parties under
11 oath as to details of the information furnished and as to other matters
12 pertinent to the court's jurisdiction and the disposition of the case.

13 c. Each party has a continuing duty to inform the court of any
14 custody proceeding concerning the child in this or any other state of
15 which he obtained information during this proceeding.

16 (cf: P.L.1979, c.124, s.10)

17

18 6. Section 11 of P.L.1979, c.124 (C.2A:34-38) is amended to read
19 as follows:

20 11. If the court learns from information furnished by the parties
21 pursuant to section 10 of **[this act] P.L.1979, c.124 (C.2A:34-37)**, or
22 from other sources that a person not a party to the custody
23 proceeding has physical custody the child or claims to have custody or
24 **[visitation] parenting time** rights with respect to the child, it shall
25 order that person to be joined as a party and to be duly notified of the
26 pendency of the proceeding and of his joinder as a party. If the person
27 joined as a party is outside that State he shall be served with process
28 or otherwise notified in accordance with the provisions of section 6 of
29 **[this act] P.L.1979, c.124 (C.2A:34-33)**.

30 (cf: P.L.1979, c.124, s.11)

31

32 7. N.J.S.2C:13-4 is amended to read as follows:

33 2C:13-4. Interference with custody. a. Custody of children. A
34 person, including a parent, guardian or other lawful custodian, is guilty
35 of interference with custody if he:

36 (1) Takes or detains a minor child with the purpose of concealing
37 the minor child and thereby depriving the child's other parent of
38 custody or **[visitation of] parenting time with** the minor child; or

39 (2) After being served with process or having actual knowledge of
40 an action affecting marriage or custody but prior to the issuance of a
41 temporary or final order determining custody and **[visitation] parenting**
42 **time** rights to a minor child, takes, detains, entices or conceals the
43 child within or outside the State for the purpose of depriving the
44 child's other parent of custody or **[visitation] parenting time**, or to
45 evade the jurisdiction of the courts of this State;

46 (3) After being served with process or having actual knowledge of

1 an action affecting the protective services needs of a child pursuant to
2 Title 9 of the Revised Statutes in an action affecting custody, but prior
3 to the issuance of a temporary or final order determining custody
4 rights of a minor child, takes, detains, entices or conceals the child
5 within or outside the State for the purpose of evading the jurisdiction
6 of the courts of this State; or

7 (4) After the issuance of a temporary or final order specifying
8 custody, ~~visitation or~~ joint custody rights or parenting time, takes,
9 detains, entices or conceals a minor child from the other parent in
10 violation of the custody or ~~visitation~~ parenting time order.

11 Interference with custody is a crime of the third degree but the
12 presumption of non-imprisonment set forth in subsection e. of
13 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall
14 not apply. However, if the child is taken, detained, enticed or
15 concealed outside the United States, interference with custody is a
16 crime of the second degree.

17 b. Custody of committed persons. A person is guilty of a crime of
18 the fourth degree if he knowingly takes or entices any committed
19 person away from lawful custody when he is not privileged to do so.
20 "Committed person" means, in addition to anyone committed under
21 judicial warrant, any orphan, neglected or delinquent child, mentally
22 defective or insane person, or other dependent or incompetent person
23 entrusted to another's custody by or through a recognized social
24 agency or otherwise by authority of law.

25 c. It is an affirmative defense to a prosecution under subsection a.
26 of this section, which must be proved by clear and convincing
27 evidence, that:

28 (1) The actor reasonably believed that the action was necessary to
29 preserve the child from imminent danger to his welfare. However, no
30 defense shall be available pursuant to this subsection if the actor does
31 not, as soon as reasonably practicable but in no event more than 24
32 hours after taking a child under his protection, give notice of the
33 child's location to the police department of the municipality where the
34 child resided, the office of the county prosecutor in the county where
35 the child resided, or the Division of Youth and Family Services in the
36 Department of Human Services;

37 (2) The actor reasonably believed that the taking or detaining of
38 the minor child was consented to by the other parent, or by an
39 authorized State agency; or

40 (3) The child, being at the time of the taking or concealment not
41 less than 14 years old, was taken away at his own volition and without
42 purpose to commit a criminal offense with or against the child.

43 d. It is an affirmative defense to a prosecution under subsection a.
44 of this section that a parent having the right of custody reasonably
45 believed he was fleeing from imminent physical danger from the other
46 parent, provided that the parent having custody, as soon as reasonably

1 practicable:

2 (1) Gives notice of the child's location to the police department of
3 the municipality where the child resided, the office of the county
4 prosecutor in the county where the child resided, or the Division of
5 Youth and Family Services in the Department of Human Services; or

6 (2) Commences an action affecting custody in an appropriate court.

7 e. The offenses enumerated in this section are continuous in nature
8 and continue for so long as the child is concealed or detained.

9 f. (1) In addition to any other disposition provided by law, a
10 person convicted under subsection a. of this section shall make
11 restitution of all reasonable expenses and costs, including reasonable
12 counsel fees, incurred by the other parent in securing the child's return.

13 (2) In imposing sentence under subsection a. of this section the
14 court shall consider, in addition to the factors enumerated in chapter
15 44 of Title 2C of the New Jersey Statutes:

16 (a) Whether the person returned the child voluntarily; and

17 (b) The length of time the child was concealed or detained.

18 g. As used in this section, "parent" means a parent, guardian or
19 other lawful custodian of a minor child.

20 (cf: P.L.1990, c.104, s.1.)

21

22 8. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to read
23 as follows:

24 13. a. A hearing shall be held in the Family Part of the Chancery
25 Division of the Superior Court within 10 days of the filing of a
26 complaint pursuant to section 12 of ¹[this act] P.L.1991, c.261
27 (C.2C:25-28)¹ in the county where the ex parte restraints were
28 ordered, unless good cause is shown for the hearing to be held
29 elsewhere. A copy of the complaint shall be served on the defendant
30 in conformity with the Rules of Court. If a criminal complaint arising
31 out of the same incident which is the subject matter of a complaint
32 brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261
33 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or
34 defendant in the domestic violence matter shall not be used in the
35 simultaneous or subsequent criminal proceeding against the defendant,
36 other than domestic violence contempt matters and where it would
37 otherwise be admissible hearsay under the rules of evidence that
38 govern where a party is unavailable. At the hearing the standard for
39 proving the allegations in the complaint shall be by a preponderance
40 of the evidence. The court shall consider but not be limited to the
41 following factors:

42 (1) The previous history of domestic violence between the plaintiff
43 and defendant, including threats, harassment and physical abuse;

44 (2) The existence of immediate danger to person or property;

45 (3) The financial circumstances of the plaintiff and defendant;

46 (4) The best interests of the victim and any child;

1 (5) In determining custody and **[visitation] parenting time** the
2 protection of the victim's safety; and

3 (6) The existence of a verifiable order of protection from another
4 jurisdiction.

5 An order issued under this act shall only restrain or provide
6 damages payable from a person against whom a complaint has been
7 filed under this act and only after a finding or an admission is made
8 that an act of domestic violence was committed by that person. The
9 issue of whether or not a violation of this act occurred, including an
10 act of contempt under this act, shall not be subject to mediation or
11 negotiation in any form. In addition, where a temporary or final order
12 has been issued pursuant to this act, no party shall be ordered to
13 participate in mediation on the issue of custody or **[visitation]**
14 **parenting time**.

15 b. In proceedings in which complaints for restraining orders have
16 been filed, the court shall grant any relief necessary to prevent further
17 abuse. At the hearing the judge of the Family Part of the Chancery
18 Division of the Superior Court may issue an order granting any or all
19 of the following relief:

20 (1) An order restraining the defendant from subjecting the victim
21 to domestic violence, as defined in this act.

22 (2) An order granting exclusive possession to the plaintiff of the
23 residence or household regardless of whether the residence or
24 household is jointly or solely owned by the parties or jointly or solely
25 leased by the parties. This order shall not in any manner affect title or
26 interest to any real property held by either party or both jointly. If it
27 is not possible for the victim to remain in the residence, the court may
28 order the defendant to pay the victim's rent at a residence other than
29 the one previously shared by the parties if the defendant is found to
30 have a duty to support the victim and the victim requires alternative
31 housing.

32 (3) An order providing for **[visitation] parenting time**. The order
33 shall protect the safety and well-being of the plaintiff and minor
34 children and shall specify the place and frequency of **[visitation] the**
35 **parenting time**. **[Visitation] Parenting time** arrangements shall not
36 compromise any other remedy provided by the court by requiring or
37 encouraging contact between the plaintiff and defendant. Orders for
38 **[visitation] parenting time** may include a designation of a place of
39 **[visitation] parenting time** away from the plaintiff, the participation of
40 a third party, or supervised **[visitation] parenting time**.

41 (a) The court shall consider a request by a custodial parent who
42 has been subjected to domestic violence by a person with **[visitation]**
43 **parenting time** rights to a child in the parent's custody for an
44 investigation or evaluation by the appropriate agency to assess the risk
45 of harm to the child prior to the entry of a **[visitation] parenting time**
46 order. Any denial of such a request must be on the record and shall

1 only be made if the judge finds the request to be arbitrary or
2 capricious.

3 (b) The court shall consider suspension of the **[visitation] parenting**
4 **time** order and hold an emergency hearing upon an application made
5 by the plaintiff certifying under oath that the defendant's access to the
6 child pursuant to the **[visitation] parenting time** order has threatened
7 the safety and well-being of the child.

8 (4) An order requiring the defendant to pay to the victim monetary
9 compensation for losses suffered as a direct result of the act of
10 domestic violence. The order may require the defendant to pay the
11 victim directly, to reimburse the Violent Crimes Compensation Board
12 for any and all compensation paid by the Violent Crimes Compensation
13 Board directly to or on behalf of the victim, and may require that the
14 defendant reimburse any parties that may have compensated the
15 victim, as the court may determine. Compensatory losses shall include,
16 but not be limited to, loss of earnings or other support, including child
17 or spousal support, out-of-pocket losses for injuries sustained, cost of
18 repair or replacement of real or personal property damaged or
19 destroyed or taken by the defendant, cost of counseling for the victim,
20 moving or other travel expenses, reasonable attorney's fees, court
21 costs, and compensation for pain and suffering. Where appropriate,
22 punitive damages may be awarded in addition to compensatory
23 damages.

24 (5) An order requiring the defendant to receive professional
25 domestic violence counseling from either a private source or a source
26 appointed by the court and, in that event, at the court's discretion
27 requiring the defendant to provide the court at specified intervals with
28 documentation of attendance at the professional counseling. The court
29 may order the defendant to pay for the professional counseling.

30 (6) An order restraining the defendant from entering the residence,
31 property, school, or place of employment of the victim or of other
32 family or household members of the victim and requiring the defendant
33 to stay away from any specified place that is named in the order and
34 is frequented regularly by the victim or other family or household
35 members.

36 (7) An order restraining the defendant from making contact with
37 the plaintiff or others, including an order forbidding the defendant
38 from personally or through an agent initiating any communication
39 likely to cause annoyance or alarm including, but not limited to,
40 personal, written, or telephone contact with the victim or other family
41 members, or their employers, employees, or fellow workers, or others
42 with whom communication would be likely to cause annoyance or
43 alarm to the victim.

44 (8) An order requiring that the defendant make or continue to
45 make rent or mortgage payments on the residence occupied by the
46 victim if the defendant is found to have a duty to support the victim or

1 other dependent household members; provided that this issue has not
2 been resolved or is not being litigated between the parties in another
3 action.

4 (9) An order granting either party temporary possession of
5 specified personal property, such as an automobile, checkbook,
6 documentation of health insurance, an identification document, a key,
7 and other personal effects.

8 (10) An order awarding emergency monetary relief, including
9 emergency support for minor children, to the victim and other
10 dependents, if any. An ongoing obligation of support shall be
11 determined at a later date pursuant to applicable law.

12 (11) An order awarding temporary custody of a minor child. The
13 court shall presume that the best interests of the child are served by an
14 award of custody to the non-abusive parent.

15 (12) An order requiring that a law enforcement officer accompany
16 either party to the residence or any shared business premises to
17 supervise the removal of personal belongings in order to ensure the
18 personal safety of the plaintiff when a restraining order has been
19 issued. This order shall be restricted in duration.

20 (13) ¹[An order which permits the victim and the defendant to
21 occupy the same premises but limits the defendant's use of that
22 premises, but only if it is documented by the judge granting the order
23 that:

24 (a) The plaintiff specifically and voluntarily requests such an order;
25 and

26 (b) The judge determines that the request is made voluntarily and
27 with the plaintiff's knowledge that the order may not provide the same
28 protection as an order excluding the defendant from the premises and
29 with the plaintiff's knowledge that the order may be difficult to
30 enforce; and

31 (c) Any conditions placed upon the defendant in connection with
32 the continued access to the premises and any penalties for
33 noncompliance with those conditions shall be explicitly set out in the
34 order and shall be in addition to any other remedies for noncompliance
35 available to the victim.] Deleted by amendment, P.L.1995, c.242.¹

36 (14) An order granting any other appropriate relief for the plaintiff
37 and dependent children, provided that the plaintiff consents to such
38 relief, including relief requested by the plaintiff at the final hearing,
39 whether or not the plaintiff requested such relief at the time of the
40 granting of the initial emergency order.

41 (15) An order that requires that the defendant report to the intake
42 unit of the Family Part of the Chancery Division of the Superior Court
43 for monitoring of any other provision of the order.

44 (16) An order prohibiting the defendant from possessing any
45 firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1
46 and ordering the search for and seizure of any such weapon at any

1 location where the judge has reasonable cause to believe the weapon
2 is located. The judge shall state with specificity the reasons for and
3 scope of the search and seizure authorized by the order.

4 (17) An order prohibiting the defendant from stalking or following,
5 or threatening to harm, to stalk or to follow, the complainant or any
6 other person named in the order in a manner that, taken in the context
7 of past actions of the defendant, would put the complainant in
8 reasonable fear that the defendant would cause the death or injury of
9 the complainant or any other person. Behavior prohibited under this
10 act includes, but is not limited to, behavior prohibited under the
11 provisions of P.L.1992, c.209 (C.2C:12-10).

12 (18) An order requiring the defendant to undergo a psychiatric
13 evaluation.

14 c. Notice of orders issued pursuant to this section shall be sent by
15 the clerk of the Family Part of the Chancery Division of the Superior
16 Court or other person designated by the court to the appropriate chiefs
17 of police, members of the State Police and any other appropriate law
18 enforcement agency.

19 d. Upon good cause shown, any final order may be dissolved or
20 modified upon application to the Family Part of the Chancery Division
21 of the Superior Court, but only if the judge who dissolves or modifies
22 the order is the same judge who entered the order, or has available a
23 complete record of the hearing or hearings on which the order was
24 based.

25 (cf: P.L.1995, c.242, s.1)

26

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

28 9:2-4. The Legislature finds and declares that it is in the public
29 policy of this State to assure minor children of frequent and continuing
30 contact with both parents after the parents have separated or dissolved
31 their marriage and that it is in the public interest to encourage parents
32 to share the rights and responsibilities of child rearing in order to
33 effect this policy.

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

37 a. Joint custody of a minor child to both parents, which is
38 comprised of legal custody or physical custody which shall include: (1)
39 provisions for residential arrangements so that a child shall reside
40 either solely with one parent or alternatively with each parent in
41 accordance with the needs of the parents and the child; and (2)
42 provisions for consultation between the parents in making major
43 decisions regarding the child's health, education and general welfare;

44 b. Sole custody to one parent with appropriate **[visitation]**
45 parenting time for the noncustodial parent; or

46 c. Any other custody arrangement as the court may determine to

1 be in the best interests of the child.

2 In making an award of custody, the court shall consider but not be
3 limited to the following factors: the parents' ability to agree,
4 communicate and cooperate in matters relating to the child; the
5 parents' willingness to accept custody and any history of unwillingness
6 to allow **[visitation] parenting time** not based on substantiated abuse;
7 the interaction and relationship of the child with its parents' and
8 siblings; the history of domestic violence, if any; the safety of the child
9 and the safety of either parent from physical abuse by the other parent;
10 the preference of the child when of sufficient age and capacity to
11 reason so as to form an intelligent decision; the needs of the child; the
12 stability of the home environment offered; the quality and continuity
13 of the child's education; the fitness of the parents; the geographical
14 proximity of the parents' homes; the extent and quality of the time
15 spent with the child prior to or subsequent to the separation; the
16 parents' employment responsibilities; and the age and number of the
17 children. A parent shall not be deemed unfit unless the parents'
18 conduct has a substantial adverse effect on the child.

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

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

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

30 f. The court shall specifically place on the record the factors which
31 justify any custody arrangement not agreed to by both parents.
32 (cf: P.L.1990, c.26, s.2)

33

34 10. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read
35 as follows:

36 10. a. A person who is entitled to notice pursuant to section 9 of
37 P.L.1977, c.367 (C.9:3-45) shall have the right to object to the
38 adoption of his child. A judgment of adoption shall not be entered over
39 an objection of a parent communicated to the court by personal
40 appearance or by letter unless the court finds:

41 (1) that the parent has substantially failed to perform the regular
42 and expected parental functions of care and support of the child,
43 although able to do so, or

44 (2) that the parent is unable to perform the regular and expected
45 parental functions of care and support of the child and that the parent's
46 inability to perform those functions is unlikely to change in the

1 immediate future.

2 The regular and expected functions of care and support of a child
3 shall include the following:

4 (a) the maintenance of a relationship with the child such that the
5 child perceives the person as his parent;

6 (b) communicating with the child or person having legal custody
7 of the child and ~~visiting the child~~ parenting time rights unless
8 ~~visitation~~ having parenting time is impossible because of the parent's
9 confinement in an institution, or unless prevented from so doing by the
10 custodial parent or other custodian of the child or a social service
11 agency over the birth parent's objection; or

12 (c) providing financial support for the child unless prevented from
13 doing so by the custodial parent or other custodian of the child or a
14 social service agency.

15 A parent shall be presumed to have failed to perform the regular
16 and expected parental functions of care and support of the child if the
17 court finds that the situation set forth in paragraph (1) or (2) has
18 occurred for six or more months.

19 b. The guardian of a child to be adopted who has not executed a
20 surrender pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) and any
21 other person who has provided care and supervision in his home for
22 the child for a period of six months or one half of the life of the child,
23 whichever is less, in the two years prior to the complaint shall be given
24 notice of the action and in accordance with the Rules of Court shall
25 have standing to object to the adoption, which objection shall be given
26 due consideration by the court in determining whether the best
27 interests of the child would be promoted by the adoption.

28 (cf: P.L.1993, c.345, s.9)

29

30 11. Section 16 of P.L.1983, c.17 (C.9:17-53) is amended to read
31 as follows:

32 16. a. The judgment or order of the court determining the
33 existence or nonexistence of the parent and child relationship is
34 determinative for all purposes.

35 b. If the judgment or order of the court is at variance with the
36 child's birth certificate, the court shall order that an amendment to the
37 original birth record be made under section 22.

38 c. The judgment or order may contain any other provision directed
39 against the appropriate party to the proceeding concerning the duty of
40 support, the custody and guardianship of the child, ~~visitation~~
41 parenting time privileges with the child, the furnishing of bond or other
42 security for the payment of the judgment, the repayment of any public
43 assistance grant, or any other matter in the best interests of the child.
44 The judgment or order may direct the father to pay the reasonable
45 expenses of the mother's pregnancy and postpartum disability,
46 including repayment to an agency which provided public assistance

1 funds for those expenses.

2 d. Support judgments or orders ordinarily shall be for periodic
3 payments, which may vary in amount. In the best interests of the
4 child, the purchase of an annuity may be ordered in lieu of periodic
5 payments of support. The court may limit a parent's liability for past
6 support of the child to the proportion of the expenses already incurred
7 that the court deems just.

8 e. In determining the amount to be paid by a parent for support of
9 the child and the period during which the duty of support is owed, a
10 court enforcing the obligation of support shall consider all relevant
11 facts, including the:

12 (1) Needs of the child;

13 (2) Standard of living and economic circumstances of each parent;

14 (3) Income and assets of each parent, including any public
15 assistance grant received by a parent;

16 (4) Earning ability of each parent, including educational
17 background, training, employment skills, work experience, custodial
18 responsibility for children and the length of time and cost for each
19 parent to obtain training or experience for appropriate employment;

20 (5) Need and capacity of the child for education, including higher
21 education;

22 (6) Age and health of the child and each parent;

23 (7) Income, assets and earning ability of the child;

24 (8) Responsibility of the parents for the support of others; and

25 (9) Debts and liabilities of each child and parent.

26 The factors set forth herein are not intended to be exhaustive. The
27 court may consider such other factors as may be appropriate under the
28 circumstances.

29 (cf: P.L.1983, c.17, s.16.)

30

31 ¹[12. Section 1 of P.L.1984, c.183 (C.52:27D-9.1) is amended to
32 read as follows:

33 1. The Department of Community Affairs shall develop a program
34 which: a. makes grandparents aware of their rights under P.L.1971,
35 c.420 (C.9:2-7.1), which establishes **[visitation] parenting time** rights
36 for grandparents in cases involving the custody and **[visitation of]**
37 **parenting time** with the child, such as divorce cases; and b. informs
38 divorcing parents as to the utility, to the child, of regular and frequent
39 **[visitation] parenting time with** grandparents.

40 (cf: P.L.1984, c.183, s.1.)¹

41

42 ¹[13.] 12.¹ This act shall take effect immediately.

- 1 _____
- 2
- 3 Revises the statutes by changing the term "visitation" to "parenting
- 4 time."

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2 child, the purchase of an annuity may be ordered in lieu of periodic
3 payments of support. The court may limit a parent's liability for past
4 support of the child to the proportion of the expenses already incurred
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15 background, training, employment skills, work experience, custodial
16 responsibility for children and the length of time and cost for each
17 parent to obtain training or experience for appropriate employment;

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19 education;

20 (6) Age and health of the child and each parent;

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22 (8) Responsibility of the parents for the support of others; and

23 (9) Debts and liabilities of each child and parent.

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25 court may consider such other factors as may be appropriate under the
26 circumstances.

27 (cf: P.L.1983, c.17, s.16.)

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32 which: a. makes grandparents aware of their rights under P.L.1971,
33 c.420 (C.9:2-7.1), which establishes **【visitation】** parenting time rights
34 for grandparents in cases involving the custody and **【visitation of】**
35 parenting time with the child, such as divorce cases; and b. informs
36 divorcing parents as to the utility, to the child, of regular and frequent
37 **【visitation】** parenting time with grandparents.

38 (cf: P.L.1984, c.183, s.1.)

39

40 13. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill would amend various sections of the law and replace the
46 term "visitation" with the term "parenting time" to more accurately

1 reflect the relationship between a parent and child who have gone
2 through a divorce.

3 This bill embodies recommendation number 6 of the report of the
4 Commission to Study the Law of Divorce, issued April 18, 1995.

5

6

7

8

9 Revises the statutes by changing the term "visitation" to "parenting
10 time."

[Passed Both Houses]

[First Reprint]

ASSEMBLY, No. 68

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblymen KAVANAUGH, COHEN,
Senators Cafiero and Ewing

1 AN ACT concerning divorce and revising various sections of the
2 statutory law.

3

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

6

7 1. Section 22 of P.L.1981, c.243 (C.2A:4-30.45) is amended to
8 read as follows:

9 22. Rules of evidence. In any hearing for the civil enforcement of
10 this act the court is governed by the rules of evidence applicable in a
11 civil court action in the Superior Court. If the action is based on a
12 support order issued by another court a certified copy of the order
13 shall be received as evidence of the duty of support, subject only to
14 any defenses available to an obligor with respect to paternity (section
15 26) or to a defendant in an action or a proceeding to enforce a foreign
16 money judgment. The determination or enforcement of a duty of
17 support owed to one obligee is unaffected by any interference by
18 another obligee with rights of custody or **[visitation] parenting time**
19 granted by a court.

20 (cf: P.L.1981, c.243, s.22)

21

22 2. Section 2 of P.L.1990, c.104 (C.2A:34-31.1) is amended to read
23 as follows:

24 2. After the issuance of any temporary or permanent order
25 determining custody or **[visitation] parenting time** of a minor child, a
26 law enforcement officer having reasonable cause to believe that a
27 person is likely to flee the State with the child or otherwise by flight

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

Matter underlined **thus** is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJU committee amendments adopted June 10, 1996.

1 or concealment evade the jurisdiction of the courts of this State may
2 take a child into protective custody and return the child to the parent
3 having lawful custody, or to a court in which a custody hearing
4 concerning the child is pending.

5 (cf: P.L.1990, c.104, s.2)

6

7 3. Section 3 of P.L.1990, c.104 (C.2A:34-31.2) is amended to read
8 as follows:

9 3. Every order of a court involving custody or **visitation**
10 parenting time shall include a written notice, in both English and
11 Spanish, advising the persons affected as to the penalties provided in
12 N.J.S.2C:13-4 for violating that order.

13 (cf: P.L.1990, c.104, s.3)

14

15 4. Section 9 of P.L.1979, c.124 (C.2A:34-36) is amended to read
16 as follows:

17 9. a. If the petitioner for an initial decree has wrongfully taken the
18 child from another state or has engaged in similar reprehensible
19 conduct the court may decline to exercise jurisdiction if this is just and
20 proper under the circumstances.

21 b. Unless required in the interest of the child, the court shall not
22 exercise its jurisdiction to modify a custody decree of another state if
23 the petitioner, without consent of the person entitled to custody, has
24 improperly removed the child from the physical custody of person
25 entitled to custody or has improperly retained the child after **a visit**
26 the scheduled parenting time has elapsed or other temporary
27 relinquishment of physical custody. If the petitioner has violated any
28 other provision of a custody decree of another state the court may
29 decline to exercise its jurisdiction if this is just and proper under the
30 circumstances.

31 c. In appropriate cases a court dismissing a petition under this
32 section may assess, and if not paid enter a judgment against the
33 petitioner for necessary travel and other expenses, including attorneys'
34 fees, incurred by other parties or their witnesses. Payment shall be
35 made to the clerk of the court for remittance to the proper party, or in
36 the event of a judgment shall be collected in accordance with the
37 normal procedures for the collection of judgments.

38 (cf: P.L.1979, c.124, s. 9)

39

40 5. Section 10 of P.L.1979, c.124 (C.2A:34-37) is amended to read
41 as follows:

42 10. a. Every party in a custody proceeding in his first pleading or
43 in an affidavit attached to that pleading shall give information under
44 oath as to the child's present address, the places where the child has
45 lived within the last 5 years, and the names and present addresses of
46 the persons with whom the child has lived during that period. In this

1 pleading or affidavit every party shall further declare under oath
2 whether:

3 (1) He has participated (as a party, witness, or in any other
4 capacity) in any other litigation concerning the custody of the same
5 child in this or any other state;

6 (2) He has information of any custody proceeding concerning the
7 child pending in a court of this or any other state; and

8 (3) He knows of any person not a party to the proceedings who has
9 physical custody of the child or claims to have custody or **[visitation]**
10 **parenting time** rights with respect to the child.

11 b. If the declaration as to any of the above items is in the
12 affirmative the declarant shall give additional information under oath
13 as required by the court. The court may examine the parties under
14 oath as to details of the information furnished and as to other matters
15 pertinent to the court's jurisdiction and the disposition of the case.

16 c. Each party has a continuing duty to inform the court of any
17 custody proceeding concerning the child in this or any other state of
18 which he obtained information during this proceeding.

19 (cf: P.L.1979, c.124, s.10)

20

21 6. Section 11 of P.L.1979, c.124 (C.2A:34-38) is amended to read
22 as follows:

23 11. If the court learns from information furnished by the parties
24 pursuant to section 10 of **[this act] P.L.1979, c.124 (C.2A:34-37)**, or
25 from other sources that a person not a party to the custody
26 proceeding has physical custody the child or claims to have custody or
27 **[visitation] parenting time** rights with respect to the child, it shall
28 order that person to be joined as a party and to be duly notified of the
29 pendency of the proceeding and of his joinder as a party. If the person
30 joined as a party is outside that State he shall be served with process
31 or otherwise notified in accordance with the provisions of section 6 of
32 **[this act] P.L.1979, c.124 (C.2A:34-33)**.

33 (cf: P.L.1979, c.124, s.11)

34

35 7. N.J.S.2C:13-4 is amended to read as follows:

36 2C:13-4. Interference with custody. a. Custody of children. A
37 person, including a parent, guardian or other lawful custodian, is guilty
38 of interference with custody if he:

39 (1) Takes or detains a minor child with the purpose of concealing
40 the minor child and thereby depriving the child's other parent of
41 custody or **[visitation of] parenting time with** the minor child; or

42 (2) After being served with process or having actual knowledge of
43 an action affecting marriage or custody but prior to the issuance of a
44 temporary or final order determining custody and **[visitation]**
45 **parenting time** rights to a minor child, takes, detains, entices or
46 conceals the child within or outside the State for the purpose of

1 depriving the child's other parent of custody or **[visitation] parenting**
2 **time**, or to evade the jurisdiction of the courts of this State;

3 (3) After being served with process or having actual knowledge of
4 an action affecting the protective services needs of a child pursuant to
5 Title 9 of the Revised Statutes in an action affecting custody, but prior
6 to the issuance of a temporary or final order determining custody
7 rights of a minor child, takes, detains, entices or conceals the child
8 within or outside the State for the purpose of evading the jurisdiction
9 of the courts of this State; or

10 (4) After the issuance of a temporary or final order specifying
11 custody, **[visitation or] joint custody rights or parenting time**, takes,
12 detains, entices or conceals a minor child from the other parent in
13 violation of the custody or **[visitation] parenting time** order.

14 Interference with custody is a crime of the third degree but the
15 presumption of non-imprisonment set forth in subsection e. of
16 N.J.S.2C:44-1 for a first offense of a crime of the third degree shall
17 not apply. However, if the child is taken, detained, enticed or
18 concealed outside the United States, interference with custody is a
19 crime of the second degree.

20 b. Custody of committed persons. A person is guilty of a crime of
21 the fourth degree if he knowingly takes or entices any committed
22 person away from lawful custody when he is not privileged to do so.
23 "Committed person" means, in addition to anyone committed under
24 judicial warrant, any orphan, neglected or delinquent child, mentally
25 defective or insane person, or other dependent or incompetent person
26 entrusted to another's custody by or through a recognized social
27 agency or otherwise by authority of law.

28 c. It is an affirmative defense to a prosecution under subsection a.
29 of this section, which must be proved by clear and convincing
30 evidence, that:

31 (1) The actor reasonably believed that the action was necessary to
32 preserve the child from imminent danger to his welfare. However, no
33 defense shall be available pursuant to this subsection if the actor does
34 not, as soon as reasonably practicable but in no event more than 24
35 hours after taking a child under his protection, give notice of the
36 child's location to the police department of the municipality where the
37 child resided, the office of the county prosecutor in the county where
38 the child resided, or the Division of Youth and Family Services in the
39 Department of Human Services;

40 (2) The actor reasonably believed that the taking or detaining of
41 the minor child was consented to by the other parent, or by an
42 authorized State agency; or

43 (3) The child, being at the time of the taking or concealment not
44 less than 14 years old, was taken away at his own volition and without
45 purpose to commit a criminal offense with or against the child.

46 d. It is an affirmative defense to a prosecution under subsection a.

1 of this section that a parent having the right of custody reasonably
2 believed he was fleeing from imminent physical danger from the other
3 parent, provided that the parent having custody, as soon as reasonably
4 practicable:

5 (1) Gives notice of the child's location to the police department of
6 the municipality where the child resided, the office of the county
7 prosecutor in the county where the child resided, or the Division of
8 Youth and Family Services in the Department of Human Services; or

9 (2) Commences an action affecting custody in an appropriate court.

10 e. The offenses enumerated in this section are continuous in nature
11 and continue for so long as the child is concealed or detained.

12 f. (1) In addition to any other disposition provided by law, a
13 person convicted under subsection a. of this section shall make
14 restitution of all reasonable expenses and costs, including reasonable
15 counsel fees, incurred by the other parent in securing the child's return.

16 (2) In imposing sentence under subsection a. of this section the
17 court shall consider, in addition to the factors enumerated in chapter
18 44 of Title 2C of the New Jersey Statutes:

19 (a) Whether the person returned the child voluntarily; and

20 (b) The length of time the child was concealed or detained.

21 g. As used in this section, "parent" means a parent, guardian or
22 other lawful custodian of a minor child.

23 (cf: P.L.1990, c.104, s.1.)

24

25 8. Section 13 of P.L.1991, c.261 (C.2C:25-29) is amended to read
26 as follows:

27 13. a. A hearing shall be held in the Family Part of the Chancery
28 Division of the Superior Court within 10 days of the filing of a
29 complaint pursuant to section 12 of ¹[this act] P.L.1991, c.261
30 (C.2C:25-28)¹ in the county where the ex parte restraints were
31 ordered, unless good cause is shown for the hearing to be held
32 elsewhere. A copy of the complaint shall be served on the defendant
33 in conformity with the Rules of Court. If a criminal complaint arising
34 out of the same incident which is the subject matter of a complaint
35 brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or P.L.1991, c.261
36 (C.2C:25-17 et seq.) has been filed, testimony given by the plaintiff or
37 defendant in the domestic violence matter shall not be used in the
38 simultaneous or subsequent criminal proceeding against the defendant,
39 other than domestic violence contempt matters and where it would
40 otherwise be admissible hearsay under the rules of evidence that
41 govern where a party is unavailable. At the hearing the standard for
42 proving the allegations in the complaint shall be by a preponderance
43 of the evidence. The court shall consider but not be limited to the
44 following factors:

45 (1) The previous history of domestic violence between the plaintiff
46 and defendant, including threats, harassment and physical abuse;

- 1 (2) The existence of immediate danger to person or property;
- 2 (3) The financial circumstances of the plaintiff and defendant;
- 3 (4) The best interests of the victim and any child;
- 4 (5) In determining custody and **[visitation]** parenting time the
- 5 protection of the victim's safety; and
- 6 (6) The existence of a verifiable order of protection from another
- 7 jurisdiction.

8 An order issued under this act shall only restrain or provide
9 damages payable from a person against whom a complaint has been
10 filed under this act and only after a finding or an admission is made
11 that an act of domestic violence was committed by that person. The
12 issue of whether or not a violation of this act occurred, including an
13 act of contempt under this act, shall not be subject to mediation or
14 negotiation in any form. In addition, where a temporary or final order
15 has been issued pursuant to this act, no party shall be ordered to
16 participate in mediation on the issue of custody or **[visitation]**
17 parenting time.

18 b. In proceedings in which complaints for restraining orders have
19 been filed, the court shall grant any relief necessary to prevent further
20 abuse. At the hearing the judge of the Family Part of the Chancery
21 Division of the Superior Court may issue an order granting any or all
22 of the following relief:

23 (1) An order restraining the defendant from subjecting the victim
24 to domestic violence, as defined in this act.

25 (2) An order granting exclusive possession to the plaintiff of the
26 residence or household regardless of whether the residence or
27 household is jointly or solely owned by the parties or jointly or solely
28 leased by the parties. This order shall not in any manner affect title or
29 interest to any real property held by either party or both jointly. If it
30 is not possible for the victim to remain in the residence, the court may
31 order the defendant to pay the victim's rent at a residence other than
32 the one previously shared by the parties if the defendant is found to
33 have a duty to support the victim and the victim requires alternative
34 housing.

35 (3) An order providing for **[visitation]** parenting time. The order
36 shall protect the safety and well-being of the plaintiff and minor
37 children and shall specify the place and frequency of **[visitation]** the
38 parenting time. **[Visitation]** Parenting time arrangements shall not
39 compromise any other remedy provided by the court by requiring or
40 encouraging contact between the plaintiff and defendant. Orders for
41 **[visitation]** parenting time may include a designation of a place of
42 **[visitation]** parenting time away from the plaintiff, the participation of
43 a third party, or supervised **[visitation]** parenting time.

44 (a) The court shall consider a request by a custodial parent who
45 has been subjected to domestic violence by a person with **[visitation]**

1 parenting time rights to a child in the parent's custody for an
2 investigation or evaluation by the appropriate agency to assess the risk
3 of harm to the child prior to the entry of a [visitation] parenting time
4 order. Any denial of such a request must be on the record and shall
5 only be made if the judge finds the request to be arbitrary or
6 capricious.

7 (b) The court shall consider suspension of the [visitation]
8 parenting time order and hold an emergency hearing upon an
9 application made by the plaintiff certifying under oath that the
10 defendant's access to the child pursuant to the [visitation] parenting
11 time order has threatened the safety and well-being of the child.

12 (4) An order requiring the defendant to pay to the victim monetary
13 compensation for losses suffered as a direct result of the act of
14 domestic violence. The order may require the defendant to pay the
15 victim directly, to reimburse the Violent Crimes Compensation Board
16 for any and all compensation paid by the Violent Crimes Compensation
17 Board directly to or on behalf of the victim, and may require that the
18 defendant reimburse any parties that may have compensated the
19 victim, as the court may determine. Compensatory losses shall include,
20 but not be limited to, loss of earnings or other support, including child
21 or spousal support, out-of-pocket losses for injuries sustained, cost of
22 repair or replacement of real or personal property damaged or
23 destroyed or taken by the defendant, cost of counseling for the victim,
24 moving or other travel expenses, reasonable attorney's fees, court
25 costs, and compensation for pain and suffering. Where appropriate,
26 punitive damages may be awarded in addition to compensatory
27 damages.

28 (5) An order requiring the defendant to receive professional
29 domestic violence counseling from either a private source or a source
30 appointed by the court and, in that event, at the court's discretion
31 requiring the defendant to provide the court at specified intervals with
32 documentation of attendance at the professional counseling. The court
33 may order the defendant to pay for the professional counseling.

34 (6) An order restraining the defendant from entering the residence,
35 property, school, or place of employment of the victim or of other
36 family or household members of the victim and requiring the defendant
37 to stay away from any specified place that is named in the order and
38 is frequented regularly by the victim or other family or household
39 members.

40 (7) An order restraining the defendant from making contact with
41 the plaintiff or others, including an order forbidding the defendant
42 from personally or through an agent initiating any communication
43 likely to cause annoyance or alarm including, but not limited to,
44 personal, written, or telephone contact with the victim or other family
45 members, or their employers, employees, or fellow workers, or others
46 with whom communication would be likely to cause annoyance or

1 alarm to the victim.

2 (8) An order requiring that the defendant make or continue to
3 make rent or mortgage payments on the residence occupied by the
4 victim if the defendant is found to have a duty to support the victim or
5 other dependent household members; provided that this issue has not
6 been resolved or is not being litigated between the parties in another
7 action.

8 (9) An order granting either party temporary possession of
9 specified personal property, such as an automobile, checkbook,
10 documentation of health insurance, an identification document, a key,
11 and other personal effects.

12 (10) An order awarding emergency monetary relief, including
13 emergency support for minor children, to the victim and other
14 dependents, if any. An ongoing obligation of support shall be
15 determined at a later date pursuant to applicable law.

16 (11) An order awarding temporary custody of a minor child. The
17 court shall presume that the best interests of the child are served by an
18 award of custody to the non-abusive parent.

19 (12) An order requiring that a law enforcement officer accompany
20 either party to the residence or any shared business premises to
21 supervise the removal of personal belongings in order to ensure the
22 personal safety of the plaintiff when a restraining order has been
23 issued. This order shall be restricted in duration.

24 (13) ¹ [An order which permits the victim and the defendant to
25 occupy the same premises but limits the defendant's use of that
26 premises, but only if it is documented by the judge granting the order
27 that:

28 (a) The plaintiff specifically and voluntarily requests such an order;
29 and

30 (b) The judge determines that the request is made voluntarily and
31 with the plaintiff's knowledge that the order may not provide the same
32 protection as an order excluding the defendant from the premises and
33 with the plaintiff's knowledge that the order may be difficult to
34 enforce; and

35 (c) Any conditions placed upon the defendant in connection with
36 the continued access to the premises and any penalties for
37 noncompliance with those conditions shall be explicitly set out in the
38 order and shall be in addition to any other remedies for noncompliance
39 available to the victim.] Deleted by amendment, P.L. 1995, c. 242.¹

40 (14) An order granting any other appropriate relief for the plaintiff
41 and dependent children, provided that the plaintiff consents to such
42 relief, including relief requested by the plaintiff at the final hearing,
43 whether or not the plaintiff requested such relief at the time of the
44 granting of the initial emergency order.

45 (15) An order that requires that the defendant report to the intake
46 unit of the Family Part of the Chancery Division of the Superior Court

1 for monitoring of any other provision of the order.

2 (16) An order prohibiting the defendant from possessing any
3 firearm or other weapon enumerated in subsection r. of N.J.S.2C:39-1
4 and ordering the search for and seizure of any such weapon at any
5 location where the judge has reasonable cause to believe the weapon
6 is located. The judge shall state with specificity the reasons for and
7 scope of the search and seizure authorized by the order.

8 (17) An order prohibiting the defendant from stalking or following,
9 or threatening to harm, to stalk or to follow, the complainant or any
10 other person named in the order in a manner that, taken in the context
11 of past actions of the defendant, would put the complainant in
12 reasonable fear that the defendant would cause the death or injury of
13 the complainant or any other person. Behavior prohibited under this
14 act includes, but is not limited to, behavior prohibited under the
15 provisions of P.L.1992, c.209 (C.2C:12-10).

16 (18) An order requiring the defendant to undergo a psychiatric
17 evaluation.

18 c. Notice of orders issued pursuant to this section shall be sent by
19 the clerk of the Family Part of the Chancery Division of the Superior
20 Court or other person designated by the court to the appropriate chiefs
21 of police, members of the State Police and any other appropriate law
22 enforcement agency.

23 d. Upon good cause shown, any final order may be dissolved or
24 modified upon application to the Family Part of the Chancery Division
25 of the Superior Court, but only if the judge who dissolves or modifies
26 the order is the same judge who entered the order, or has available a
27 complete record of the hearing or hearings on which the order was
28 based.

29 (cf: P.L.1995, c.242, s.1)

30

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

32 9:2-4. The Legislature finds and declares that it is in the public
33 policy of this State to assure minor children of frequent and continuing
34 contact with both parents after the parents have separated or dissolved
35 their marriage and that it is in the public interest to encourage parents
36 to share the rights and responsibilities of child rearing in order to
37 effect this policy.

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

41 a. Joint custody of a minor child to both parents, which is
42 comprised of legal custody or physical custody which shall include: (1)
43 provisions for residential arrangements so that a child shall reside
44 either solely with one parent or alternatively with each parent in
45 accordance with the needs of the parents and the child; and (2)
46 provisions for consultation between the parents in making major

- 1 decisions regarding the child's health, education and general welfare;
2 b. Sole custody to one parent with appropriate [visitation]
3 parenting time for the noncustodial parent; or
4 c. Any other custody arrangement as the court may determine to
5 be in the best interests of the child.

6 In making an award of custody, the court shall consider but not be
7 limited to the following factors: the parents' ability to agree,
8 communicate and cooperate in matters relating to the child; the
9 parents' willingness to accept custody and any history of unwillingness
10 to allow [visitation] parenting time not based on substantiated abuse;
11 the interaction and relationship of the child with its parents' and
12 siblings; the history of domestic violence, if any; the safety of the child
13 and the safety of either parent from physical abuse by the other parent;
14 the preference of the child when of sufficient age and capacity to
15 reason so as to form an intelligent decision; the needs of the child; the
16 stability of the home environment offered; the quality and continuity
17 of the child's education; the fitness of the parents; the geographical
18 proximity of the parents' homes; the extent and quality of the time
19 spent with the child prior to or subsequent to the separation; the
20 parents' employment responsibilities; and the age and number of the
21 children. A parent shall not be deemed unfit unless the parents'
22 conduct has a substantial adverse effect on the child.

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

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

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

34 f. The court shall specifically place on the record the factors which
35 justify any custody arrangement not agreed to by both parents.
36 (cf: P.L.1990, c.26, s.2)

37

38 10. Section 10 of P.L.1977, c.367 (C.9:3-46) is amended to read
39 as follows:

40 10. a. A person who is entitled to notice pursuant to section 9 of
41 P.L.1977, c.367 (C.9:3-45) shall have the right to object to the
42 adoption of his child. A judgment of adoption shall not be entered over
43 an objection of a parent communicated to the court by personal
44 appearance or by letter unless the court finds:

45 (1) that the parent has substantially failed to perform the regular
46 and expected parental functions of care and support of the child,

1 although able to do so, or

2 (2) that the parent is unable to perform the regular and expected
3 parental functions of care and support of the child and that the parent's
4 inability to perform those functions is unlikely to change in the
5 immediate future.

6 The regular and expected functions of care and support of a child
7 shall include the following:

8 (a) the maintenance of a relationship with the child such that the
9 child perceives the person as his parent;

10 (b) communicating with the child or person having legal custody
11 of the child and ~~visiting the child~~ parenting time rights unless
12 ~~visitation~~ having parenting time is impossible because of the parent's
13 confinement in an institution, or unless prevented from so doing by the
14 custodial parent or other custodian of the child or a social service
15 agency over the birth parent's objection; or

16 (c) providing financial support for the child unless prevented from
17 doing so by the custodial parent or other custodian of the child or a
18 social service agency.

19 A parent shall be presumed to have failed to perform the regular
20 and expected parental functions of care and support of the child if the
21 court finds that the situation set forth in paragraph (1) or (2) has
22 occurred for six or more months.

23 b. The guardian of a child to be adopted who has not executed a
24 surrender pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) and any
25 other person who has provided care and supervision in his home for
26 the child for a period of six months or one half of the life of the child,
27 whichever is less, in the two years prior to the complaint shall be given
28 notice of the action and in accordance with the Rules of Court shall
29 have standing to object to the adoption, which objection shall be given
30 due consideration by the court in determining whether the best
31 interests of the child would be promoted by the adoption.

32 (cf: P.L.1993, c.345, s.9)

33

34 11. Section 16 of P.L.1983, c.17 (C.9:17-53) is amended to read
35 as follows:

36 16. a. The judgment or order of the court determining the
37 existence or nonexistence of the parent and child relationship is
38 determinative for all purposes.

39 b. If the judgment or order of the court is at variance with the
40 child's birth certificate, the court shall order that an amendment to the
41 original birth record be made under section 22.

42 c. The judgment or order may contain any other provision directed
43 against the appropriate party to the proceeding concerning the duty of
44 support, the custody and guardianship of the child, ~~visitation~~
45 parenting time privileges with the child, the furnishing of bond or other
46 security for the payment of the judgment, the repayment of any public

1 assistance grant, or any other matter in the best interests of the child.
2 The judgment or order may direct the father to pay the reasonable
3 expenses of the mother's pregnancy and postpartum disability,
4 including repayment to an agency which provided public assistance
5 funds for those expenses.

6 d. Support judgments or orders ordinarily shall be for periodic
7 payments, which may vary in amount. In the best interests of the
8 child, the purchase of an annuity may be ordered in lieu of periodic
9 payments of support. The court may limit a parent's liability for past
10 support of the child to the proportion of the expenses already incurred
11 that the court deems just.

12 e. In determining the amount to be paid by a parent for support of
13 the child and the period during which the duty of support is owed, a
14 court enforcing the obligation of support shall consider all relevant
15 facts, including the:

- 16 (1) Needs of the child;
- 17 (2) Standard of living and economic circumstances of each parent;
- 18 (3) Income and assets of each parent, including any public
19 assistance grant received by a parent;
- 20 (4) Earning ability of each parent, including educational
21 background, training, employment skills, work experience, custodial
22 responsibility for children and the length of time and cost for each
23 parent to obtain training or experience for appropriate employment;
- 24 (5) Need and capacity of the child for education, including higher
25 education;
- 26 (6) Age and health of the child and each parent;
- 27 (7) Income, assets and earning ability of the child;
- 28 (8) Responsibility of the parents for the support of others; and
- 29 (9) Debts and liabilities of each child and parent.

30 The factors set forth herein are not intended to be exhaustive. The
31 court may consider such other factors as may be appropriate under the
32 circumstances.

33 (cf: P.L.1983, c.17, s.16.)

34

35 ¹[12. Section 1 of P.L.1984, c.183 (C.52:27D-9.1) is amended to
36 read as follows:

37 1. The Department of Community Affairs shall develop a program
38 which: a. makes grandparents aware of their rights under P.L.1971,
39 c.420 (C.9:2-7.1), which establishes **[visitation] parenting time** rights
40 for grandparents in cases involving the custody and **[visitation of]**
41 **parenting time** with the child, such as divorce cases; and b. informs
42 divorcing parents as to the utility, to the child, of regular and frequent
43 **[visitation] parenting time with** grandparents.

44 (cf: P.L.1984, c.183, s.1.)¹

45

46 ¹[13.] 12.¹ This act shall take effect immediately.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 68

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 1996

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 68.

This bill would amend various sections of the law and replace the term "visitation" with the term "parenting time" to more accurately reflect the relationship between a parent and child who have gone through a divorce.

The committee amendments deleted section 12 of the bill concerning grandparents rights since visitation appears to be the correct term in that context. The amendments in section 8 of the bill are technical and reflect recently enacted legislation, P.L.1995, c.242, which amended the "Prevention of Domestic Violence Act".

This bill embodies recommendation number 6 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.