

P.L. 2005, CHAPTER 169, *approved August 5, 2005*

Senate, No. 2664

1 **AN ACT** concerning child protective services and revising various
2 parts of the statutory law.

3

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

6

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

9 1. As used in this act, unless the specific context indicates
10 otherwise:

11 a. "Parent or guardian" means any natural parent, adoptive parent,
12 resource family parent, stepparent, paramour of a parent or any
13 person, who has assumed responsibility for the care, custody or
14 control of a child or upon whom there is a legal duty for such care.
15 Parent or guardian includes a teacher, employee or volunteer, whether
16 compensated or uncompensated, of an institution who is responsible
17 for the child's welfare and any other staff person of an institution
18 regardless of whether or not the person is responsible for the care or
19 supervision of the child. Parent or guardian also includes a teaching
20 staff member or other employee, whether compensated or
21 uncompensated, of a day school as defined in section 1 of P.L.1974,
22 c.119 (C.9:6-8.21).

23 b. "Child" means any child alleged to have been abused or
24 neglected.

25 c. "Abused or neglected child" means a child less than 18 years of
26 age whose parent or guardian, as herein defined, (1) inflicts or allows
27 to be inflicted upon such child physical injury by other than accidental
28 means which causes or creates a substantial risk of death, or serious
29 or protracted disfigurement, or protracted impairment of physical or
30 emotional health or protracted loss or impairment of the function of
31 any bodily organ; (2) creates or allows to be created a substantial or
32 ongoing risk of physical injury to such child by other than accidental
33 means which would be likely to cause death or serious or protracted
34 disfigurement, or protracted loss or impairment of the function of any
35 bodily organ; (3) commits or allows to be committed an act of sexual
36 abuse against the child; (4) or a child whose physical, mental, or
37 emotional condition has been impaired or is in imminent danger of
38 becoming impaired as the result of the failure of his parent or
39 guardian, as herein defined, to exercise a minimum degree of care (a)
40 in supplying the child with adequate food, clothing, shelter, education,
41 medical or surgical care though financially able to do so or though

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

Matter underlined thus is new matter.

1 offered financial or other reasonable means to do so, or (b) in
2 providing the child with proper supervision or guardianship, by
3 unreasonably inflicting or allowing to be inflicted harm, or substantial
4 risk thereof, including the infliction of excessive corporal punishment;
5 or by any other acts of a similarly serious nature requiring the aid of
6 the court; (5) or a child who has been willfully abandoned by his
7 parent or guardian, as herein defined; (6) or a child upon whom
8 excessive physical restraint has been used under circumstances which
9 do not indicate that the child's behavior is harmful to himself, others
10 or property; (7) or a child who is in an institution and (a) has been
11 placed there inappropriately for a continued period of time with the
12 knowledge that the placement has resulted or may continue to result
13 in harm to the child's mental or physical well-being or (b) who has
14 been willfully isolated from ordinary social contact under
15 circumstances which indicate emotional or social deprivation.

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

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

24 d. "Law guardian" means an attorney admitted to the practice of
25 law in this State, regularly employed by the Office of the Public
26 Defender or appointed by the court, and designated under this act to
27 represent minors in alleged cases of child abuse or neglect and in
28 termination of parental rights proceedings.

29 e. "Attorney" means an attorney admitted to the practice of law
30 in this State who shall be privately retained; or, in the instance of an
31 indigent parent or guardian, an attorney from the Office of the Public
32 Defender or an attorney appointed by the court who shall be appointed
33 in order to avoid conflict between the interests of the child and the
34 parent or guardian in regard to representation.

35 f. "Division" means the Division of Youth and Family Services in
36 the Department of Human Services unless otherwise specified.

37 g. "Institution" means a public or private facility in the State
38 which provides children with out of home care, supervision or
39 maintenance. Institution includes, but is not limited to, a correctional
40 facility, detention facility, treatment facility, day care center,
41 residential school, shelter and hospital.

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

1 basis.

2 (cf: P.L.2004, c.130, s.27)

3

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

6 26. a. In any hearing under this act, including an administrative
7 hearing held in accordance with the "Administrative Procedure Act,"
8 P.L.1968, c.410 (C.52:14B-1 et seq.). (1) proof of the abuse or
9 neglect of one child shall be admissible evidence on the issue of the
10 abuse or neglect of any other child of, or the responsibility of, the
11 parent or guardian and (2) proof of injuries sustained by a child or of
12 the condition of a child of such a nature as would ordinarily not be
13 sustained or exist except by reason of the acts or omissions of the
14 parent or guardian shall be prima facie evidence that a child of, or who
15 is the responsibility of such person is an abused or neglected child, and
16 (3) any writing, record or photograph, whether in the form of an entry
17 in a book or otherwise, made as a memorandum or record of any
18 condition, act, transaction, occurrence or event relating to a child in
19 an abuse or neglect proceeding of any hospital or any other public or
20 private institution or agency shall be admissible in evidence in proof of
21 that condition, act, transaction, occurrence or event, if the judge finds
22 that it was made in the regular course of the business of any hospital
23 or any other public or private institution or agency, and that it was in
24 the regular course of such business to make it, at the time of the
25 condition, act, transaction, occurrence or event, or within a reasonable
26 time thereafter, shall be prima facie evidence of the facts contained in
27 such certification. A certification by someone other than the head of
28 the hospital or agency shall be accompanied by a photocopy of a
29 delegation of authority signed by both the head of the hospital or
30 agency and by such other employees. All other circumstances of the
31 making of the memorandum, record or photograph, including lack of
32 personal knowledge of the making, may be proved to affect its
33 weight, but they shall not affect its admissibility and (4) previous
34 statements made by the child relating to any allegations of abuse or
35 neglect shall be admissible in evidence; provided, however, that no
36 such statement, if uncorroborated, shall be sufficient to make a fact
37 finding of abuse or neglect.

38 b. In a fact-finding hearing (1) any determination that the child is
39 an abused or neglected child must be based on a preponderance of the
40 evidence and (2) only competent, material and relevant evidence may
41 be admitted.

42 c. In a dispositional hearing and during all other stages of a
43 proceeding under this act, only material and relevant evidence may be

1 admitted.

2 (cf: P. L.1977, c.209, s.22)

3

4 3. R.S.30:1-9 is amended to read as follows:

5 30:1-9. The commissioner may create within the department such
6 divisions as he may deem necessary. Each division shall be under the
7 supervision of a director or assistant commissioner, who shall be
8 qualified by training and experience, appointed by and receive the
9 compensation fixed by the commissioner, except where otherwise
10 provided by statute, and shall devote his entire time to the
11 performance of his duties.

12 The commissioner may in his discretion combine the duties of two
13 or more divisions under one head.

14 The division directors or assistant commissioners shall perform such
15 services and exercise such powers at such times and places as the
16 commissioner shall prescribe.

17 (cf: P.L.1974, c.44, s.2)

18

19 4. Section 2 of P.L.1951, c.138 (C.30:4C-2) is amended to read as
20 follows:

21 2. For the purposes of this act the following words and terms
22 shall, unless otherwise indicated, be deemed and taken to have the
23 meanings herein given to them:

24 (a) The term "Division of Youth and Family Services," or
25 "division," successor to the "Bureau of Children's Services" means the
26 State agency for the care, custody, guardianship, maintenance and
27 protection of children, as more specifically described by the provisions
28 of this act, and succeeding the agency heretofore variously designated
29 by the laws of this State as the State Board of Child Welfare or the
30 State Board of Children's Guardians.

31 (b) The word "child" includes stepchild and illegitimate child, and
32 further means any person under the age of 18 years.

33 (c) The term "care" means cognizance of a child for the purpose of
34 providing necessary welfare services, or maintenance, or both.

35 (d) The term "custody" means continuing responsibility for the
36 person of a child, as established by a surrender and release of custody
37 or consent to adoption, for the purpose of providing necessary welfare
38 services, or maintenance, or both.

39 (e) The term "guardianship" means control over the person and
40 property of a child as established by the order of a court of competent
41 jurisdiction, and as more specifically defined by the provisions of this
42 act. Guardianship by the Division of Youth and Family Services shall
43 be treated as guardianship by the Commissioner of Human Services
44 exercised on his behalf wholly by and in the name of the Division of
45 Youth and Family Services, acting through the chief executive officer
46 of the division or his authorized representative. Such exercise of

1 guardianship by the division shall be at all times and in all respects
2 subject to the supervision of the commissioner.

3 (f) The term "maintenance" means moneys expended by the
4 Division of Youth and Family Services to procure board, lodging,
5 clothing, medical, dental, and hospital care, or any other similar or
6 specialized commodity or service furnished to, on behalf of, or for a
7 child pursuant to the provisions of this act; maintenance also includes
8 but is not limited to moneys expended for shelter, utilities, food,
9 repairs, essential household equipment, and other expenditures to
10 remedy situations of an emergent nature to permit, as far as
11 practicable, children to continue to live with their families.

12 (g) The term "welfare services" means consultation, counseling,
13 and referral to or utilization of available resources, for the purpose of
14 determining and correcting or adjusting matters and circumstances
15 which are endangering the welfare of a child, and for the purpose of
16 promoting his proper development and adjustment in the family and
17 the community.

18 (h) The term "resource family parent" means any person other
19 than a natural or adoptive parent with whom a child in the care,
20 custody or guardianship of the Department of Human Services is
21 placed by the department, or with its approval, for [temporary or
22 long-term] care, and shall include any person with whom a child is
23 placed by the division for the purpose of adoption until the adoption
24 is finalized.

25 (i) The term "resource family home" means and includes private
26 residences[, group homes, residential facilities and institutions]
27 wherein any child in the care, custody or guardianship of the
28 Department of Human Services may be placed by the department, or
29 with its approval, for [temporary or long-term] care, and shall include
30 any private residence maintained by persons with whom any such child
31 is placed by the division for the purpose of adoption until the adoption
32 is finalized.

33 (j) The singular includes the plural form.

34 (k) The masculine noun and pronoun include the feminine.

35 (l) The word "may" shall be construed to be permissive.

36 (m) The term "group home" means and includes any single family
37 dwelling used in the placement of 12 children or less pursuant to law,
38 recognized as a group home by the Department of Human Services in
39 accordance with rules and regulations adopted by the Commissioner
40 of Human Services; provided, however, that no group home shall
41 contain more than 12 children.

42 (n) The term "youth facility" means a facility within this State used
43 to house or provide services to children under this act, including but
44 not limited to group homes, residential facilities, day care centers, and
45 day treatment centers.

46 (o) The term "youth facility aid" means aid provided by the

1 Division of Youth and Family Services to public, private or voluntary
2 agencies to purchase, construct, renovate, repair, upgrade or
3 otherwise improve a youth facility in consideration for an agreement
4 for the agency to provide residential care, day treatment or other
5 youth services for children in need of such services.

6 (p) The term "day treatment center" means a facility used to
7 provide counseling, supplemental educational services, therapy, and
8 other related services to children for whom it has been determined that
9 such services are necessary, but is not used to house these children in
10 a residential setting.

11 (q) The term "residential facility" means a facility used to house
12 and provide treatment and other related services on a 24-hour basis to
13 children determined to be in need of such housing and services.

14 (r) The term "legally responsible person" means the natural or
15 adoptive parent, or the spouse of a child receiving maintenance from
16 or through the Division of Youth and Family Services.

17 (s) "Commissioner" means the Commissioner of Human Services.

18 (t) "Department" means the Department of Human Services.

19 (cf: P.L.2004, c.130, s.47)

20

21 5. Section 1 of P.L.1962, c.137 (C.30:4C-26.1) is amended to read
22 as follows:

23 1. As used in this act "resource family home" means and includes
24 private residences[, group homes and institutions] wherein any child
25 in the care, custody or guardianship of the [Division of Youth and
26 Family] Department of Human Services[,] may be placed by the
27 department, or with its approval, for [temporary or long-term] care,
28 and shall include any private residence maintained by persons with
29 whom any such child is placed by the [division] Division of Youth and
30 Family Services for the purpose of adoption until the adoption is
31 finalized.

32 (cf: P.L.2004, c.130, s.59)

33

34 6. Section 1 of P.L.1962, c.136 (C30:4C-26.4) is amended to read
35 as follows:

36 1. As used in this act "resource family parent" shall mean any
37 person with whom a child in the care, custody or guardianship of the
38 [Division of Youth and Family] Department of Human Services[,]
39 is placed by the department, or with its approval, for [temporary or
40 long-term] care and shall include any person with whom a child is
41 placed by the [division] Division of Youth and Family Services for the
42 purpose of adoption until the adoption is finalized.

43 (cf: P.L.2004, c.130, s.61)

44

45 7. Section 1 of P.L.1962, c.139 (C.30:4C-26.6) is amended to

1 read as follows:

2 1. As used in this act "resource family parent" shall mean any
3 person with whom a child in the care, custody or guardianship of the
4 [Division of Youth and Family] Department of Human Services[,] is
5 placed by the department, or with its approval, for [temporary or
6 long-term] care and shall include any person with whom a child is
7 placed by the [division] Division of Youth and Family Services for the
8 purpose of adoption until the adoption is finalized.

9 (cf: P.L.2004, c.130, s.63)

10

11 8. Section 1 of P.L.1985, c.396 (C.30:4C-26.8) is amended to
12 read as follows:

13 1. a. A person, in addition to meeting other requirements as may
14 be established by the Department of Human Services, shall become a
15 resource family parent or eligible to adopt a child only upon the
16 completion of an investigation to ascertain if there is a State or federal
17 record of criminal history for the prospective adoptive or resource
18 family parent or any other adult residing in the prospective parent's
19 home. The investigation shall be conducted by the Division of State
20 Police in the Department of Law and Public Safety and shall include
21 an examination of its own files and the obtaining of a similar
22 examination by federal authorities.

23 b. If the prospective resource family parent or any adult residing
24 in the prospective parent's home has a record of criminal history, the
25 Department of Human Services shall review the record with respect to
26 the type and date of the criminal offense and make a determination as
27 to the suitability of the person to become a resource family parent or
28 the suitability of placing a child in that person's home, as the case may
29 be.

30 c. For the purposes of this section, a conviction for one of the
31 offenses enumerated in subsection d. or e. of this section has occurred
32 if the person has been convicted under the laws of this State or any
33 other state or jurisdiction for an offense that is substantially equivalent
34 to the offenses enumerated in these subsections.

35 d. A person shall be disqualified from being a resource family
36 parent or shall not be eligible to adopt a child if that person or any
37 adult residing in that person's household ever committed a crime which
38 resulted in a conviction for:

39 (1) a crime against a child, including endangering the welfare of a
40 child and child pornography pursuant to N.J.S.2C:24-4; or child abuse,
41 neglect, or abandonment pursuant to R.S.9:6-3;

42 (2) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to
43 N.J.S.2C:11-4;

44 (3) aggravated assault which would constitute a crime of the
45 second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

46 (4) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);

1 (5) kidnapping and related offenses including criminal restraint;
2 false imprisonment; interference with custody; criminal coercion; or
3 enticing a child into a motor vehicle, structure, or isolated area
4 pursuant to N.J.S.2C:13-1 through 2C:13-6;

5 (6) sexual assault, criminal sexual contact or lewdness pursuant to
6 N.J.S.2C:14-2 through N.J.S.2C:14-4;

7 (7) robbery which would constitute a crime of the first degree
8 pursuant to N.J.S.2C:15-1;

9 (8) burglary which would constitute a crime of the second degree
10 pursuant to N.J.S.2C:18-2;

11 (9) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et
12 seq.);

13 (10) endangering the welfare of an incompetent person pursuant to
14 N.J.S.2C:24-7 or endangering the welfare of an elderly or disabled
15 person pursuant to N.J.S.2C:24-8;

16 (11) terrorist threats pursuant to N.J.S.2C:12-3;

17 (12) arson pursuant to N.J.S.2C:17-1, or causing or risking
18 widespread injury or damage which would constitute a crime of the
19 second degree pursuant to N.J.S.2C:17-2; or

20 (13) an attempt or conspiracy to commit an offense listed in
21 paragraphs (1) through (12) of this subsection.

22 e. A person shall be disqualified from being a resource family
23 parent if that person or any adult residing in that person's household
24 was convicted of one of the following crimes and the date of release
25 from confinement occurred during the preceding five years:

26 (1) simple assault pursuant to subsection a. of N.J.S.2C:12-1;

27 (2) aggravated assault which would constitute a crime of the fourth
28 degree pursuant to subsection b. of N.J.S.2C:12-1;

29 (3) a drug-related crime pursuant to P.L.1987, c.106 (C.2C:35-1
30 et seq.);

31 (4) robbery which would constitute a crime of the second degree
32 pursuant to N.J.S.2C:15-1;

33 (5) burglary which would constitute a crime of the third degree
34 pursuant to N.J.S.2C:18-2; or

35 (6) an attempt or conspiracy to commit an offense listed in
36 paragraphs (1) through (5) of this subsection.

37 For the purposes of this subsection, the "date of release from
38 confinement" means the date of termination of court-ordered
39 supervision through probation, parole, or residence in a correctional
40 facility, whichever date occurs last.

41 For purposes of this section, "resource family parent" means any
42 person with whom a child in the care, custody or guardianship of the
43 [Division of Youth and] Department of Human Services is placed by
44 the department, or with its approval, for [temporary or long-term]
45 care and shall include any person with whom a child is placed by the
46 [division] Division of Youth and Family Services for the purpose of

1 adoption until the adoption is finalized.

2 (cf: P.L.2004, c.130, s.65)

3
4 9. Section 1 of P.L.1989, c.21 (C.30:4C-26.9) is amended to read
5 as follows:

6 1. The Department of Human Services may grant approval to a
7 prospective resource family parent for a period not to exceed six
8 months, upon completion of the State portion of the criminal history
9 record investigation required pursuant to P.L.1985, c.396
10 (C.30:4C-26.8), pending completion and review of the federal portion
11 of the criminal history record investigation required pursuant to that
12 act, if (1) the State portion of the criminal history record investigation
13 indicates no information which would disqualify the person, (2) the
14 prospective resource family parent and any adult residing in the
15 prospective resource family parent's home submit a sworn statement
16 to the Department of Human Services attesting that the person does
17 not have a record of criminal history which would disqualify the
18 person and (3) there is substantial compliance with department
19 standards for resource family homes indicating there is no risk to a
20 child's health or safety.

21 For purposes of this section, "resource family parent" means any
22 person with whom a child in the care, custody or guardianship of the
23 [Division of Youth and] Department of Human Services is placed by
24 the department, or with its approval, for [temporary or long-term]
25 care and shall [not] include any person with whom a child is placed by
26 the [division] Division of Youth and Family Services for the purpose
27 of adoption until the adoption is finalized.

28 (cf: P.L.2004, c.130, s.66)

29
30 10. Section 1 of P.L.1962, c.135 (C.30:4C-27.1) is amended to
31 read as follows:

32 1. As used in this act "resource family parent" shall mean any
33 person with whom a child in the care, custody or guardianship of the
34 [Division of Youth and Family] Department of Human Services[,] is
35 placed by the department, or with its approval, for [temporary or
36 long-term] care and shall include any person with whom a child is
37 placed by the [division] Division of Youth and Family Services for the
38 purpose of adoption until the adoption is finalized.

39 (cf: P.L.2004, c.130, s.68)

40
41 11. Section 3 of P.L.2001, c.419 (C.30:4C-27.5) is amended to
42 read as follows:

43 3. As used in this act:

44 "Child" means a person who: is either under the age of 18 or meets
45 the criteria set forth in subsection f. of section 2 of P.L.1972, c.81
46 (C.9:17B-2); and is under the care or custody of the division or

1 another public or private agency authorized to place children in New
2 Jersey.

3 "Commissioner" means the Commissioner of Human Services.

4 "Department" means the Department of Human Services.

5 "Division" means the Division of Youth and Family Services in the
6 Department of Human Services.

7 "Resource family home" or "home" means a private residence, other
8 than a children's group home or shelter home, in which board, lodging,
9 care and temporary out-of-home placement services are provided by
10 a resource family parent on a 24-hour basis to a child under the
11 auspices of the division or any public or private agency authorized to
12 place children in New Jersey.

13 "Resource family parent" means a person who has been licensed
14 pursuant to this act to provide resource family care to five or fewer
15 children, including a child who has been placed by the division with
16 the person for the purpose of adoption, except that the department
17 may license a resource family parent to provide care for more than five
18 children, if necessary, to keep sibling groups intact or to serve the best
19 interests of the children in the home.

20 "License" means a document issued by the department to a person
21 who meets the requirements of this act to provide resource family care
22 to children in the person's home.

23 (cf: P.L.2004, c.130, s.72)

24

25 12. Section 3 of P.L.1973, c.81 (C.30:4C-47) is amended to read
26 as follows:

27 3. Payments in subsidization of adoption shall include but are not
28 limited to the maintenance costs, medical and surgical expenses, and
29 other costs incidental to the care, training and education of the child.
30 Such payments may not exceed the cost of providing comparable
31 assistance in [foster] resource family care and shall not be made after
32 the adoptive child becomes 18 years of age, except that payments [not
33 to exceed 80% of the costs] shall be made until the child becomes 21
34 years of age [when it is determined by the Division of Youth and
35 Family Services that the needs of the child cannot be adequately met
36 without the payments] if the child is enrolled as a student of a
37 secondary school or its equivalent.

38 (cf: P.L.1983, c.484, s.2)

39

40 13. Section 3 of P.L.1977, c.424 (C.30:4C-52) is amended to read
41 as follows:

42 3. As used in this act, unless the context indicates otherwise:

43 a. "Child" means any person less than 18 years of age;

44 b. "Child placed outside his home" means a child under the care,
45 custody or guardianship of the division[, through voluntary agreement
46 or court order,] who resides in a resource family home, group home,

1 residential treatment facility, shelter for the care of abused or
2 neglected children or juveniles considered as juvenile-family crisis
3 cases, or independent living arrangement operated by or approved for
4 payment by the division, or a child who has been placed by the division
5 in the home of a person who is not related to the child and does not
6 receive any payment for the care of the child from the division, or a
7 child placed by the court in juvenile-family crisis cases pursuant to
8 P.L.1982, c.77 (C.2A:4A-20 et seq.), but does not include a child
9 placed by the court in the home of a person related to the child who
10 does not receive any payment from the division for the care of the
11 child;

12 c. "County of supervision" means the county in which the division
13 has established responsibility for supervision of the child;

14 d. "Division" means the Division of Youth and Family Services in
15 the Department of Human Services;

16 e. "Temporary caretaker" means a resource family parent as
17 defined in section 1 of P.L.1962, c.136 (C.30:4C-26.4) or a director
18 of a group home or residential treatment facility;

19 f. "Designated agency" means an agency designated by the court
20 pursuant to P.L.1982, c.80 (C.2A:4A-76 et seq.) to develop a family
21 services plan.

22 (cf: P.L.2004, c.130, s.83)

23

24 14. Section 5 of P.L.1977, 424 (C.30:4C-54) is amended to read
25 as follows:

26 5. The court shall, within 15 days following receipt of the notice
27 of the initial placement pursuant to a voluntary agreement, determine,
28 based solely upon the petition and other affidavits and written
29 materials submitted to the court, whether or not reasonable efforts
30 have been made to prevent the placement and whether or not the
31 continuation of the child in his home would be contrary to the welfare
32 of the child, and either approve the placement or order the return of
33 the child to his home, except that, lack of reasonable efforts to prevent
34 placement shall not be the sole basis for the court's order of a return
35 of the child to his home.

36 If the division has documented an exception to the requirement to
37 provide reasonable efforts towards family reunification, the court shall
38 make a finding of whether reasonable efforts are required in
39 accordance with section 25 of P.L.1999, c.53 (C.30:4C-11.3). The
40 child's health, safety and need for permanency shall be of paramount
41 concern to the court when it makes its finding.

42 The court also may require the submission of supplementary
43 material or schedule a summary hearing if:

44 a. The court has before it conflicting statements of material fact;

45 b. The court determines that it is in the best interest of the child;

46 or

1 c. The child's parents or legal guardian requests the hearing.

2 The court shall provide written notice to the parties involved in the
3 hearing at least five days prior to the hearing. The court shall provide
4 written notice of the date, time and place of such hearing to the
5 parents or legal guardian of the child, the child or the child's counsel,
6 the child's temporary caretaker, the division, and any other party the
7 court deems appropriate. If the child's caretaker is a [foster] resource
8 family parent, preadoptive parent or relative, the caretaker shall
9 receive written notice of and an opportunity to be heard at the hearing,
10 but the caretaker shall not be made a party to the hearing solely on the
11 basis of the notice and opportunity to be heard.

12 (cf: P.L.1999, c.53, s.43)

13

14 15. Section 7 of P.L.2001, c.250 (C.30:4C-84) is amended to read
15 as follows:

16 7. As used in sections 7 through 10 of P.L.2001, c.250
17 (C.30:4C-84 et seq.):

18 "Caregiver" means a person over 18 years of age, other than a
19 child's parent, who has a kinship relationship with the child and has
20 been providing care and support for the child, while the child has been
21 residing in the caregiver's home, for [at least] either the last 12
22 consecutive months or 15 of the last 22 months.

23 "Child" means a person under 18 years of age, except as otherwise
24 provided in P.L.2001, c.250 (C.3B:12A-1 et al.).

25 "Commissioner" means the Commissioner of Human Services.

26 "Court" means the Superior Court, Chancery Division, Family Part.

27 "Division" means the Division of Youth and Family Services in the
28 Department of Human Services.

29 "Kinship caregiver assessment" means a written report prepared in
30 accordance with the provisions of P.L.2001, c.250 (C.3B:12A-1 et al.)
31 and pursuant to regulations adopted by the commissioner.

32 "Kinship legal guardian" means a caregiver who is willing to assume
33 care of a child due to parental incapacity, with the intent to raise the
34 child to adulthood, and who is appointed the kinship legal guardian of
35 the child by the court pursuant to P.L.2001, c.250 (C.3B:12A-1 et al.).
36 A kinship legal guardian shall be responsible for the care and
37 protection of the child and for providing for the child's health,
38 education and maintenance.

39 "Kinship relationship" means a family friend or a person with a
40 biological or legal relationship with the child.

41 (cf: P.L.2001, c.250, s.7)

42

43 16. Section 8 of P.L.2001, c.250 (C.30:4C-85) is amended to read
44 as follow:

45 8. a. In the case of a child who has been removed from his home by
46 the division within the last 12 months, or for whom the division has an

1 open or currently active case and where legal representation is
2 currently being provided by the Office of the Public Defender either
3 through its Law Guardian Program or Parental Representation Unit:

4 (1) The kinship caregiver assessment required pursuant to section
5 5 of P.L.2001, c.250 (C.3B:12A-5) shall be conducted by the division,
6 at no cost to the caregiver.

7 (2) An indigent parent and child shall be afforded the same right to
8 legal counsel and representation as in actions under P.L.1974, c.119
9 (C.9:6-8.21 et seq.) and section 54 of P.L.1999, c.53 (C.30:4C-15.4).

10 (3) In cases where the child has been placed in the caregiver's home
11 by the division and the child has resided in the caregiver's home for [at
12 least] either the last 12 consecutive months or 15 of the last 22
13 months, the caregiver shall obtain the consent of the division in order
14 to petition the court for the appointment of the caregiver as kinship
15 legal guardian of the child. The appointment of a kinship legal
16 guardian for a child shall be considered by the court as the permanent
17 placement for the child.

18 b. In all cases other than those specified in subsection a. of this
19 section:

20 (1) The kinship caregiver assessment required pursuant to section
21 5 of P.L.2001, c.250 (C.3B:12A-5) shall be conducted by an agency
22 in accordance with regulations adopted by the commissioner.

23 (2) The costs for the kinship caregiver assessment shall be borne
24 by the department in cases where a financially eligible individual is
25 applying for cash assistance under a kinship care program or pilot
26 program provided by the department, for which kinship legal
27 guardianship is a requirement for receiving such assistance. For all
28 other cases under this subsection, the caregiver shall be responsible for
29 all of the costs of the kinship caregiver assessment.

30 (cf: P.L.2001, c.250, s.8)

31

32 17. Section 3 of P.L.1968, c.413 (C.30:4D-3) is amended to read
33 as follows:

34 3. Definitions. As used in this act, and unless the context
35 otherwise requires:

36 a. "Applicant" means any person who has made application for
37 purposes of becoming a "qualified applicant."

38 b. "Commissioner" means the Commissioner of Human Services.

39 c. "Department" means the Department of Human Services, which
40 is herein designated as the single State agency to administer the
41 provisions of this act.

42 d. "Director" means the Director of the Division of Medical
43 Assistance and Health Services.

44 e. "Division" means the Division of Medical Assistance and
45 Health Services.

46 f. "Medicaid" means the New Jersey Medical Assistance and

1 Health Services Program.

2 g. "Medical assistance" means payments on behalf of recipients to
3 providers for medical care and services authorized under this act.

4 h. "Provider" means any person, public or private institution,
5 agency or business concern approved by the division lawfully
6 providing medical care, services, goods and supplies authorized under
7 this act, holding, where applicable, a current valid license to provide
8 such services or to dispense such goods or supplies.

9 i. "Qualified applicant" means a person who is a resident of this
10 State, and either a citizen of the United States or an eligible alien, and
11 is determined to need medical care and services as provided under this
12 act, with respect to whom the period for which eligibility to be a
13 recipient is determined shall be the maximum period permitted under
14 federal law, and who:

15 (1) Is a dependent child or parent or caretaker relative of a
16 dependent child who would be, except for resources, eligible for the
17 [temporary assistance for needy families] aid to families with
18 dependent children program under the State Plan for Title IV-A of the
19 federal Social Security Act as of July 16, 1996;

20 (2) Is a recipient of Supplemental Security Income for the Aged,
21 Blind and Disabled under Title XVI of the Social Security Act;

22 (3) Is an "ineligible spouse" of a recipient of Supplemental Security
23 Income for the Aged, Blind and Disabled under Title XVI of the Social
24 Security Act, as defined by the federal Social Security Administration;

25 (4) Would be eligible to receive Supplemental Security Income
26 under Title XVI of the federal Social Security Act or, without regard
27 to resources, would be eligible for the [temporary assistance for needy
28 families] aid to families with dependent children program under the
29 State Plan for Title IV-A of the federal Social Security Act as of July
30 16, 1996, except for failure to meet an eligibility condition or
31 requirement imposed under such State program which is prohibited
32 under Title XIX of the federal Social Security Act such as a durational
33 residency requirement, relative responsibility, consent to imposition of
34 a lien;

35 (5) (Deleted by amendment, P.L.2000, c.71).

36 (6) Is an individual under 21 years of age who, without regard to
37 resources, would be, except for dependent child requirements, eligible
38 for the [temporary assistance for needy families] aid to families with
39 dependent children program under the State Plan for Title IV-A of the
40 federal Social Security Act as of July 16, 1996, or groups of such
41 individuals, including but not limited to, children in resource family
42 placement under supervision of the Division of Youth and Family
43 Services whose maintenance is being paid in whole or in part from
44 public funds, children placed in a resource family home or institution
45 by a private adoption agency in New Jersey or children in intermediate
46 care facilities, including developmental centers for the developmentally

1 disabled, or in psychiatric hospitals;

2 (7) Would be eligible for the Supplemental Security Income
3 program, but is not receiving such assistance and applies for medical
4 assistance only;

5 (8) Is determined to be medically needy and meets all the eligibility
6 requirements described below:

7 (a) The following individuals are eligible for services, if they are
8 determined to be medically needy:

9 (i) Pregnant women;

10 (ii) Dependent children under the age of 21;

11 (iii) Individuals who are 65 years of age and older; and

12 (iv) Individuals who are blind or disabled pursuant to either 42
13 C.F.R.435.530 et seq. or 42 C.F.R.435.540 et seq., respectively.

14 (b) The following income standard shall be used to determine
15 medically needy eligibility:

16 (i) For one person and two person households, the income
17 standard shall be the maximum allowable under federal law, but shall
18 not exceed 133 1/3% of the State's payment level to two person
19 households under the [temporary assistance for needy families] aid to
20 families with dependent children program under the State Plan for
21 Title IV-A of the federal Social Security Act in effect as of July 16,
22 1996; and

23 (ii) For households of three or more persons, the income standard
24 shall be set at 133 1/3% of the State's payment level to similar size
25 households under the [temporary assistance for needy families] aid to
26 families with dependent children program under the State Plan for
27 Title IV-A of the federal Social Security Act in effect as of July 16,
28 1996.

29 (c) The following resource standard shall be used to determine
30 medically needy eligibility:

31 (i) For one person households, the resource standard shall be
32 200% of the resource standard for recipients of Supplemental Security
33 Income pursuant to 42 U.S.C. s.1382(1)(B);

34 (ii) For two person households, the resource standard shall be
35 200% of the resource standard for recipients of Supplemental Security
36 Income pursuant to 42 U.S.C. s.1382(2)(B);

37 (iii) For households of three or more persons, the resource
38 standard in subparagraph (c)(ii) above shall be increased by \$100.00
39 for each additional person; and

40 (iv) The resource standards established in (i), (ii), and (iii) are
41 subject to federal approval and the resource standard may be lower if
42 required by the federal Department of Health and Human Services.

43 (d) Individuals whose income exceeds those established in
44 subparagraph (b) of paragraph (8) of this subsection may become
45 medically needy by incurring medical expenses as defined in 42
46 C.F.R.435.831(c) which will reduce their income to the applicable

1 medically needy income established in subparagraph (b) of paragraph
2 (8) of this subsection.

3 (e) A six-month period shall be used to determine whether an
4 individual is medically needy.

5 (f) Eligibility determinations for the medically needy program shall
6 be administered as follows:

7 (i) County welfare agencies and other entities designated by the
8 commissioner are responsible for determining and certifying the
9 eligibility of pregnant women and dependent children. The division
10 shall reimburse county welfare agencies for 100% of the reasonable
11 costs of administration which are not reimbursed by the federal
12 government for the first 12 months of this program's operation.
13 Thereafter, 75% of the administrative costs incurred by county welfare
14 agencies which are not reimbursed by the federal government shall be
15 reimbursed by the division;

16 (ii) The division is responsible for certifying the eligibility of
17 individuals who are 65 years of age and older and individuals who are
18 blind or disabled. The division may enter into contracts with county
19 welfare agencies to determine certain aspects of eligibility. In such
20 instances the division shall provide county welfare agencies with all
21 information the division may have available on the individual.

22 The division shall notify all eligible recipients of the Pharmaceutical
23 Assistance to the Aged and Disabled program, P.L.1975, c.194
24 (C.30:4D-20 et seq.) on an annual basis of the medically needy
25 program and the program's general requirements. The division shall
26 take all reasonable administrative actions to ensure that
27 Pharmaceutical Assistance to the Aged and Disabled recipients, who
28 notify the division that they may be eligible for the program, have their
29 applications processed expeditiously, at times and locations convenient
30 to the recipients; and

31 (iii) The division is responsible for certifying incurred medical
32 expenses for all eligible persons who attempt to qualify for the
33 program pursuant to subparagraph (d) of paragraph (8) of this
34 subsection;

35 (9) (a) Is a child who is at least one year of age and under 19 years
36 of age and, if older than six years of age but under 19 years of age, is
37 uninsured; and

38 (b) Is a member of a family whose income does not exceed 133%
39 of the poverty level and who meets the federal Medicaid eligibility
40 requirements set forth in section 9401 of Pub.L.99-509 (42 U.S.C.
41 s.1396a);

42 (10) Is a pregnant woman who is determined by a provider to be
43 presumptively eligible for medical assistance based on criteria
44 established by the commissioner, pursuant to section 9407 of
45 Pub.L.99-509 (42 U.S.C. s.1396a(a));

46 (11) Is an individual 65 years of age and older, or an individual

1 who is blind or disabled pursuant to section 301 of Pub.L.92-603 (42
2 U.S.C. s.1382c), whose income does not exceed 100% of the poverty
3 level, adjusted for family size, and whose resources do not exceed
4 100% of the resource standard used to determine medically needy
5 eligibility pursuant to paragraph (8) of this subsection;

6 (12) Is a qualified disabled and working individual pursuant to
7 section 6408 of Pub.L.101-239 (42 U.S.C. s.1396d) whose income
8 does not exceed 200% of the poverty level and whose resources do
9 not exceed 200% of the resource standard used to determine eligibility
10 under the Supplemental Security Income Program, P.L.1973, c.256
11 (C.44:7-85 et seq.);

12 (13) Is a pregnant woman or is a child who is under one year of
13 age and is a member of a family whose income does not exceed 185%
14 of the poverty level and who meets the federal Medicaid eligibility
15 requirements set forth in section 9401 of Pub.L.99-509 (42 U.S.C.
16 s.1396a), except that a pregnant woman who is determined to be a
17 qualified applicant shall, notwithstanding any change in the income of
18 the family of which she is a member, continue to be deemed a qualified
19 applicant until the end of the 60-day period beginning on the last day
20 of her pregnancy;

21 (14) (Deleted by amendment, P.L.1997, c.272).

22 (15) (a) Is a specified low-income Medicare beneficiary pursuant to
23 42 U.S.C. s.1396a(a)10(E)iii whose resources beginning January 1,
24 1993 do not exceed 200% of the resource standard used to determine
25 eligibility under the Supplemental Security Income program, P.L.1973,
26 c.256 (C.44:7-85 et seq.) and whose income beginning January 1,
27 1993 does not exceed 110% of the poverty level, and beginning
28 January 1, 1995 does not exceed 120% of the poverty level.

29 (b) An individual who has, within 36 months, or within 60 months
30 in the case of funds transferred into a trust, of applying to be a
31 qualified applicant for Medicaid services in a nursing facility or a
32 medical institution, or for home or community-based services under
33 section 1915(c) of the federal Social Security Act (42 U.S.C.
34 s.1396n(c)), disposed of resources or income for less than fair market
35 value shall be ineligible for assistance for nursing facility services, an
36 equivalent level of services in a medical institution, or home or
37 community-based services under section 1915(c) of the federal Social
38 Security Act (42 U.S.C. s.1396n(c)). The period of the ineligibility
39 shall be the number of months resulting from dividing the
40 uncompensated value of the transferred resources or income by the
41 average monthly private payment rate for nursing facility services in
42 the State as determined annually by the commissioner. In the case of
43 multiple resource or income transfers, the resulting penalty periods
44 shall be imposed sequentially. Application of this requirement shall be
45 governed by 42 U.S.C. s.1396p(c). In accordance with federal law,
46 this provision is effective for all transfers of resources or income made

1 on or after August 11, 1993. Notwithstanding the provisions of this
2 subsection to the contrary, the State eligibility requirements
3 concerning resource or income transfers shall not be more restrictive
4 than those enacted pursuant to 42 U.S.C. s.1396p(c).

5 (c) An individual seeking nursing facility services or home or
6 community-based services and who has a community spouse shall be
7 required to expend those resources which are not protected for the
8 needs of the community spouse in accordance with section 1924(c) of
9 the federal Social Security Act (42 U.S.C. s.1396r-5(c)) on the costs
10 of long-term care, burial arrangements, and any other expense deemed
11 appropriate and authorized by the commissioner. An individual shall
12 be ineligible for Medicaid services in a nursing facility or for home or
13 community-based services under section 1915(c) of the federal Social
14 Security Act (42 U.S.C. s.1396n(c)) if the individual expends funds in
15 violation of this subparagraph. The period of ineligibility shall be the
16 number of months resulting from dividing the uncompensated value of
17 transferred resources and income by the average monthly private
18 payment rate for nursing facility services in the State as determined by
19 the commissioner. The period of ineligibility shall begin with the
20 month that the individual would otherwise be eligible for Medicaid
21 coverage for nursing facility services or home or community-based
22 services.

23 This subparagraph shall be operative only if all necessary approvals
24 are received from the federal government including, but not limited to,
25 approval of necessary State plan amendments and approval of any
26 waivers;

27 (16) Subject to federal approval under Title XIX of the federal
28 Social Security Act, is a dependent child, parent or specified caretaker
29 relative of a child who is a qualified applicant, who would be eligible,
30 without regard to resources, for the [temporary assistance for needy
31 families] aid to families with dependent children program under the
32 State Plan for Title IV-A of the federal Social Security Act as of July
33 16, 1996, except for the income eligibility requirements of that
34 program, and whose family earned income does not exceed 133% of
35 the poverty level plus such earned income disregards as shall be
36 determined according to a methodology to be established by regulation
37 of the commissioner;

38 (17) Is an individual from 18 through 20 years of age who is not
39 a dependent child and would be eligible for medical assistance
40 pursuant to P.L.1968, c.413 (C.30:4D-1 et seq.), without regard to
41 income or resources, who, on the individual's 18th birthday was in
42 resource family care under the care and custody of the Division of
43 Youth and Family Services and whose maintenance was being paid in
44 whole or in part from public funds;

45 (18) Is a person between the ages of 16 and 65 who is permanently
46 disabled and working, and:

- 1 (a) whose income is at or below 250% of the poverty level, plus
2 other established disregards;
- 3 (b) who pays the premium contribution and other cost sharing as
4 established by the commissioner, subject to the limits and conditions
5 of federal law; and
- 6 (c) whose assets, resources and unearned income do not exceed
7 limitations as established by the commissioner; or
- 8 (19) Is an uninsured individual under 65 years of age who:
- 9 (a) has been screened for breast or cervical cancer under the
10 federal Centers for Disease Control and Prevention breast and cervical
11 cancer early detection program;
- 12 (b) requires treatment for breast or cervical cancer based upon
13 criteria established by the commissioner;
- 14 (c) has an income that does not exceed the income standard
15 established by the commissioner pursuant to federal guidelines;
- 16 (d) meets all other Medicaid eligibility requirements; and
- 17 (e) in accordance with Pub.L.106-354, is determined by a qualified
18 entity to be presumptively eligible for medical assistance pursuant to
19 42 U.S.C. s.1396a(aa), based upon criteria established by the
20 commissioner pursuant to section 1920B of the federal Social Security
21 Act (42 U.S.C. s.1396r-1b).
- 22 j. "Recipient" means any qualified applicant receiving benefits
23 under this act.
- 24 k. "Resident" means a person who is living in the State voluntarily
25 with the intention of making his home here and not for a temporary
26 purpose. Temporary absences from the State, with subsequent returns
27 to the State or intent to return when the purposes of the absences have
28 been accomplished, do not interrupt continuity of residence.
- 29 l. "State Medicaid Commission" means the Governor, the
30 Commissioner of Human Services, the President of the Senate and the
31 Speaker of the General Assembly, hereby constituted a commission to
32 approve and direct the means and method for the payment of claims
33 pursuant to this act.
- 34 m. "Third party" means any person, institution, corporation,
35 insurance company, group health plan as defined in section 607(1) of
36 the federal "Employee Retirement and Income Security Act of 1974,"
37 29 U.S.C. s.1167(1), service benefit plan, health maintenance
38 organization, or other prepaid health plan, or public, private or
39 governmental entity who is or may be liable in contract, tort, or
40 otherwise by law or equity to pay all or part of the medical cost of
41 injury, disease or disability of an applicant for or recipient of medical
42 assistance payable under this act.
- 43 n. "Governmental peer grouping system" means a separate class
44 of skilled nursing and intermediate care facilities administered by the
45 State or county governments, established for the purpose of screening
46 their reported costs and setting reimbursement rates under the

1 Medicaid program that are reasonable and adequate to meet the costs
2 that must be incurred by efficiently and economically operated State
3 or county skilled nursing and intermediate care facilities.

4 o. "Comprehensive maternity or pediatric care provider" means
5 any person or public or private health care facility that is a provider
6 and that is approved by the commissioner to provide comprehensive
7 maternity care or comprehensive pediatric care as defined in
8 subsection b. (18) and (19) of section 6 of P.L.1968, c.413
9 (C.30:4D-6).

10 p. "Poverty level" means the official poverty level based on family
11 size established and adjusted under Section 673(2) of Subtitle B, the
12 "Community Services Block Grant Act," of Pub.L.97-35 (42 U.S.C.
13 s.9902(2)).

14 q. "Eligible alien" means one of the following:

15 (1) an alien present in the United States prior to August 22, 1996,
16 who is:

17 (a) a lawful permanent resident;

18 (b) a refugee pursuant to section 207 of the federal "Immigration
19 and Nationality Act" (8 U.S.C. s.1157);

20 (c) an asylee pursuant to section 208 of the federal "Immigration
21 and Nationality Act" (8 U.S.C. s.1158);

22 (d) an alien who has had deportation withheld pursuant to section
23 243(h) of the federal "Immigration and Nationality Act" (8 U.S.C.
24 s.1253 (h));

25 (e) an alien who has been granted parole for less than one year by
26 the U.S. Citizenship and Immigration Services pursuant to section
27 212(d)(5) of the federal "Immigration and Nationality Act" (8 U.S.C.
28 s.1182(d)(5));

29 (f) an alien granted conditional entry pursuant to section 203(a)(7)
30 of the federal "Immigration and Nationality Act" (8 U.S.C.
31 s.1153(a)(7)) in effect prior to April 1, 1980; or

32 (g) an alien who is honorably discharged from or on active duty in
33 the United States armed forces and the alien's spouse and unmarried
34 dependent child.

35 (2) An alien who entered the United States on or after August 22,
36 1996, who is:

37 (a) an alien as described in paragraph (1)(b), (c), (d) or (g) of this
38 subsection; or

39 (b) an alien as described in paragraph (1)(a), (e) or (f) of this
40 subsection who entered the United States at least five years ago.

41 (3) A legal alien who is a victim of domestic violence in
42 accordance with criteria specified for eligibility for public benefits as
43 provided in Title V of the federal "Illegal Immigration Reform and
44 Immigrant Responsibility Act of 1996" (8 U.S.C. s.1641).

45 (cf: P.L.2004, c.130, s.93)

1 custody of a child through a court order pursuant to the provisions of
2 Title 9 of the Revised Statutes (Children);
3 --N.J.S.A.30:4C-47 and 30:4C-54 to update a reference to "foster
4 family" with "resource family";
5 --N.J.S.A.30:4C-84 and 30:4C-85, regarding kinship relationships,
6 to clarify that the definition of "caregiver" includes a person with
7 whom a child has been residing for either the last 12 consecutive
8 months or 15 of the last 22 months; and
9 --N.J.S.A.30:4D-3, concerning the Medicaid program, to make a
10 technical correction to replace references to "temporary assistance for
11 needy families" with "aid to families with dependent children."
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16 Updates provisions in Titles 9 and 30 of the Revised Statutes to
17 conform with DYFS child welfare reform plan.