

ASSEMBLY, No. 69

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH

1 **AN ACT** concerning divorce, supplementing Title 2A of the New
2 Jersey Statutes and amending P.L.1991, c.261.

3

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

6

7 1. (New section) This act shall be known and may be cited as the
8 " Mandatory Parenting Plan Act."

9

10 2. (New section) a. The Legislature finds and declares that by
11 requiring parties in a divorce proceeding to file a parenting plan the
12 State would be assisting these individuals in developing a restructured
13 family which would meet the needs of all the members of the family.
14 The parenting plan would provide for the minor children's physical
15 care, maintain the minor children's emotional stability, and provide for
16 the minor children's changing needs as he or she develops, in a manner
17 which minimizes the need for future modifications to the parenting
18 plan.

19 b. The Legislature further finds that by setting forth the authority
20 and responsibilities of each party with respect to the minor children,
21 the parties would be encouraged to fulfill their parenting
22 responsibilities through agreements in the parenting plan rather than
23 by relying on judicial intervention. The Legislature further finds that
24 setting forth the responsibilities of the parents would assure the minor
25 children of frequent and continuing contact with both parents after the
26 parents have separated or divorced. Furthermore, participation and
27 cooperation by both parties in the minor children's activities would
28 minimize the minor children's exposure to harmful parental conflict and
29 would provide both parties with equal access to the minor children.

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31 3. (New section) a. Each party in an action for divorce, nullity or
32 separate maintenance, where the custody, visitation or support of a

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.

1 minor child is an issue, shall file a parenting plan within 90 days of
2 filing the complaint

3 b. The parenting plan shall determine procedures for the day-to-day
4 care of the minor child. The plan shall also determine procedures for
5 transporting the minor child from one parent to the other parent at the
6 start and conclusion of visitation. Consideration shall be given to the
7 minor child's age and developmental needs. The plan shall include a
8 schedule which designates the time the minor child shall spend with
9 each parent on a weekly basis and on special occasions including, but
10 not limited to, specified religious and secular holidays, birthday and
11 vacations. The plan shall specify how major decisions regarding the
12 minor child's education, health care, and religious upbringing will be
13 made. Regardless of the allocation of the decision making in the
14 parenting plan, the parties shall authorize emergency medical
15 procedures in situations affecting the immediate health of the child.

16 c. The parenting plan shall address only issues regarding parenting
17 functions. Other issues included, but not limited to, property division
18 and financial issues or child support, shall be specifically excluded
19 from the parenting plan.

20 d. Within 45 days from the date the parenting plan was to be filed,
21 the parties are required to file a mutually agreed upon parenting plan.
22 If a mutually agreed upon parenting plan cannot be achieved by the
23 parties, the parties may be referred to mediation. If a parenting plan
24 cannot be achieved through mediation, the matter shall be referred to
25 the court for disposition.

26 e. The court may modify or suspend a parenting plan when an
27 allegation of domestic violence has been proven. The court may also
28 modify or suspend a parenting plan if, after considering the special
29 circumstances surrounding the case, adherence to the plan would not
30 be in the best interest of the child. The court shall issue written
31 findings of fact and an explanation of the reasons for modifying or
32 suspending the plan.

33 f. The court shall make available to each party a "parenting plan
34 kit" which shall include a sample parenting plan.

35

36 4. Section 12 of P.L.1991, c.261 (C.2C:25-28) is amended to read
37 as follows:

38 12. a. A victim may file a complaint alleging the commission of an
39 act of domestic violence with the Family Part of the Chancery Division
40 of the Superior Court in conformity with the rules of court. The court
41 shall not dismiss any complaint or delay disposition of a case because
42 the victim has left the residence to avoid further incidents of domestic
43 violence. Filing a complaint pursuant to this section shall not prevent
44 the filing of a criminal complaint for the same act.

45 On weekends, holidays and other times when the court is closed, a
46 victim may file a complaint before a judge of the Family Part of the

1 Chancery Division of the Superior Court or a municipal court judge
2 who shall be assigned to accept complaints and issue emergency, ex
3 parte relief in the form of temporary restraining orders pursuant to this
4 act.

5 A plaintiff may apply for relief under this section in a court having
6 jurisdiction over the place where the alleged act of domestic violence
7 occurred, where the defendant resides, or where the plaintiff resides
8 or is sheltered, and the court shall follow the same procedures
9 applicable to other emergency applications. Criminal complaints filed
10 pursuant to this act shall be investigated and prosecuted in the
11 jurisdiction where the offense is alleged to have occurred. Contempt
12 complaints filed pursuant to N.J.S.2C:29-9 shall be prosecuted in the
13 county where the contempt is alleged to have been committed and a
14 copy of the contempt complaint shall be forwarded to the court that
15 issued the order alleged to have been violated.

16 b. The court shall waive any requirement that the petitioner's place
17 of residence appear on the complaint.

18 c. The clerk of the court, or other person designated by the court,
19 shall assist the parties in completing any forms necessary for the filing
20 of a summons, complaint, answer or other pleading.

21 d. Summons and complaint forms shall be readily available at the
22 clerk's office, at the municipal courts and at municipal and State police
23 stations.

24 e. As soon as the domestic violence complaint is filed, both the
25 victim and the abuser shall be advised of any programs or services
26 available for advice and counseling.

27 f. A plaintiff may seek emergency, ex parte relief in the nature of
28 a temporary restraining order. A municipal court judge or a judge of
29 the Family Part of the Chancery Division of the Superior Court may
30 enter an ex parte order when necessary to protect the life, health or
31 well-being of a victim on whose behalf the relief is sought.

32 g. If it appears that the plaintiff is in danger of domestic violence,
33 the judge shall, upon consideration of the plaintiff's domestic violence
34 complaint, order emergency ex parte relief, in the nature of a
35 temporary restraining order. A decision shall be made by the judge
36 regarding the emergency relief forthwith.

37 h. A judge may issue a temporary restraining order upon sworn
38 testimony or complaint of an applicant who is not physically present,
39 pursuant to court rules, or by a person who represents a person who
40 is physically or mentally incapable of filing personally. A temporary
41 restraining order may be issued if the judge is satisfied that exigent
42 circumstances exist sufficient to excuse the failure of the applicant to
43 appear personally and that sufficient grounds for granting the
44 application have been shown.

45 i. An order for emergency, ex parte relief shall be granted upon
46 good cause shown and shall remain in effect until a judge of the Family

1 Part issues a further order. Any temporary order hereunder is
2 immediately appealable for a plenary hearing de novo not on the
3 record before any judge of the Family Part of the county in which the
4 plaintiff resides or is sheltered if that judge issued the temporary order
5 or has access to the reasons for the issuance of the temporary order
6 and sets forth in the record the reasons for the modification or
7 dissolution. The denial of a temporary restraining order by a municipal
8 court judge and subsequent administrative dismissal of the complaint
9 shall not bar the victim from refiling a complaint in the Family Part
10 based on the same incident and receiving an emergency, ex parte
11 hearing de novo not on the record before a Family Part judge, and
12 every denial of relief by a municipal court judge shall so state.

13 j. Emergency relief may include modifying a parenting plan
14 submitted to the court pursuant to section 3 of P.L. c. (C.) (now
15 pending before the Legislature as section 3 of this bill), forbidding the
16 defendant from returning to the scene of the domestic violence,
17 forbidding the defendant to possess any firearm or other weapon
18 enumerated in subsection r. of N.J.S.2C:39-1, ordering the search for
19 and seizure of any such weapon at any location where the judge has
20 reasonable cause to believe the weapon is located and any other
21 appropriate relief. The judge shall state with specificity the reasons
22 for and scope of the search and seizure authorized by the order.

23 k. The judge may permit the defendant to return to the scene of the
24 domestic violence to pick up personal belongings and effects but shall,
25 in the order granting relief, restrict the time and duration of such
26 permission and provide for police supervision of such visit.

27 1. An order granting emergency relief, together with the complaint
28 or complaints, shall immediately be forwarded to the appropriate law
29 enforcement agency for service on the defendant, and to the police of
30 the municipality in which the plaintiff resides or is sheltered, and shall
31 immediately be served upon the defendant by the police, except that
32 an order issued during regular court hours may be forwarded to the
33 sheriff for immediate service upon the defendant in accordance with
34 the Rules of Court. If personal service cannot be effected upon the
35 defendant, the court may order other appropriate substituted service.
36 At no time shall the plaintiff be asked or required to serve any order
37 on the defendant.

38 m. (Deleted by amendment, P.L.1994, c.94.)

39 n. Notice of temporary restraining orders issued pursuant to this
40 section shall be sent by the clerk of the court or other person
41 designated by the court to the appropriate chiefs of police, members
42 of the State Police and any other appropriate law enforcement agency
43 or court.

44 o. (Deleted by amendment, P.L.1994, c.94.)

45 p. Any temporary or permanent restraining order issued pursuant

1 to this act shall be in effect throughout the State, and shall be enforced
2 by all law enforcement officers.
3 (cf: P.L.1994, c.94, s.4)

4

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

7 13. a. A hearing shall be held in the Family Part of the Chancery
8 Division of the Superior Court within 10 days of the filing of a
9 complaint pursuant to section 12 of this act in the county where the ex
10 parte restraints were ordered, unless good cause is shown for the
11 hearing to be held elsewhere. A copy of the complaint shall be served
12 on the defendant in conformity with the Rules of Court. If a criminal
13 complaint arising out of the same incident which is the subject matter
14 of a complaint brought under P.L.1981, c.426 (C.2C:25-1 et seq.) or
15 P.L.1991, c.261 (C.2C:25-17 et seq.) has been filed, testimony given
16 by the plaintiff or defendant in the domestic violence matter shall not
17 be used in the simultaneous or subsequent criminal proceeding against
18 the defendant, other than domestic violence contempt matters and
19 where it would otherwise be admissible hearsay under the rules of
20 evidence that govern where a party is unavailable. At the hearing the
21 standard for proving the allegations in the complaint shall be by a
22 preponderance of the evidence. The court shall consider but not be
23 limited to the following factors:

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

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

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

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

29 (5) In determining custody and visitation the protection of the
30 victim's safety; and

31 (6) The existence of a verifiable order of protection from another
32 jurisdiction.

33 An order issued under this act shall only restrain or provide
34 damages payable from a person against whom a complaint has been
35 filed under this act and only after a finding or an admission is made
36 that an act of domestic violence was committed by that person. The
37 issue of whether or not a violation of this act occurred, including an
38 act of contempt under this act, shall not be subject to mediation or
39 negotiation in any form. In addition, where a temporary or final order
40 has been issued pursuant to this act, no party shall be ordered to
41 participate in mediation on the issue of custody or visitation.

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

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

3 (2) An order granting exclusive possession to the plaintiff of the
4 residence or household regardless of whether the residence or
5 household is jointly or solely owned by the parties or jointly or solely
6 leased by the parties. This order shall not in any manner affect title or
7 interest to any real property held by either party or both jointly. If it
8 is not possible for the victim to remain in the residence, the court may
9 order the defendant to pay the victim's rent at a residence other than
10 the one previously shared by the parties if the defendant is found to
11 have a duty to support the victim and the victim requires alternative
12 housing.

13 (3) An order providing for visitation. The order shall protect the
14 safety and well-being of the plaintiff and minor children and shall
15 specify the place and frequency of visitation. Visitation arrangements
16 shall not compromise any other remedy provided by the court by
17 requiring or encouraging contact between the plaintiff and defendant.
18 Orders for visitation may include a designation of a place of visitation
19 away from the plaintiff, the participation of a third party, or supervised
20 visitation.

21 (a) The court shall consider a request by a custodial parent who
22 has been subjected to domestic violence by a person with visitation
23 rights to a child in the parent's custody for an investigation or
24 evaluation by the appropriate agency to assess the risk of harm to the
25 child prior to the entry of a visitation order. Any denial of such a
26 request must be on the record and shall only be made if the judge finds
27 the request to be arbitrary or capricious.

28 (b) The court shall consider suspension of the visitation order and
29 hold an emergency hearing upon an application made by the plaintiff
30 certifying under oath that the defendant's access to the child pursuant
31 to the visitation order has threatened the safety and well-being of the
32 child.

33 (4) An order requiring the defendant to pay to the victim monetary
34 compensation for losses suffered as a direct result of the act of
35 domestic violence. The order may require the defendant to pay the
36 victim directly, to reimburse the Violent Crimes Compensation Board
37 for any and all compensation paid by the Violent Crimes Compensation
38 Board directly to or on behalf of the victim, and may require that the
39 defendant reimburse any parties that may have compensated the
40 victim, as the court may determine. Compensatory losses shall include,
41 but not be limited to, loss of earnings or other support, including child
42 or spousal support, out-of-pocket losses for injuries sustained, cost of
43 repair or replacement of real or personal property damaged or
44 destroyed or taken by the defendant, cost of counseling for the victim,
45 moving or other travel expenses, reasonable attorney's fees, court
46 costs, and compensation for pain and suffering. Where appropriate,

1 punitive damages may be awarded in addition to compensatory
2 damages.

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

9 (6) An order restraining the defendant from entering the residence,
10 property, school, or place of employment of the victim or of other
11 family or household members of the victim and requiring the defendant
12 to stay away from any specified place that is named in the order and
13 is frequented regularly by the victim or other family or household
14 members.

15 (7) An order restraining the defendant from making contact with
16 the plaintiff or others, including an order forbidding the defendant
17 from personally or through an agent initiating any communication
18 likely to cause annoyance or alarm including, but not limited to,
19 personal, written, or telephone contact with the victim or other family
20 members, or their employers, employees, or fellow workers, or others
21 with whom communication would be likely to cause annoyance or
22 alarm to the victim.

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

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

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

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

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

45 (13) An order which permits the victim and the defendant to
46 occupy the same premises but limits the defendant's use of that

1 premises, but only if it is documented by the judge granting the order
2 that:

3 (a) The plaintiff specifically and voluntarily requests such an order;
4 and

5 (b) The judge determines that the request is made voluntarily and
6 with the plaintiff's knowledge that the order may not provide the same
7 protection as an order excluding the defendant from the premises and
8 with the plaintiff's knowledge that the order may be difficult to
9 enforce; and

10 (c) Any conditions placed upon the defendant in connection with
11 the continued access to the premises and any penalties for
12 noncompliance with those conditions shall be explicitly set out in the
13 order and shall be in addition to any other remedies for noncompliance
14 available to the victim.

15 (14) An order granting any other appropriate relief for the plaintiff
16 and dependent children, provided that the plaintiff consents to such
17 relief, including relief requested by the plaintiff at the final hearing,
18 whether or not the plaintiff requested such relief at the time of the
19 granting of the initial emergency order.

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

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

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

37 (18) An order requiring the defendant to undergo a psychiatric
38 evaluation.

39 (19) An order modifying the parenting plan filed with the court
40 pursuant to section 3 of P.L. c. (C.) (now pending before the
41 Legislature as section 3 of this bill). The order shall protect the safety
42 and well being of the spouse and the minor children. The court may
43 consider suspension of the parenting plan and hold an emergency
44 hearing upon application made by the plaintiff certifying under oath
45 that the defendant's access to the child pursuant to the parenting plan
46 has threatened the safety and well-being of the child.

1 c. Notice of orders issued pursuant to this section shall be sent by
2 the clerk of the Family Part of the Chancery Division of the Superior
3 Court or other person designated by the court to the appropriate chiefs
4 of police, members of the State Police and any other appropriate law
5 enforcement agency.

6 d. Upon good cause shown, any final order may be dissolved or
7 modified upon application to the Family Part of the Chancery Division
8 of the Superior Court, but only if the judge who dissolves or modifies
9 the order is the same judge who entered the order, or has available a
10 complete record of the hearing or hearings on which the order was
11 based.

12 (cf: P.L.1994, c.137, s.2)

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14 6. The Supreme Court of New Jersey may adopt Rules of Court
15 appropriate or necessary to effectuate the purpose of this act.

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17 7. This act shall take effect immediately.

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STATEMENT

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This bill would require the parties in a divorce action to file a parenting plan. The plan would specify the day to day care of the minor child, procedures for transporting the child from one parent to the other parent at the start and conclusion of visitation and notification procedures between the parents concerning visitation. The plan would include a schedule which would specify the time the minor child would spend with each parent on a weekly basis, including, but not limited to, special occasions, religious and secular holidays, birthdays and vacations. The plan would also specify how major decisions would be made among the parents concerning the minor child's education, health care and religious upbringing. In addition, the plan would authorize emergency medical procedures in situations affecting the immediate health of the child.

35 The bill would require each party to file a parenting plan within 90
36 days of filing a complaint for divorce. After each party has filed an
37 individual plan, the bill would require the parties within 45 days to file
38 a mutually agreed upon plan. If a mutually agreed plan cannot be
39 achieved the parties would be referred to mediation. If the parties are
40 unable to reach an agreement through mediation, then the matter
41 would be referred to the court for disposition.

42 The bill would also authorize the court to modify or suspend a
43 parenting plan when an allegation or of domestic violence has been
44 proven or if adherence to the plan would not be in the best interest of
45 the child.

46 In addition, the bill would require the court to make available to

1 each party a "parenting plan kit" which would include a sample
2 parenting plan.

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

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9 Requires each party in a divorce action to file a parenting plan.