

ASSEMBLY, No. 1186

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman DALTON

1 AN ACT concerning family violence and supplementing P.L.1991,
2 c.261 (C.2C:25-17 et seq.).

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

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7 1. This act shall be known and may be cited as the
8 "Post-Separation Family Violence Relief Act."

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10 2. The Legislature finds and declares that: the problems associated
11 with family violence do not cease when the parties involved are legally
12 separated, divorced or no longer live together. In fact, the violence
13 often escalates and child custody and visitation rights become the
14 forum for the continuation of abuse. Current laws relative to custody
15 and visitation issues are based on the assumption that divorcing
16 parents or parents who no longer live together are in relatively equal
17 positions to provide for the care of their children and to act in their
18 best interest. These laws are also based on the assumption that
19 children have a right to frequent and continuing contact with both
20 parents after the parents are separated or divorced. However, family
21 violence can make this principle unworkable and damaging to the
22 children whose rights the laws are trying to protect. Custody and
23 visitation rights are often granted without adequate evaluation or
24 supervision to parents who have committed acts of physical or sexual
25 abuse or who have killed a child's other parent or siblings.
26 Additionally, parents who have been abused and suffer the effects of
27 that abuse often are denied custody. As a result, these laws often
28 work against families with a history of violence, where the protection
29 of the children and the abused parent is of the utmost importance.

30 Therefore, it is in the best interest of the State to develop standards
31 for child custody and visitation issues that take into account the unique
32 dynamics of a family victimized by family violence.

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34 3. As used in this act:

35 "Abused parent" means a parent who is or has been subjected to

1 domestic violence as defined in section 3 of P.L.1991, c.261
2 (C.2C:25-19 et seq.).

3 "Abusive parent" means a child's natural, adoptive or step-parent
4 who has a history of committing acts of family violence.

5 "Court" means the Family Part of the Chancery Division of the
6 Superior Court.

7 "Family violence" means an occurrence of one or more acts, as
8 defined in section 3 of P.L.1991, c.261 (C.2C:25-19), upon a person
9 protected under that act or the occurrence of one or more
10 substantiated acts of child abuse as defined in subsections a., b. or c.
11 of section 2 of P.L.1971, c.437 (C.9:6-8.9) upon a child protected
12 under that act. Family violence shall not include reasonable acts
13 committed by a parent in self-defense or to protect a child, from the
14 violence of another person.

15 "Supervised visitation" means court-ordered contact between an
16 abusive parent and a child, which occurs in the presence of a qualified
17 person appointed by the court to monitor the contact for any sign of
18 physical abuse, sexual abuse, threats or intimidation, or to prevent the
19 abduction of either the abused parent or the child.

20 "Treatment program" means a course of evaluation and psychiatric
21 and psychological services provided by a community-based agency for
22 individuals who have committed an act of family violence as defined
23 by this act. At least one full-time staff member of the program shall
24 be licensed by the State in the practice of psychiatry, psychology or
25 social work. The staff of the treatment program shall also have
26 current and demonstrable training and experience working with
27 perpetrators and victims of family violence.

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29 4. a. The court shall not award sole or joint custody of a child to
30 an abusive parent as defined in this act, unless it can be shown by clear
31 and convincing evidence that:

32 (1) the parent has been evaluated by a treatment program for
33 danger to the child or abused parent;

34 (2) the parent is not abusing alcohol or other drugs; and

35 (3) the best interest of the child requires the participation of the
36 abusive parent as a custodial parent.

37 b. If both parents are each seeking sole custody of the child and the
38 court finds that both parents have committed acts of family violence,
39 the court should consider the comparative extent of the injuries
40 inflicted by each party, the history of family violence involving the
41 parties and any other relevant factors, including any steps taken by
42 each parent to correct or minimize the use of violence. The court may
43 award sole custody to the parent who is less likely to continue to
44 engage in acts of family violence and has been evaluated by a
45 treatment program; except that the court may award sole custody of
46 the child to a suitable third person, who shall serve as the child's

1 guardian, if the court finds that the parents are likely to continue to
2 engage in acts of family violence and it is in the best interest of the
3 child.

4 c. The court shall not award sole or joint custody to an abusive
5 parent who has committed or has been indicted for an act of sexual
6 assault against his child as defined by the provisions of N.J.S.2C:14-2
7 et seq. or any other crime which results in the death or permanent
8 physical or mental disability of a family member.

9 d. The court shall not award sole or joint custody to an abusive
10 parent who has committed or has been indicted for an act of sexual
11 assault against a child as defined by the provisions of N.J.S.2C:14-2
12 et seq. or any other crime which results in the death or permanent
13 physical or mental disability of a victim.

14 e. The court shall not condition the awarding of sole or joint
15 custody on the grounds that an abused parent suffers from the effects
16 of family violence.

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18 5. a. The court shall not grant supervised visitation between a
19 child and the abusive parent, unless it can be shown by clear and
20 convincing evidence that:

21 (1) the parent has been evaluated by a treatment program for
22 danger to the child or the abused parent;

23 (2) the parent is not abusing alcohol or any other drugs; and

24 (3) supervised visitation is in the best interest of the child.

25 b. At the request of the abused parent, the monitor appointed by
26 the court to supervise visitation between the abusive parent and the
27 child shall be a family member or friend, a law enforcement official, a
28 therapist or other competent professional. The court-appointed
29 monitor shall not be a relative, friend, therapist or associate of the
30 abusive parent.

31 c. Supervised visitation shall not be conducted overnight or in the
32 home of the abusive parent.

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34 6. a. The court shall not grant unsupervised visitation to an
35 abusive parent, unless it can be shown by clear and convincing
36 evidence that:

37 (1) the parent has been evaluated by a treatment program for
38 danger to the child or the abused parent;

39 (2) the parent is not abusing alcohol or any other drugs; and

40 (3) such visitation is in the best interest of the child.

41 b. At the request of the abused parent, the court shall suspend
42 unsupervised visitation between the child and the abusive parent, upon
43 an application not found by the court to be arbitrary and capricious.

44 c. If a parent has been indicted for an act of sexual assault against
45 a child as defined by the provisions of N.J.S.2C:14-2 et seq. or any
46 other crime which results in the death or permanent physical or mental

1 disability of a family member, the court shall prohibit visitation
2 between the parent and that child until the resolution of the indictment.

3 d. A court appointed guardian who has been granted sole custody
4 of a child pursuant to the provisions of subsection b. of section 4 of
5 this act shall not allow the parents to visit the child, except as ordered
6 by the court.

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8 7. If the court finds that a parent has committed an act of family
9 violence, the abused parent shall not be ordered to participate in
10 mediation on the issues of child custody or visitation.

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12 8. Notwithstanding any law to the contrary, the court shall order
13 the parent who has committed an act of family violence to pay all
14 court costs, expert's fees and reasonable attorney fees incurred as a
15 result of the act of family violence. The court shall also order the
16 parent to pay the costs for any evaluation and the medical and
17 psychological care of the abused parent and the child incurred as a
18 result of the act of family violence.

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20 9. This act shall take effect immediately.

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STATEMENT

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25 This bill establishes standards to be used by the court when dealing
26 with the questions of child custody and visitation for families with a
27 history of family violence. For the purposes of this bill, family
28 violence is defined as the occurrence of one or more acts defined under
29 the State's domestic violence law, P.L.1991, c.261 (C.2C:25-19 et
30 seq.) or the occurrence of one or more acts of child abuse as defined by
31 subsections a., b. or c. of section 2 of the State's child abuse statute,
32 P.L.1971, c.437 (C.9:6-8.9). Under the provisions of the bill, the
33 court would not award joint or sole custody to an abusive parent,
34 unless it can be shown by clear and convincing evidence that:

35 1. the parent has been evaluated by a treatment program for danger
36 to the child or abused parent;

37 2. the parent is not abusing alcohol or any other drugs; and

38 3. the best interest of the child requires that the abusive parent
39 participate as a custodial parent.

40 If both parents have been accused of committing acts of family
41 violence, custody may be awarded to the parent who is less likely to
42 continue to engage in acts of family violence and has been evaluated
43 by a treatment program, except that the court may also grant custody
44 to a third party. A parent who has committed or has been indicted for
45 sexually assaulting a child under the provisions of N.J.S.2C:14-2 et
46 seq. or any other crime which results in the death or permanent

1 physical or mental disability of a family member or any other individual
2 would be prohibited from obtaining custody. Under another provision
3 of the bill, the awarding of sole or joint custody could not be
4 conditioned on the fact that an abused parent suffers from the effects
5 of family violence.

6 The court may grant supervised or unsupervised visitation if:

- 7 1. the parent has been evaluated by a treatment program for danger
8 to the child or abused parent;
- 9 2. the parent is not abusing alcohol or any other drugs; and
- 10 3. it is in the best interest of the child that the abusive parent be
11 awarded visitation rights.

12 If a parent has been indicted for sexually assaulting a child or any
13 other crime which results in the death or disability of a family member,
14 the parent would be prohibited from visiting the child until the
15 resolution of the indictment.

16 The bill would also require that if a parent has committed an act of
17 family violence, the abused parent could not be ordered to participate
18 in mediation on the issues of child custody or visitation.

19 Finally, the bill would also require that the court order the parent
20 who has committed an act of family violence to pay for all court,
21 medical and evaluation costs of the abused parent and the child
22 incurred as a result of the act of family violence.

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Designated the "Post-Separation Family Violence Relief Act."