

ASSEMBLY, No. 1285

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblywomen GILL and BUONO

1 AN ACT concerning child abuse and neglect and revising parts of
2 statutory law.

3

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

6

7 1. N.J.S.2C:24-4 is amended to read as follows:

8 2C:24-4. Endangering Welfare of Children. a. Any person having
9 a legal duty for the care of a child or who has assumed responsibility
10 for the care of a child who engages in sexual conduct which would
11 impair or debauch the morals of the child, or who causes the child
12 harm that would make the child an abused or neglected child as
13 defined in [R.S.9:6-1, R.S.9:6-3 and] P.L.1974, c.119, s.1
14 (C.9:6-8.21) is guilty of a crime of the second degree. Any other
15 person who engages in conduct or who causes harm as described in
16 this subsection to a child under the age of 16 is guilty of a crime of the
17 third degree.

18 b. As used in this subsection:

19 (1) "Child" shall mean any person under 16 years of age.

20 (2) "Prohibited sexual act" means

21 (a) Sexual intercourse; or

22 (b) Anal intercourse; or

23 (c) Masturbation; or

24 (d) Bestiality; or

25 (e) Sadism; or

26 (f) Masochism; or

27 (g) Fellatio; or

28 (h) Cunnilingus; or

29 (i) Nudity, if depicted for the purpose of sexual stimulation or
30 gratification of any person who may view such depiction.

31 (3) Any person, including any parent, guardian, or other person
32 legally charged with the care or custody of a child, who causes or

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 permits a child to engage in a prohibited sexual act or in the simulation
2 of such an act if the person knows, has reason to know or intends that
3 the prohibited act may be photographed, filmed, reproduced, or
4 reconstructed in any manner or may be part of an exhibition or
5 performance is guilty of a crime of the second degree.

6 (4) Any person who photographs or films a child in a prohibited
7 sexual act or in the simulation of such an act or who uses any device
8 to reproduce or reconstruct the image of a child in a prohibited sexual
9 act or in the simulation of such an act is guilty of a crime of the second
10 degree.

11 (5) (a) Any person who knowingly receives for the purpose of
12 selling or who knowingly sells, procures, manufactures, gives,
13 provides, lends, trades, mails, delivers, transfers, publishes, distributes,
14 circulates, disseminates, presents, exhibits, advertises, offers or agrees
15 to offer any photograph, film, videotape or any other reproduction or
16 reconstruction which depicts a child engaging in a prohibited sexual
17 act or in the simulation of such an act, is guilty of a crime of the
18 second degree.

19 (b) Any person who knowingly possesses or knowingly views any
20 photograph, film, videotape or any other reproduction or
21 reconstruction which depicts a child engaging in a prohibited sexual
22 act or in the simulation of such an act, is guilty of a crime of the fourth
23 degree.

24 (6) For purposes of this subsection, a person who is depicted as or
25 presents the appearance of being under the age of 16 in any
26 photograph or film shall be rebuttably presumed to be under the age
27 of 16.

28 (cf. P.L.1992, c.6 s.1)

29

30 2. (New section) a. For the purposes of this section, abuse of a
31 child shall consist of any the following acts: (1) disposing of the
32 custody of a child contrary to law; (2) employing or permitting a child
33 to be employed in any vocation or employment injurious to his health
34 or dangerous to his life or limb, or contrary to the laws of this State;
35 (3) employing or permitting a child to be employed in any occupation,
36 employment or vocation dangerous to the morals of such child; or (4)
37 using excessive physical restraint on the child under circumstances
38 which do not indicate that the child's behavior is harmful to himself,
39 others or property.

40 Abandonment of a child shall mean the willful forsaking of a child
41 by anyone having the custody or control of the child.

42 Cruelty of a child shall mean inflicting unnecessarily severe corporal
43 punishment upon a child by anyone having the custody or control of
44 the child.

45 Neglect of a child shall mean the willfull failure by anyone having
46 the custody and control of a child to provide proper and sufficient

1 food, clothing, maintenance, regular school education as required by
2 law, medical attendance or surgical treatment, and a clean and proper
3 home.

4 b. Any parent or guardian or person having the care, custody or
5 control of a child who abuses, abandons, is cruel to or neglectful of
6 such child, or any person who abuses, is cruel to, or neglectful of any
7 child is guilty of a crime of the fourth degree.

8

9 3. Section 2 of P.L.1971, c.437 (C.9:6-8.9) is amended to read as
10 follows:

11 2. For purposes of this act:

12 "Abused child" means a child under the age of 18 years whose
13 parent, guardian, or other person having his custody and control:

14 a. Inflicts or allows to be inflicted upon such child physical injury
15 by other than accidental means which causes or creates a substantial
16 risk of death, or serious or protracted disfigurement, or protracted
17 impairment of physical or emotional health or protracted loss or
18 impairment of the function of any bodily organ;

19 b. Creates or allows to be created a substantial or ongoing risk of
20 physical injury to such child by other than accidental means which
21 would be likely to cause death or serious or protracted disfigurement,
22 or protracted loss or impairment of the function of any bodily organ;
23 or

24 c. Commits or allows to be committed an act of sexual abuse
25 against the child;

26 d. Or a child whose physical, mental, or emotional condition has
27 been impaired or is in imminent danger of becoming impaired as the
28 result of the failure of his parent or guardian, or such other person
29 having his custody and control, to exercise a minimum degree of care
30 (1) in supplying the child with adequate food, clothing, shelter,
31 education, medical or surgical care or a clean and proper home though
32 financially able to do so or though offered financial or other reasonable
33 means to do so, or (2) in providing the child with proper supervision
34 or guardianship, by unreasonably inflicting or allowing to be inflicted
35 harm, or substantial risk thereof, including the infliction of excessive
36 corporal punishment or using excessive physical restraint under
37 circumstances which do not indicate that the child's behavior is
38 harmful to himself, others or property; or by any other act of a
39 similarly serious nature requiring the aid of the court;

40 e. Or a child who has been willfully abandoned by his parent or
41 guardian, or such other person having his custody and control;

42 f. Or a child who is in an institution as defined in section 1 of
43 P.L.1974, c.119 (C.9:6-8.21) and (1) has been so placed
44 inappropriately for a continued period of time with the knowledge that
45 the placement has resulted and may continue to result in harm to the
46 child's mental or physical well-being or (2) has been willfully isolated

1 from ordinary social contact under circumstances which indicate
2 emotional or social deprivation[.];

3 g. Commits any willful act of omission or commission whereby
4 unnecessary pain and suffering, whether mental or physical, is caused
5 or permitted to be inflicted on a child;

6 h. Exposes a child to unnecessary hardship, fatigue or mental or
7 physical strains that may tend to injure the health or physical or moral
8 well-being of the child;

9 i. Fails to care for and keep the control and custody of a child so
10 that child is exposed to physical or moral risk without proper and
11 sufficient protection; or

12 j. Fails to care for and keep the control and custody of a child so
13 that the child is liable to be supported and maintained at the expense
14 of the public, or by child care societies or private persons not legally
15 chargeable with his care, custody and control.

16 A child shall not be considered abused or neglected pursuant to
17 subsection f. of this section if the acts or omissions described therein
18 occur in a day school as defined in section 1 of P.L.1974, c.119
19 (C.9:6-8.21).

20 (cf. P.L.1987, c.341)

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22 4. Section 4 of P.L.1971, c.437 (C.9:6-8.11) is amended to read as
23 follows:

24 4. Upon receipt of any such report the [Bureau of Children's
25 Services] Division of Youth and Family Services shall immediately
26 take such action as shall be necessary to insure the safety of the child
27 and to that end may request and shall receive appropriate assistance
28 from local and State law enforcement officials. The [bureau] division
29 shall also, within 72 hours, forward a report of such matter to the
30 Central Registry of the [Bureau of Children's Services] Division of
31 Youth and Family Services in Trenton. No information received in the
32 central registry shall be considered as a public record within the
33 meaning of P.L.1963, c.73.

34 (cf. P.L.1971, c.437 s.4)

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36 5. Section 5 of P.L.1971, c.437 (C.9:6-8.12) is amended to read as
37 follows:

38 5. The [Bureau of Children's Services] Division of Youth and
39 Family Services shall maintain in each of its districts on a 24 hour daily
40 basis throughout each year an emergency telephone service for the
41 receipt of child abuse calls.

42 (cf. P.L.1971, c.437 s.5)

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44 6. Section 8 of P.L.1971, c.437 (C.9:6-8.15) is amended to read as
45 follows:

46 8. The [Bureau of Children's Services] Division of Youth and

1 Family Services shall from time to time promulgate such rules and
2 regulations as may be necessary to effectuate the provisions of this act.
3 (cf. P.L.1971, c.437 s.8)

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

7 1. As used in this act, unless the specific context indicates
8 otherwise:

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

20 b. "Child" means any child alleged to have been abused or
21 neglected.

22 c. "Abused or neglected child" means a child less than 18 years of
23 age whose parent or guardian, as herein defined, (1) inflicts or allows
24 to be inflicted upon such child physical injury by other than accidental
25 means which causes or creates a substantial risk of death, or serious
26 or protracted disfigurement, or protracted impairment of physical or
27 emotional health or protracted loss or impairment of the function of
28 any bodily organ; (2) creates or allows to be created a substantial or
29 ongoing risk of physical injury to such child by other than accidental
30 means which would be likely to cause death or serious or protracted
31 disfigurement, or protracted loss or impairment of the function of any
32 bodily organ; (3) commits or allows to be committed an act of sexual
33 abuse against the child; (4) or a child whose physical, mental, or
34 emotional condition has been impaired or is in imminent danger of
35 becoming impaired as the result of the failure of his parent or
36 guardian, as herein defined, to exercise a minimum degree of care (a)
37 in supplying the child with adequate food, clothing, shelter, education,
38 medical or surgical care or a clean and proper home though financially
39 able to do so or though offered financial or other reasonable means to
40 do so, or (b) in providing the child with proper supervision or
41 guardianship, by unreasonably inflicting or allowing to be inflicted
42 harm, or substantial risk thereof, including the infliction of excessive
43 corporal punishment; or by any other acts of a similarly serious nature
44 requiring the aid of the court; (5) or a child who has been willfully
45 abandoned by his parent or guardian, as herein defined; (6) or a child
46 upon whom excessive physical restraint has been used under

1 circumstances which do not indicate that the child's behavior is
2 harmful to himself, others or property; (7) or a child who is in an
3 institution and (a) has been placed there inappropriately for a
4 continued period of time with the knowledge that the placement has
5 resulted or may continue to result in harm to the child's mental or
6 physical well-being or (b) who has been willfully isolated from
7 ordinary social contact under circumstances which indicate emotional
8 or social deprivation; or (8) commits any willful act of omission or
9 commission whereby unnecessary pain and suffering, whether mental
10 or physical, is caused or permitted to be inflicted on a child; or (9)
11 exposes a child to unnecessary hardship, fatigue or mental or physical
12 strains that may tend to injure the health or physical or moral
13 well-being of the child; or (10) fails to care for and keep control and
14 custody of a child so that child is exposed to physical or moral risk
15 without proper and sufficient protection; or (11) fails to care for and
16 keep the control and custody of a child so that the child shall be liable
17 to be supported and maintained at the expense of the public, or by
18 child care societies or private persons not legally chargeable with his
19 care, custody and control.

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

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

28 d. "Law guardian" means an attorney admitted to the practice of
29 law in this State, regularly employed by the Office of the Public
30 Defender or appointed by the court, and designated under this act to
31 represent minors in alleged cases of child abuse or neglect.

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

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

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

45 h. "Day school" means a public or private school which provides
46 general or special educational services to day students in grades

1 kindergarten through 12. Day school does not include a residential
2 facility, whether public or private, which provides care on a 24-hour
3 basis.

4 (cf. P.L.1994, c.58 s.39)

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6 8. P.L.1950, c.125 (C.9:6-1.1) and R.S.9:6-1 through R.S.9:6-8,
7 inclusive, are repealed.

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9 9. This act shall take effect immediately.

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12 STATEMENT

13

14 This bill makes various changes in the child abuse and neglect law
15 and the criminal statutes dealing with crimes against children.
16 Amendments proposed by the bill would clarify the definition of child
17 abuse and neglect found in the abuse statutes by separating the acts of
18 abuse and neglect which constitute a crime and the acts which would
19 fall under the Division of Youth and Family Services' (DYFS)
20 jurisdiction. The criminal acts would be defined in the criminal
21 statutes dealing with endangering the welfare of a child (Title 2C) and
22 the acts which fall under DYFS' jurisdiction would remain in Title 9.
23 The bill also expands the definition of endangering the welfare of a
24 child to include certain acts of abuse, abandonment, cruelty and
25 neglect. Under the bill's provisions, these acts would constitute crimes
26 of the fourth degree. The bill also updates references to the Bureau
27 of Children's Services to the Division of Youth and Family Services
28 and repeals P.L.1950, c.125 (C.9:6-1.1) and R.S.9:6-1 through
29 R.S.9:6-8, inclusive.

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34 _____
34 Makes various changes to the State's child abuse and neglect statutes.