

**SENATE, No. 1940**

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**STATE OF NEW JERSEY**

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INTRODUCED MARCH 20, 1997

**By Senators LIPMAN, CAFIERO and Kenny**

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  
36       domestic violence as defined in section 3 of P.L.1991, c.261

1     (C.2C:25-19 et seq.).

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

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

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

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

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

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

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

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

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

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

1 engage in acts of family violence and it is in the best interest of the  
2 child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 between the parent and that child until the resolution of the indictment.

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

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

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

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19        9. This act shall take effect immediately.

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## STATEMENT

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

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

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

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

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

1 would be prohibited from obtaining custody. Under another provision  
2 of the bill, the awarding of sole or joint custody could not be  
3 conditioned on the fact that an abused parent suffers from the effects  
4 of family violence.

5 The court may grant supervised or unsupervised visitation if:

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

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

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

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

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