

ASSEMBLY, No. 2518

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Expands means to obtain protective order for minor.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning domestic violence, and amending P.L.1991,
2 c.261, P.L.1971, c.437, and P.L.1974, c.119.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 3 of P.L.1991, c.261 (C.2C:25-19) is amended to
8 read as follows:

9 3. As used in this act:

10 a. "Domestic violence" means the occurrence of one or more of
11 the following acts inflicted upon a person protected under this act
12 by an adult or an emancipated minor:

- 13 (1) Homicide N.J.S.2C:11-1 et seq.
- 14 (2) Assault N.J.S.2C:12-1
- 15 (3) Terroristic threats N.J.S.2C:12-3
- 16 (4) Kidnapping N.J.S.2C:13-1
- 17 (5) Criminal restraint N.J.S.2C:13-2
- 18 (6) False imprisonment N.J.S.2C:13-3
- 19 (7) Sexual assault N.J.S.2C:14-2
- 20 (8) Criminal sexual contact N.J.S.2C:14-3
- 21 (9) Lewdness N.J.S.2C:14-4
- 22 (10) Criminal mischief N.J.S.2C:17-3
- 23 (11) Burglary N.J.S.2C:18-2
- 24 (12) Criminal trespass N.J.S.2C:18-3
- 25 (13) Harassment N.J.S.2C:33-4
- 26 (14) Stalking P.L.1992, c.209 (C.2C:12-10)
- 27 (15) Criminal coercion N.J.S.2C:13-5
- 28 (16) Robbery N.J.S.2C:15-1
- 29 (17) Contempt of a domestic violence order pursuant to
30 subsection b. of N.J.S.2C:29-9 that constitutes a crime or disorderly
31 persons offense
- 32 (18) Any other crime involving risk of death or serious
33 bodily injury to a person protected under the "Prevention of
34 Domestic Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et
35 al.)

36 (19) Cyber-harassment P.L.2013, c.272 (C.2C:33-4.1)

37 When one or more of these acts is inflicted by an unemancipated
38 minor upon a person protected under this act, the occurrence shall
39 not constitute "domestic violence," but may be the basis for the
40 filing of a petition or complaint pursuant to the provisions of
41 section 11 of P.L.1982, c.77 (C.2A:4A-30).

42 When one or more of these acts is inflicted on an unemancipated
43 minor by a parent or guardian, as defined in section 1 of P.L.1974,
44 c.119 (C.9:6-8.21), responsible for the child's care, or spouse of a
45 parent or guardian or both, the occurrence shall not constitute

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 “domestic violence,” but may be the basis for the filing of a petition
2 or request for relief to obtain an order of protection pursuant to the
3 provisions of P.L.1974, c.119 (C.9:6-8.21 et seq).

4 b. "Law enforcement agency" means a department, division,
5 bureau, commission, board or other authority of the State or of any
6 political subdivision thereof which employs law enforcement
7 officers.

8 c. "Law enforcement officer" means a person whose public
9 duties include the power to act as an officer for the detection,
10 apprehension, arrest and conviction of offenders against the laws of
11 this State.

12 d. "Victim of domestic violence" means a person protected
13 under this act and shall include any person who is 18 years of age or
14 older or who is an emancipated minor and who has been subjected
15 to domestic violence by a spouse, former spouse, or any other
16 person who is a present household member or was at any time a
17 household member. "Victim of domestic violence" also includes
18 any person **【**, regardless of age,**】** who has been subjected to
19 domestic violence by a person with whom the victim has a child in
20 common, or with whom the victim anticipates having a child in
21 common, if one of the parties is pregnant. "Victim of domestic
22 violence" also includes any person who has been subjected to
23 domestic violence by a person with whom the victim has had a
24 dating relationship.

25 e. "Emancipated minor" means a person who is under 18 years
26 of age but who has been married, has entered military service, has a
27 child or is pregnant or has been previously declared by a court or an
28 administrative agency to be emancipated.

29 (cf: P.L.2016, c.77, s.1)

30
31 2. Section 2 of P.L.1971, c.437 (C.9:6-8.9) is amended to read
32 as follows:

33 2. For purposes of this act:

34 "Abused child" means a child under the age of 18 years whose
35 parent, guardian, or other person having **【his】** custody and control:

36 a. Inflicts or allows to be inflicted upon such child physical
37 injury by other than accidental means which causes or creates a
38 substantial risk of death, or serious or protracted disfigurement, or
39 protracted impairment of physical or emotional health or protracted
40 loss or impairment of the function of any bodily organ;

41 b. Creates or allows to be created a substantial or ongoing risk
42 of physical injury to such child by other than accidental means
43 which would be likely to cause death or serious or protracted
44 disfigurement, or protracted loss or impairment of the function of
45 any bodily organ; or

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

1 d. Or a child whose physical, mental, or emotional condition
2 has been impaired or is in imminent danger of becoming impaired
3 as the result of the failure of his parent or guardian, or such other
4 person having his custody and control, to exercise a minimum
5 degree of care (1) in supplying the child with adequate food,
6 clothing, shelter, education, medical or surgical care though
7 financially able to do so or though offered financial or other
8 reasonable means to do so, or (2) in providing the child with proper
9 supervision or guardianship, by unreasonably inflicting or allowing
10 to be inflicted harm, or substantial risk thereof, including the
11 infliction of excessive corporal punishment or using excessive
12 physical restraint under circumstances which do not indicate that
13 the child's behavior is harmful to himself, others or property; or by
14 exhibiting a pattern of behavior that emotionally impairs or creates
15 an imminent danger of emotional impairment for the child; or by
16 any other act of a similarly serious nature requiring the aid of the
17 court;

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

20 f. Or a child who is in an institution as defined in section 1 of
21 P.L.1974, c.119 (C.9:6-8.21) and (1) has been so placed
22 inappropriately for a continued period of time with the knowledge
23 that the placement has resulted and may continue to result in harm
24 to the child's mental or physical well-being or (2) has been willfully
25 isolated from ordinary social contact under circumstances which
26 indicate emotional or social deprivation.

27 A child shall not be considered abused pursuant to subsection f.
28 of this section if the acts or omissions described therein occur in a
29 day school as defined in section 1 of P.L.1974, c.119 (C. 9:6-8.21).
30 (cf: P.L.1987, c.341, s.3)

31

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

34 1. As used in P.L.1974, c.119 (**[C.9-8.21]** C.9:6-8.21 et seq.),
35 unless the specific context indicates otherwise:

36 a. "Parent or guardian" means any natural parent, adoptive
37 parent, resource family parent, stepparent, paramour of a parent, or
38 any person, who has assumed responsibility for the care, custody, or
39 control of a child or upon whom there is a legal duty for such care.
40 Parent or guardian includes a teacher, employee, or volunteer,
41 whether compensated or uncompensated, of an institution who is
42 responsible for the child's welfare and any other staff person of an
43 institution regardless of whether or not the person is responsible for
44 the care or supervision of the child. Parent or guardian also
45 includes a teaching staff member or other employee, whether
46 compensated or uncompensated, of a day school as defined in
47 section 1 of P.L.1974, c.119 (C.9:6-8.21).

1 b. "Child" means any child alleged to have been abused or
2 neglected.

3 c. "Abused or neglected child" means a child less than 18 years
4 of age whose parent or guardian, as herein defined, (1) inflicts or
5 allows to be inflicted upon such child physical injury by other than
6 accidental means which causes or creates a substantial risk of death,
7 or serious or protracted disfigurement, or protracted impairment of
8 physical or emotional health or protracted loss or impairment of the
9 function of any bodily organ; (2) creates or allows to be created a
10 substantial or ongoing risk of physical injury to such child by other
11 than accidental means which would be likely to cause death or
12 serious or protracted disfigurement, or protracted loss or
13 impairment of the function of any bodily organ; (3) commits or
14 allows to be committed an act of sexual abuse against the child; (4)
15 or a child whose physical, mental, or emotional condition has been
16 impaired or is in imminent danger of becoming impaired as the
17 result of the failure of his parent or guardian, as herein defined, to
18 exercise a minimum degree of care (a) in supplying the child with
19 adequate food, clothing, shelter, education, medical or surgical care
20 though financially able to do so or though offered financial or other
21 reasonable means to do so, or (b) in providing the child with proper
22 supervision or guardianship, by unreasonably inflicting or allowing
23 to be inflicted harm, or substantial risk thereof, including the
24 infliction of excessive corporal punishment; or by exhibiting a
25 pattern of behavior that emotionally impairs or creates an imminent
26 danger of emotional impairment for the child; or by any other acts
27 of a similarly serious nature requiring the aid of the court; (5) or a
28 child who has been willfully abandoned by his parent or guardian,
29 as herein defined; (6) or a child upon whom excessive physical
30 restraint has been used under circumstances which do not indicate
31 that the child's behavior is harmful to himself, others, or property;
32 (7) or a child who is in an institution and (a) has been placed there
33 inappropriately for a continued period of time with the knowledge
34 that the placement has resulted or may continue to result in harm to
35 the child's mental or physical well-being or (b) who has been
36 willfully isolated from ordinary social contact under circumstances
37 which indicate emotional or social deprivation.

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

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

46 d. "Law guardian" means an attorney admitted to the practice
47 of law in this State, regularly employed by the Office of the Public
48 Defender or appointed by the court, and designated under P.L.1974,

1 c.119 (C.9:6-8.21 et seq.) to represent minors in alleged cases of
2 child abuse or neglect and in termination of parental rights
3 proceedings.

4 e. "Attorney" means an attorney admitted to the practice of law
5 in this State who shall be privately retained; or, in the instance of an
6 indigent parent or guardian, an attorney from the Office of the
7 Public Defender or an attorney appointed by the court who shall be
8 appointed in order to avoid conflict between the interests of the
9 child and the parent or guardian in regard to representation.

10 f. "Division" means the Division of Child Protection and
11 Permanency in the Department of Children and Families unless
12 otherwise specified.

13 g. "Institution" means a public or private facility in the State
14 which provides children with **【out of home】** out-of-home care,
15 supervision, or maintenance. Institution includes, but is not limited
16 to, a correctional facility, detention facility, treatment facility, day
17 care center, residential school, shelter, and hospital.

18 h. "Day school" means a public or private school which
19 provides general or special educational services to day students in
20 grades kindergarten through 12. Day school does not include a
21 residential facility, whether public or private, which provides care
22 on a 24-hour basis.

23 (cf: P.L.2012, c.16, s.31)

24

25 4. Section 30 of P.L.1974, c.119 (C.9:6-8.50) is amended to
26 read as follows:

27 30. Sustaining or dismissing complaint. a. If facts sufficient to
28 sustain the complaint are established, the court shall enter an order
29 finding that the child is an abused or neglected child and shall state
30 the grounds for said findings.

31 b. If the proof does not conform to the specific allegations of
32 the complaint, the court may amend the allegations to conform to
33 the proof; provided, however, that in such case the respondent shall
34 be given reasonable time to prepare to answer the amended
35 allegations.

36 c. If facts sufficient to sustain the complaint under this act are
37 not established, or the court concludes that its assistance is not
38 required on the record before it, the court shall dismiss the
39 complaint and shall state the grounds for the dismissal.

40 d. If the court makes a finding of abuse or neglect, it shall
41 determine, based upon the facts adduced during the fact-finding
42 hearing, and upon any other facts presented to it, whether a
43 preliminary order pursuant to section 11 **【hereof】** of P.L.1974,
44 c.119 (C.9:6-8.31), which may include an order of protection
45 pursuant to section 35 of P.L.1974, c.119 (C.9:6-8.55). is required
46 to protect the child's interests pending a final order of disposition.
47 The court shall state the grounds for its determination. In addition,
48 a child found to be abused or neglected may be removed and

1 remanded to a place designated by the court or be placed in the
2 custody of a suitable person, pending a final order of disposition, if
3 the court finds that there is a substantial probability that the final
4 order of disposition will be an order of placement under **the**
5 section 34 **hereof** of P.L.1974, c.119 (C.9:6-8.54).

6 e. If the court finds that the child is an abused or neglected
7 child as defined in this act, it may refer any aspect of the matter,
8 including anything related to the child and the parent or guardian, to
9 the division, ordering that the division provide such services as are
10 deemed appropriate to the ends of protecting the child and
11 rehabilitating and improving family life, wherever possible. In the
12 event of such referral, the court may suspend any dispositional
13 hearing indefinitely. The division shall report the status of the case
14 so referred to the court annually in writing, a copy to be served
15 upon the parent or guardian and the law guardian. The division
16 shall also report its intent to terminate services in a case so referred
17 to the court in writing.

18 (cf: P.L.1977, c.209, s.24)

19
20 5. Section 31 of P.L.1974, c.119 (C.9:6-8.51) is amended to
21 read as follows:

22 31. Disposition of adjudication. a. At the conclusion of a
23 dispositional hearing under this act, the court shall enter an order of
24 disposition: (1) suspending judgment in accord with section 32
25 **hereof** of P.L.1974, c.119 (C.9:6-8.52); (2) releasing the child to
26 the custody of his parents or guardian in accord with section 33
27 **hereof** of P.L.1974, c.119 (C.9:6-8.53); (3) placing the child in
28 accord with section 34 **hereof** of P.L.1974, c.119 (C.9:6-8.54);
29 (4) making or continuing an order of protection in accord with
30 section 35 **hereof** of P.L.1974, c.119 (C.9:6-8.55); (5) placing
31 the respondent on probation in accord with section 36 **hereof** of
32 P.L.1974, c.119 (C.9:6-8.56); (6) requiring that an individual found
33 to have abused or neglected a child accept therapeutic services, and
34 this order may be carried out in conjunction with any other order of
35 disposition.

36 b. The court shall state the grounds for any disposition made
37 under this section.

38 (cf: P.L.1974, c.119, s.31)

39
40 6. Section 35 of P.L.1974, c.119 (C.9:6-8.55) is amended to
41 read as follows:

42 35. Order of protection. The court may make an order of
43 protection in assistance or as a condition of any other order made
44 under this act at any time. The order of protection may set forth
45 reasonable conditions of behavior to be observed for a specified
46 time by a person who is before the court and is a parent or guardian

1 responsible for the child's care or the spouse of the parent or
2 guardian, or both. Such an order may require any such person:

3 a. To stay away from the home, the other spouse **【or】**, the
4 child, or other children identified by the court whose safety may be
5 at risk;

6 b. To permit a parent to visit the child at stated periods;

7 c. To abstain from offensive conduct against the child or
8 against the other parent or against any person to whom custody of
9 the child is awarded;

10 d. To give proper attention to the care of the home; and

11 e. To refrain from acts of commission or omission that tend to
12 make the home not a proper place for the child.

13 The court may also award custody of the child, during the term
14 of the order of protection to either parent or to an appropriate
15 relative; however, nothing in this section shall be construed to give
16 the court power to place or board out any child or to commit a child
17 to the custody of an institution or agency. In making orders of
18 protection, the court shall so act as to insure that in the care,
19 protection, discipline and guardianship of the child, his religious
20 faith shall be preserved and protected.

21 The court may extend an order of protection pursuant to sections
22 8 and 11 of P.L.1974, c.119 (C.9:6-8.28 and 9:6-8.31) and pursuant
23 to this section beyond a child's age of majority as necessary to
24 protect the safety of the child. However, this order may be
25 dissolved or modified upon application to the Superior Court, upon
26 good cause shown.

27 (cf: P.L.1974, c.119, s.35)

28

29 7. Section 47 of P.L.1974, c.119 (C.9:6-8.67) is amended to
30 read as follows:

31 47. Failure to comply with terms and conditions of probation. If
32 a parent or guardian is brought before the court for failing to
33 comply with the terms and conditions of an order of probation
34 issued under section 36 **【hereof】** of P.L.1974, c.119 (C.9:6-8.56),
35 or of an order of protection issued under **【section 35 or】** section 11
36 **【hereof】** of P.L.1974, c.119 (C.9:6-8.31), and if, after hearing, the
37 court is satisfied by competent proof that the parent or guardian did
38 so willfully and without just cause, the court may revoke the order
39 of probation **【or of protection】** and enter any order necessary to
40 protect the safety of the child and that might have been made at the
41 time the order of probation was made.

42 If a parent or guardian is brought before the court for failing to
43 comply with the terms and conditions of an order of protection
44 issued pursuant to section 8, 11, or 35 of P.L.1974, c.119 (C.9:6-
45 8.28, 9:6-8.31, or 9:6-8.55), and after a hearing, the court is
46 satisfied by competent proof that the parent or guardian did so
47 willfully and without just cause, the act shall constitute an offense

1 under subsection b. of N.J.S.2C:29-9 and each order shall so state.
2 Additionally, and notwithstanding the term of imprisonment
3 provided in N.J.S.2C:43-8, any person convicted of a second or
4 subsequent non-indictable contempt offense shall serve a minimum
5 term of not less than 30 days imprisonment.

6 All contempt proceedings conducted pursuant to N.J.S.2C:29-9
7 involving orders of protection issued pursuant to P.L.1974,
8 c.119 (C.9:6-8.21 et seq.) shall be heard by the Superior Court and
9 be subject to any rules or guidelines established by the Supreme
10 Court. The court may also issue orders of protection, as necessary,
11 for any other action that may protect the best interest of the child.

12 Whenever a law enforcement officer finds that there is probable
13 cause that a parent or guardian has committed contempt of an order
14 entered pursuant to the provisions of section 8, 11, or 35 of
15 P.L.1974, c.119 (C.9:6-8.28, 9:6-8.31, or 9:6-8.55), the parent or
16 guardian shall be arrested and taken into custody by the law
17 enforcement officer and the law enforcement officer shall sign a
18 complaint concerning the incident which gave rise to the contempt.
19 (cf: P.L.1974, c.119, s.47)

20
21 8. This act shall take effect on the first day of the third month
22 following enactment.
23

24 STATEMENT

25
26
27 This bill makes various changes to the laws concerning
28 protective orders related to child abuse to make them more similar
29 to the laws concerning protective orders related to domestic
30 violence.

31 Section 1 of the bill clarifies whether the domestic violence laws
32 or the child abuse laws control situations related to abuse of a child
33 by a parent or guardian. It adds language to the relevant definition
34 of “domestic violence” to state that when one or more of the acts
35 enumerated in the list of crimes in the definition of domestic
36 violence is inflicted on an unemancipated minor by a parent or
37 guardian responsible for the child’s care, or spouse of the parent or
38 guardian, or both, it is not domestic violence, but may be the basis
39 for the filing of a petition or request for relief to obtain an order of
40 protection pursuant to the State’s child abuse laws.

41 Sections 2 and 3 of the bill amend the relevant definitions of
42 “abused child” and “abused or neglected child” to include
43 exhibiting a pattern of behavior that emotionally impairs or creates
44 an imminent danger of emotional impairment for the child.

45 The purpose of updating these sections is to expand the
46 protections offered by the child abuse statutes.

47 The bill also provides that a court in child abuse or neglect cases
48 may issue orders requiring persons to stay away from not just the

1 abused child, but also other children identified by the court whose
2 safety may be at risk. It further provides that a court may extend an
3 order of protection beyond when the child reaches the age of
4 majority if necessary to protect the person's safety. An order so
5 extended could be dissolved or modified upon good cause shown.

6 Additionally, the bill does the following concerning failures to
7 comply with such orders of protection:

- 8 • provides that a parent or guardian willfully failing to comply
9 with an order of protection without just cause commits a
10 contempt offense under subsection b. of N.J.S.2C:29-9;
- 11 • provides that for a second or subsequent non-indictable
12 contempt offense, a person is subject to a mandatory term of
13 not less than 30 days imprisonment;
- 14 • requires that all contempt proceedings be conducted in
15 Superior Court pursuant to the Supreme Court's rules and
16 guidelines; and
- 17 • requires that a law enforcement officer who finds that there
18 is probable cause that a parent or guardian has committed an
19 act of contempt of an order of protection shall arrest the
20 person, take them into custody, and file a complaint.