

ASSEMBLY, No. 3193

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 24, 2020

Sponsored by:

Assemblywoman CAROL A. MURPHY
District 7 (Burlington)

Co-Sponsored by:

Assemblywoman Vainieri Huttie

SYNOPSIS

Prevents parent found by clear and convincing evidence to have committed sexual assault resulting in birth of child from having custody or visitation; provides grounds for termination of parental rights.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/5/2020)

1 AN ACT concerning parental rights in certain cases and amending
2 P.L.1995, c.55 and P.L.1951, c.138.

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

6
7 1. Section 1 of P.L.1995, c.55 (C.9:2-4.1) is amended to read
8 as follows:

9 1. a. (1) Notwithstanding any provision of law to the contrary
10 and except as provided in paragraph (2) of this subsection, [a
11 person convicted] if the court finds by clear and convincing
12 evidence that a person committed an act of sexual assault under
13 N.J.S.2C:14-2 that resulted in the birth of a child, the person shall
14 not be awarded the custody of or visitation rights to **[any]** the
15 minor child], including a minor child who was born as a result of or
16 was the victim of the sexual assault, except upon a showing by clear
17 and convincing evidence that it is in the best interest of the child for
18 custody or visitation rights to be awarded. However, a court that
19 awards such custody or visitation rights to a person convicted of
20 sexual assault under N.J.S.2C:14-2 shall stay enforcement of the
21 order or judgment for at least 10 days in order to permit the appeal
22 of the order or judgment and application for a stay in accordance
23 with the Rules of Court].

24 A conviction of sexual assault under N.J.S.2C:14-2 is not a
25 prerequisite for a finding by the court that the person committed an
26 act of sexual assault that resulted in the birth of a child. The court
27 may make such a finding in the absence of a criminal charge; while
28 a criminal charge is pending; or if the defendant is charged with an
29 offense set forth in this subsection and subsequently pleads guilty to
30 a lesser offense pursuant to a negotiated agreement.

31 (2) A person convicted of sexual assault under N.J.S.2C:14-2,
32 other than a sexual assault that results in the birth of a child, shall
33 not be awarded the custody of or visitation rights to any minor
34 child, except upon a showing by clear and convincing evidence that
35 it is in the best interest of the child for custody or visitation rights to
36 be awarded. However, a court that awards such custody or visitation
37 rights to a person convicted of sexual assault under N.J.S.2C:14-2
38 shall stay enforcement of the order or judgment for at least 10 days
39 in order to permit the appeal of the order or judgment and
40 application for a stay in accordance with the Rules of Court.

41 b. Notwithstanding any provision of law to the contrary, a
42 person convicted of sexual contact under N.J.S.2C:14-3 or
43 endangering the welfare of a child under N.J.S.2C:24-4 shall not be
44 awarded the custody of or visitation rights to any minor child,
45 except upon a showing by clear and convincing evidence that it is in

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 the best interest of the child for such custody or visitation rights to
2 be awarded. However, a court that awards such custody or
3 visitation rights to a person convicted of sexual contact under
4 N.J.S.2C:14-3 or endangering the welfare of a child under
5 N.J.S.2C:24-4 shall stay enforcement of the order or judgment for at
6 least 10 days in order to permit the appeal of the order or judgment
7 and application for a stay in accordance with the Rules of Court.

8 c. **【A】** Except as provided in paragraph (g) of section 15 of
9 P.L.1951, c.138 (C.30:4C-15), a denial of custody or visitation
10 under this section shall not by itself terminate the parental rights of
11 the person denied visitation or custody, nor shall it affect the
12 obligation of the person to support the minor child.

13 d. In any proceeding for establishment or enforcement of such
14 an obligation of support the victim shall not be required to appear in
15 the presence of the obligor and the victim's and child's whereabouts
16 (cf: P.L.1999, c.424)

17
18 2. Section 15 of P.L.1951, c.138 (C.30:4C-15) is amended to
19 read as follows:

20 15. Whenever

21 (a) it appears that a court wherein a complaint has been
22 proffered as provided in chapter 6 of Title 9 of the Revised Statutes,
23 has entered a conviction against the parent or parents, guardian, or
24 person having custody and control of any child because of abuse,
25 abandonment, neglect of or cruelty to such child; or

26 (b) (Deleted by amendment, P.L.1991, c.275);

27 (c) it appears that the best interests of any child under the care
28 or custody of the division require that he be placed under
29 guardianship; or

30 (d) it appears that a parent or guardian of a child, following the
31 acceptance of such child by the division pursuant to section 11 or
32 12 of P.L.1951, c.138 (C.30:4C-11 or 12), or following the
33 placement or commitment of such child in the care of an authorized
34 agency, whether in an institution or in a resource family home, and
35 notwithstanding the reasonable efforts of such agency to encourage
36 and strengthen the parental relationship, has failed for a period of
37 one year to remove the circumstances or conditions that led to the
38 removal or placement of the child, although physically and
39 financially able to do so, notwithstanding the division's reasonable
40 efforts to assist the parent or guardian in remedying the conditions;
41 or

42 (e) the parent has abandoned the child; or

43 (f) the parent of a child has been found by a criminal court of
44 competent jurisdiction to have committed murder, aggravated
45 manslaughter or manslaughter of another child of the parent; to
46 have aided or abetted, attempted, conspired, or solicited to commit
47 such murder, aggravated manslaughter or manslaughter of the child
48 or another child of the parent; or to have committed, or attempted to

1 commit, an assault that resulted, or could have resulted, in the
2 significant bodily injury to the child or another child of the parent;
3 or the parent has committed a similarly serious act which resulted,
4 or could have resulted, in the death or significant bodily injury to
5 the child or another child of the parent; or

6 (g) the parent has been found by clear and convincing evidence
7 to have committed sexual assault that resulted in the birth of the
8 child;

9 a petition to terminate the parental rights of the child's parents,
10 setting forth the facts in the case, shall be filed by the division with
11 the Family Part of the Chancery Division of the Superior Court in
12 the county where such child may be at the time of the filing of such
13 petition. A petition shall be filed as soon as any one of the
14 circumstances in subsections (a) through **[(f)] (g)** of this section is
15 established, but no later than when the child has been in placement
16 for 15 of the most recent 22 months, unless the division establishes
17 an exception to the requirement to seek termination of parental
18 rights in accordance with section 31 of P.L.1999, c.53 (C.30:4C-
19 15.3). Upon filing the petition, the division shall initiate concurrent
20 efforts to identify, recruit, process and approve a qualified family to
21 adopt the child.

22 A petition as provided in this section may be filed by any person
23 or any association or agency, interested in such child in the
24 circumstances set forth in subsections (a) and **[(f)] (g)** of this
25 section. The division shall seek to be joined as a party to a petition
26 filed to terminate the parental rights of a child in the care and
27 custody of the division unless the division has established an
28 exception to the requirement to seek termination of parental rights
29 in accordance with section 31 of P.L.1999, c.53 (C.30:4C-15.3).
30 (cf: P.L.2004, c.130, s.55)

31
32 3. This act shall take effect immediately and shall apply to any
33 proceeding concerning custody or visitation for which a final
34 adjudication has not been made as of the effective date.

35 36 37 STATEMENT

38
39 This bill provides that a parent found by clear and convincing
40 evidence by the court to have committed sexual assault which
41 resulted in the birth of a child will be barred from having custody of
42 or visitation rights to that child. Also, the Division of Child
43 Protection and Permanency must file a petition in family court to
44 terminate the parent's rights.

45 *Custody and Visitation*

46 Currently, N.J.S.A.9:2-4.1 provides that a person convicted of
47 sexual assault, sexual contact, or endangering the welfare of a child
48 shall not be awarded custody of or visitation rights to any minor

1 child, including a minor child who was born as a result of or was
2 the victim of the sexual assault, except upon a showing by clear and
3 convincing evidence that custody or visitation is in the best interest
4 of the child.

5 Under this bill, if the court finds by clear and convincing
6 evidence that a person committed an act of sexual assault under
7 N.J.S.2C:14-2 that resulted in the birth of a child, then the person
8 will be barred from having custody of or visitation rights to that
9 minor child. Also, the best interest of the child exception would be
10 eliminated in this case.

11 *Termination of Parental Rights*

12 Under current law, set out in N.J.S.A.30:4C-15, the Division of
13 Child Protection and Permanency must file a petition in family
14 court to terminate parental rights under several circumstances,
15 including where a parent has been convicted of certain serious
16 crimes against the child or against another child of the parent. The
17 bill provides that if the court finds by clear and convincing evidence
18 that the defendant committed sexual assault resulting in the birth of
19 a child, that finding would also constitute grounds for the division
20 to file a petition to terminate the defendant's parental rights.