

ASSEMBLY, No. 3689

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman RAJ MUKHERJI

District 33 (Hudson)

SYNOPSIS

Clarifies juvenile's right to attorney representation; requires 12-month judicial review hearing when juvenile is placed out-of-home.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2021)

1 AN ACT concerning juvenile justice and amending P.L.1982, c.77.

2

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

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6 1. Section 20 of P.L.1982, c.77 (C.2A:4A-39) is amended to
7 read as follows:

8 20. a. A juvenile shall have the right, as provided by the Rules
9 of Court, to be represented by counsel at every critical stage **[in**
10 **the]** of a court proceeding [which, in the opinion of the court may
11 result in the institutional commitment of the juvenile]. For the
12 purposes of this act “critical stage of a court proceeding” shall
13 include but not be limited to every court appearance by the juvenile;
14 any interrogation, identification procedure, or other investigative
15 activity involving the juvenile undertaken by law enforcement or
16 prosecutorial personnel subsequent to the filing of the complaint;
17 and the duration of any dispositional order entered by the court.

18 b. During every critical stage of a court proceeding in a
19 delinquency case provided under subsection a. of this section, the
20 waiving of any right afforded to a juvenile shall be accomplished in
21 the following manner:

22 (1) A juvenile who is found to have mental capacity may not
23 waive any rights except in the presence of and after consultation
24 with counsel, and unless a parent has first been afforded a
25 reasonable opportunity to consult with the juvenile and the
26 juvenile's counsel regarding this decision. The parent or guardian
27 may not waive the rights of a juvenile found to have mental
28 capacity.

29 (2) Any such waiver shall be executed in writing or recorded.
30 Before the court may accept a waiver, the court shall question the
31 juvenile and the juvenile's counsel to determine if the juvenile is
32 knowingly, willingly, and voluntarily waiving any right. If the
33 court finds after questioning the juvenile that the waiver is not
34 being made voluntarily and intelligently, the waiver shall be denied.

35 (3) A juvenile who is found to lack mental capacity may not
36 waive any right. A guardian ad litem shall be appointed for the
37 juvenile who may waive rights after consultation with the juvenile
38 and the juvenile's counsel.

39 (4) Waivers shall be executed in the language regularly spoken
40 by the juvenile.

41 (cf: P.L.2013, c.103, s.1)

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43 2. Section 26 of P.L.1982, c.77 (C.2A:4A-45) is amended to
44 read as follows:

45 26. Retention of jurisdiction.

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 a. The court shall retain jurisdiction over any case in which it
2 has entered a disposition under paragraph 7 of subsection b. or
3 subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or under
4 section 25 of P.L.1982, c.77 (C.2A:4A-44) for the duration of that
5 disposition of commitment or incarceration and may substitute any
6 disposition otherwise available to it under section 24 of
7 P.L.1982, c.77 (C.2A:4A-43) other than incarceration.

8 b. Except as provided for in subsection a., the court shall retain
9 jurisdiction over any case in which it has entered a disposition
10 under section 24 of P.L.1982, c.77 (C.2A:4A-43) and may at any
11 time for the duration of that disposition, if after hearing, and notice
12 to the prosecuting attorney, it finds violation of the conditions of
13 the order of disposition, substitute any other disposition which it
14 might have made originally.

15 c. The court may by its order retain jurisdiction in any other
16 case.

17 d. Notwithstanding the provisions of subsection a. of this
18 section, whenever the court has entered a disposition directing the
19 out-of-home placement of the juvenile pursuant to subsection b. or
20 subsection c. of section 24 of P.L.1982, c.77 (C.2A:4A-43) or
21 section 25 of P.L.1982, c.77 (C.2A:4A-44), the court shall conduct
22 a placement review hearing no later than 12 months after entry of
23 the dispositional order. During this hearing, the court shall, at a
24 minimum, review the treatment, care, and custody status of the
25 juvenile; determine whether the placement agency is providing
26 those mental health, substance abuse, educational, and other
27 rehabilitative services necessary to promote the juvenile's
28 successful reintegration into the community; determine whether the
29 placement continues to be consistent with the factors enumerated in
30 subsection a. of section 24 of P.L.1982, c.77 (C.2A:4A-43); and, if
31 necessary, modify the dispositional order in accordance with those
32 factors. Subsequent placement review hearings shall be conducted
33 by the court at least once every 12 months throughout the duration
34 of any out-of-home placement ordered by the court.

35 e. The Supreme Court of New Jersey may adopt Rules of Court
36 governing the conduct of the placement review hearings mandated
37 by subsection d. of this section.

38 (cf: P.L.1995, c.280, s.13)

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40 3. This act shall take effect immediately.

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43 STATEMENT

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45 Under current law, a juvenile has a right to an attorney at every
46 critical stage of a court proceeding in a delinquency case. This bill
47 clarifies that a juvenile has a right to an attorney during every court
48 appearance by the juvenile, any interrogation, identification

1 procedure, or other investigative activity undertaken by law
2 enforcement or prosecutorial personnel subsequent to the filing of
3 the complaint; and the duration of any dispositional order entered
4 by the court.

5 In addition, this bill establishes that when a court requires out-of-
6 home placement of child in a delinquency case, the court shall
7 conduct a placement review hearing no later than 12 months after
8 entry of the dispositional order. Under current law, although young
9 people are routinely sentenced to serve three or more years in State
10 custody, there is no court oversight of out-of-home placements in
11 juvenile delinquency cases unless a specific request is made of the
12 court.

13 This provision would amend the current law in New Jersey to be
14 consistent with Key Principle No. 13 of the National Council of
15 Juvenile and Family Court Judges' *Juvenile Delinquency Guidelines*
16 (2005), which states: "Juvenile Delinquency Court Judges Should
17 Ensure Effective Post-Disposition Review Is Provided to Each
18 Delinquent Youth as Long as the Youth is Involved in any
19 Component of the Juvenile Justice System." Such reviews are
20 essential to monitor compliance with the court's dispositional
21 orders, to ascertain whether the difficulties that led young people
22 into state custody are being addressed by the placement agency, and
23 to ensure that out-of-home placement continues to be appropriate.
24 Such hearings are required in a number of other states, including
25 New York and Pennsylvania.

26 The bill provides that during the placement hearing, the court is
27 to review the treatment, care, and custody status of the juvenile;
28 determine whether the placement agency is providing those mental
29 health, substance abuse, educational, and other rehabilitative
30 services necessary to promote the juvenile's successful
31 reintegration into the community; and determine whether the
32 placement continues to be consistent with the factors weighed in
33 determining the original disposition of the juvenile. The bill allows
34 the court to modify the dispositional order based on the factors
35 considered during the placement review hearing. The bill further
36 requires that the court conduct subsequent placement review
37 hearings every 12 months throughout the duration of any out-of-
38 home placement ordered by the court.