

SENATE, No. 1270

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 3, 2020

Sponsored by:

Senator JOSEPH F. VITALE

District 19 (Middlesex)

SYNOPSIS

Expands the means to obtain a protective order for a 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 bodily
33 injury to a person protected under the "Prevention of Domestic
34 Violence Act of 1991," P.L.1991, c.261 (C.2C:25-17 et al.)
- 35 (19) Cyber-harassment P.L.2013, c.272 (C.2C:33-4.1)

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

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

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 or request for relief to obtain an order of protection pursuant to the
2 provisions of P.L.1974, c.119 (C.9:6-8.21 et seq).

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

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

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

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

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

29
30 2. Section 2 of P.L.1971, c.437 (C.9:6-8.9) is amended to read
31 as follows:

32 2. For purposes of this act:

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

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

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

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

47 d. Or a child whose physical, mental, or emotional condition
48 has been impaired or is in imminent danger of becoming impaired

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

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

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

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

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

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

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

46 b. "Child" means any child alleged to have been abused or
47 neglected.

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

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

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

44 d. "Law guardian" means an attorney admitted to the practice
45 of law in this State, regularly employed by the Office of the Public
46 Defender or appointed by the court, and designated under P.L.1974,
47 c.119 (C.9:6-8.21 et seq.) to represent minors in alleged cases of

1 child abuse or neglect and in termination of parental rights
2 proceedings.

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

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

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

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

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

23

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

26 30. Sustaining or dismissing complaint.

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

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

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

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

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

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

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

18
19 5. Section 31 of P.L.1974, c.119 (C.9:6-8.51) is amended to
20 read as follows:

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

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

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

38
39 6. Section 35 of P.L.1974, c.119 (C.9:6-8.55) is amended to
40 read as follows:

41 35. Order of protection. The court may make an order of
42 protection in assistance or as a condition of any other order made
43 under this act at any time. The order of protection may set forth
44 reasonable conditions of behavior to be observed for a specified
45 time by a person who is before the court and is a parent or guardian
46 responsible for the child's care or the spouse of the parent or
47 guardian, or both. Such an order may require any such person:

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

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

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

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

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

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

19 The court may extend an order of protection pursuant to sections
20 8 and 11 of P.L.1974, c.119 (C.9:6-8.28 and 9:6-8.31) and pursuant
21 to this section beyond a child's age of majority as necessary to
22 protect the safety of the child. However, this order may be
23 dissolved or modified upon application to the Superior Court, upon
24 good cause shown.

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

26
27 7. Section 47 of P.L.1974, c.119 (C.9:6-8.67) is amended to
28 read as follows:

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

40 If a parent or guardian is brought before the court for failing to
41 comply with the terms and conditions of an order of protection
42 issued pursuant to section 8, 11, or 35 of P.L.1974, c.119 (C.9:6-
43 8.28, 9:6-8.31, or 9:6-8.55), and after a hearing, the court is
44 satisfied by competent proof that the parent or guardian did so
45 willfully and without just cause, the act shall constitute an offense
46 under subsection b. of N.J.S.2C:29-9 and each order shall so state.
47 Additionally, and notwithstanding the term of imprisonment

1 provided in N.J.S.2C:43-8, any person convicted of a second or
2 subsequent non-indictable contempt offense shall serve a minimum
3 term of not less than 30 days imprisonment.

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

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

17 (cf: P.L.1974, c.119, s.47)

18
19 8. This act shall take effect on the first day of the third month
20 following enactment.

21 22 23 STATEMENT

24
25 This bill makes various changes to the laws concerning
26 protective orders related to child abuse to make them more similar
27 to the laws concerning protective orders related to domestic
28 violence.

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

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

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

45 The bill also provides that a court in child abuse or neglect cases
46 may issue orders requiring persons to stay away from not just the
47 abused child, but also other children identified by the court whose
48 safety may be at risk. It further provides that a court may extend an

1 order of protection beyond when the child reaches the age of
2 majority if necessary to protect the person's safety. An order so
3 extended could be dissolved or modified upon good cause shown.

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

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