

**To: New Jersey Law Revision Commission**  
**Fr: Laura C. Tharney, Executive Director**  
**Re: “Surrender” in the Context of Voluntary Relinquishment of Parental Rights**  
**Date: July 11, 2022**

## **MEMORANDUM**

### **Summary**

Title 9 of the New Jersey statutes “Children – Juvenile and Domestic Relations Courts” and Title 30 “Institutions and Agencies” both contain provisions concerning the voluntary relinquishment of parental rights and use the term “surrender” to refer to that relinquishment.

The term “surrender” appears in 21 statutory sections across Title 9 and Title 30, 19 of which concern parental rights.<sup>1</sup>

By letter of June 30, 2022, the New Jersey State Bar Association requested, pursuant to N.J.S. 1:12A-8, that the New Jersey Law Revision Commission review the use of the term “surrender” in the context of voluntary relinquishments of parental rights, and consider replacing the term with “transfer” in order to more accurately describe the “nature of the issue.”<sup>2</sup>

### **Background**

The term “surrender” is defined in the parental rights context as “a voluntary relinquishment of all parental rights by a birth parent, previous adoptive parent, or other person or agency authorized to exercise these rights by law, court order or otherwise, for purposes of

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<sup>1</sup> N.J. STAT. ANN. § 9:2-13. Definitions (West 2022); N.J. STAT. ANN. § 9:2-14. Surrender of child custody; validity (West 2022); N.J. STAT. ANN. § 9:2-15. Surrender or termination of rights of one parent; rights of other parent (West 2022); N.J. STAT. ANN. § 9:2-16. Voluntary surrender to approved agency (West 2022); N.J. STAT. ANN. § 9:2-17. Form of surrender (West 2022); N.J. STAT. ANN. § 9:2-18. Action to terminate parental rights; notice; report (West 2022); N.J. STAT. ANN. § 9:2-19. Determinations and declarations of court (West 2022); N.J. STAT. ANN. § 9:3-38. Definitions (West 2022); N.J. STAT. ANN. § 9:3-41. Surrender of child; acknowledged and signed instrument; relinquishment of rights and consent to adoption; validity; acceptance of custody by approved agency (West 2022); N.J. STAT. ANN. § 9:3-41.1. Surrender of child to agency; provision of available information on child’s development to prospective parent (West 2022); N.J. STAT. ANN. § 9:3-45. Notice of complaint and hearing to parent; service; contents; when notice not required (West 2022); N.J. STAT. ANN. § 9:3-46. Objection by parent; prohibition of judgment of adoption; exception; guardian or person standing in loco parentis; notice and standing to object (West 2022); N.J. STAT. ANN. § 9:3-47. Action of complaint for adoption; child received from approved agency (West 2022); N.J. STAT. ANN. § 9:3-48. Action on complaint for adoption; child not received from approved agency (West 2022); N.J. STAT. ANN. § 9:17-65. Gestational carrier agreement; requirements (West 2022); N.J. REV. STAT. § 9:17-68. Applicability of laws (West 2022); N.J. STAT. ANN. § 30:4-49.2. Settlement of minor born in wedlock (West 2022); N.J. STAT. ANN. § 30:4C-2. Definitions (West 2022); and N.J. STAT. ANN. § 30:4C:23. Voluntary surrenders and releases of custody and consents to adoption (West 2022).

<sup>2</sup> Email from Lisa Chapland to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm’n, forwarding June 30, 2022, letter from Jeralyn Lawrence, President of the New Jersey State Bar Association (June 30, 2022, 02:22 p.m. EST), (on file with the NJLRC).

allowing a child to be adopted.”<sup>3</sup> It is also described as “relinquishment of the person's parental rights in or guardianship or custody of the child named therein and consent by the person to adoption of the child.”<sup>4</sup>

“Surrender” is defined by Merriam-Webster as “to give up completely or agree to forgo especially in favor of another.”<sup>5</sup>

The New Jersey State Bar Association (NJSBA) expressed concern about a negative connotation or negative impact resulting from the use of the term “surrender,” and explained that

[t]o witness a voluntary transfer of parental rights is sobering. Judges often acknowledge that parents voluntarily offering to termination their parental rights are acting in the best interest of their child and are acting selflessly by placing the child’s welfare above their own.<sup>6</sup>

The NJSBA also explained that a “parent who is inclined to surrender their parental rights in the best interests of their child may not be deterred by the use of the term ‘surrender,’ but it is often a hurdle to emotionally overcome [in] what is an already emotionally charged court proceeding.”<sup>7</sup>

The NJSBA noted that other jurisdictions use terms such as “relinquish” or “voluntary transfer of parental rights” rather than “surrender,” and asked that the Commission consider this issue.<sup>8</sup>

### Analysis

A brief preliminary search for terms used in this context in statutes across the country confirms that some states do appear to use “relinquish” or “terminate” rather than “surrender.”<sup>9</sup>

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<sup>3</sup> N.J. STAT. ANN. § 9:3-38(j) (West 2022).

<sup>4</sup> N.J. STAT. ANN. § 9:3-41(a) (West 2022).

<sup>5</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/surrender> (last visited July 9, 2022).

<sup>6</sup> See, *supra*, Letter from Jeralyn Lawrence to Laura C. Tharney, June 30, 2022.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> See, for example, Alaska Stat. Ann. § 25.23.180 (West 2022) “The rights of a parent with reference to a child, including parental right to control the child or to withhold consent to an adoption, may be relinquished and the relationship of parent and child terminated in or before an adoption proceeding as provided in this section”; Okla. Stat. Ann. tit. 10, § 7501-1.3 (West 2022) “Permanent relinquishment” means the voluntary surrender of the rights of the parent or guardian with respect to a minor, including legal and physical custody of the minor, to a child-placing agency, Department of Human Services or any person with the assent of the court, by a minor's parent or guardian, for purposes of the minor's adoption”; Utah Code Ann. § 62A-4a-106 (West 2022) “The division may not require, request, or recommend that a parent terminate parental rights, or that a parent or guardian transfer or surrender custodial rights, in order to receive services, using out-of-home funds, for a child who is adopted from the custody of the division.”; W. Va. Code Ann. § 48-22-115 (West 2022) “Relinquishment” means the voluntary surrender to an agency by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.”; Wis. Stat. Ann. § 48.63 (West 2022) “Prior to termination of parental rights to the child, no person may coerce a birth parent of the child or any alleged or presumed father of the child into refraining from exercising his or her right

Other states, like New Jersey, appear use “surrender.”<sup>10</sup>

A more comprehensive review of the law of other states and secondary source materials would provide additional information about the range of terms used by the states, how common the various terms are, and whether individuals in other states with experience and expertise in this area of the law favor the use of certain terms.

### **Pending Bills**

There are no bills currently pending in New Jersey that address the use of the term “surrender” generally in the context of parental rights. Companion bills were introduced in the current legislative session pertaining to “surrender” that allow those “who give birth to children in licensed general hospitals to surrender those children under the ‘Safe Haven Infant Protection Act’,” clarifying that such persons are covered by the Act.”<sup>11</sup>

### **Conclusion**

Staff requests authorization to conduct further research and outreach to determine whether replacement of the term “surrender” would be appropriate in the context of voluntary relinquishments of parental rights.

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to withdraw consent to the transfer or surrender of the child or to termination of his or her parental rights to the child, to have reasonable visitation or contact with the child, or to otherwise exercise his or her parental rights to the child.”

<sup>10</sup> See, for example, Fla. Stat. Ann. § 39.808 (West 2022); Ga. Code Ann. § 15-11-321 (West 2022); 750 Ill. Comp. Stat. Ann. 50/1 (West 2022); La. Child. Code Ann. art. 1107.5 (West 2022); N.H. Rev. Stat. Ann. § 169-C:3 (West 2022); N.Y. Fam. Ct. Act § 1089 (McKinney, West 2022); Or. Rev. Stat. Ann. § 109.285 (West 2022); and Tenn. Code Ann. § 36-1-102 (West 2022).

<sup>11</sup> A.B. 4110 and S.B. 2828, 2022 Leg., 220th Sess. (N.J. 2022).