



NEW JERSEY LAW REVISION COMMISSION

Draft Tentative Report Addressing “Surrender” in the Context of Voluntary Relinquishment of Parental Rights

September 16, 2024

The New Jersey Law Revision Commission is required to “[c]onduct a continuous examination of the general and permanent statutory law of this State and the judicial decisions construing it” and to propose to the Legislature revisions to the statutes to “remedy defects, reconcile conflicting provisions, clarify confusing language and eliminate redundant provisions.” *N.J.S. 1:12A-8*.

This Report is distributed to advise interested persons of the Commission's tentative recommendations and to notify them of the opportunity to submit comments. Comments should be received by the Commission no later than **November 16, 2024**.

The Commission will consider these comments before making its final recommendations to the Legislature. The Commission often substantially revises tentative recommendations as a result of the comments it receives. If you approve of the Report, please inform the Commission so that your approval can be considered along with other comments. Please send comments concerning this Report or direct any related inquiries, to:

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Project Summary¹

The act of adoption provides a legal and permanent family for an individual who, for various reasons, cannot be raised by their biological or legal parent(s).² The New Jersey Administrative Code provides that the “legal transfer of all parental rights and responsibilities from each birth and legal parent[] to another person who desires to assume those rights and responsibilities”³ begins with the “surrender” of a child.⁴

The voluntary surrender of child custody and parental rights is addressed by the New Jersey statutes, specifically in Title 9, titled “Children – Juvenile and Domestic Relations Courts.”⁵ The surrender of a child is also addressed in Title 30, which pertains to “Institutions and Agencies.”⁶ The term “surrender” appears in nineteen statutes concerning parental rights across Title 9 and Title 30.⁷

The New Jersey State Bar Association (“NJSBA”) requested, pursuant to N.J.S. 1:12A-8,⁸ that the New Jersey Law Revision Commission (“NJLRC”) review the use of the term “surrender” in the context of voluntary relinquishment of parental rights.⁹ The NJSBA explained that the term

¹ Preliminary work on this project was conducted by Samuel M. Silver, Esq., during his tenure as the Deputy Director with the N.J. Law Revision Comm’n. Additional work was done by Michael Fuccile and Randall Terhune during their time as Legislative Law Clerks with the Commission.

² N.J. ADMIN. CODE § 3A:50-1.5(b)(1)-(6) (West 2024) (providing that adoptions are classified in six categories: (1) agency; (2) foreign; (3) identified or private; (4) independent; (5) stepparent; and (6) relative).

³ N.J. ADMIN. CODE § 3A:50-1.5.

⁴ N.J. STAT. ANN. §§ 9:3-38(j), 9:3-41 (West 2024).

⁵ N.J. STAT. ANN. §§ 9:2-16, 9:2-17.

⁶ N.J. STAT. ANN. § 30:4C-23 (West 2024) (providing that the Division of Child Protection and Permanency... may, in cases where it would be to the permanent advantage of the child, take voluntary surrenders and releases of custody and consents to adoption from the parents... having the authority to give such surrenders).

⁷ N.J. STAT. ANN. § 9:2-13 (West 2024) (definitions); N.J. STAT. ANN. § 9:2-14 (West 2024) (surrender of child custody; validity); N.J. STAT. ANN. § 9:2-15 (West 2024) (surrender or termination of rights of one parent; rights of other parent); N.J. STAT. ANN. § 9:2-16 (West 2024) (voluntary surrender to approved agency); N.J. STAT. ANN. § 9:2-17 (West 2024) (form of surrender); N.J. STAT. ANN. § 9:2-18 (West 2024) (action to terminate parental rights; notice; report); N.J. STAT. ANN. § 9:2-19 (West 2024) (determinations and declarations of court); N.J. STAT. ANN. § 9:3-38 (West 2024) (definitions); N.J. STAT. ANN. § 9:3-41 (West 2024) (surrender of child; acknowledged and signed instrument; relinquishment of rights and consent to adoption; validity; acceptance of custody by approved agency); N.J. STAT. ANN. § 9:3-41.1 (West 2024) (surrender of child to agency; provision of available information on child’s development to prospective parent); N.J. STAT. ANN. § 9:3-45 (West 2024) (notice of complaint and hearing to parent; service; contents; when notice not required); N.J. STAT. ANN. § 9:3-46 (West 2024) (objection by parent; prohibition of judgment of adoption; exception; guardian or person standing in loco parentis; notice and standing to object); N.J. STAT. ANN. § 9:3-47 (West 2024) (action of complaint for adoption; child received from approved agency); N.J. STAT. ANN. § 9:3-48 (West 2024) (action on complaint for adoption; child not received from approved agency); N.J. STAT. ANN. § 9:17-65 (West 2024) (gestational carrier agreement; requirements); N.J. STAT. ANN. § 9:17-68 (West 2024) (applicability of laws); N.J. STAT. ANN. § 30:4-49.2 (West 2024) (settlement of minor born in wedlock); N.J. STAT. ANN. § 30:4C-2vv (West 2024) (“Definitions”); and N.J. STAT. ANN. § 30:4C:23 (West 2024) (voluntary surrenders and releases of custody and consents to adoption).

⁸ N.J. STAT. ANN. § 1:12A-8 (West 2024) (providing that the Commission shall “[r]eceive and consider suggestions and recommendations from... bar associations, members of the bar and the public generally...”).

⁹ Letter from Jeralyn L. Lawrence, President, N.J. State Bar Ass’n to Laura C. Tharney, Exec. Dir., N.J. Law Revision Comm’n (June 30, 2022) (on file with the NJLRC) [hereinafter “NJSBA Letter”].

“surrender” is “often associated with giving up power and control to another,” which can be an additional “hurdle to emotionally overcome [in] what is an already emotionally charged court proceeding.”¹⁰ Therefore, the NJSBA requested the NJLRC to consider replacing the term with “transfer” which the NJSBA described as “a more accurate descriptor of the nature of the issue,” and noted also that some jurisdictions use the term “relinquish” instead.¹¹

Following the Commission’s authorization of the project, Staff reviewed the terminology used in fifteen other jurisdictions to assess the feasibility of replacing the term “surrender” in the New Jersey statutes with another term.

The proposed modifications are made to nineteen statutes¹² that use the term “surrender” in the context of terminating parental rights in Title 19 and Title 30. The modifications replace the term “surrender” with “relinquish” in an effort to mitigate the negative connotation of the term “surrender.”

Background

Adoption is the process through which individuals who are not biologically related establish the legal and relational status of parent and child.¹³

In New Jersey, there are six classifications of adoptions:¹⁴ (1) agency adoption;¹⁵ (2) foreign adoption;¹⁶ (3) identified or private adoption;¹⁷ (4) independent adoption;¹⁸ (5) stepparent

¹⁰ *Id.*

¹¹ *Id.*

¹² *See supra* n. 6.

¹³ N.J. ADMIN. CODE § 3A:50-1.5(a) (defining adoption as “the legal transfer of all parental rights and responsibilities from each birth and legal parent(s) to another who desires to assume those rights and responsibilities.”). N.J. STAT. ANN. § 9:3-50(b) (providing that “[t]he entry of a judgment of adoption shall establish the same relationships, rights, and responsibilities between the child and the adopting parent as if the child were born to the adopting parent in lawful wedlock.”). *In re Adoption of J.E.V.*, 226 N.J. 90, 100 (2016) (“[a] completed adoption establishes the same relationship[] . . . between the child and the adopting parent as if the child were born to the adopting parent.”) (internal quotation marks omitted).

¹⁴ N.J. ADMIN. CODE § 3A:50-1.5(b)(1)-(6).

¹⁵ *Id.* (defining agency adoption as “an adoption where the birth parent(s) and the adoptive parent(s) come to an agency independent of each other and there is no prior relationship for the purpose of adoption....”).

¹⁶ *Id.* (defining foreign adoption as the adoption of a child who resides in a country other than the United States).

¹⁷ *Id.* (defining identified or private adoption as “an adoption where the agency becomes involved in providing services to each birth parent, legal parent and prospective adoptive parent who is considering a plan to place the child for adoption in the prospective adoptive parent’s home.”).

¹⁸ *Id.* (defining independent adoption as “an adoption where the child is received in the adoptive home from a source other than an agency.”).

adoption;¹⁹ and (6) relative adoption.²⁰ These classifications are categorized either as “agency” placement adoptions²¹ and “non-agency” placement adoptions.²²

A birth parent’s parental rights to the adoptee must be terminated as a prerequisite for a finalized adoption.²³ An individual’s parental rights may be terminated either (1) when an approved agency that is supervising a child institutes an action to terminate the “rights of the parent of such child and... transfer... custody of such child to the agency”;²⁴ or (2) within an adoption proceeding.²⁵ Since the issue raised by the NJSBA relates to voluntary surrenders, the Report focuses on statutes addressing only the latter scenario.

The New Jersey Adoption Act (“Adoption Act”) governs the adoption of children.²⁶ The Legislature mandated that the act be “liberally construed to the end that the best interests of the child [are] promoted” and states that child safety is of paramount concern.²⁷ The rights of all individuals affected by the adoption are to be given due regard – including the rights of the biological or legal parents.²⁸

To facilitate the adoption of a child, the biological or legal parent may voluntarily “surrender” the child to an approved agency.²⁹ 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 allowing a child to be adopted.”³⁰ It is also described in the statutes

¹⁹ *Id.* (defining stepparent adoption as “an adoption of a child by the birth parent’s current spouse.”).

²⁰ *Id.* (defining relative adoption as “an adoption of a child by a person(s) who is related by blood or marriage.”).

²¹ See N.J. STAT. ANN. § 9:3-39.1(a) (b) (authorizing the Commissioner of Children and Families to enforce adoption law in New Jersey). See also N.J. ADMIN. CODE § 3A:50-1.3 (providing that the office of Licensing of the New Jersey Department of Children and Families is responsible for the implementation and enforcement of the law).

²² N.J. STAT. ANN. § 9:3-39.1(a) (permitting the placement of a child for adoption by other than an approved agency where: “(1) the person is the parent or guardian of the child, or ... (3) the placement for adoption is with a brother, sister, aunt, uncle, grandparent, birth father, or stepparent of the child, or... (4) the placement is through an intermediary” and “certain requirements are met.”).

²³ N.J. STAT. ANN. § 9:3-59(c)(1); *Sees v. Baber*, 74 N.J. 201, 210 (1997) (holding “the termination of the rights of the natural parent is a condition precedent which must be met before an adoption can proceed to finality.”); *Matter of Adoption of Child by R.C.W.*, No. A-2907-17T3, 2018 WL 3732739, *12 (N.J. Super. Ct. App. Div. Aug. 7, 2018).

²⁴ N.J. STAT. ANN. § 9:2-18. This procedure is utilized if the agency is unable to obtain a valid surrender or if the child may not readily be placed for adoption. Because this method to terminate parental rights generally occurs in the absence of a valid surrender, further examination would exceed the scope of this memorandum.

²⁵ N.J. STAT. ANN. § 9:3-48(c), 9:3-50.

²⁶ N.J. STAT. ANN. §§ 9:3-37 to 9:3-56 (West 2024). See *Matter of Adoption of P*, 193 N.J. Super. 33, 36 (Prob. Div. 1983) (noting that “there is no right to adoption under common law” and that “any right to adopt a child...exists only by virtue of statute.”).

²⁷ N.J. STAT. ANN. § 9:3-37.

²⁸ *Id.* See N.J. STAT. ANN. § 9:3-41(a).

²⁹ N.J. STAT. ANN. §§ 9:2-16, 9:2-17, 9:3-41(a).

³⁰ N.J. STAT. ANN. § 9:3-38(j) (emphasis added).

as “*relinquishment* of the person’s parental rights in guardianship or custody of the child named therein and consent by the person to adoption of the child.”³¹

The rights of the biological or legal parents are respected through a series of statutory safeguards.³² The surrender of the child must be in writing, and executed before an officer authorized to take acknowledgements.³³ A surrender accompanied by a written acknowledgment is valid regardless of the age of the surrendering person.³⁴ Surrender of a child is invalid, however, if executed prior to the child’s birth or before the child is seventy-two hours old.³⁵

In addition, prior to execution of the surrender, the approved agency is required to offer counseling to the parent.³⁶ The person executing the surrender must be informed that “the instrument is a surrender of parental rights by the signatory and means the permanent end of the relationship and all contact between the parent and child.”³⁷ Furthermore, the parent must be informed that the surrender constitutes a relinquishment of their parental rights and serves as their consent to the adoption of the child by another individual.³⁸

The primary purpose of the Adoption Act is to bolster the newly established family and promote the adoption of children, assuring prospective families that the involvement of biological relatives will not disrupt the cohesion of the new family unit.³⁹ To safeguard newly formed families, the Adoption Act provides for the termination of the parental rights of natural parents who have surrendered children for adoption or whose parental rights have been severed.⁴⁰ To that end, the Adoption Act “maintains the policy that adoption ends the parental role of the biological parents and transfers that role to the adoptive parents.”⁴¹

The NJSBA expressed concern about the negative connotation of the term “surrender,” explaining that

[t]o witness a voluntary transfer of parental rights is sobering. Judges often acknowledge that parents voluntarily offering to terminate their parental rights are

³¹ N.J. STAT. ANN. § 9:3-41(a) (emphasis added) (requiring certain information be conveyed to the “surrendering” parent, including that “surrender” means the parent is “relinquishing” their parental rights).

³² N.J. STAT. ANN. § 9:2-16; 9:3-41. *See also* N.J. STAT. ANN. § 46:14-2.1; 46:14-6.1.

³³ N.J. STAT. ANN. § 9:2-16; 9:3-41. *See also* N.J. STAT. ANN. § 46:16.2.1; 46:14-6.1.

³⁴ N.J. STAT. ANN. § 9:2-16; 9:3-41.

³⁵ N.J. STAT. ANN. § 9:3-41(e); 9:2-16, 9:2-17; N.J. ADMIN. CODE § 30:50-5.4(d)(4).

³⁶ N.J. STAT. ANN. § 9:3-41(a); N.J. ADMIN. CODE § 30:50-5.4(c)(1)-(2) (providing that the agency must offer the birth parents at least three counseling sessions covering adoption alternatives, present emotional issues, legal rights, surrender preparation, and external resource referrals). *See Matter of Baby M*, 109 N.J. 396 (1988).

³⁷ N.J. STAT. ANN. § 9:3-41(a).

³⁸ *Id.*

³⁹ *In re Adoption of Child by W.P.*, 163 N.J. 158, 174 (2000).

⁴⁰ *Id.*

⁴¹ *Id.* (citing *In re Adoption of Child by D.M.H.*, 135 N.J. 473, 491 (1994)).

acting in the best interest of their child and are acting selflessly by placing the child's welfare above their own.⁴²

The NJSBA 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.”⁴³ In its initial letter to the NJLRC, the NJSBA noted that other jurisdictions use terms such as “relinquish” or “transfer of parental rights” rather than “surrender.”⁴⁴

Analysis

An examination of the laws of several other states⁴⁵ was undertaken to assess how common the terms “surrender,” “relinquishment,” and “transfer” are in the context of adoption and whether a suitable replacement for the term “surrender” could be identified.

- *Surrender and Relinquish*

The term “surrender” is commonly used in relevant statutes across multiple jurisdictions, including New Jersey. Several of the other state’s statutes examined utilize the term “surrender” to denote the physical act of turning a child over to another individual or entity and the accompanying surrender of one’s rights to the child.⁴⁶

In 1993, the Legislature added a definition of the word “surrender” to the definition section of the Adoption Act.⁴⁷ New Jersey defines “surrender” 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 allowing a child to be adopted.”⁴⁸

The use of the term “relinquishment” to define “surrender” prompted Staff to examine the use of this term to determine whether it could be a suitable replacement for the term “surrender” in the Adoption Act.

Similar to the term “surrender,” the term “relinquish” is widely used in statutes across multiple jurisdictions. The term “relinquish” has been defined as “[t]o abandon, to give up, to

⁴² See NJSBA Letter, *supra* n. 9.

⁴³ *Id.*

⁴⁴ *Id.* The NJSBA did not identify the jurisdictions on which it focused.

⁴⁵ In addition to New Jersey, Staff examined the statutory and common law in the following fifteen states: Ala.; Alaska; Ariz.; Ark.; Colo.; Conn.; Del.; Ga.; Idaho; Kan.; Miss.; Neb.; S.C.; W. Va.; and Wyo.

⁴⁶ See N.J. STAT. ANN. § 9:2-16 (voluntary surrender of a child shall be to an approved agency).

⁴⁷ See L. 1953, c. 345, § 23 (amending L. 1979, c. 292, amending and supplementing L. 1977, c. 367).

⁴⁸ N.J. STAT. ANN. § 9:3-38(j). The two subsequent legislative amendments to this statute, L. 2006, c. 47, and L. 2012, c. 16, did not alter New Jersey’s definition of the term “surrender” in this context.

surrender, to renounce some right or thing.”⁴⁹ Some states use the term “relinquish” in connection with the termination of parental rights without defining the term, while others use it in connection with the transfer of the physical custody of the child.

Of the sixteen jurisdictions surveyed, only two define “relinquish” in their statutes. One state defines “relinquish” as an “informed and voluntary release,”⁵⁰ and the other uses the phrase “voluntary surrender” to define “relinquish.”⁵¹

New Jersey, in its adoption statutes, utilizes the term “surrender” to signify both the physical act of handing a child over to an authorized agency and to denote relinquishment of parental rights.⁵² The examination of adoption terminology in New Jersey and elsewhere supports the conclusion that the terms “surrender” and “relinquish” are synonyms, with the selection between the two seeming to reflect a legislative preference rather than a substantive difference.

- *Transfer*

The term “transfer” appears in several state statutes regarding custody or guardianship, and generally means to convey or pass from one person or place to another. In the states surveyed, “transfer” is not uniformly defined, but its statutory context usually relates to the physical location or custody of a child or parental rights.

In New Jersey, replacing the term “surrender” with “transfer” in statutes concerning adoption could potentially cause confusion about the permanency of surrendering parental rights. Kinship legal guardianship is described in New Jersey as an “alternative arrangement” to adoption, which does not involve “the termination of parental rights” but rather “the *transfer* to the caregiver of certain parental rights.”⁵³

Unlike the terms “surrender” or “relinquishment,” which consistently indicate a permanent end to parental rights, the term “transfer” may imply a temporary or conditional action. Using “transfer” instead of “surrender” or “relinquishment” could impact the clarity and effectiveness of current adoption statutes and procedures.

⁴⁹ *Black’s Law Dictionary* 1292 (6th ed. 1990).

⁵⁰ *Id.* South Carolina defines “relinquish” as “the informed and voluntary release in writing of all parental rights with respect to a child by a parent to a child placing agency or to a person who facilitates the placement of a child for the purpose of adoption.”

⁵¹ *Id.* West Virginia defines “relinquish” as “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.”

⁵² See N.J. CT. RULES, R. 5:10-7 (explaining procedures corresponding to the judicial surrender of parental rights).

⁵³ N.J. STAT. ANN. § 3B:12A-1 (West 2024) (emphasis added) (providing that birth parents “retain[] the . . . rights to consent to adoption, the obligation to pay child support, and the parents’ right to have some ongoing contact with the child”).

April 2024 Commission Meeting

During the April 18, 2024, Commission meeting, an Update Memorandum summarizing the review of other state statutes and common law and seeking guidance regarding the continued direction of the project was presented.⁵⁴ The Chief Counsel for Family Law at Legal Services of New Jersey (“LSNJ”), Mary McManus-Smith, attended that meeting and explained LSNJ’s position.⁵⁵ She stated that, in the legal context, surrender and relinquish are very similar words that are often used interchangeably or to define one another.⁵⁶

She emphasized, however, that the more common understanding of the word “surrender” is related to the military use of the term, which implies admitting defeat and unilaterally laying down arms – potentially suggesting to both parents and children that the parent gave up the fight for the child.⁵⁷ Ms. McManus-Smith explained that LSNJ prefers the term “relinquish” because it sounds more technical and is not as commonly used outside the legal context.⁵⁸ LSNJ also provided comments in a letter to the NJLRC specifically addressing the term “surrender.”⁵⁹

Classie Colinet, Co-Chair of the Child Welfare Law Section of the NJSBA, also attended the April Commission meeting.⁶⁰ She reiterated the NJSBA’s hope that the Commission would continue to consider replacing the word “surrender,” and strongly suggested that it be replaced with “relinquish.”⁶¹ Explaining that child welfare cases are very emotional, Ms. Colinet said that the term “relinquish” helps parents, many of whom have a long and difficult journey to reach the point of voluntarily terminating parental rights, to better understand and feel that they are making the best decision for their child in a way that the term “surrender” does not.⁶²

The Commission concluded that the project should continue but with a focus on the term “relinquish” rather than “transfer,” and authorized continued research and outreach.⁶³

⁵⁴ See N.J. Law Revision Comm’n, *Update Memorandum Re: Parental Rights - “Surrender”* (Apr. 8, 2024), www.njlrc.org (last visited Aug. 3, 2024) (seeking the Commission’s guidance regarding whether to continue work or conclude the project concerning the potential replacement of the term “surrender” in the context of voluntarily relinquishment of parental rights).

⁵⁵ See N.J. Law Revision Comm’n, *Minutes of Commission Meeting*, at 11 (Apr. 18, 2024) www.njlrc.org (last visited Aug. 2, 2024) [hereinafter “April 2024 Minutes”].

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Letter from Mary M. McManus-Smith, Chief Counsel for Family Law, LSNJ, to Laura C. Tharney, Exec. Dir., NJLRC (Apr. 16, 2024) (on file with the NJLRC) [hereinafter “LSNJ Letter”] (explaining that the association of “admitting defeat” with the word “surrender” could potentially “lead even attorneys to erroneously believe that surrender requires admitting to the factual allegations in the complaint against the parent or admitting that the Division would prevail if the matter were fully litigated” and that the word use of the word “relinquish” “would eliminate this ambiguity”).

⁶⁰ See April 2024 Minutes at 11, *supra* note 63.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

Pending Bills

There are no bills currently pending in New Jersey that propose replacing the term “surrender” in the context of parental rights.

Conclusion

The proposed modifications, set forth in the Appendix, replace the term “surrender” with the appropriate form of “relinquish” in nineteen statutes found in Title 19 and Title 30 to help minimize the emotional impact on persons who voluntarily terminate their parental rights.

Appendix

The proposed modifications to **N.J.S. 9:2-13**; **N.J.S. 9:2-14**; **N.J.S. 9:2-15**; **N.J.S. 9:2-16**; **N.J.S. 9:2-17**; **N.J.S. 9:2-18**; **N.J.S. 9:2-19**; **N.J.S. 9:3-38**; **N.J.S. 9:3-41**; **N.J.S. 9:3-41.1**; **N.J.S. 9:3-45**; **N.J.S. 9:3-46**; **N.J.S. 9:3-47**; **N.J.S. 9:3-48**; **N.J.S. 9:17-65**; **N.J.S. 9:17-68**; **N.J.S. 30:4-49.2**; **N.J.S. 30:4C-2**; and **N.J.S. 30:4C:23** are presented with underlining for inserted language, brackets for optional language, and ~~striketrough~~ for deletions.

N.J.S. 9:2-13. Definitions.

For the purposes of P.L.1955, c. 232 (C.9:2-13 et seq.), the following words and phrases, unless otherwise indicated, shall be deemed to have the following meanings:

* * *

(c) The word “custody” means continuing control and authority over the person of a child, established by natural parenthood, by order or judgment of a court of competent jurisdiction, or by written ~~surrender~~ relinquishment to and an approved agency pursuant to law.

* * *

COMMENT

The proposed modifications to N.J.S. 9:2-13 replace the term “surrender” with “relinquishment” in subsection (c), which defines the term “custody.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the New Jersey State Bar Association (“NJSBA”), in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

In addition, the proposed modifications correct the grammatically incorrect use of the word “and” to “an,” also in subsection (c).

N.J.S. 9:2-14. ~~Surrender~~ Relinquishment of child custody; validity.

Except as otherwise provided by law or by order or judgment of a court of competent jurisdiction or by testamentary disposition, no ~~surrender~~ relinquishment of the custody of a child shall be valid in this State unless made to an approved agency pursuant to the provisions of this act or pursuant to the provisions of a substantially similar law of another State or territory of the United States or of the Dominion of Canada or of one of its provinces.

COMMENT

The proposed modifications to N.J.S. 9:2-14 replace the term “surrender” with “relinquishment” in the title and text of the statute. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:2-15. ~~Surrender~~ Relinquishment or termination of rights of one parent; rights of other parent.

No ~~surrender~~ relinquishment of custody by, nor termination of the parental rights of, one parent shall affect the rights of the other parent; nor may one parent act as the agent or representative of the other parent in the ~~surrender~~ relinquishment of custody or termination of parental rights.

COMMENT

The proposed modifications to N.J.S. 9:2-15 replace the term “surrender” with “relinquishment” in the title and text of the statute. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:2-16. Voluntary ~~surrender~~ relinquishment to approved agency.

An approved agency may take a voluntary ~~surrender~~ relinquishment of custody of a child from the parent of such child, or from such other person or persons who, by order of a court of competent jurisdiction, have been substituted for the parent as to custody of such child. Each such ~~surrender~~ relinquishment, when properly acknowledged in the manner and form provided by sections ~~46:14-6 and 46:14-7~~ 46:14-2.1 and 46:14-6.1 of the Revised Statutes, shall be valid whether or not the person giving the same is a minor, and shall be irrevocable except at the discretion of the approved agency taking such ~~surrender~~ relinquishment or upon order or judgment of a court of competent jurisdiction, setting aside such ~~surrender~~ relinquishment upon proof of fraud, duress or misrepresentation.

COMMENT

The proposed modifications to N.J.S. 9:2-16 replace the term “surrender” with “relinquishment” in the title and text of the statute. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

In addition, the proposed modifications replace the statutory references to N.J.S. 46:14-6 and -7 with references to N.J.S. 46:14-2.1 and -6.1.⁶⁴ N.J.S. 46:14-6 and -7 were repealed in 1991 and the substance of those two statutes was enacted in N.J.S. 46:14-2.1 and -6.1.⁶⁵

⁶⁴ N.J. STAT. ANN. § 46:14-2.1 (West 2024) (“Acknowledgement and proof”); N.J. STAT. ANN. § 46:14-6.1 (West 2024) (“Officers authorized to take acknowledgments”).

⁶⁵ L.1991, c. 308, § 6, eff. June 1, 1992.

N.J.S. 9:2-17. Form of ~~surrender~~ relinquishment.

The form of any such ~~surrender~~ relinquishment shall be such as to declare that the person executing the same desires to relinquish the custody of the child, acknowledge the termination of parental rights as to such custody in favor of the approved agency, and acknowledge full understanding of the effect of such ~~surrender~~ relinquishment as provided by this act. Any such ~~surrender~~ relinquishment may include a statement that its purpose is to permit the approved agency to place the child for adoption by such person or persons as the approved agency may select.

COMMENT

The proposed modifications to N.J.S. 9:2-17 replace the term “surrender” with “relinquishment” in the title and text of the statute. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:2-18. Procedure to terminate parental rights.

An approved agency which is providing supervision of a child may institute an action in the Superior Court, seeking the termination of the rights of the parents of such child and the transfer of custody of such child to the agency. A prior ~~surrender~~ relinquishment of custody as provided by Article II of this act shall not be deemed a waiver of notice or service of process in proceedings under Article III hereof. At least five days prior to the hearing, the plaintiff shall file with the court a written report as to all circumstances of the case.

COMMENT

The proposed modifications to N.J.S. 9:2-18 replace the term “surrender” with “relinquishment.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:2-19. Grounds for terminating custody.

If the court shall determine that custody of the child has been ~~surrendered~~ relinquished as provided in Article II of P.L.1955, c.232 (C.9:2-13 et seq.), the court may declare that the person making such ~~surrender~~ relinquishment shall have no further right to custody of the child. If the court shall determine that a parent of the child is dead, or mentally incapacitated as defined in section 1 of P.L.1955, c.232 (C.9:2-13), or has forsaken parental obligation, the court may declare that such parent shall have no further right to custody of the child. If the court shall determine that a custodian or guardian has been appointed for the child, but that such custodian or guardian has willfully and continuously neglected or failed to discharge the responsibilities of such appointment, the court may declare that such custodian or guardian shall have no further control and authority over the person of the child.

COMMENT

The proposed modifications to N.J.S. 9:2-19 replace the term “surrender” with “relinquishment.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:3-38. Definitions.

For the purposes of P.L.1977, c. 367 (C.9:3-37 et seq.):

* * *

(j) ~~“Surrender”~~ “Relinquishment” means a voluntary ~~relinquishment~~ [termination] [permanent transfer] [waiver] 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 allowing a child to be adopted;

* * *

COMMENT

The proposed modifications to N.J.S. 9:2-38 replace the term “surrender” with “relinquishment” in subsection (c), which defines the term “surrender.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

The proposed bracketed terms indicate that Commission guidance is requested regarding which term is most synonymous to define the term “relinquishment” in the context of relinquishing parental rights. The word “termination” is used throughout Title 9, most consistently as part of the phrase “termination of parental rights.”⁶⁶ The phrase “permanent transfer” does not appear in either Title 9 or Title 30, but its inclusion stems from the initial suggestion by the NJSBA that “transfer” be considered as a replacement for “surrender.”⁶⁷ Finally, the word “waiver” is also used repeatedly in Title 9, most often in connection with waiving notice.⁶⁸ This list is not exhaustive and provides suggestions to encourage feedback from the Commission and the public.

⁶⁶ N.J. STAT. ANN. §§ 9:2-15, -17, 9:3-39.1, -43.1, -45, 9:6-8.21 and 9:17-68 (West 2024) (all employing the phrase “termination of parental rights”).

⁶⁷ See NJSBA Letter, *supra* note 8.

⁶⁸ N.J. STAT. ANN. §§ 9:2-12.1 (West 2024) (“any application . . . shall not . . . be considered a *waiver* of any right or protection . . .”) (emphasis added), -18 (West 2024) (“[a] prior surrender of custody . . . shall not be deemed a *waiver* of notice or service of process . . .”) (emphasis added), 9:3-43 (West 2024) (“the court for good cause may *waive* either [age] requirement, which *waiver* shall be recited in any judgment of adoption thereafter entered”) (emphasis added), -45 (“[f]ailure to respond . . . shall constitute a *waiver* of all notice of any subsequent proceedings”) (emphasis added), -46 (“[f]ailure to object within that time period constitutes a *waiver* of the right to object”) (emphasis added), 9:17A-1.7 (West 2024) (“[a] minor may, by petition or motion, seek a *waiver* of parental notification”) (emphasis added), and -1.8 (West 2024) (“a minor may, by petition or motion, seek a *waiver* of parental notification”) (emphasis added).

N.J.S. 9:3-41. Surrender Relinquishment of child.

a. ~~Surrender~~ Relinquishment of a child to an approved agency for the purpose of adoption, other than a ~~surrender~~ relinquishment taken in accordance with P.L.1955, c.232 (C.9:2-13 et seq.), shall be by a signed instrument acknowledged by the person executing the instrument before an officer authorized to take acknowledgments or proofs in the State in which the instrument is executed. Prior to the execution of the ~~surrender~~ relinquishment, the approved agency shall, directly or through its agent, inform the person executing the ~~surrender~~ relinquishment that the instrument is a ~~surrender~~ relinquishment of parental rights by the signatory and means the permanent end of the relationship and all contact between the parent and child. The approved agency shall advise the parent that the ~~surrender~~ relinquishment shall constitute ~~relinquishment~~ [termination] [permanent transfer] [waiver] 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. The approved agency shall offer counseling to the parent, prior to the execution of the ~~surrender~~ relinquishment. The ~~surrender~~ relinquishment shall be valid and binding without regard to the age of the person executing the ~~surrender~~ relinquishment and shall be irrevocable except at the discretion of the approved agency taking such ~~surrender~~ relinquishment or upon order or judgment of a court of competent jurisdiction setting aside such ~~surrender~~ relinquishment upon proof of fraud, duress or misrepresentation by the approved agency. The ~~surrender~~ relinquishment taken pursuant to this section shall be valid whether acknowledged in this State pursuant to section 1 of P.L.1991, c.308 (R.S. 46:14-2.1) or acknowledged in another state or country pursuant to section 1 of P.L.1991, c.308 (R.S. 46:14-6.1).

b. Any approved agency may accept custody of a child by a duly executed instrument of ~~surrender~~ relinquishment from a parent or guardian of the child or from another approved agency or any agency for the care and protection of children approved by any other state, by the United States or by any foreign country, which has duly obtained the authority to place the child for adoption.

c. A ~~surrender~~ relinquishment executed in another state or foreign country by a domiciliary of that state or country and valid where executed shall be deemed a valid ~~surrender~~ relinquishment in this State if taken more than 72 hours after the birth of the child.

d. At the request of a parent of the child, an approved agency authorized to receive ~~surrenders~~ relinquishments, may receive that parent's ~~surrender~~ relinquishment of ~~his~~ the child for purposes of having the child adopted by a person specified by the ~~surrendering~~ relinquishing parent. The agency shall follow all regulations regarding the securing of a ~~surrender~~ relinquishment and shall cooperate with the prospective parents in the processing of the proposed adoption. An adoption based on a ~~surrender~~ relinquishment under this subsection shall be deemed one in which the child was received from an approved agency for purposes of section 11 of P.L.1977, c.367 (C.9:3-47).

e. A ~~surrender~~ relinquishment of a child shall not be valid if taken prior to the birth of the child who is the subject of the ~~surrender~~ relinquishment. A ~~surrender~~ relinquishment by the birth parent of a child shall not be valid if taken within 72 hours of the birth of the child. The denial of paternity by an alleged father, at any time including prior to the birth of the child, shall be deemed a ~~surrender~~ relinquishment for purposes of allowing the child to be adopted.

COMMENT

The proposed modifications to N.J.S. 9:3-41 replace the term “surrender” with “relinquishment.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

As in N.J.S. 9:3-38, the proposed bracketed terms indicate that Commission guidance is requested regarding which term is most synonymous to define the term “relinquishment” in the context of relinquishing parental rights.⁶⁹ This list is not exhaustive and provides suggestions to encourage feedback from the Commission and the public.

In addition, the proposed modifications render the statutory language gender-neutral by replacing the gendered term “his child” in subsection (d) with the term “the child,” consistent with current drafting practices.

⁶⁹ See *supra* notes 74-76.

N.J.S. 9:3-41.1. Provision of available information on child’s development to prospective parent.

a. An approved agency making an investigation of the facts and circumstances surrounding the ~~surrender~~ relinquishment of a child shall provide a prospective parent with all available information, other than information which would identify or permit the identification of the birth parent of the child, relevant to the child’s development, including ~~his~~ the child’s developmental and medical history, personality and temperament, the parent’s complete medical histories, including conditions or diseases which are believed to be hereditary, any drugs or medications taken during pregnancy and any other conditions of the parent’s health which may be a factor influencing the child’s present or future health. This information shall be made available to the prospective parent prior to the actual adoptive placement to the extent available and supplemented upon the completion of an investigation conducted by an approved agency pursuant to section 12 of P.L.197, c.367 (C.9:3-48).

b. The available information required of an approved agency by subsection a. of this section shall be presented to the adoptive parents on standardized forms prepared by the Commissioner of Children and Families.

COMMENT

The proposed modifications to N.J.S. 9:3-41.1 replace the term “surrender” with “relinquishment.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

In addition, the proposed modifications render the statutory language gender-neutral by replacing the gendered term “his” in subsection (a) with the term “the child’s,” consistent with current drafting practices.

N.J.S. 9:3-45. Notice of complaint to parents.

a. In an adoption proceeding . . . , notice of the complaint may not be waived and a notice of hearing shall be served in accordance with the Rules of Court on each parent of the child to be adopted. . . .

b. Notice pursuant to subsection a. of this section shall not be served on a parent:

(1) Who has executed a valid ~~surrender~~ relinquishment to an approved agency pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) or P.L.1955, c.232 (C.9:2-13 et seq.);

(2) Whose parental rights have been terminated in a separate judicial proceeding by court order;

(3) Who has, prior to the placement of the child for adoption, received notice of the intention to place the child, . . . and who has either failed to file written objections or denied paternity or maternity of the child. . . . ;

(4) Who has given the child for adoption to the adopting parent, and the Superior Court, Chancery Division, Family Part, after a hearing at which the ~~surrendering~~ relinquishing parent was heard as to the voluntariness of the ~~surrender~~ relinquishment, has determined that the ~~surrender~~ relinquishment was voluntary and proper;

(5) Whose child has been made available for adoption in a foreign state or country if the United States Immigration and Naturalization Service has determined that the child has been approved for adoptive placement. . . . ; or

(6) Who is presumed to be the biological father of the child . . . but who . . . has not acknowledged paternity

* * *

e. In conducting the hearing required by paragraph (4) of subsection b. of this section, the court shall determine that the ~~surrender~~ relinquishment is voluntary and that the birth parent knows (1) that the hearing is to ~~surrender~~ relinquish birth rights; (2) that the hearing is to permanently end the relationship and all contact between parent and child; (3) that such action is a ~~relinquishment~~ and termination of parental rights and consent on the part of the birth parent to the adoption; and (4) that no further notice of the adoption proceedings shall be provided to the birth parent if the ~~surrender~~ relinquishment is accepted by the court.

COMMENT

The proposed modifications to N.J.S. 9:3-45 replace the term “surrender” with “relinquishment” in subsections (b)(1), (b)(4), and (b)(6), which set forth exceptions to the requirement that notice of the complaint and hearing is provided to all parents. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

In addition, the proposed modifications eliminate the phrase “relinquishment and” in subsection (e)(3), to avoid confusion and superfluous language.

N.J.S. 9:3-46. Objection to adoption.

a. A person who is entitled to notice pursuant to section 9 of P.L.1977, c. 367 (C.9:3-45) shall have the right to object to the adoption of his child within 20 days after the filing of the complaint for adoption for a State resident and 35 days after the filing in the case of a nonresident. Failure to object within that time period constitutes a waiver of the right to object.

* * *

b. The guardian of a child to be adopted who has not executed a ~~surrender~~ relinquishment pursuant to section 5 of P.L.1977, c.367 (C.9:3-41) and any other person who has provided primary care and supervision in his home for the child for a period of six months or one half of the life of the child, whichever is less, in the two years prior to the complaint shall be given notice of the action and in accordance with the Rules of Court shall have standing to object to the adoption, which objection shall be given due consideration by the court in determining whether the best interests of the child would be promoted by the adoption.

COMMENT

The proposed modifications to N.J.S. 9:3-46 replace the term “surrender” with “relinquishment” in subsection (b), which explains a guardian’s right to notice and objection to the adoption of a child. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:3-47. Action on complaint for adoption of child received from approved agency.

a. When the child to be adopted has been received from an approved agency, the prospective parent shall file with the court a complaint for adoption after the child has been in the home of the prospective parent for at least six months. In the discretion of the approved agency, a complaint may be filed prior to that time and the court may schedule a hearing to resolve all matters except finalization of the adoption. The adoption shall not be finalized under this section unless the child has been in the home of the adoptive parent for at least six months. The complaint shall be accompanied by a consent to the plaintiff's adoption of the child signed and acknowledged by an authorized officer or representative of the approved agency; except that failure or refusal on the part of the approved agency to give consent, or withdrawal of consent on the part of the approved agency, shall not preclude an action for adoption.

b. Upon the filing of the complaint, the court shall set a date for the adoption hearing not less than 10 nor more than 30 days from the date of institution of the action unless a longer period shall be required in order to obtain service of notice upon one or more of the people entitled thereto and shall order the approved agency concerned to file at least five days prior to the hearing a written report which shall describe the circumstances surrounding the ~~surrender~~ relinquishment of the child and shall set forth the results of the agency's evaluation of the child, the plaintiff and any other person residing in the proposed adoptive home; and the agency's assessment of the care being received by the child and the adjustment of the child and the plaintiff as members of a family.

* * *

COMMENT

The proposed modifications to N.J.S. 9:3-47 replace the term "surrender" with "relinquishment" in subsection (b), which explains the filing of a report regarding the circumstances surrounding the relinquishment of the child. Replacing the term "surrender" in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term "surrender" in an already emotionally charged proceeding. Following a survey of other state statutes' terminology in this context, the Commission concluded that "relinquishment" is an appropriate replacement for the word "surrender."

N.J.S. 9:3-48. Action on complaint for adoption of child not received from approved agency.

a. When the child to be adopted has not been received from an approved agency, the prospective parent shall file with the court a complaint for adoption. Upon receipt of the complaint, the court shall by its order:

(1) Declare the child to be a ward of the court and declare that the plaintiff shall have custody of the child subject to further order of the court;

(2) Appoint an approved agency to make an investigation and submit a written report to the court which shall include:

(a) the facts and circumstances surrounding the ~~surrender~~ relinquishment of custody by the child's parents and the placement of the child in the home of the plaintiff, including the identity of any intermediary who participated in the placement of the child;

(b) an evaluation of the child and of the plaintiff and the spouse of the plaintiff if not the child's parent and any other person residing in the prospective home; and

(c) any fees, expenses or costs paid by or on behalf of the adopting parent in connection with the adoption.

* * *

COMMENT

The proposed modifications to N.J.S. 9:3-48 replace the term "surrender" with "relinquishment" in subsection (a)(2)(a), which sets forth the information that must be included in an agency's written report during an investigation. Replacing the term "surrender" in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term "surrender" in an already emotionally charged proceeding. Following a survey of other state statutes' terminology in this context, the Commission concluded that "relinquishment" is an appropriate replacement for the word "surrender."

N.J.S. 9:17-65. Requirements for a gestational carrier agreement.

Requirements for a Gestational Carrier Agreement.

a. A gestational carrier agreement shall satisfy the following requirements:

(1) It is in writing and executed by the gestational carrier, her spouse or partner in a civil union or domestic partnership, if any, and each intended parent. . . . ;

(2) It is executed after the required medical and psychological screenings . . . ; and

(3) The gestational carrier and her spouse or partner, if any, and the intended parent shall have been represented by separate attorneys

b. A gestational carrier agreement shall provide:

(1) Express terms that the gestational carrier shall:

(a) Undergo pre-embryo transfer and attempt to carry and give birth to the child;

(b) ~~Surrender~~ Relinquish custody of the child to the intended parent immediately upon the child's birth; and

(c) Have the right to medical care for the pregnancy, labor, delivery, and postpartum recovery . . . ;

(2) An express term that, if the gestational carrier is married or in a civil union or domestic partnership, the spouse or partner agrees to the obligations imposed on the gestational carrier pursuant to the terms of the gestational carrier agreement and to ~~surrender~~ relinquish custody of the child to the intended parent immediately upon the child's birth; and

(3) Express terms that the intended parent shall:

(a) Accept custody of the child immediately upon the child's birth; and

(b) Assume sole responsibility for the support of the child immediately upon the child's birth.

* * *

COMMENT

The proposed modifications to N.J.S. 9:17-65 replace the term “surrender” with “relinquishment” in subsections (b)(1)(b) and (b)(2), which explain the required express terms in a gestational carrier agreement. Replacing

the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 9:17-68. Certain provisions of law not applicable to gestational carrier agreements.

Certain Provisions of Law not Applicable to Gestational Carrier Agreements.

a. A gestational carrier agreement shall not be considered:

(1) An adoption pursuant to Title 9 of the Revised Statutes; or

(2) A ~~surrender~~ relinquishment of custody or termination of parental rights to the child by the gestational carrier in violation of the requirements of Title 9 of the Revised Statutes.

b. The payment of reasonable expenses in connection with a valid gestational carrier agreement shall not constitute a violation of section 18 of P.L.1993, c. 345 (C.9:3-39.1).

COMMENT

The proposed modifications to N.J.S. 9:17-68 replace the term “surrender” with “relinquishment” in subsection (a)(2), which limits the scope of a gestational carrier agreement. Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 30:4-49.2. Settlement of minor born in wedlock.

The settlement of a minor born in wedlock shall be that of ~~his~~ the minor's parents or surviving parent or in case of divorce or separation, of the parent having ~~his~~ custody. In the case of the death of the parent having custody, the settlement shall be that of the surviving parent. In case of the death of both parents or in case of permanent separation from ~~his~~ the parents by court order or by ~~surrender~~ relinquishment of custody by an instrument in writing in accordance with law, the settlement of such minor at the time of such death or separation shall continue until ~~his~~ the minor reaches majority unless ~~he~~ the minor shall gain a separate settlement as hereinafter provided.

COMMENT

The proposed modifications to N.J.S. 30:4-49.2 replace the term “surrender” with “relinquishment.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

In addition, the proposed modifications render the statutory language gender-neutral by replacing the gendered term “his” with the term “the” or “the minor” consistent with current drafting practices.

N.J.S. 30:4C-2. Definitions.

For the purposes of P.L.1951, c. 138 (C.30:4C-1 et seq.) the following words and terms shall, unless otherwise indicated, be deemed and taken to have the meanings herein given to them:

* * *

(d) The term “custody” means continuing responsibility for the person of a child, as established by a ~~surrender~~ relinquishment and release of custody or consent to adoption, for the purpose of providing necessary welfare services, or maintenance, or both.

* * *

COMMENT

The proposed modifications to N.J.S. 30:4C-2 replace the term “surrender” with “relinquishment” in subsection (d), which defines the term “custody.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”

N.J.S. 30:4C:23. Voluntary ~~surrenders~~ relinquishments, releases of custody, and consents to adoption.

In addition to the methods otherwise provided in this article for establishing guardianship by the Division of Child Protection and Permanency, and when necessary to carry out the provisions of P.L.1951, c.138 (C.30:4C-1 et seq.), the Division of Child Protection and Permanency, after due investigation and consideration, may, in cases where it would be to the permanent advantage of the child, take voluntary ~~surrenders~~ relinquishments and releases of custody and consents to adoption from the parent, parents, guardians, or other persons or agencies having the right or authority to give such ~~surrenders~~ relinquishments, releases, or consents. Such ~~surrenders~~ relinquishments, releases, or consents, when properly acknowledged before a person authorized to take acknowledgments of proofs in the State of New Jersey, shall be valid and binding irrespective of the age of the person giving the same, and shall be irrevocable except at the discretion of the Division of Child Protection and Permanency or upon order of a court of competent jurisdiction.

COMMENT

The proposed modifications to N.J.S. 30:4C:23 replace the term “surrender” with “relinquishment.” Replacing the term “surrender” in the context of terminating parental rights was suggested by the NJSBA, in light of the negative connotation of the term “surrender” in an already emotionally charged proceeding. Following a survey of other state statutes’ terminology in this context, the Commission concluded that “relinquishment” is an appropriate replacement for the word “surrender.”