

MEMORANDUM

TO: NEW JERSEY LAW REVISION COMMISSION

FROM: JOHN M. CANNEL

DATED: JULY 7, 2014

RE: CHILD ABUSE & NEGLECT – THE PROJECT SO FAR

The Commission reached a general consensus on the text of a final report at the June meeting, but delayed release of the report to July to allow last-minute adjustments. I have revised the draft Final Report to reflect decisions made at the June meeting and it is included in the mailing.

We received this communication from the Department of Children and Families after the June meeting:

Hi John,

I think our biggest concern remains unchanged from our letter last year.

The new definition of abuse or neglect still appears to be too narrow to comply with even the floor set by federal standards, <https://www.childwelfare.gov/can/defining/federal.cfm>, much less with NJ's history of providing broad protection for children.

Additionally, the insertion of a "knowing" standard in proposed 9:27-1 a (1) & (2) or "reckless disregard" in (3) appears to be a sizable deviation from the gross negligence standard articulated in GS as "more than simple negligence" applying "to situations ranging from 'slight inadvertence to malicious purpose to inflict injury.'"

When we last discussed you mentioned that the new definition of "child in need of services" might alleviate these concerns, but in my view it unfortunately does not. Instead, it seems to further narrow the protections that children currently receive under Title 30 by: 1) inserting a new "imminent danger" standard and 2) by newly applying the religious exception and financial means language in historical Title 30 cases. While inappropriate to substantiate abuse or neglect, children are still protected by Title 30 in those situations; they will be completely beyond the State's reach given the proposed language.

-Joe

After telephone discussion, it appears that the informal department requests are as follows;

9:27-1. "Child abuse or neglect" defined

a. "Child abuse or neglect" means an action or failure to act by a parent or other custodian that creates a risk to the child in that:

* * *

(3) the parent or other custodian acts with ~~reckless~~ grossly negligent disregard of a substantial and unjustifiable risk of injury to the child.

9:27-2. "Child in need of services" defined

For purposes of this act, "child in need of services" means a child whose health or safety is in imminent danger and that danger can be prevented by services that the Division can supply.

~~b. "child in need of services" does not include a child whose need results from (i) good faith treatment by spiritual means alone through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof, or (ii) inability to provide housing or other essentials due to a lack of financial means.~~

The Office of Law Guardian requested other changes in 9:27-2 to broaden the definition:

9:27-2. "Child in need of services" defined

For purposes of this act, "child in need of services" means a child whose health or safety is in ~~imminent~~ danger and that danger can be prevented or ameliorated by services that the Division can supply.