

MEMORANDUM

TO: NEW JERSEY LAW REVISION COMMISSION
FROM: STAFF
DATED: JULY 21, 2005
RE: TITLE 44 – POOR

Introduction

Current Law; Background

Title 44 – Poor, comprises one volume of New Jersey Statutes, containing 14 chapters covering these subjects:

- Almshouses;
- Municipal almshouses;
- Settlement and relief of poor; county referendum law;
- Medical care and hospitalization of poor in general;
- Free dental clinics;
- Old age and permanent disability assistance;
- Financial assistance to certain needy persons;
- Assistance for dependent children;
- Public assistance recipients; representatives;
- Anti-poverty programs;
- County welfare per capita cost limitations

(Note: Though 14 chapters are listed in the Title, one is “reserved” and two have been repealed.)

Many of the statutes in the earlier chapters of the title were enacted in the nineteenth century. Others date from the 1920’s and before. They are archaic, in substance and in style, and do not reflect current reality and practice. Repealed and superseded terms and statutory citations exist in numerous sections. Also found in many sections are outdated dollar amounts and references to outmoded types of books, color of inks and pencils to use in balloting; and provisions (most likely unconstitutional) for deporting people who lack legal “settlement” in New Jersey to other states.

It appears that as times and welfare programs changed, very little of the old law was repealed. Thus, when categorical relief was established in the 1930’s, new chapters were added but the old statutes on indoor and outdoor relief were left in place. When poverty programs were established in the 1960’s, more material was added. With welfare reform in the 1990’s, more was added, but very little was repealed or amended to bring it

up to date. The result is that most of Title 44 completely anachronistic. Very little of it is read or relied on by those who administer welfare programs. However, there are a few statutes that are of continuing importance buried among statutes that have no modern function. For example, sections in chapter 1 establish the basic duties of the counties and municipalities. Those must be retained.

Basic revisions necessary

Revision of the Title must take into account the following:

1. County Welfare Board and Boards of Social Services (CWBs) and County/Municipal Welfare Directors (CWDs/MWDs).

Three sets of statutes in the Title provide for the formation, duties and authority of the CWBs and CWDs: Sections 44:1-10 et seq., 44:4-20 et seq., and 44:7-7 et seq. They apply only to counties which have not engaged in charter reform. Am. Fed. State, Cty. Mun. Emp. V. Hudson Welf. Bd., 141 N.J. Super. 25 (Ch. Div. 1976) (Counties undergoing charter reform under 40:41A may abolish their CWBs as long as whatever bodies replace them fulfill the same functions and duties.) The three sets of statutes agree on the method of choosing board members and on the length of their service and could be combined into one unified set. Statutes regarding hiring, duties and authority of MWDs are in Sections 44:1-73 et seq. Do MWDs need different qualifications than the standard civil service qualifications in Title 11A? Perhaps the statute should state that MWDs who are elected officials (under municipal commission governance as defined by N.J.S. 40:70 et seq.) need to satisfy the civil service requirements. Some municipalities have consolidated with their counties to provide general assistance; these municipalities do not have MWDs. The statutes need to provide for this consolidation.

2. Settlement.

Provisions for deporting people lacking legal settlement in New Jersey to other states are most likely unconstitutional under current interpretations of the privileges and immunities clause of the 14th Amendment to the United States Constitution. Saenz v. Roe, 119 S. Ct. 1518 (1999) (overturning a California statute limiting new residents in their first year of residency to TANF benefits they would have received in their former state of residence. “The constitutional right to travel from one state to another is firmly embedded in our jurisprudence.” 119 S. Ct. at 1525.) It is possible, also, that intrastate deporting of residents from one county to another is unconstitutional under either the United States Constitution or the New Jersey Constitution. These statutes should be repealed: 44:1-102 through 44:1-127 and 44:4-57 through 44:4-81.

3. Medical services funding.

Title 44 provisions for funding medical services are mooted and can be deleted. They are: N.J.S. 44:1-152 through 44:1-154, N.J.S. 44:4-112 through 44:4-115; and

N.J.S. 44:5-2 through 44:5-19. These superseding statutes are: N.J.S. 30:9-16 et seq. (Cities and municipalities have the power to build and maintain hospitals); N.J.S. 40:5-2.10© [PLS. TAKE AWAY COPYRIGHT SIGN] (Counties and municipalities have the power to contribute to non-profit hospitals); and N.J.S. 40:32-2.1 et seq. (Counties have the power to build hospitals).

4. Liens, and compulsion actions, generally.

Chapters 1, 4 and 5 provide two ways for a county or municipality to recoup money it (as opposed to the state or federal government) has spent on public assistance and publicly funded medical expenses: placing liens on the recipient's property, and compelling payment from relatives of the recipient. If counties and municipalities exercise this authority, it should be set out in a single statute with the particular details left to administrative regulations.

5. Dental.

The State has plenary authority under N.J.S. 26:1A-37 to make regulations and programs for improving general dental health and to fund and coordinate local dental health programs. Chapter 6 of Title 44 is moot.

6. Aid for the Aged and Disabled.

The State Department of Health and Senior Services is in charge of health related services for the aged and the disabled. Additionally, federal and state programs have superseded the duties of CWBs and municipal welfare operations for the blind, elderly and mentally disabled. Chapter 7 of Title 44 appears unnecessary; Staff will investigate further.

7. Anti-poverty programs.

The Department of Community Affairs (DCA) funds anti-poverty programs through N.J.S. 52:27D-280 et seq. (The DCA succeeded the New Jersey Office of Economic Opportunity which had responsibility for effectuating the federal Economic Opportunity Act of 1964. Note that the Act was repealed in 2002.) Chapter 12 of Title 44 should be repealed.

Chapter by chapter analysis

Chapter 1. Settlement and Relief of Poor; Municipal, County or Joint County Relief

Of the 160 sections, the only ones to be retained are those in Article 11. (Municipal Directors of Welfare and Appointees), and Section 44:1-24.2 (Voter registration forms available at principal office of county welfare agency. L. 1991, c. 318, Sect. 9, amended by L. 1994, c. 182, Sect. 21.)

The following Articles should be repealed; specific sections illustrate typical problems in content and style.

Article 1. Definitions; Construction.

Includes archaic and superseded terms (“Almshouse,” “insane persons,” “Overseer,” “Permanent or indoor poor,” “Temporary or outdoor poor,” etc.)

Article 2. County Welfare-House.

Repeal. Acquisition of real estate for welfare housing should reside in the counties’ plenary authority; the relevant eminent domain statute is no longer the one cited in Section 44:1-4.

Article 3. County Welfare Board.

Section 44:1-11. (Membership) states that “at least two” of the members of the welfare board “shall be women.” Section 44:1-12. (Terms of members; vacancies) details duration for the “first appointments” which were made 75 years ago. Section 44:1-19. (Public record of board proceedings requires that the proceeding be kept “in a book provided for that purpose.” Section 44:1-22. (Working expense fund) requires the board of chosen freeholders to provide the welfare board with “a working expense fund of not more than three hundred dollars, which fund shall be raised as other expense money is required” Repeal. Revise in abbreviated form the portions which will go into a consolidated statute described above in Basic revisions necessary, number 1. Retain Section 44:1-24.2. (Voter registration forms available at principal office of county welfare agency)

Article 4. Superintendent of Welfare; Other Officers and Employees.

Section 44:1-29. (General powers of superintendent) states that the superintendent of welfare shall have “management of the welfare-house, the grounds and buildings and the inmates thereof.” Section 44:1-30.3. (Recording of certificates; warrant of satisfaction or release) states that “The county clerks or registers of deed and mortgages, as the case may be, shall record the said certificate in a book, which he shall provide, to be known as ‘welfare-house liens’ and shall index the same in the indices made or kept for deeds, mortgages and chattel mortgages. No clerk or register shall charge any fee therefore.” This section has so many things wrong with it, that it is a poster child for terrible drafting, excess verbiage, gender/noun disagreement, etc. Repeal.

Article 5. Contract by One County with Another for Maintenance of Permanent Poor.

Repeal; has no modern function.

Article 6. Joint County or District Welfare Plan.

Section 44:1-41. (Marking ballot) was amended by L. 1994, c. 77, Sect. 22, to omit requirement that ink or pencil be black. No provision is made for voting by machine. Section 44:1-45. (Compensation and expenses of members) states that “The members of a district welfare board shall be paid ten dollars each for attendance at the regular monthly meetings ...” Section 44:1-50. (Custody of funds raised in respective counties) states that money should be “held by the treasurer of the county in which the district welfare-house is situated, and be deposited in a separate account in a state or national bank located and doing business in that county.” Section 44:1-53. (Borrowing money and issuing bonds to establish or enlarge welfare-house) cites a repealed statute, (Section 40:1-1, et. seq.; see now Section 40A:2-1. et seq.) as a guide for issuance of bonds, and lists six requirement which may not be as reasonable now as they were in 1924. Section 44:1-57. (Notice of readiness to accommodate poor of district) includes the superseded term “overseer.”

Article 7. Provisions Relating Generally to County and Joint County Plans.

Article 8. Election by Municipality Not to Participate in County or Joint County Plan.

Articles 6, 7 and 8

They pertain to consolidations which do not take place, and should be repealed.

Article 9. Municipal and County Almshouses.

Section 44:1-67. (Bond issues for construction, repair or equipment) states that “In order to meet the expense: Of providing proper furniture for any such buildings, or apparatus for lighting, heating or otherwise fitting them up--.” Repeal; see Article 2 above.

Article 10. Management of Institutions for Poor in General.

Section 44:1-68. (Classification and care of inmates) states that “Inmates afflicted with any tubercular disease shall be separated from the other inmates and cared for in separate dwellings.”

Section 44:1-69. (Separation of sexes) states that in every ... institution for the reception and maintenance of poor persons, females shall be kept separate from males at all times in their living rooms, bedrooms, toilets, halls, stairways and outbuildings ...” Section 44:1-70. (Denomination of supervisors of almshouses) states that “The keepers of all almshouses, except welfare-houses under the control of a welfare board in a county, shall be denominated ‘supervisors’ instead of ‘keepers’ or ‘wardens.’” Section 4:1-71. (Record keeping) reads in full:

The supervisors or superintendent and person in charge of every institution for the poor shall keep a book, to be provided by the authority charged with the care of the institution, in which book he shall enter from time to time the name, date of the commitment, age, sex, color, description, physical and mental condition, education, habits, occupations, condition of ancestors and family relations, cause of dependence, birthplace and date of discharge, or of death and place of burial of every person coming into the care of such institution, and such other records as may be prescribed by the state board of health and the bureau of vital statistics, together with any other information about them which may be ascertained, and the book shall be open to the inspection of the public at all times.

Section 44:1-72. (Penalty for failure to properly keep record book) states that the person in charge of the book “shall be liable to a penalty of twenty-five dollars, to be recovered with costs of suit in an action at law by the overseer of the poor” Article 10. should be repealed; see Article 2 above.

Article 11. Municipal Director of Welfare and Appointees.

Section 44:1-75. (Qualifications) includes the sentence, “Females, as well as males, of full age shall be eligible to appointment as overseers.” MWDs still are governed by these statutes which should be retained and revised.

Article 12. Application for and Granting of Relief in General.

Section 44:1-87. (Inquiring into application for relief) runs into a problem because of using the masculine pronoun: “The overseer shall also ascertain the direct or indirect causes of poverty, and whether or not the person requiring permanent relief is without adequate home or without children, grandchildren, parents, grandparents, or husband who are by law required and able to maintain him and other persons who are willing to do so.” Section 44:1-98. (Record, as to every applicant for relief) states that “Overseers shall in respect to all applicants for relief keep a record which may be by card index and which shall state: (d) Whether citizen or alien and the place of nativity;” Section 44:1-99. (Books relative to money received and orders for relief) states that “Overseers and deputies shall keep a book setting forth therein all moneys, goods and materials received by them ... and in addition thereto, a separate book of orders for relief, with stubs attached.” Article 12. should be repealed; the functionality of programs is handled in Chapter 8.

Article 13. Place of Settlement of Poor Persons

Article 14. Removal of Poor Persons

Articles 13. and 14. are unconstitutional.

Article 15. Maintenance of Certain Permanent Adult Poor in Their Homes.

Section 44:1-130. (Summary hearing; order for home relief) states that the court “being satisfied that permanent relief should be furnished to the poor person in the home, shall, in its discretion, order a fixed sum not exceeding the rate of two hundred dollars per annum for the poor person’s maintenance and support in the home for a period of six months from the date of the order.” Repeal; the functions are best handled by regulations.

Article 16. Temporary Placing of Poor Minors.

Sections 44:1-134. (Board of children’s guardians to be notified of commitment to almshouse), 44:135. (Supervisor of minor committed to almshouse), and 44:1-136. (Temporary commitment of poor minor by director of welfare to institution or home) all contain superseded terms and officials. Repeal; the Article is superseded by modern foster care.

Article 17. Support of Poor Persons by Relatives or Others.

Article 18. Desertion of Family.

Section 44:1-147. (Willful deserter as disorderly person; punishment) states that a husband or father who neglects to provide for his wife or children, or a mother who neglects to provide for her children or a child who similarly neglects parents, is a disorderly person and shall be committed to the workhouse or county jail for a period not exceeding 60 days.

Articles 17. and 18. should be repealed and replaced with a unified statute.

Article 19. Medical Care and Hospitalization of Poor.

Repeal; superseded by provisions in other Titles.

Article 20. Arrival of Sick or Incapable Poor Persons by Vessel.

Section 44:1-156. (Liability of master or commander for landing persons wrongfully) states that a commander of a ship who lands from on board the ship a passenger who is sick or otherwise incapable of providing for own support and is likely to become a public charge, and who does not notify the overseer of the poor and enter into a bond, shall be liable for the expense of the care of the poor person. Repeal; a customs and immigration matter for federal authorities.

Article 21. Death and Burial of Poor.

These provisions are unnecessary because N.J.S. 40A:9-49 provides that relatives of the indigent or the county of residence funds burial costs other than for those funded by the state under Work First New Jersey (WFNJ). See generally, Cemeteries, Title 8A. Repeal.

Article 22. Appropriations for Relief.

More study is necessary before a recommendation on this article is made.

Chapter 2. County Almshouses Repeal.

Chapter 3. Municipal Almshouses Repeal.

Chapter 4. Settlement and Relief of Poor; County Referendum Law

Article 5. Records and Reports.

Section 44:4-55. (Book kept in every institution; required entries) requires the person in charge of every institution for the poor to keep a book in which he shall enter “the name, date of the commitment, age, sex, color, description, physical and mental condition, education, habits, occupations, condition of ancestors and family relations, cause of dependence, birthplace ... of every person coming into the care of the institution ... and such book shall be open to the inspection of the public at all times.”

Article 10. Temporary Placing of Poor Minors.

Section 44:4-98. (Notice of placement to boards of freeholders and children’s guardians) states that within 24 hours of placement of a minor the director of welfare shall give written notice to the state board of children’s guardians [superseded by DYFS] and to the board of chosen freeholders which notice shall give the child’s name, age, sex, religion, faith of its parents, etc.

Repeal. (Future Memorandum will detail disposition of each of the 17 Articles’ content.

Chapter 5. Medical Care and Hospitalization of Poor in General. Repeal; unneeded.

Chapter 6. Free Dental Clinics. Repeal; unneeded.

Chapter 7. Old Age and Permanent Disability Assistance

Article 4. Assistance for the Blind.

Section 44:7-45. (Rules, regulations and administrative orders) states that a purpose of the Assistance for the Blind Act is “(g) To assure that payments of assistance will be denied or promptly terminated with respect to any person who publicly solicits alms by wearing, carrying or exhibiting signs denoting ---- begging from house to house.” Repeal; other programs have superseded. However, Staff will investigate further.

Chapter 8. Financial Assistance to Certain Needy Persons.

Note: the “General Public Assistance Law” was replaced by the Work First New Jersey General Public Assistance Act in 1997.

Section 44:8-114. (Public assistance to be funded by state and administered by municipality ... failure or refusal to participate) In Robinson v. New Jersey Dept. of Human Services, div. Of Family Development, 270 N.J. Super. 191 (App. Div. 1994), the court found that a general assistance recipient who was an hour late to work because of a faulty alarm clock was not unwilling to work according to the workfare regulation which authorized a 90-day suspension of benefits for persons who refuse to perform assigned work. (In 1997 the statute was amended; new penalties are set out in N.J.S. 44:10-63.) Retain and revise as needed.

Chapter 9. Reserved

Chapter 10. Assistance for Dependent Children

On January 13, 2004, Governor James McGreevey issued Reorganization Plan No. 001-2004 (“the Plan”) which consolidated responsibility for all employment-directed and workforce development activities, from the Departments of Human Services and Education, to the Department of labor.

Section 44:10-58. (Work First New Jersey Program) The program, established in 1997, replaced Aid to Families with Dependent Children (AFDC) and emergency assistance for AFDC families, general public assistance (GA) and emergency assistance for GA recipients, the GA employability program, and the Family Development Initiative. This recent major reorganization included revision. Retain as is.

Chapter 11. Public Assistance Recipients; Representatives.

This “Act concerning appointment of a representative payee for persons receiving public assistance” is L. 1964, c. 155 and may have importance. Retain.

Chapter 12. Anti-Poverty Programs.

Repeal; see Reorganization Plan, Chapter 10, above.

Chapter 14. County Welfare Per Capita Cost Limitation

Section 44:14-3. (Distribution of funds; determination) states that “Funds shall be distributed under this act according a set formula. Retain this 1981 Chapter.