

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 845, 971, and 1649

STATE OF NEW JERSEY
216th LEGISLATURE

ADOPTED JUNE 26, 2014

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SYNOPSIS

Establishes durational limits and enumerates certain factors concerning modification and termination of alimony; establishes "open durational" alimony.

CURRENT VERSION OF TEXT

Substitute as adopted by the Assembly Judiciary Committee.

(Sponsorship Updated As Of: 7/1/2014)

1 AN ACT concerning alimony and amending N.J.S.2A:34-23.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. N.J.S.2A:34-23 is amended to read as follows:

7 2A:34-23. Alimony, maintenance.

8 Pending any matrimonial action or action for dissolution of a
9 civil union brought in this State or elsewhere, or after judgment of
10 divorce or dissolution or maintenance, whether obtained in this
11 State or elsewhere, the court may make such order as to the alimony
12 or maintenance of the parties, and also as to the care, custody,
13 education and maintenance of the children, or any of them, as the
14 circumstances of the parties and the nature of the case shall render
15 fit, reasonable and just, and require reasonable security for the due
16 observance of such orders, including, but not limited to, the creation
17 of trusts or other security devices, to assure payment of reasonably
18 foreseeable medical and educational expenses. Upon neglect or
19 refusal to give such reasonable security, as shall be required, or
20 upon default in complying with any such order, the court may
21 award and issue process for the immediate sequestration of the
22 personal estate, and the rents and profits of the real estate of the
23 party so charged, and appoint a receiver thereof, and cause such
24 personal estate and the rents and profits of such real estate, or so
25 much thereof as shall be necessary, to be applied toward such
26 alimony and maintenance as to the said court shall from time to
27 time seem reasonable and just; or the performance of the said orders
28 may be enforced by other ways according to the practice of the
29 court. Orders so made may be revised and altered by the court from
30 time to time as circumstances may require.

31 The court may order one party to pay a retainer on behalf of the
32 other for expert and legal services when the respective financial
33 circumstances of the parties make the award reasonable and just. In
34 considering an application, the court shall review the financial
35 capacity of each party to conduct the litigation and the criteria for
36 award of counsel fees that are then pertinent as set forth by court
37 rule. Whenever any other application is made to a court which
38 includes an application for pendente lite or final award of counsel
39 fees, the court shall determine the appropriate award for counsel
40 fees, if any, at the same time that a decision is rendered on the other
41 issue then before the court and shall consider the factors set forth in
42 the court rule on counsel fees, the financial circumstances of the
43 parties, and the good or bad faith of either party. The court may not
44 order a retainer or counsel fee of a party convicted of an attempt or
45 conspiracy to murder the other party to be paid by the party who
46 was the intended victim of the attempt or conspiracy.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 a. In determining the amount to be paid by a parent for support
2 of the child and the period during which the duty of support is
3 owed, the court in those cases not governed by court rule shall
4 consider, but not be limited to, the following factors:

- 5 (1) Needs of the child;
- 6 (2) Standard of living and economic circumstances of each
7 parent;
- 8 (3) All sources of income and assets of each parent;
- 9 (4) Earning ability of each parent, including educational
10 background, training, employment skills, work experience,
11 custodial responsibility for children including the cost of providing
12 child care and the length of time and cost of each parent to obtain
13 training or experience for appropriate employment;
- 14 (5) Need and capacity of the child for education, including
15 higher education;
- 16 (6) Age and health of the child and each parent;
- 17 (7) Income, assets and earning ability of the child;
- 18 (8) Responsibility of the parents for the court-ordered support of
19 others;
- 20 (9) Reasonable debts and liabilities of each child and parent; and
21 (10) Any other factors the court may deem relevant.

22 The obligation to pay support for a child who has not been
23 emancipated by the court shall not terminate solely on the basis of
24 the child's age if the child suffers from a severe mental or physical
25 incapacity that causes the child to be financially dependent on a
26 parent. The obligation to pay support for that child shall continue
27 until the court finds that the child is relieved of the incapacity or is
28 no longer financially dependent on the parent. However, in
29 assessing the financial obligation of the parent, the court shall
30 consider, in addition to the factors enumerated in this section, the
31 child's eligibility for public benefits and services for people with
32 disabilities and may make such orders, including an order involving
33 the creation of a trust, as are necessary to promote the well-being of
34 the child.

35 As used in this section "severe mental or physical incapacity"
36 shall not include a child's abuse of, or addiction to, alcohol or
37 controlled substances.

38 b. In all actions brought for divorce, dissolution of a civil
39 union, divorce from bed and board, legal separation from a partner
40 in a civil union couple or nullity the court may award one or more
41 of the following types of alimony: **【permanent】** open durational
42 alimony; rehabilitative alimony; limited duration alimony or
43 reimbursement alimony to either party. In so doing the court shall
44 consider, but not be limited to, the following factors:

- 45 (1) The actual need and ability of the parties to pay;
- 46 (2) The duration of the marriage or civil union;
- 47 (3) The age, physical and emotional health of the parties;
- 48 (4) The standard of living established in the marriage or civil
49 union and the likelihood that each party can maintain a reasonably

1 comparable standard of living, with neither party having a greater
2 entitlement to that standard of living than the other;

3 (5) The earning capacities, educational levels, vocational skills,
4 and employability of the parties;

5 (6) The length of absence from the job market of the party
6 seeking maintenance;

7 (7) The parental responsibilities for the children;

8 (8) The time and expense necessary to acquire sufficient
9 education or training to enable the party seeking maintenance to
10 find appropriate employment, the availability of the training and
11 employment, and the opportunity for future acquisitions of capital
12 assets and income;

13 (9) The history of the financial or non-financial contributions to
14 the marriage or civil union by each party including contributions to
15 the care and education of the children and interruption of personal
16 careers or educational opportunities;

17 (10) The equitable distribution of property ordered and any
18 payouts on equitable distribution, directly or indirectly, out of
19 current income, to the extent this consideration is reasonable, just
20 and fair;

21 (11) The income available to either party through investment of
22 any assets held by that party;

23 (12) The tax treatment and consequences to both parties of any
24 alimony award, including the designation of all or a portion of the
25 payment as a non-taxable payment;

26 (13) The nature, amount, and length of pendente lite support
27 paid, if any; and

28 **[(13)]** (14) Any other factors which the court may deem
29 relevant.

30 In each case where the court is asked to make an award of
31 alimony, the court shall consider and assess evidence with respect
32 to all relevant statutory factors. If the court determines that certain
33 factors are more or less relevant than others, the court shall make
34 specific written findings of fact and conclusions of law on the
35 reasons why the court reached that conclusion. No factor shall be
36 elevated in importance over any other factor unless the court finds
37 otherwise, in which case the court shall make specific written
38 findings of fact and conclusions of law in that regard.

39 When a share of a retirement benefit is treated as an asset for
40 purposes of equitable distribution, the court shall not consider
41 income generated thereafter by that share for purposes of
42 determining alimony.

43 c. In any case in which there is a request for an award of
44 **[(permanent)]** alimony, the court shall consider and make specific
45 findings on the evidence about all of the statutory factors set forth
46 in subsection b. of this section **[(above factors)]**. If the court
47 determines that an award of permanent alimony is not warranted,
48 the court shall make specific findings on the evidence setting out

1 the reasons therefor. The court shall then consider whether alimony
2 is appropriate for any or all of the following: (1) limited duration;
3 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
4 consider and make specific findings on the evidence about factors
5 set forth above. The court shall not award limited duration alimony
6 as a substitute for permanent alimony in those cases where
7 permanent alimony would otherwise be awarded].

8 For any marriage or civil union less than 20 years in duration,
9 the total duration of alimony shall not, except in exceptional
10 circumstances, exceed the length of the marriage or civil union.
11 Determination of the length and amount of alimony shall be made
12 by the court pursuant to consideration of all of the statutory factors
13 set forth in subsection b. of this section. In addition to those
14 factors, the court shall also consider the practical impact of the
15 parties' need for separate residences and the attendant increase in
16 living expenses on the ability of both parties to maintain a standard
17 of living reasonably comparable to the standard of living
18 established in the marriage or civil union, to which both parties are
19 entitled, with neither party having a greater entitlement thereto.

20 Exceptional circumstances which may require an adjustment to
21 the duration of alimony include:

22 (1) The ages of the parties at the time of the marriage or civil
23 union and at the time of the alimony award;

24 (2) The degree and duration of the dependency of one party on
25 the other party during the marriage or civil union;

26 (3) Whether a spouse or partner has a chronic illness or unusual
27 health circumstance;

28 (4) Whether a spouse or partner has given up a career or a career
29 opportunity or otherwise supported the career of the other spouse or
30 partner;

31 (5) Whether a spouse or partner has received a disproportionate
32 share of equitable distribution;

33 (6) The impact of the marriage or civil union on either party's
34 ability to become self-supporting, including but not limited to either
35 party's responsibility as primary caretaker of a child;

36 (7) Tax considerations of either party;

37 (8) Any other factors or circumstances that the court deems
38 equitable, relevant and material.

39 An award of alimony for a limited duration may be modified
40 based either upon changed circumstances, or upon the
41 nonoccurrence of circumstances that the court found would occur at
42 the time of the award. The court may modify the amount of such an
43 award, but shall not modify the length of the term except in unusual
44 circumstances.

45 In determining the length of the term, the court shall consider the
46 length of time it would reasonably take for the recipient to improve
47 his or her earning capacity to a level where limited duration
48 alimony is no longer appropriate.

1 d. Rehabilitative alimony shall be awarded based upon a plan
2 in which the payee shows the scope of rehabilitation, the steps to be
3 taken, and the time frame, including a period of employment during
4 which rehabilitation will occur. An award of rehabilitative alimony
5 may be modified based either upon changed circumstances, or upon
6 the nonoccurrence of circumstances that the court found would
7 occur at the time of the rehabilitative award.

8 This section is not intended to preclude a court from modifying
9 **【permanent】** alimony awards based upon the law.

10 e. Reimbursement alimony may be awarded under
11 circumstances in which one party supported the other through an
12 advanced education, anticipating participation in the fruits of the
13 earning capacity generated by that education. An award of
14 reimbursement alimony shall not be modified for any reason.

15 f. Except as provided in subsection i., nothing in this section
16 shall be construed to limit the court's authority to award
17 **【permanent】** open durational alimony, limited duration alimony,
18 rehabilitative alimony or reimbursement alimony, separately or in
19 any combination, as warranted by the circumstances of the parties
20 and the nature of the case.

21 g. In all actions for divorce or dissolution other than those
22 where judgment is granted solely on the ground of separation the
23 court may consider also the proofs made in establishing such
24 ground in determining an amount of alimony or maintenance that is
25 fit, reasonable and just. In all actions for divorce, dissolution of
26 civil union, divorce from bed and board, or legal separation from a
27 partner in a civil union couple where judgment is granted on the
28 ground of institutionalization for mental illness the court may
29 consider the possible burden upon the taxpayers of the State as well
30 as the ability of the party to pay in determining an amount of
31 maintenance to be awarded.

32 h. Except as provided in this subsection, in all actions where a
33 judgment of divorce, dissolution of civil union, divorce from bed
34 and board or legal separation from a partner in a civil union couple
35 is entered the court may make such award or awards to the parties,
36 in addition to alimony and maintenance, to effectuate an equitable
37 distribution of the property, both real and personal, which was
38 legally and beneficially acquired by them or either of them during
39 the marriage or civil union. However, all such property, real,
40 personal or otherwise, legally or beneficially acquired during the
41 marriage or civil union by either party by way of gift, devise, or
42 intestate succession shall not be subject to equitable distribution,
43 except that interspousal gifts or gifts between partners in a civil
44 union couple shall be subject to equitable distribution. The court
45 may not make an award concerning the equitable distribution of
46 property on behalf of a party convicted of an attempt or conspiracy
47 to murder the other party.

1 i. No person convicted of Murder, N.J.S.2C:11-3;
2 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
3 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
4 substantially similar offense under the laws of another jurisdiction,
5 may receive alimony if: (1) the crime results in death or serious
6 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
7 family member of a divorcing party; and (2) the crime was
8 committed after the marriage or civil union. A person convicted of
9 an attempt or conspiracy to commit murder may not receive
10 alimony from the person who was the intended victim of the
11 attempt or conspiracy. Nothing in this subsection shall be
12 construed to limit the authority of the court to deny alimony for
13 other bad acts.

14 As used in this subsection:

15 "Family member" means a spouse, child, parent, sibling, aunt,
16 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
17 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
18 stepchild, stepbrother, stepsister, half brother, or half sister, whether
19 the individual is related by blood, marriage or civil union, or
20 adoption.

21 j. Alimony may be modified or terminated upon the
22 prospective or actual retirement of the obligor.

23 (1) There shall be a rebuttable presumption that alimony shall
24 terminate upon the obligor spouse or partner attaining full
25 retirement age, except that any arrearages that have accrued prior to
26 the termination date shall not be vacated or annulled. The court may
27 set a different alimony termination date for good cause shown based
28 on specific written findings of fact and conclusions of law.

29 The rebuttable presumption may be overcome if, upon
30 consideration of the following factors and for good cause shown,
31 the court determines that alimony should continue:

32 (a) The ages of the parties at the time of the application for
33 retirement;

34 (b) The ages of the parties at the time of the marriage or civil
35 union and their ages at the time of entry of the alimony award;

36 (c) The degree and duration of the economic dependency of the
37 recipient upon the payor during the marriage or civil union;

38 (d) Whether the recipient has foregone or relinquished or
39 otherwise sacrificed claims, rights or property in exchange for a
40 more substantial or longer alimony award;

41 (e) The duration or amount of alimony already paid;

42 (f) The health of the parties at the time of the retirement
43 application;

44 (g) Assets of the parties at the time of the retirement
45 application;

46 (h) Whether the recipient has reached full retirement age as
47 defined in this section;

48 (i) Sources of income, both earned and unearned, of the parties;

1 (j) The ability of the recipient to have saved adequately for
2 retirement; and

3 (k) Any other factors that the court may deem relevant.

4 If the court determines, for good cause shown based on specific
5 written findings of fact and conclusions of law, that the
6 presumption has been overcome, then the court shall apply the
7 alimony factors as set forth in subsection b. of this section to the
8 parties' current circumstances in order to determine whether
9 modification or termination of alimony is appropriate. If the obligor
10 intends to retire but has not yet retired, the court shall establish the
11 conditions under which the modification or termination of alimony
12 will be effective.

13 (2) Where the obligor seeks to retire prior to attaining the full
14 retirement age as defined in this section, the obligor shall have the
15 burden of demonstrating by a preponderance of the evidence that
16 the prospective or actual retirement is reasonable and made in good
17 faith. Both the obligor's application to the court for modification or
18 termination of alimony and the obligee's response to the application
19 shall be accompanied by current Case Information Statements or
20 other relevant documents as required by the Rules of Court, as well
21 as the Case Information Statements or other documents from the
22 date of entry of the original alimony award and from the date of any
23 subsequent modification.

24 In order to determine whether the obligor has met the burden of
25 demonstrating that the obligor's prospective or actual retirement is
26 reasonable and made in good faith, the court shall consider the
27 following factors:

28 (a) The age and health of the parties at the time of the
29 application;

30 (b) The obligor's field of employment and the generally
31 accepted age of retirement for those in that field;

32 (c) The age when the obligor becomes eligible for retirement at
33 the obligor's place of employment, including mandatory retirement
34 dates or the dates upon which continued employment would no
35 longer increase retirement benefits;

36 (d) The obligor's motives in retiring, including any pressures to
37 retire applied by the obligor's employer or incentive plans offered
38 by the obligor's employer;

39 (e) The reasonable expectations of the parties regarding
40 retirement during the marriage or civil union and at the time of the
41 divorce or dissolution;

42 (f) The ability of the obligor to maintain support payments
43 following retirement, including whether the obligor will continue to
44 be employed part-time or work reduced hours;

45 (g) The obligee's level of financial independence and the
46 financial impact of the obligor's retirement upon the obligee; and

47 (h) Any other relevant factors affecting the obligor's decision to
48 retire and the parties' respective financial positions.

1 If the obligor intends to retire but has not yet retired, the court
2 shall establish the conditions under which the modification or
3 termination of alimony will be effective.

4 (3) When a retirement application is filed in cases in which
5 there is an existing final alimony order or enforceable written
6 agreement established prior to the effective date of this act, the
7 obligor's reaching full retirement age as defined in this section shall
8 be deemed a good faith retirement age. Upon application by the
9 obligor to modify or terminate alimony, both the obligor's
10 application to the court for modification or termination of alimony
11 and the obligee's response to the application shall be accompanied
12 by current Case Information Statements or other relevant documents
13 as required by the Rules of Court, as well as the Case Information
14 Statements or other documents from the date of entry of the original
15 alimony award and from the date of any subsequent modification.
16 In making its determination, the court shall consider the ability of
17 the obligee to have saved adequately for retirement as well as the
18 following factors in order to determine whether the obligor, by a
19 preponderance of the evidence, has demonstrated that modification
20 or termination of alimony is appropriate:

21 (a) The age and health of the parties at the time of the
22 application;

23 (b) The obligor's field of employment and the generally
24 accepted age of retirement for those in that field;

25 (c) The age when the obligor becomes eligible for retirement at
26 the obligor's place of employment, including mandatory retirement
27 dates or the dates upon which continued employment would no
28 longer increase retirement benefits;

29 (d) The obligor's motives in retiring, including any pressures to
30 retire applied by the obligor's employer or incentive plans offered
31 by the obligor's employer;

32 (e) The reasonable expectations of the parties regarding
33 retirement during the marriage or civil union and at the time of the
34 divorce or dissolution;

35 (f) The ability of the obligor to maintain support payments
36 following retirement, including whether the obligor will continue to
37 be employed part-time or work reduced hours;

38 (g) The obligee's level of financial independence and the
39 financial impact of the obligor's retirement upon the obligee; and

40 (h) Any other relevant factors affecting the parties' respective
41 financial positions.

42 (4) The assets distributed between the parties at the time of the
43 entry of a final order of divorce or dissolution of a civil union shall
44 not be considered by the court for purposes of determining the
45 obligor's ability to pay alimony following retirement.

46 k. When a non-self-employed party seeks modification of
47 alimony, the court shall consider the following factors:

48 (1) The reasons for any loss of income;

1 (2) Under circumstances where there has been a loss of
2 employment, the obligor's documented efforts to obtain
3 replacement employment or to pursue an alternative occupation;

4 (3) Under circumstances where there has been a loss of
5 employment, whether the obligor is making a good faith effort to
6 find remunerative employment at any level and in any field;

7 (4) The income of the obligee; the obligee's circumstances; and
8 the obligee's reasonable efforts to obtain employment in view of
9 those circumstances and existing opportunities;

10 (5) The impact of the parties' health on their ability to obtain
11 employment;

12 (6) Any severance compensation or award made in connection
13 with any loss of employment;

14 (7) Any changes in the respective financial circumstances of the
15 parties that have occurred since the date of the order from which
16 modification is sought;

17 (8) The reasons for any change in either party's financial
18 circumstances since the date of the order from which modification
19 is sought, including, but not limited to, assessment of the extent to
20 which either party's financial circumstances at the time of the
21 application are attributable to enhanced earnings or financial
22 benefits received from any source since the date of the order;

23 (9) Whether a temporary remedy should be fashioned to provide
24 adjustment of the support award from which modification is sought,
25 and the terms of any such adjustment, pending continuing
26 employment investigations by the unemployed spouse or partner;
27 and

28 (10) Any other factor the court deems relevant to fairly and
29 equitably decide the application.

30 Under circumstances where the changed circumstances arise
31 from the loss of employment, the length of time a party has been
32 involuntarily unemployed or has had an involuntary reduction in
33 income shall not be the only factor considered by the court when an
34 application is filed by a non-self-employed party to reduce alimony
35 because of involuntary loss of employment. The court shall
36 determine the application based upon all of the enumerated factors,
37 however, no application shall be filed until a party has been
38 unemployed, or has not been able to return to or attain employment
39 at prior income levels, or both, for a period of 90 days. The court
40 shall have discretion to make any relief granted retroactive to the
41 date of the loss of employment or reduction of income.

42 1. When a self-employed party seeks modification of alimony
43 because of an involuntary reduction in income since the date of the
44 order from which modification is sought, then that party's
45 application for relief must include an analysis that sets forth the
46 economic and non-economic benefits the party receives from the
47 business, and which compares these economic and non-economic
48 benefits to those that were in existence at the time of the entry of
49 the order.

1 m. When assessing a temporary remedy, the court may
2 temporarily suspend support, or reduce support on terms; direct that
3 support be paid in some amount from assets pending further
4 proceedings; direct a periodic review; or enter any other order the
5 court finds appropriate to assure fairness and equity to both parties.

6 n. Alimony may be suspended or terminated if the payee
7 cohabits with another person. Cohabitation involves a mutually
8 supportive, intimate personal relationship in which a couple has
9 undertaken duties and privileges that are commonly associated with
10 marriage or civil union but does not necessarily maintain a single
11 common household.

12 When assessing whether cohabitation is occurring, the court shall
13 consider the following:

14 (1) Intertwined finances such as joint bank accounts and other
15 joint holdings or liabilities;

16 (2) Sharing or joint responsibility for living expenses;

17 (3) Recognition of the relationship in the couple's social and
18 family circle;

19 (4) Living together, the frequency of contact, the duration of the
20 relationship, and other indicia of a mutually supportive intimate
21 personal relationship;

22 (5) Sharing household chores;

23 (6) Whether the recipient of alimony has received an
24 enforceable promise of support from another person within the
25 meaning of subsection h. of R.S.25:1-5; and

26 (7) All other relevant evidence.

27 In evaluating whether cohabitation is occurring and whether
28 alimony should be suspended or terminated, the court shall also
29 consider the length of the relationship. A court may not find an
30 absence of cohabitation solely on grounds that the couple does not
31 live together on a full-time basis.

32 As used in this section:

33 "Full retirement age" shall mean the age at which a person is
34 eligible to receive full retirement for full retirement benefits under
35 section 216 of the federal Social Security Act (42 U.S.C. s.416).

36 (cf: P.L.2009, c.43, s.1)

37
38 2. This act shall take effect immediately and shall not be
39 construed either to modify the duration of alimony ordered or
40 agreed upon or other specifically bargained for contractual
41 provisions that have been incorporated into:

42 a. a final judgment of divorce or dissolution;

43 b. a final order that has concluded post-judgment litigation; or

44 c. any enforceable written agreement between the parties.