

ASSEMBLY, No. 399

STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

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SYNOPSIS

Prohibits awarding alimony to domestic violence offenders; permits termination of alimony based on conviction for crime or offense involving domestic violence.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

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 conspiracy to murder the other party to be paid by the party who
2 was the intended victim of the attempt or conspiracy.

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

7 (1) Needs of the child;

8 (2) Standard of living and economic circumstances of each
9 parent;

10 (3) All sources of income and assets of each parent;

11 (4) Earning ability of each parent, including educational
12 background, training, employment skills, work experience,
13 custodial responsibility for children including the cost of providing
14 child care and the length of time and cost of each parent to obtain
15 training or experience for appropriate employment;

16 (5) Need and capacity of the child for education, including
17 higher education;

18 (6) Age and health of the child and each parent;

19 (7) Income, assets and earning ability of the child;

20 (8) Responsibility of the parents for the court-ordered support of
21 others;

22 (9) Reasonable debts and liabilities of each child and parent; and

23 (10) Any other factors the court may deem relevant.

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

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

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

47 (1) The actual need and ability of the parties to pay;

48 (2) The duration of the marriage or civil union;

- 1 (3) The age, physical and emotional health of the parties;
- 2 (4) The standard of living established in the marriage or civil
3 union and the likelihood that each party can maintain a reasonably
4 comparable standard of living;
- 5 (5) The earning capacities, educational levels, vocational skills,
6 and employability of the parties;
- 7 (6) The length of absence from the job market of the party
8 seeking maintenance;
- 9 (7) The parental responsibilities for the children;
- 10 (8) The time and expense necessary to acquire sufficient
11 education or training to enable the party seeking maintenance to
12 find appropriate employment, the availability of the training and
13 employment, and the opportunity for future acquisitions of capital
14 assets and income;
- 15 (9) The history of the financial or non-financial contributions to
16 the marriage or civil union by each party including contributions to
17 the care and education of the children and interruption of personal
18 careers or educational opportunities;
- 19 (10) The equitable distribution of property ordered and any
20 payouts on equitable distribution, directly or indirectly, out of
21 current income, to the extent this consideration is reasonable, just
22 and fair;
- 23 (11) The income available to either party through investment of
24 any assets held by that party;
- 25 (12) The tax treatment and consequences to both parties of any
26 alimony award, including the designation of all or a portion of the
27 payment as a non-taxable payment; and
- 28 (13) Any other factors which the court may deem relevant.

29 When a share of a retirement benefit is treated as an asset for
30 purposes of equitable distribution, the court shall not consider
31 income generated thereafter by that share for purposes of
32 determining alimony.

33 c. In any case in which there is a request for an award of
34 permanent alimony, the court shall consider and make specific
35 findings on the evidence about the above factors. If the court
36 determines that an award of permanent alimony is not warranted,
37 the court shall make specific findings on the evidence setting out
38 the reasons therefor. The court shall then consider whether alimony
39 is appropriate for any or all of the following: (1) limited duration;
40 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
41 consider and make specific findings on the evidence about factors
42 set forth above. The court shall not award limited duration alimony
43 as a substitute for permanent alimony in those cases where
44 permanent alimony would otherwise be awarded.

45 An award of alimony for a limited duration may be modified
46 based either upon changed circumstances, or upon the
47 nonoccurrence of circumstances that the court found would occur at
48 the time of the award. The court may modify the amount of such an

1 award, but shall not modify the length of the term except in unusual
2 circumstances.

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

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

14 This section is not intended to preclude a court from modifying
15 permanent alimony awards based upon the law.

16 e. Reimbursement alimony may be awarded under
17 circumstances in which one party supported the other through an
18 advanced education, anticipating participation in the fruits of the
19 earning capacity generated by that education.

20 f. Except as provided in **subsection** subsections i. and j.,
21 nothing in this section shall be construed to limit the court's
22 authority to award permanent alimony, limited duration alimony,
23 rehabilitative alimony or reimbursement alimony, separately or in
24 any combination, as warranted by the circumstances of the parties
25 and the nature of the case.

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

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

1 union couple shall be subject to equitable distribution. The court
2 may not make an award concerning the equitable distribution of
3 property on behalf of a party convicted of an attempt or conspiracy
4 to murder the other party.

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

18 As used in this subsection:

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

24 j. The court shall not award alimony to any person convicted
25 of a crime or offense involving domestic violence as defined in
26 section 3 of P.L.1991, c.261 (C.2C:25-19) by the victim of that
27 crime or offense. If the recipient of an existing alimony award is
28 subsequently convicted of a crime or offense involving domestic
29 violence against the payer spouse or partner, such conviction shall
30 constitute changed circumstances for the purposes of a petition to
31 terminate the alimony award. Nothing in this subsection shall be
32 construed to limit the authority of the court to deny alimony for
33 other bad acts.

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

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36 2. This act shall take effect immediately.

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STATEMENT

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41 This bill would prohibit an award of alimony to a person
42 convicted of a crime or offense involving domestic violence by the
43 victim of that crime or offense. If the recipient of an existing
44 alimony award is subsequently convicted of a crime or offense
45 involving domestic violence against the payer spouse or partner,
46 such conviction would constitute "changed circumstances" for the
47 purposes of a petition to terminate the alimony award.

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1 As defined in section 3 of P.L.1991, c.261 (C.2C:25-19), the acts
2 that constitute domestic violence are: homicide; assault; terroristic
3 threats; kidnapping; criminal restraint; false imprisonment; sexual
4 assault; criminal sexual contact; lewdness; criminal mischief;
5 burglary; criminal trespass; harassment; and stalking.