SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 74 and 76

STATE OF NEW JERSEY

DATED: NOVEMBER 18, 1996

The Senate Women's Issues, Children and Family Services Committee favorably reports Assembly Committee Substitute for Assembly Bill Nos. 74 and 76.

Presently, the courts may award two types of alimony: permanent alimony, which is intended to compensate a spouse for an economic dependency created by the marriage, and rehabilitative alimony, which is intended for specific educational or training purposes and is of short duration. This bill would authorize the court to award two additional types of alimony: limited duration, which would be awarded where economic assistance is necessary for a limited time, and reimbursement alimony, which would be awarded to compensate a party who supported the other party through an advanced education, anticipating participation in the fruits of the earning capacity generated by the education.

This bill would also add two new factors which the court would consider in determining whether any type of alimony is appropriate. Under current provisions of law the court, in making this determination, must consider several factors, including the need and ability of the parties to pay, the duration of the marriage, the age and health of the parties, their standard of living and their earning capacities and educational levels, the length of absence from the job market and custodial responsibilities of the parties, the time and expense necessary for training and education to acquire appropriate employment, the history of financial and non-financial contributions of the parties and the equitable distribution of the property. The bill would add the following factors to the list: the income available to either party through investment of any assets and the tax treatment and consequences to both parties of any alimony awarded, including the designation of all or a portion of the payment as a non-taxable payment.

The bill provides that if after the threshold determination the court determines that an award of permanent alimony is not warranted, the court would make specific findings on the evidence setting out the

reasons therefor. The court would then consider whether any or all of the following types of alimony would be appropriate: limited duration, rehabilitative or reimbursement. In making this determination the court must consider the factors mentioned above and make specific findings.

The bill provides that limited duration alimony would not be awarded as a substitute for permanent alimony in cases where permanent alimony would otherwise be awarded. A limited duration alimony award may be modified due to a change in circumstances or upon a nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of the award, but would not be allowed to modify the length of the term except in unusual circumstances. In determining the length of the term, the court must consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

With regard to rehabilitative alimony, the bill provides that it shall be awarded based upon a plan in which the payee shows the scope of the rehabilitation, the steps to be taken and the time frame, including the period of employment during which rehabilitation will occur. Rehabilitative alimony may be modified based upon changed circumstances or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award.

Under the provisions of the bill, reimbursement alimony may be awarded separately or in conjunction with limited duration or rehabilitative alimony.

Section 2 of the bill would amend N.J.S.2A:34-25 to provide that limited duration alimony, like permanent alimony under current law, would terminate upon the remarriage of the spouse receiving it. The bill would also provide that reimbursement alimony, like rehabilitative alimony under the current law, would not terminate upon remarriage.

This bill embodies Recommendations 12 and 13 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill is identical to Senate Bill No. 1495, sponsored by Senators Martin and Ewing, which was also released by this committee on November 18, 1996.