

ASSEMBLY, No. 77

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH and Assemblywoman CRECCO

1 AN ACT concerning child support and education expenses and
2 amending N.J.S.2A:34-23.

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

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

8 2A:34-23. Pending any matrimonial action brought in this State or
9 elsewhere, or after judgment of divorce or maintenance, whether
10 obtained in this State or elsewhere, the court may make such order as
11 to the alimony or maintenance of the parties, and also as to the care,
12 custody, education and maintenance of the children, or any of them,
13 as the circumstances of the parties and the nature of the case shall
14 render fit, reasonable and just, and require reasonable security for the
15 due observance of such orders, including, but not limited to, the
16 creation of trusts or other security devices, to assure payment of
17 reasonably foreseeable medical and educational expenses. Upon
18 neglect or refusal to give such reasonable security, as shall be required,
19 or upon default in complying with any such order, the court may
20 award and issue process for the immediate sequestration of the
21 personal estate, and the rents and profits of the real estate of the party
22 so charged, and appoint a receiver thereof, and cause such personal
23 estate and the rents and profits of such real estate, or so much thereof
24 as shall be necessary, to be applied toward such alimony and
25 maintenance as to the said court shall from time to time seem
26 reasonable and just; or the performance of the said orders may be
27 enforced by other ways according to the practice of the court. Orders
28 so made may be revised and altered by the court from time to time as
29 circumstances may require.

30 The court may order one party to pay a retainer on behalf of the
31 other for expert and legal services when the respective financial
32 circumstances of the parties make the award reasonable and just. In

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

Matter underlined thus is new matter.

1 considering an application, the court shall review the financial capacity
2 of each party to conduct the litigation and the criteria for award of
3 counsel fees that are then pertinent as set forth by court rule.
4 Whenever any other application is made to a court which includes an
5 application for pendente lite or final award of counsel fees, the court
6 shall determine the appropriate award for counsel fees, if any, at the
7 same time that a decision is rendered on the other issue then before the
8 court and shall consider the factors set forth in the court rule on
9 counsel fees, the financial circumstances of the parties, and the good
10 or bad faith of either party.

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

15 (1) Needs of the child;

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

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

18 (4) Earning ability of each parent, including educational
19 background, training, employment skills, work experience, custodial
20 responsibility for children including the cost of providing child care
21 and the length of time and cost of each parent to obtain training or
22 experience for appropriate employment;

23 (5) Need and capacity of the child for education, including higher
24 education;

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

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

27 (8) Responsibility of the parents for the court-ordered support of
28 others;

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

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

31 b. In any case where the child attends post-secondary education or
32 plans to do so in the near future, and a parent paying child support is
33 contributing additional funds to pay post-secondary education
34 expenses or is asked to contribute additional funds for that purpose,
35 the court upon request of either party shall review the existing child
36 support obligation on the grounds that a change of circumstances has
37 occurred. In determining whether the child support obligation shall be
38 adjusted, the court shall take into consideration the child's
39 post-secondary education expenses, the needs of the child for ongoing
40 periodic support and the parental contribution to the education
41 expenses, in addition to such other factors as the court deems relevant.

42 c. In all actions brought for divorce, divorce from bed and board,
43 or nullity the court may award permanent or rehabilitative alimony or
44 both to either party, and in so doing shall consider, but not be limited
45 to, the following factors:

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

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

22 When a share of a retirement benefit is treated as an asset for
23 purposes of equitable distribution, the court shall not consider income
24 generated thereafter by that share for purposes of determining
25 alimony.

26 In any case in which there is a request for an award of rehabilitative
27 or permanent alimony, the court shall consider and make specific
28 findings on the evidence about the above factors.

29 An award of rehabilitative alimony may be modified based either
30 upon changed circumstances, or upon the nonoccurrence of
31 circumstances that the court found would occur at the time of the
32 rehabilitative award. This section is not intended to preclude a court
33 from modifying permanent alimony awards based upon the law. In all
34 actions for divorce other than those where judgment is granted solely
35 on the ground of separation the court may consider also the proofs
36 made in establishing such ground in determining an amount of alimony
37 or maintenance that is fit, reasonable and just. In all actions for
38 divorce or divorce from bed and board where judgment is granted on
39 the ground of institutionalization for mental illness the court may
40 consider the possible burden upon the taxpayers of the State as well
41 as the ability of the party to pay in determining an amount of
42 maintenance to be awarded.

43 In all actions where a judgment of divorce or divorce from bed and
44 board is entered the court may make such award or awards to the
45 parties, in addition to alimony and maintenance, to effectuate an
46 equitable distribution of the property, both real and personal, which

1 was legally and beneficially acquired by them or either of them during
2 the marriage. However, all such property, real, personal or otherwise,
3 legally or beneficially acquired during the marriage by either party by
4 way of gift, devise, or intestate succession shall not be subject to
5 equitable distribution, except that interspousal gifts shall be subject to
6 equitable distribution.

7 (cf: P.L.1988, c.153.s.3)

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9 2. This act shall take effect immediately.

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STATEMENT

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14 This bill would require the family court to review child support
15 orders in cases where the child attends post-secondary education and
16 a parent paying child support is contributing additional funds towards
17 those education expenses.

18 The bill provides that in this situation, upon request of either party
19 the court would be required to review the existing child support
20 obligation on the grounds that a change of circumstances has occurred.
21 In determining any new amount of child support to be paid, the court
22 would take into consideration the child's expenses in post-secondary
23 education, the needs of the child for ongoing periodic support and the
24 parental contribution to the education expenses, among any other
25 factors the court may wish to consider.

26 This bill embodies Recommendation 11 of the report of the
27 Commission to Study the Law of Divorce, issued April 18, 1995.

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32 Requires family court review of child support order where parent is
33 paying post-secondary education expenses.