

SENATE, No. 1498

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Senators MARTIN, EWING and Cafiero

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  
33 considering an application, the court shall review the financial capacity  
34 of each party to conduct the litigation and the criteria for award of

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

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

13 (1) Needs of the child;

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

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

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

21 (5) Need and capacity of the child for education, including higher  
22 education;

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

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

25 (8) Responsibility of the parents for the court-ordered support of  
26 others;

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

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

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

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

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

45 (2) The duration of the marriage;

46 (3) The age, physical and emotional health of the parties;

1 (4) The standard of living established in the marriage and the  
2 likelihood that each party can maintain a reasonably comparable  
3 standard of living;

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

6 (6) The length of absence from the job market and custodial  
7 responsibilities for children of the party seeking maintenance;

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

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

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

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

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

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

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

41 In all actions where a judgment of divorce or divorce from bed and  
42 board is entered the court may make such award or awards to the  
43 parties, in addition to alimony and maintenance, to effectuate an  
44 equitable distribution of the property, both real and personal, which  
45 was legally and beneficially acquired by them or either of them during  
46 the marriage. However, all such property, real, personal or otherwise,

1 legally or beneficially acquired during the marriage by either party by  
2 way of gift, devise, or intestate succession shall not be subject to  
3 equitable distribution, except that interspousal gifts shall be subject to  
4 equitable distribution.

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

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7 2. This act shall take effect immediately.

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10 STATEMENT

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12 This bill would require the family court to review child support  
13 orders in cases where the child attends post-secondary education, or  
14 plans to do so in the near future, and a parent paying child support is  
15 contributing additional funds towards those education expenses.

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

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

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