

SENATE, No. 1627

STATE OF NEW JERSEY

INTRODUCED OCTOBER 28, 1996

By Senators LIPMAN and ADLER

1 AN ACT concerning payment of post high-school education expenses  
2 under certain circumstances and amending N.J.S.2A:34-23.

3

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

6

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 there is a request for payment of post  
30 high-school education expenses on behalf of the child, the court shall  
31 consider and make specific findings on the evidence about each of the  
32 following factors:

- 33 (1) Whether the parent, if still living with the child, would have  
34 contributed towards the cost of the post high-school education;
- 35 (2) The effect of the parent's background, values and goals on the  
36 reasonableness of the child's expectation for post high-school  
37 education;
- 38 (3) The amount of the contribution sought by the child for the cost  
39 of higher education;
- 40 (4) The ability of the parent to pay that cost;
- 41 (5) The relationship of the requested contribution to the kind of  
42 school or course of study sought by the child;
- 43 (6) The financial resources of both parents;
- 44 (7) The commitment to and aptitude of the child for the requested  
45 education;
- 46 (8) The financial resources of the child, including assets owned

1 individually or held in custodianship or trust;

2 (9) The ability of the child to earn income during the school year or  
3 on vacation;

4 (10) The availability of financial aid in the form of college grants  
5 and loans;

6 (11) The child's relationship to the paying parent, including mutual  
7 affection and shared goals as well as responsiveness to parental advice  
8 and guidance; and

9 (12) The relationship of the education requested to any prior  
10 training and to the overall long-range goals of the child.

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

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

16 (2) The duration of the marriage;

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

18 (4) The standard of living established in the marriage and the  
19 likelihood that each party can maintain a reasonably comparable  
20 standard of living;

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

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

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

29 (8) The history of the financial or non-financial contributions to the  
30 marriage by each party including contributions to the care and  
31 education of the children and interruption of personal careers or  
32 educational opportunities;

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

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

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

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

44 An award of rehabilitative alimony may be modified based either  
45 upon changed circumstances, or upon the nonoccurrence of  
46 circumstances that the court found would occur at the time of the

1 rehabilitative award. This section is not intended to preclude a court  
2 from modifying permanent alimony awards based upon the law. In all  
3 actions for divorce other than those where judgment is granted solely  
4 on the ground of separation the court may consider also the proofs  
5 made in establishing such ground in determining an amount of alimony  
6 or maintenance that is fit, reasonable and just. In all actions for  
7 divorce or divorce from bed and board where judgment is granted on  
8 the ground of institutionalization for mental illness the court may  
9 consider the possible burden upon the taxpayers of the State as well  
10 as the ability of the party to pay in determining an amount of  
11 maintenance to be awarded.

12 In all actions where a judgment of divorce or divorce from bed and  
13 board is entered the court may make such award or awards to the  
14 parties, in addition to alimony and maintenance, to effectuate an  
15 equitable distribution of the property, both real and personal, which  
16 was legally and beneficially acquired by them or either of them during  
17 the marriage. However, all such property, real, personal or otherwise,  
18 legally or beneficially acquired during the marriage by either party by  
19 way of gift, devise, or intestate succession shall not be subject to  
20 equitable distribution, except that interspousal gifts shall be subject to  
21 equitable distribution.

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

23

24 2. This act shall take effect immediately.

25

26

27

## STATEMENT

28

29 Currently, the family court may order a divorced parent to  
30 contribute towards the costs of post high-school education for his or  
31 her child under certain circumstances.

32 This bill codifies the standards used by the family court pursuant to  
33 New Jersey Supreme Court case law in making the determination  
34 whether to order a contribution towards post high-school education  
35 costs.

36 The bill would codify a New Jersey Supreme Court case,  
37 Newburgh v. Arrigo, 88 N.J.529 (1982) which held that, in general,  
38 financially capable parents should contribute to the higher education  
39 costs of children who are qualified students.

40 In making the determination, the bill requires that the court weigh  
41 the following factors:

42 (1) Whether the parent, if still living with the child, would have  
43 contributed towards the cost of the post high-school education;

44 (2) The effect of the parent's background, values and goals on the  
45 reasonableness of the child's expectation for post high-school  
46 education;

- 1       (3) The amount of the contribution sought by the child for the cost  
2 of higher education;
- 3       (4) The ability of the parent to pay that cost;
- 4       (5) The relationship of the requested contribution to the kind of  
5 school or course of study sought by the child;
- 6       (6) The financial resources of both parents;
- 7       (7) The commitment to and aptitude of the child for the requested  
8 education;
- 9       (8) The financial resources of the child, including assets owned  
10 individually or held in custodianship or trust;
- 11       (9) The ability of the child to earn income during the school year or  
12 on vacation;
- 13       (10) The availability of financial aid in the form of college grants  
14 and loans;
- 15       (11) The child's relationship to the paying parent, including mutual  
16 affection and shared goals as well as responsiveness to parental advice  
17 and guidance; and
- 18       (12) The relationship of the education requested to any prior  
19 training and to the overall long-range goals of the child.

20

21

22

23

24       \_\_\_\_\_

25 Codifies New Jersey Supreme Court ruling concerning divorced  
26 parents' obligation to pay for children's post high-school education  
expenses under certain circumstances.