

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A: 34-13 et al

(Divorce--child support, alimony, equitable distribution--various amendments)

LAWS OF: 1988

CHAPTER: 153

Bill No: S976

Sponsor(s): Lipman

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: September 29, 1988

Senate: February 2, 1988

Date of Approval: November 14, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: Yes

Hearings: Yes

(over)

- 974.90 New Jersey. Commission on Sex Discrimination in the Statues.  
W872 Toward economic equity: recommendations  
1985 for the elimination of Sex Discrimination... January, 1985.  
Trenton, 1985.  
(p.ii)
- 974.90 New Jersey. Commission on Sex Discrimination in the Statues.  
W872 Sex Discrimination in marriage & family law.  
1981b Second report. September, 1981  
(See pp ii, 23-33, Appendix F)
- 974.90 New Jersey. Commission on Sex Discrimination in the Statues.  
W872 Public hearing, held 2-13-80 &  
1980 2-26-80, Trenton, 1980.
- 974.90 New Jersey. Commission on Sex Discrimination in the the Statutes.  
W872 Sex Discrimination in the employment statutes. October 1979.  
1979d (see pp 26-27, 38-39)

See also:

Rosenblum, Elise "New law on factors in child support..."  
122 N.J.L.J. 1409 (12-1-88)

[FIRST REPRINT]

SENATE, No. 976

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Senator LIPMAN

1 AN ACT concerning matrimonial action and revising parts of the  
statutory law.

3

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

1. N.J.S. 2A:34-13 is amended to read as follows:

7 2A:34-13. A [man] person who has attained the age of [18  
years and a woman who has attained the age of] 16 years may  
9 prosecute or defend any matrimonial action in person or by  
attorney.

11 (cf: N.J.S. 2A:34-13)

2. N.J.S. 2A:34-21 is amended to read as follows:

13 2A:34-21. The court, upon or after granting a divorce from  
the bonds of matrimony to either spouse, may allow [the wife]  
15 either spouse to resume any name used by [her] the spouse  
before the marriage, [and may also order the wife to refrain  
17 from using the surname of the husband as her name] or to  
assume any surname.

19 (cf: N.J.S. 2A:34-21)

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

21 2A:34-23. Pending any matrimonial action brought in this  
State or elsewhere, or after judgment of divorce or  
23 maintenance, whether obtained in this State or elsewhere, the  
court may make such order as to the alimony or maintenance of  
25 the parties, and also as to the care, custody, education and  
maintenance of the children, or any of them, as the  
27 circumstances of the parties and the nature of the case shall  
render fit, reasonable and just, and require reasonable security  
29 for the due observance of such orders, including, but not limited  
to, the creation of trusts or other security devices, to assure  
31 payment of reasonably foreseeable medical and educational

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.

Matter enclosed in superscript numerals has been adopted as follows:  
Senate SJU committee amendments adopted January 21, 1988.

1 expenses. Upon neglect or refusal to give such reasonable  
security, as shall be required, or upon default in complying with  
3 any such order, the court may award and issue process for the  
immediate sequestration of the personal estate, and the rents  
5 and profits of the real estate of the party so charged, and  
appoint a receiver thereof, and cause such personal estate and  
7 the rents and profits of such real estate, or so much thereof as  
shall be necessary, to be applied toward such alimony and  
9 maintenance as to the said court shall from time to time seem  
reasonable and just; or the performance of the said orders may  
11 be enforced by other ways according to the practice of the  
court. Orders so made may be revised and altered by the court  
13 from time to time as circumstances may require.

The court may order one party to pay a retainer on behalf of  
15 the other for expert and legal services when the respective  
financial circumstances of the parties make the award  
17 reasonable and just. In considering an application, the court  
shall review the financial capacity of each party to conduct the  
19 litigation and the criteria for award of counsel fees that are  
then pertinent as set forth by court rule. Whenever any other  
21 application is made to a court which includes an application for  
pendente lite or final award of counsel fees, the court shall  
23 determine the appropriate award for counsel fees, if any, at the  
same time that a decision is rendered on the other issue then  
25 before the court and shall consider the factors set forth in the  
court rule on counsel fees, the financial circumstances of the  
27 parties, and the good or bad faith of either party.

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

- (1) Needs of the child;
- 33 (2) Standard of living and economic circumstances of each  
parent;
- 35 (3) All sources of income and assets of each parent;
- (4) Earning ability of each parent, including educational  
37 background, training, employment skills, work experience,  
custodial responsibility for children <sup>1</sup>including the cost of  
39 providing child care<sup>1</sup> and the length of time and cost of each

1 parent to obtain training or experience for appropriate  
2 employment;

3 (5) Need and capacity of the child for education, including  
4 higher education;

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

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

7 (8) Responsibility of the parents for the <sup>1</sup>court-ordered<sup>1</sup>  
8 support of others;

9 (9) <sup>1</sup>[Debts] Reasonable debts <sup>1</sup> and liabilities of each child  
10 and parent; and

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

12 b. In all actions brought for divorce, divorce from bed and  
13 board, or nullity the court may award permanent or  
14 rehabilitative alimony or both to either party, and in so doing  
15 shall consider [the actual need and ability to pay of the parties  
16 and the], but not be limited to, the following factors:

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

18 (2) The duration of the marriage;

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

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

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

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

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

32 (8) The history of the <sup>1</sup>financial or non-financial<sup>1</sup>  
33 contributions to the marriage by each party including  
34 contributions to the care and education of the children and  
35 interruption of personal careers or educational opportunities;

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

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

2       When a share of a retirement benefit is treated as an asset for  
3 purposes of equitable distribution, the court shall not consider  
4 income generated thereafter by that <sup>1</sup>[asset] share<sup>1</sup> for purposes  
5 of determining alimony.

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

10       An award of rehabilitative alimony may be modified based  
11 either upon changed circumstances, or upon the nonoccurrence  
12 of circumstances that the court found would occur at the time  
13 of the rehabilitative award. This section is not intended to  
14 preclude a court from modifying permanent alimony awards  
15 based upon the law. In all actions for divorce other than those  
16 where judgment is granted solely on the ground of separation the  
17 court may consider also the proofs made in establishing such  
18 ground in determining an amount of alimony or maintenance  
19 that is fit, reasonable and just. In all actions for divorce or  
20 divorce from bed and board where judgment is granted on the  
21 ground of institutionalization for mental illness the court may  
22 consider the possible burden upon the taxpayers of the State as  
23 well as the ability of the [plaintiff] party to pay in determining  
24 an amount of maintenance to be awarded.

25       In all actions where a judgment of divorce or divorce from bed  
26 and board is entered the court may make such award or awards  
27 to the parties, in addition to alimony and maintenance, to  
28 effectuate an equitable distribution of the property, both real  
29 and personal, which was legally and beneficially acquired by  
30 them or either of them during the marriage. However, all such  
31 property, real, personal or otherwise, legally or beneficially  
32 acquired during the marriage by either party by way of gift,  
33 devise, or intestate succession shall not be subject to equitable  
34 distribution, except that interspousal gifts shall be subject to  
35 equitable distribution.

(cf. P.L. 1983, c. 519, s. 1)

36       4. (New section) In making an equitable distribution of  
37 property, the court shall consider, but not be limited to, the  
38 following factors:  
39

- 1 a. The duration of the marriage;
- b. The age and physical and emotional health of the parties;
- 3 c. The income or property brought to the marriage by each party;
- 5 d. The standard of living established during the marriage;
- e. Any written agreement made by the parties before or
- 7 during the marriage concerning an arrangement of property distribution;
- 9 f. The economic circumstances of each party at the time the division of property becomes effective;
- 11 g. The income and earning capacity of each party, including educational background, training, employment skills, work
- 13 experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to
- 15 become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;
- 17 h. The contribution by each party to the education, training or earning power of the other;
- 19 i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the
- 21 contribution of a party as a homemaker;
- 23 j. The tax consequences of the proposed distribution to each party;
- 25 k. The present value of the property;
- 27 l. The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the
- 29 household effects;
- m. The debts and liabilities of the parties;
- 31 n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children; and
- 33 o. Any other factors which the court may deem relevant.

35 In every case, the court shall make specific findings of fact on the evidence relative to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in

37 this section.

39

1 It shall be a rebuttable presumption that each party made a  
substantial financial or nonfinancial contribution to the  
3 acquisition of income and property while the party was married.

5 5. The title of P.L. 1954, c. 187 (C. 2A:34-24.1) is amended  
to read as follows:

7 AN ACT concerning the support and maintenance of [wife]  
spouse and children and supplementing chapter 34 of Title 2A  
of the New Jersey Statutes.

9 (cf: P.L. 1954, c. 189)

11 6. Section 1 of P.L. 1954, c. 187 (C. 2A:34-24.1) is amended  
to read as follows:

13 1. When a [husband] spouse has secured a judgment or decree  
of divorce, whether absolute or from bed and board, or of nullity  
or annulment of marriage, in an action whether brought in this  
15 State or elsewhere, wherein jurisdiction over the person of the  
[wife] other spouse was not obtained, the court may make the  
17 same orders and judgments touching the suitable support and  
maintenance to be paid and provided by the [husband] spouse, or  
19 to be made out of [his] the spouse's property, for the [wife]  
other spouse and [her] their children, or any of them, by their  
21 marriage and for such time, as the nature of the case and  
circumstances of the parties render suitable and proper,  
23 pursuant to the provisions of [the statute hereby supplemented]  
chapter 34 of Title 2A of the New Jersey Statutes  
25 notwithstanding the securing of such judgment or decree.

(cf: P.L. 1954, c. 189, s. 1)

27 7. N.J.S. 2A:34-25 is amended to read as follows:

29 2A:34-25. If after the judgment of divorce [the wife] a  
former spouse shall remarry, [the court shall not make any order  
as to the alimony of such wife except that upon application of  
31 the former husband, on notice and on proof of the marriage of  
the former wife after the judgment of divorce, the court shall  
33 modify any order or judgment as to the alimony of the former  
wife, by vacating and annulling any and all provisions in any such  
35 order or judgment, or both, directing the payment of money for  
the support of the former wife] permanent alimony shall  
37 terminate as of the date of remarriage except that any  
arrearses that have accrued prior to the date of remarriage  
39 shall not be vacated or annulled. The remarriage of a former



1 spouse receiving rehabilitative alimony shall not be cause for  
 2 termination of the rehabilitative alimony by the court unless  
 3 1the court finds that the circumstances upon which the award  
 4 was based have not occurred or unless the<sup>1</sup> payer spouse  
 5 demonstrates an agreement or good cause to the contrary.

6 Alimony shall terminate upon the death of the payer spouse,  
 7 except that any arrearages that have accrued prior to the date  
 8 of the payer spouse's death shall not be vacated or annulled.

9 Nothing in this act shall be construed to prohibit a court from  
 10 ordering either spouse to maintain life insurance for the  
 11 protection of the former spouse or the children of the marriage  
 12 in the event of the payer spouse's death.

13 (cf. N.J.S. 2A:34-25)

14 8. N.J.S. 2A:34-26 is amended to read as follows:

15 2A:34-26. When a [husband] spouse cannot be found within  
 16 this State to be served with process, [his] the spouse's estate,  
 17 property and effects within this State and the rents and profits  
 18 thereof may be attached to compel [his] the spouse's  
 19 appearance and performance of any judgment or order which  
 20 may be made in the action. Where the proceedings are by  
 21 process of attachment and the defendant does not appear, the  
 22 judgment shall be enforceable only out of and against the  
 23 property attached.

(cf: N.J.S. 2A:34-26)

24 9. This act shall take effect on September 1, 1988, and shall  
 25 apply only to orders and judgments entered after that date.

26

27

## 28 DOMESTIC RELATIONS

### 29 Children

30

31 Amends matrimonial law concerning child support, alimony and  
 32 equitable distribution.  
 33

1        Nothing in this act shall be construed to prohibit a court from  
2        ordering either spouse to maintain life insurance for the  
3        protection of the former spouse or the children of the marriage  
4        in the event of the payer spouse's death.

5        8. N.J.S. 2A:34-26 is amended to read as follows:

6        2A:34-26. When a [husband] spouse cannot be found within  
7        this State to be served with process, [his] the spouse's estate,  
8        property and effects within this State and the rents and profits  
9        thereof may be attached to compel [his] the spouse's  
10       appearance and performance of any judgment or order which  
11       way be made in the action. Where the proceedings are by  
12       process of attachment and the defendant does not appear, the  
13       judgment shall be enforceable only out of and against the  
14       property attached.

15       9. This act shall take effect on September 1, 1988, and shall  
16       apply only to orders and judgments entered after that date.

17  
18  
19                    *SPONSOR'S* STATEMENT

20  
21        This bill establishes standards to guide the courts in rendering  
22        decisions related to child support, alimony and equitable  
23        distribution.

24        With regard to child support, the bill provides that a court  
25        should consider the following: needs of the child; standard of  
26        living and economic circumstances of each parent; all sources of  
27        income and assets of each parent; earning ability of each parent  
28        including educational background and work experience;  
29        educational need and capacity of the child and each parent;  
30        income and earnings of the child; and responsibility of the  
31        parents for the support of others and debts and liabilities.

32        With regard to alimony, the bill provides that the court may  
33        award both permanent and rehabilitative alimony. In addition to  
34        the present criteria of ability to pay and needs of the parties  
35        and duration of the marriage, this bill establishes the following  
36        criteria for the court to consider in awarding alimony: the  
37        standard of living established in the marriage and the likelihood  
38        that the party seeking alimony can become self-supporting;  
39        earning capacities; educational levels; job skills and  
40        employability of the parties; the length of absence from the job

5976 (1988)

1 market and custodial responsibilities for children of the party  
2 seeking alimony; the time and expense necessary for the party  
3 seeking alimony to acquire sufficient education or training; the  
4 opportunity for future acquisitions of capital assets and income;  
5 the history of the contributions by each party to the marriage  
6 including care and education of the children and interruption of  
7 career and educational opportunities; and any equitable  
8 distribution of property which results in payouts from current  
9 income.

10 The bill clarifies that permanent alimony terminates upon the  
11 remarriage of the spouse receiving alimony. Arrearages accrued  
12 prior to the remarriage shall not be vacated. A retirement  
13 benefit treated as an asset for equitable distribution purposes  
14 shall not be considered income for determining alimony.

15 With regard to equitable distribution, the bill establishes the  
16 following criteria for the court to consider: duration of the  
17 marriage; the age and emotional health of the parties; income  
18 and property brought to the marriage by each party; any written  
19 agreement made by the parties concerning property distribution;  
20 the economic circumstances of each party at the time of the  
21 property division; the income and earning capacity of each  
22 party; any written agreement made by the parties concerning  
23 property distribution; the economic circumstances of each party  
24 at the time of the property division; the income and earning  
25 capacity of each party including education, employment skills,  
26 work experience and length of absence from the job market;  
27 custodial responsibilities for children; the contribution of each  
28 party to the other's education, training or earning power; the  
29 contribution of each party to the accrual or loss of marital  
30 property including a party's contribution as a homemaker; the  
31 tax consequences of the proposed distribution; the present value  
32 of the property; and the need of the parent with custody of the  
33 children to own or use the marital residence and household  
34 effects and the debts and liabilities of the parties.

35

The bill also:

36 1. Permits the court to order one party in a marital action to  
37 pay retainers for expert and legal services of the other party  
38 when the respective financial circumstances make such  
39 payments reasonable and just.

1       2. Provides that rehabilitative alimony will not terminate  
upon the remarriage of the receiving spouse but that an award  
3 of rehabilitative alimony may be modified upon changed  
circumstances or the absence of anticipated future occurrences.

5       3. Alimony shall terminate on the death of the payer spouse  
except for any accrued arrearages.

7       4. The court may order a spouse to maintain life insurance  
for the protection of the former spouse or any children.

9

11

## DOMESTIC RELATIONS

### Children

13

Amends marital law concerning child support, alimony and  
15 equitable distribution.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 976

with Senate committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 21, 1988

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 976.

This bill establishes standards to guide the courts in rendering decisions related to child support, alimony and equitable distribution.

CHILD SUPPORT

With regard to child support, this bill provides that a court should consider the following: needs of the child; standards of living and economic circumstances of each parent; all sources of income and assets of each parent; earning ability of each parent including educational background and work experience; educational need and capacity of the child and each parent; income and earnings of the child; responsibility of the parents for the support of others and debts and liabilities.

With regard to determining the amount of child support, the amendments adopted by the committee:

1. Require the court to consider the cost of providing child care.
2. Clarify that only court-ordered support obligations are to be considered.
3. Clarify that only reasonable debts and liabilities are to be considered.

ALIMONY

With regard to alimony, this bill provides that a court may award both permanent and rehabilitative alimony. In addition to the present criteria of ability to pay and needs of the parties and duration of the marriage, this bill establishes the following criteria for the court to consider in awarding alimony: the

standard of living established in the marriage and the likelihood that the party seeking alimony can become self-supporting; earning capacities; educational levels; job skills and employability of the parties; the length of absence from the job market and custodial responsibilities for children of the party seeking alimony; the time and expense for the party seeking alimony to acquire sufficient education or training; the opportunity for future acquisitions of capital assets and income; the history of the contributions by each party to the marriage including care and education of the children and interruption of career and educational opportunities and any equitable distribution of property which results in payouts from current income.

This bill clarifies that permanent alimony terminates upon the remarriage of the spouse receiving alimony but that arrearages accrued prior to the remarriage shall not be vacated.

This bill also provides that a retirement benefit treated as an asset for equitable distribution purposes shall not be considered income for determining alimony.

With regard to alimony the committee amendments:

1. Add language indicating that the court is to consider both the financial and non financial contributions of each party to the marriage.
2. Clarify that when a share of a retirement benefit is treated as an asset for purpose of equitable distribution, the income generated by that share only is not to be considered in determining alimony.
3. Clarify that an award for rehabilitative alimony may only be modified upon the remarriage of the spouse receiving alimony if the circumstances upon which the award was based have not occurred; if that there is an agreement between the parties with regard to modification or for good cause.

#### EQUITABLE DISTRIBUTION

With regard to equitable distribution, S-976 establishes the following criteria for the court to consider: duration of the marriage; the age and emotional health of the parties; income and property brought to the marriage by each party; any written agreement made by the parties concerning property distribution; the economic circumstances of each party at the time of the property division; the income and earning capacity of each party; any written agreement made by the parties concerning property

distribution; the economic circumstances of each party at the time of the property division; the income and earning capacity of each party; any written agreement made by the parties concerning property distribution; the economic circumstances of each party at the time of the property division; the income and earning capacity of each party including education, employment skills, work experience and length of absence from the job market; custodial responsibilities for children; the construction of each party to the accrual or loss of marital property including a party's contribution as a homemaker; the tax consequences of the proposed distribution; the present value of the property; the need of the parent with custody of the children to own or use the marital residence and household effects and the debts and liabilities of the parties.

OTHER PROVISIONS OF S-976

1. Permit the court to order one party in a marital action to pay retainers for expert and legal services of the other party when the respective financial circumstances make such payments reasonable and just.

2. Provide that rehabilitative alimony will not terminate upon the remarriage of the receiving spouse but that an award of rehabilitative alimony may be modified upon changed circumstances or the absence of anticipated future occurrences.

3. Provides that the court may order a spouse to maintain life insurance for the protection of the former spouse or any children.

This bill was pre-filed for introduction in the 1988 session pending technical review. As amended, the bill includes the changes required by technical review which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 976

STATE OF NEW JERSEY

DATED: MAY 2, 1988

The Assembly Judiciary Committee reports favorably Senate Bill No. 976.

Senate Bill No. 976 establishes standards to guide the courts in rendering decisions related to child support, alimony and equitable distribution.

CHILD SUPPORT

With regard to child support, this bill provides that a court should consider the following: needs of the child; standards of living and economic circumstances of each parent; all sources of income and assets of each parent; earning ability of each parent including educational background and work experience; educational need and capacity of the child and each parent; income and earnings of the child; responsibility of the parents for the support of others and debts and liabilities.

Senate Bill No. 976 further requires the court to consider the cost of providing child care; clarifies that only court-ordered support obligations are to be considered; and clarifies that only reasonable debts and liabilities are to be considered.

ALIMONY

With regard to alimony, this bill provides that a court may award both permanent and rehabilitative alimony. In addition to the present criteria of ability to pay and needs of the parties and duration of the marriage, this bill establishes the following criteria for the court to consider in awarding alimony: the standard of living established in the marriage and the likelihood that the party seeking alimony can become self-supporting; earning capacities; educational levels; job skills and employability of the parties; the length of absence from the job market and custodial responsibilities for children of the party seeking alimony; the time and expense for the party seeking alimony to



acquire sufficient education or training; the opportunity for future acquisitions of capital assets and income; the history of the contributions by each party to the marriage including care and education of the children and interruption of career and educational opportunities; and any equitable distribution of property which results in payouts from current income.

The bill clarifies that permanent alimony terminates upon the remarriage of the spouse receiving alimony but that arrearages accrued prior to the remarriage shall not be vacated.

The bill also provides that a retirement benefit treated as an asset for equitable distribution purposes shall not be considered income for determining alimony.

Senate Bill No. 976 adds language indicating that the court is to consider both the financial and non-financial contributions of each party to the marriage; clarifies that when a share of a retirement benefit is treated as an asset for purpose of equitable distribution, the income generated by that share only is not to be considered in determining alimony; provides that an award for rehabilitative alimony may only be modified upon the remarriage of the spouse receiving alimony if the circumstances upon which the award was based have not occurred or if there is an agreement between the parties with regard to modification.

#### EQUITABLE DISTRIBUTION

With regard to equitable distribution, this bill establishes the following criteria for the court to consider: duration of the marriage; the age and emotional health of the parties; income and property brought to the marriage by each party; any written agreement made by the parties concerning property distribution; the economic circumstances of each party at the time of the property division; the income and earning capacity of each party including education, employment skills, work experience and length of absence from the job market; custodial responsibilities for children; the contribution of each party to the accrual or loss of marital property including a party's contribution as a homemaker; the tax consequences of the proposed distribution; the present value of the property; the need of the parent with custody of the children to own or use the marital residence and household effects and the debts and liabilities of the parties.

OTHER PROVISIONS OF S-976

1. Permits the court to order one party in a marital action to pay retainers for expert and legal services of the other party when the respective financial circumstances make these payments reasonable and just.

2. Provides that rehabilitative alimony will not terminate upon the remarriage of the receiving spouse but that an award of rehabilitative alimony may be modified upon changed circumstances or the absence of anticipated future occurrences.

3. Provides that the court may order a spouse to maintain life insurance for the protection of the former spouse or any children.

STATE OF NEW JERSEY  
COMMISSION ON SEX DISCRIMINATION  
IN THE STATUTES



SEX DISCRIMINATION  
IN THE  
EMPLOYMENT STATUTES

974.90  
W872  
1979d  
c. 2

FIRST REPORT  
October 1979

The Commission recommends that statutory references dealing with the appointment of women to commissions, boards and agencies be deleted. The Commission further recommends that more women be appointed to commissions, boards and agencies in order to reflect their proportion in the population.

B. Sex-Neutral Language

The Commission recommends that all proposed legislation be drafted and administrative regulations be written in sex-neutral language.

Traditionally the language of the statutes has been sex-based--such as the generic use of the term "man." While N.J.S.A. 1:1-2 states that masculine pronouns apply to females as well as males, this provision is insufficient in view of contemporary standards of equality. The continued use of masculine pronouns communicates the message that males and females perform different societal roles.

The strict application of the Commission's attitudes on the need for sex-neutral language in the statutes, if carried to its logical conclusion, would demand a complete revision of the laws. However, such an endeavor would quickly exhaust the limited resources of the Commission. The Commission believes that it would make a more lasting and valuable contribution by proceeding with the many other tasks before it.

The Commission strongly recommends that every effort and consideration be made in the drafting of future legislation to assure that sex-based classifications do not continue in the New Jersey statutes. It specifically recommends that the sex-neutral language guidelines developed in the report by the United States Commission on Civil Rights on Sex Bias in the U.S. Code be followed. (See appendix) The report declared that sex-based language is only permissible in three situations: "(1) when no suitable sex-neutral term exists (e.g., aunt, uncle); (2) when the reference is to a unique physical characteristic of all members of one sex (e.g., programs for prenatal care); and (3) when the constitutional right of privacy requires a sex-based reference (e.g., female customs officials shall perform body searches of women)."

Finally, the Commission believes that a continuing awareness of the basic soundness and equity of sex-neutral language will obviate the need for a similar review of the statutes in the future.

APPENDIX C \_\_\_\_\_

RECOMMENDED SEX-NEUTRAL LANGUAGE\*

**SEX-SPECIFIC LANGUAGE**

**SEX-NEUTRAL LANGUAGE**

serviceman, servicemen

services, service member, servicemembers

crewman  
midshipman  
enlisted man

crew member  
cadet, midshipperson  
enlisted personnel,  
enlisted member, enlistee

laboring men and women  
seamen  
longshoremen  
chairman

workers, laborers  
sailor, crew member  
stevedores  
chairperson, moderator,  
the chair, coordinator

postmaster  
plainclothesman

postoffice director, postal director  
plainclothesperson,  
officer, investigator

lineman

line installer, line repairer,  
line maintainer, line service  
attendant

newsboy  
she, her (reference to ship)  
"to man" a vessel  
duties of seamanship  
lifeboat man  
businessman

newscarrier, newspaper vendor  
it, its  
to staff  
nautical or seafaring duties  
lifeboat person or operator  
business person, executive,  
member of the business community,  
business manager

"husband" of the vessel  
master  
entryman  
workman's compensation  
salesman

manager  
captain, commanding officer  
entry person, enterer  
workers' compensation  
salesperson, sales personnel,  
sales representative, sales  
agent, sales clerk  
guard, watchperson, watcher,  
the watch patroller

watchman

**Relationship Models**

widow or widower  
wife, wives/husband, husband's

surviving spouse  
spouse, spouses, spouse's

broth  
daugh  
mothe  
husba  
fath  
grand  
step  
pate  
moth  
mate  
  
Gend  
  
man,  
  
mank  
per  
pruc  
fema  
man  
man  
  
tra

\*From Sex Bias in the U.S. Code, A Report of the United States Commission on Civil Rights, April, 1977

brother/sister  
daughter/son  
mother/father  
husband and wife  
father/mother  
grandfather/grandmother  
stepbrother/stepsister  
paternity  
mother's insurance benefits  
maternal welfare

sibling/siblings  
child/children  
parent  
married couple  
either parent  
grandparents  
stepsibling  
parentage  
child-in-care benefits  
parental welfare

**Gender Models**

man, living man  
mankind  
per man  
prudent man  
female/male  
manpower  
manmade  
trained manpower

person, human, human being,  
living human  
humanity, human beings, humankind  
per person  
prudent individual, person  
person, individual  
human resources  
artificial, of human  
origin, synthetic  
trained work force

tor

STATE OF NEW JERSEY

COMMISSION ON SEX DISCRIMINATION  
IN THE STATUTES



**SEX DISCRIMINATION  
IN  
MARRIAGE AND FAMILY LAW**

**SEPTEMBER 1981  
SECOND REPORT**

974.90  
W872  
1981 b

copy 2



member must be a woman. In practice, a minimal quota has often served to limit the number of women appointed because it is interpreted to mean "only one of whom shall be a woman."

SEX-NEUTRAL LANGUAGE:

The Commission recommends that all legislation and administrative regulations be written in sex-neutral language. In keeping with contemporary standards of equality, it is no longer appropriate to use sex-based terms such as the generic "man." Using sex-neutral language demonstrates a commitment to the elimination of the legal inequities that have occurred because of differential treatment on the basis of sex.

Many of New Jersey's laws reflect policy judgments that are no longer acceptable in our society and, therefore, must be revised.

The Commission believes that equality of rights under the law should not be denied or abridged on account of sex.

arrearages and forward the amount to the county probation office. The employer may receive \$1.00 for expenses each time, which shall be deducted from the money paid the employee. If extraordinary circumstances prevent the payer from making a payment, an appeal procedure is provided to hold the assignment in abeyance until the court makes a determination.

The county probation office may enforce the income assignment provision through the "Wage Reporting Act" by locating a payer who has disappeared but is still in the state. The payer's tax records would be used to locate the most recent employer's name and address so that the county probation office<sup>4</sup> could effectuate the income assignment order.

---

<sup>4</sup>After consultation with Mr. Harry Wiggins, Chief, Bureau of Child Support and Paternity, Department of Human Services, and the Commission on Sex Discrimination in the Statutes, amendments were suggested to Senate Bill 1508 by the Women's Rights and Family Law Sections of the New Jersey Bar Association to correct certain technical difficulties. The Bar Association's recommendations are contained in the Assembly Committee Substitute, released by the Assembly Judiciary Committee on June 22, 1981 (See Appendix - Assembly Committee Substitute for Senate Bill 1508). The Board of Trustees of the New Jersey Bar Association endorses the Assembly Committee Substitute for Senate Bill 1508.

On July 9, 1981, Governor Brendan T. Byrne signed into law Assembly Bill 1668 (P.L. 1981, c. 203) sponsored by Assemblywoman Barbara Kalik, which modifies New Jersey's support enforcement law by changing from forty-five to thirty the number of days that must elapse before the payee can request a garnishment proceeding. Under this legislation, the payer must pay at least fifty percent of the payment within thirty days or the court may attach the payer's wages. While this legislation improves the existing system, the burden is still on the payee to go into court to request a wage garnishment when the payer defaults in court-ordered support.

TITLE 2A, CHAPTER 34 RECOMMENDATIONS

(DIVORCE AND NULLITY OF MARRIAGE - ALIMONY AND MAINTENANCE -  
CARE AND CUSTODY OF CHILDREN)

CITATION #15: N.J.S.A. 2A:34-13  
Minors May Prosecute or Defend Matrimonial  
Actions

SYNOPSIS: This statute permits minors to prosecute or  
defend any matrimonial action. There is an  
age difference, however, for men (18) and  
women (16).

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to eliminate  
the age difference between males and females.  
The threshold age of 16 should be established  
for both sexes to enable them to equally  
prosecute or defend any matrimonial action  
as necessary.

CITATION #16: N.J.S.A. 2A:34-21  
Resumption of Name; Surname of Husband

SYNOPSIS: This statute permits the court, within its  
discretion, to allow a woman after divorce to  
resume her maiden name.

The court may also forbid the wife from using  
her husband's surname.

RECOMMENDATION: Amend.

DISCUSSION: Under common law, a person could assume any  
name so long as there was no fraudulent or  
improper motive behind the change of name.  
The New Jersey statutory law on change of  
name (N.J.S.A. 2A:52-1) has been interpreted  
to supplement the common law rather than to  
abrogate it.

This statute should be amended to permit a  
spouse to assume any surname or resume any  
name previously used.

CITATION #17: N.J.S.A. 2A:34-23  
Alimony; Maintenance; Custody and Maintenance  
of Children; Failure to Obey Order; Seques-  
tration; Receiver; Modification of Orders

SYNOPSIS: This statute permits the court to order main-  
tenance for either spouse in divorce or  
annulment proceedings and to award support  
for the care, custody, education and main-  
tenance of the child(ren). The court may  
consider the proofs made in establishing  
grounds (for divorce, other than no-fault  
separation) in determining the amount of  
alimony or maintenance. Procedures are  
established to use upon default of support  
orders. Support orders may be modified by  
the court. It may consider the parties'  
actual need and ability to pay and the duration  
of the marriage in awarding alimony. In  
addition to awarding alimony and maintenance,  
the court may make awards to effectuate an  
equitable distribution of the property, both  
real and personal, that was legally and  
beneficially acquired by both or either one  
of the spouses during the marriage.

RECOMMENDATION: Amend.

DISCUSSION: In 1971 the New Jersey Divorce Act introduced  
the concept of equitable distribution into  
the laws of the state. Before this legis-  
lative revision, property in a divorce action  
was divided by ownership or agreement between  
the parties.

Although the statutory language embodied in  
N.J.S.A. 2A:34-23 has provided an important  
basis for the development of the concept of  
equitable distribution, no criteria or guide-  
lines are provided to the courts in settling  
the division of property upon divorce. As  
the provision for equitable distribution was  
added to the New Jersey law by a floor  
amendment in the Legislature, little legis-  
lative history exists.

A significant series of cases established the  
outlines for equitable distribution. See  
Painter v. Painter, 65 N.J. 196 (1974),

Rothman v. Rothman, 65 N.J. 219 (1974) and Chalmers v. Chalmers, 65 N.J. 186 (1974).

New Jersey courts have continued to expand upon the model provided by these earlier decisions. Judicial discretion has often provided equitable results, but has proved confusing and unpredictable for litigants in divorce actions. The addition of specific factors into the law would provide judges with guidelines, thereby decreasing appeals for clarification of equitable distribution awards.

At the Commission's two marriage and family law public hearings (February, 1980), the testimony of a number of public citizens indicated that there were inequities in New Jersey's equitable distribution statute.

This view was supported by Ms. Charlotte Callahan of the League of Women Voters who testified that following a two-year League study, the League concluded that specific guidelines need to be incorporated into the equitable distribution statute. "The guidelines should recognize the career seniority benefits lost by a homemaker during the marriage years and his or her resulting diminished economic potential (upon divorce)."

A review of pertinent literature demonstrates the validity of these concerns. As Professor Ann E. Freedman states, comprehensive factors built into the law will facilitate true equitable distribution upon divorce. By recognizing factors such as the contribution of a homemaker to the marriage, equitable distribution reflects the view that marriage is a partnership to which both spouses contribute equally.<sup>5</sup> Under that philosophy, and enumerated in some cases Rothman v. Rothman, 65 N.J. 219, 228 (1974) and Gibbons

---

<sup>5</sup>Brown, Barbara A. and Freedman, Ann E. et. al., Women's Rights and the Law, New York: Praeger Publishers, 1977.

v. Gibbons, 1974 N.J. Super. 107 (App. Div. 1980), the assets acquired during marriage should be divided equally and equitably between the husband and wife upon divorce. Since alimony is infrequently awarded (according to a League of Women Voters study, in only 20 of 226 cases disposed of in Bergen County during the month of April 1978) and difficult to collect, an equitable property division is the only mechanism available to provide a non-wage earner spouse with her or his share of the marital assets.

Recently New York and Pennsylvania enacted legislation based on the Uniform Marriage and Divorce Act which enumerates comprehensive factors to be considered by the judge. The bills were proposed to eliminate unconstitutional sex-based distinctions in the law, i.e., the law retained the common law property system which placed undue emphasis on how title was held. The basic premise of the legislation was that modern marriage should be viewed as a form of partnership. To assure implementation of that concept, the bills detailed factors to be considered when making an equitable distribution of assets. A law review article on the New York statute discussed the issue of judges' discretionary power to make equitable distribution and suggested that the "New Jersey Legislature would do well to add guidelines, such as those in New York's statute, to its own statute."<sup>6</sup>

A review of New Jersey cases on issues such as distribution of pension benefits demonstrates confusion over the appropriate standards to be considered. In one case the proper standard to be applied in instances of equitable distribution is whether the "property right has been acquired during the marriage and whether equity warrants its inclusion in the marital estate ..." Weir v. Weir, 173 N.J. Super. 131 (Ch. Div. 1980). As such, pension funds are available for equitable distribution. Pension funds may properly be considered as wage substitutes

---

<sup>6</sup>"Equitable Distribution in New York," 45 Albany Law Review 483 (Winter 1981).

or property which is a form of deferred compensation and vesting is not required. "[I]f the court concludes that the uncertainties of payment under the plan do not warrant present division, it can allot to each spouse a fair portion of the pension fund as, if and when payments commence." Weir v. Weir, *id.* at 135. In the Weir case, the husband had qualified for a non-contributory pension and merely had to live long enough to collect it; therefore, the court determined it could properly be made available for distribution as a form of property.

An opinion converse to that in Weir was reached in Mueller v. Mueller, 166 N.J. Super. 557 (Ch.Div.1979), in which the court held a husband's fully vested pension plan was not subject to equitable distribution. The Weir court specifically objected to the result reached in Mueller, saying that the Mueller decision had incorrectly interpreted an earlier case, Mey v. Mey, 79 N.J. 121 (1979) which involved the distribution of a trust fund, not a pension plan. The Weir court stated that Mey did not require pension funds to be excluded from distribution at all, but actually supported their inclusion.

The judge in Kikkert v. Kikkert, 177 N.J. Super. 471 (App.Div.1981), held that a vested pension plan which would provide future benefits if the husband survived, was available for equitable distribution in a divorce proceeding. In reaching this decision, the court resolved a conflict between two recent decisions, Mueller v. Mueller, 166 N.J. Super. 557 (Ch. Div. 1979) and Weir v. Weir, 173 N.J. Super. 130 (Ch.Div.1980), and agreed with the judge in Weir that fully vested pension plans may properly be considered an asset. As the court in Kikkert said, "equitable considerations mandate its inclusion for distribution where, as here, the employee has already qualified for benefits and the other spouse, during the marriage, has foregone enjoyment of that additional compensation represented by the cost of the plan whether or not it requires employee contributions." Kikkert v. Kikkert, 177 N.J. Super. at 476.

The courts have also broadened the scope of the concept of property available for equitable distribution to include professional degrees. In Mahoney v. Mahoney, 175 N.J. Super. 443 (Ch. Div. 1980), the court held that a Masters Degree in Business Administration obtained during the marriage could properly be considered a property right subject to equitable offset. It is proper to permit the working spouse some credit for the degree obtained by the nonworking spouse during the marriage. To determine otherwise would permit unjust enrichment. "A working spouse who contributes to the education of another spouse does so certainly with the expectation that there will be in the future some benefit derived from such a sacrifice." Mahoney v. Mahoney, id. at 446.

In order to assure an equal and equitable distribution of a husband's and wife's assets upon divorce, the Commission recommends that the statute be amended to include the following factors adapted from the Uniform Marriage and Divorce Act, as well as the statutes of Pennsylvania, New York, Minnesota and Wisconsin:

- o The duration of the marriage.
- o The age and physical and emotional health of the parties.
- o The income or property brought to the marriage by each party.
- o The standard of living of the parties established during the marriage.
- o Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution.
- o The economic circumstances of each party at the time the division of property is to become effective.
- o The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, opportunity of each party for future acquisitions of capital assets and income, and the



time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage.

- o The contribution by one party to the education, training, or increased earning power of the other.
- o The contribution of each party in the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.
- o The sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits, whether vested or unvested.
- o The tax consequences to each party.
- o Whether the property award is in lieu of or in addition to alimony, maintenance or child support.
- o The current value and income producing capacity of the property.
- o The need of a custodial parent to own or occupy the marital residence and to use or own its household effects.
- o The debts and liabilities of the parties to the marriage.
- o Such other factors as the court may in each individual case determine to be relevant.

The provisions of an agreement made by the parties before or during the marriage concerning an arrangement for property distribution shall be incorporated in the court's order for equitable distribution except where the terms are inequitable to either party.

It shall be presumed that each party made a substantial contribution to the acquisition of income and property while the party was married.

CITATION #18: N.J.S.A. 2A:34-24  
Abandonment of Wife; Support of Wife and  
Children; Debts During Maintenance

SYNOPSIS: This statute permits the court to order a husband to pay support and maintenance if, without justifiable cause, he abandons his wife and refuses to maintain her. The court may order the defendant to give reasonable security for the maintenance and may enforce such a judgment pursuant to N.J.S.A. 2A:34-23. During the time maintenance is ordered, the husband may not be charged with his wife's debts.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to permit court-ordered maintenance payments to either spouse when the other spouse refuses to provide support. Such a revision is consistent with the availability of support awards to either sex in instances of necessity.

This statute should also be amended to eliminate the provision stating that a husband is not liable for his wife's debts during the time maintenance is ordered. In Citation #37, Title 37, the Commission's comprehensive recommendation on the liability of spouses for each other's debts, provides that neither spouse be liable for the other's debts during separation if the spouse who is liable for support has provided the dependent spouse with reasonable support.

CITATION #19: N.J.S.A. 2A:34-24.1  
Divorce by Husband in Absence of Jurisdiction  
Over Wife; Support Orders

SYNOPSIS: This section provides that where a husband has secured a divorce in an action where jurisdiction over the person of the wife was not obtained, the court may still order support and maintenance. It was intended to provide a remedy to abandoned wives whose husbands secured an ex-parte divorce (only one party is present in the proceeding).

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to provide that either spouse may obtain support and maintenance from a spouse who obtains an ex-parte divorce. In Title 2A, Citation #18, the Commission made a consistent recommendation that either dependent spouse may obtain support and maintenance from the other spouse.

CITATION #20: N.J.S.A. 2A:34-25  
Remarriage of Former Wife; No Order Touching Alimony; Vacation of Prior Order

SYNOPSIS: This statute provides that a wife's remarriage ends her former husband's support obligation upon his application to the court and proof of her remarriage. This statute is held to be mandatory.

RECOMMENDATION: Amend.

DISCUSSION: Traditionally a married woman relied on her husband for her support. If they divorced, he might be ordered to make alimony payments until her death. Should she remarry, the court could order such payments stopped upon application of her former husband.

Permanent alimony is infrequently awarded and the courts have recently granted temporary, or rehabilitative alimony. This type of grant is made for a limited period of time and for a specified purpose such as providing the dependent spouse with education, training or job experience. One aim of a rehabilitative award is to make the formerly dependent spouse self-sufficient through development of skills which may have been unused during the marriage.

As Lee Hymerling, Esq. has stated, some instances in which rehabilitative alimony might be appropriate include short-term marriages, situations in which dependent spouses at the time of divorce are pursuing

advanced degrees, and situations in which the parties enjoy comparable earnings, but one spouse is forced to vacate a home to establish a new identity.

In Section II of this report, the Commission supports Senate Bill 1020, as amended. This bill provides that alimony may be either temporary or permanent. In certain instances, as discussed above, temporary alimony will be increasingly awarded as the court seeks to direct an alimony award towards a specific goal. The very nature of such a grant makes it comparable to a grant of alimony in gross, payable over a period of time. This award resembles a property settlement more closely than it does traditional alimony. Automatic termination of this type of grant upon the remarriage of the recipient spouse may defeat its purpose.

This statute should be amended to provide that upon remarriage, a grant of permanent alimony may be terminated by the court upon application of the supporting spouse but a grant of temporary alimony shall not be terminated unless good cause is shown to the court by the supporting spouse.

CITATION #21: N.J.S.A. 2A:34-26  
Attachment; Bond

SYNOPSIS: This statute provides that when a husband can not be located in this state, his property may be attached in order to obtain support.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to afford protection for a spouse, regardless of sex.

---

<sup>7</sup>Hyerling, Lee. "Commentary on Lepis v. Lepis," 12 Rutgers Law Journal, 1 (Fall, 1980).

APPENDIX F

AN ACT concerning matrimonial actions and revising parts  
of the Statutory Law.

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

1. N.J.S. 2A:34-13 is amended to read as follows:

2A:34-13. A man who has attained  
the age of 18 years and a woman who has at-  
tained the age of 16 years may prosecute or de-  
fend any matrimonial action in person or by  
attorney. person

2. N.J.S. 2A:34-21 is amended to read as follows:

2A:34-21. The court, upon or after granting a  
divorce from the bonds of matrimony to either  
spouse, may allow the wife to resume any name  
used by her before the marriage and may also  
order the wife to refrain from using the sur-  
name of the husband as her name. ] or to  
either spouse  
the spouse  
assume any surname.

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

2A:34-23. Pending any matrimonial action brought in this State  
or elsewhere, or after judgment of divorce or maintenance, whether  
obtained in this State or elsewhere, the court may make such order  
as to the alimony or maintenance of the parties, and also as to  
the care, custody, education and maintenance of the children, or  
any of them, as the circumstances of the parties and the nature of  
the case shall render fit, reasonable and just, and require reason-  
able security for the due observance of such orders. Upon neglect  
or refusal to give such reasonable security, as shall be required,  
or upon default in complying with any such order, the court may  
award and issue process for the immediate sequestration of the  
personal estate, and the rents and profits of the real estate of the  
party so charged, and appoint a receiver thereof, and cause such  
personal estate and the rents and profits of such real estate, or

so much thereof as shall be necessary, to be applied toward such alimony and maintenance as to the said court shall from time to time seem reasonable and just; or the performance of the said orders may be enforced by other ways according to the practice of the court. Orders so made may be revised and altered by the court from time to time as circumstances may require.

In all actions brought for divorce, divorce from bed and board, or nullity the court may award alimony which may be tem-

porary or permanent in nature to either party, and in so doing shall consider the actual need and ability to pay of the parties and, but not be limited to the following factors: the duration of the marriage , the age, physical and emotional health of the parties; the standard of living established in the marriage and the likelihood that the party seeking maintenance can become self-supporting at a reasonably comparable standard of living established in the marriage and the likelihood that the party seeking maintenance can become self-supporting at a reasonably comparable standard of living; the earning capacities, educational levels, vocational skills, and employability of the parties; the length of absence from the job market and custodial responsibilities for children of the party seeking maintenance; the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; and the history of the contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities.

In all actions for divorce other than those where judgment is granted solely on the ground of separation the court may consider also the proofs made in establishing such ground in determining an amount of alimony or maintenance that is fit, reasonable and just. In all actions for divorce or divorce from bed and board where judgment is granted on the ground of institutionalization for mental illness the court may consider the possible burden upon the taxpayers of the State as well as the ability of the plaintiff to pay in determining an amount of maintenance to be awarded.

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

(ROMAN I  
CEPT WHE  
UNDERLIN

4. (New Section) In making an equitable distribution of property, the court shall consider but not be limited to the following factors:
- a. the duration of the marriage;
  - b. the age and physical and emotional health of the parties;
  - c. the income or property brought to the marriage by each party;
  - d. the standard of living established during the marriage;
  - e. any written agreement made by the parties before or during the marriage concerning an arrangement for property distribution;
  - f. the economic circumstances of each party at the time the division of property becomes effective;

- g. the earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, opportunity for future acquisitions of capital assets and income, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;
- h. the contribution by each party to the education, training or increased earning power of the other;
- i. the contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker;
- j. the sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits, whether vested or unvested;
- k. the tax consequences of the proposed distribution to each party;
- l. whether the property award is in lieu of or in addition to alimony, maintenance or child support;



- m. the current value and income producing capacity of the property;
- n. the need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own its household effects;
- o. the debts and liabilities of the parties; and
- p. such other factors as the court may deem relevant.

The provisions of an agreement made by the parties before or during the marriage concerning an arrangement for property distribution shall be incorporated in the court's order for equitable distribution except where the terms are inequitable to either party.

It shall be presumed that each party made a substantial contribution to the acquisition of income and property while the party was married.

5. N.J.S. 2A:34-24 is amended to read as follows:

2A:34-24.

	If	
	a [husband, without justifiable cause,] shall	----- spouse
	abandon his wife or separate [himself] from [her]	----- the other spouse
	and refuse or neglect to maintain and provide	
	for [her,] the court may order suitable support	----- that spouse
	and maintenance to be paid and provided by the	
<u>the spouses</u>	[husband] for the [wife] and [her] children, or any of	----- other spouse
	them, by their marriage, or to be made out of [his]	----- their
	property and for such time as the nature of the	
	case and circumstances of the parties render	
	suitable and proper. The court may compel the	
	defendant to give reasonable security for such	
	maintenance and allowance and may, from time	
	to time, make further orders touching the same	
	as shall be just and equitable and enforce such	
	judgment and orders in the manner provided in	
N. J. S. . . .	[section] 2A:34-23 [of this title] [During the time	
	such maintenance shall be allowed, the husband	
	shall not be chargeable with the debts of the wife.]	

6. The title of P.L. 1954, c. 187 (C.2A:34-24.1) is amended to read as follows:

spouse - - - - AN Act concerning support and maintenance of [wife] and children and supplementing chapter 34 of Title 2A of the New Jersey Statutes.

7. Section 1 of P.L. 1954, c. 187 (C.2A:34-24.1) is amended to read as follows:

1. When a [husband] has secured a judgment or decree of divorce, whether absolute or from bed and board, or of nullity or annulment of marriage, in an action whether brought in this State or elsewhere, wherein jurisdiction over the person of the [wife] was not obtained, the court may make the same orders and judgments touching the suitable support and maintenance to be paid and provided by the [husband] or to be made out of [his] property, for the [wife] and [her] children, or any of them, by their marriage and for such time, as the nature of the case and circumstances of the parties render suitable and proper, pursuant to the provisions of [the statute hereby supplemented] notwithstanding the securing of such judgment or decree. spouse other spouse the spouse's their chapter 34 of of Title 2A of the New Jersey Statutes

8. N.J.S. 2A:34-25 is amended to read as follows:

2A:34-25. If after the judgment of divorce [the wife] shall remarry, the court shall not make any order as to the alimony of [such wife] except that upon application of the [former husband] on notice and on proof of the marriage of the former [wife] after the judgment of divorce, the court shall modify any order or judgment as to the alimony of the former [wife] by vacating and annulling any and all provisions in any such order or judgment, or both, directing the payment of money for the support of the former [wife]. The remarriage a former spouse the spouse payer spouse spouse permanent spouse spouse.

of a former spouse receiving temporary alimony shall not be cause for termination of the temporary alimony by the court unless the payer spouse demonstrates good cause to the contrary.

9. N.J.S. 2A:34-26 is amended to read as follows:

2A:34-26. When a hus- ----- spouse  
band cannot be found within this state to be -----  
served with process, his estate, property and ----- the spouse's  
effects within this state and the rents and profits -----  
thereof may be attached to compel his appear- ----- the spouse's  
ance and performance of any judgment or order -----  
which may be made in the action.

Where the proceedings are by process of attachment and the defendant does not appear, the judgment shall be enforceable only out of and against the property attached.

10. This act shall take effect 90 days following enactment.

**STATE OF NEW JERSEY**

**COMMISSION ON SEX DISCRIMINATION  
IN THE STATUTES**

**TOWARD ECONOMIC EQUITY:  
RECOMMENDATIONS FOR THE ELIMINATION OF  
SEX DISCRIMINATION IN THE CREDIT, HOUSING, INSURANCE, PENSIONS,  
PROBATE, PROPERTY, PUBLIC OBLIGATIONS AND TAX STATUTES**

**JANUARY 1985**

**TRENTON, NEW JERSEY**

**THIRD REPORT**

MEMBERSHIP OF WOMEN ON COMMISSIONS, BOARDS,  
AND AGENCIES:

The Commission recommends the nomination or appointment by the Governor of more women to commissions, boards and agencies so that their membership is ultimately equivalent to their proportion in the population. Many of the statutes creating policy-making commissions, boards and agencies in New Jersey mandate that at least one member must be a woman. In practice, such a minimal quota has often served to limit the number of women appointed because it is interpreted to mean "only one of whom shall be a woman." The Commission deletes these phrases when they appear in a statute.

SEX-NEUTRAL LANGUAGE:

The Commission recommends that all proposed legislation and administrative regulations be written in sex-neutral language. In keeping with contemporary standards of equality, it is no longer appropriate to use sex-based terms such as the generic "man." Using sex-neutral language demonstrates a commitment to the elimination of the legal inequities that have occurred because of differential treatment on the basis of sex.

The Commission's commitment during the past six years and the foundation for its policy recommendations is that equality of rights under the law shall not be denied or abridged on account of sex.