

R.S. 2A:34-1 et seq.

August 6, 1971

LEGISLATIVE HISTORY OF R.S. 2A:34-1 et seq.

(Divorce and Nullity of Marriage - 1970 Revision)

New York enacted a "no-fault" divorce law in 1962 (Laws 1962, Chapter 313) and California enacted similar legislation in 1969 (Stats. 1969, Chapter 1608). New Jersey began studying its divorce law in 1967, after numerous bills were introduced in preceding years calling for a study commission.

Divorce Law Study Commission created by:

L. 1967 - Chap. 57 - S-261.
Not amended during passage.
No statement on the bill.

Amended by:

L. 1968 - Chap. 170 Extends report date.
L. 1969 - Chap. 25 Extends report date.

The Commission published:

974.90 New Jersey. Divorce Law Study Commission
M359 Public hearing... held Jan. 30 1969.
1969

Public hearing ... 6/27/69 - will not be transcribed

974.90 New Jersey Divorce Law Study Commission .
M359
1970 Final report 1970.

Similar bills introduced (1969-1971)

- 1969 - A-123 (Kaser) - 1 year separation.
- 1969 - A-399 (Owens and others) prohibits defense of recrimination.
- 1969 - A-400 (Owens) both parties at fault.
- 1969 - A-428 (Owens) insanity as ground.
- 1969 - A-632 (Doyle) alimony to husband.
- 1970 - A-140 (Owens) prohibits recrimination.
- 1970 - A-141 (Owens) both parties at fault.
- 1970 - A-143 (Owens) insanity as ground.
- 1970 - A-735 (Thomas) desertion as ground.
- 1970 - S-862 (Beadleston) general revision.

Bill which became law was:

L.1971 - Chap.212 - A-1100.

May 14, 1970 - Introduced by DeKorte (and 11 others).

Feb.1, 1971 - Passed Assembly, amended (copy enclosed).

Mar. 25 - Passed Senate, amended (copy enclosed).

Mar. 29 - Senate amended, passed Assembly.

Apr. 22 - Governor conditional veto (copy enclosed).

Apr. 26 - re-enacted in Assembly.

Apr. 29 - Re-enacted in Senate.

June 14 - Approved.

No statement.

Amended by L.1971, c.217 (S2292) Sec.11 (copy enclosed)

Hearing on above bill:

974.90 New Jersey. Legislative Assembly Judiciary

M359 Committee.

1970b Public hearings on A-1100 (Divorce)

Letters and lobbyists materials sent to legislators.
(copy enclosed). Material located in legislative history bill
file.

"Fact Sheet on Divorce" from N.J. Council of Family Life Directors

Publicity release from Family Life Bureau

Jan. 28, 1971 letter from Elmer M. Mathews, Esq.

Law Journal Articles (1966 - 1970)

89 NJLJ 180, March 24, 1966 "The State Bar's Family Law Section."

89 NJLJ 341, May 26, 1966 "Revision of divorce laws urged".

89 NJLJ 711, Nov. 3, 1966 "Divorce law reform to be pushed".

90 NJLJ 73, Feb. 2, 1967 "New Jersey Legislators call for Divorce
Law Study and Reform.

90 NJLJ 345, May 25, 1967 "Dean Heckel says keep religion out
of divorce law."

90 NJLJ 613, Sept. 14, 1967 "Congressman urges public support
of new divorce bill".

90 NJLJ 617, Sept. 21, 1967 Foster, Henry H. Jr., "Reform of
divorce grounds and defenses"

90 NJLJ 652, Oct. 5, 1967 "Renewable term marriages, prepaid
alimony urged".

91 NJLJ 81, Feb.8, 1968 "Judge Woods comments on divorce law
and family courts".

91 NJLJ 640, Oct. 3, 1968 "Our outmoded marriage, divorce and
sex laws". [editorial]

- 93 NJLJ 687, Sept. 24, 1970 "NJSBJ endorses divorce reform bill".
- 93 NJLJ 696, Oct. 1, 1970 Feinberg, Richard J. Letter to editor ... needed changes in law as proposed in A-1100.
- 14 NJSBJ 53 p.40 Fall 1970. Skoloff, Gary N. "The divorce reform bill and the final report of the divorce law commission - a brief analysis."
- 93 NJLJ 794, Nov. 12, 1970 "Family Law Section speaks on A-1100-support for divorce reform.
- 2 Seton Hall L.R. 63, Lubitz, Michael, "No-fault divorce: modernization long overdue in New Jersey.
- 94 NJLJ 36, Jan. 21, 1971 Trelease, Charles C. Letter to editor... opposed to proposed 6 month waiting time in place of 2 years.
- 94 NJLJ 85, Feb. 11, 1971 Sandles, Lester. Letter to editor... noting points in divorce law which need reform or clarification.
- 94 NJLJ 169, March 11, 1971 "State Bar urges passage of divorce reform bill."
- 94 NJLJ 173 March 11, 1971 "Golden urges Senators to pass divorce reform bill A-1100".
- 94 NJLJ 349, July 1, 1971 Divorce bill as amended expected to become law.
- 94 NJLJ 572, July 1, 1971 Crystal, Daniel. Letter to editor... new divorce law does not adequately protect the rights of children.
- 94 NJLJ 572, July 1, 1971 The new divorce act-separation and extreme cruelty as grounds for divorce. [editorial]
- 94 NJLJ 556, June 24, 1971 The new divorce law-alimony and property distributions. [editorials]
- 94 NJLJ 1053 *Marriage Dissolution under the new Divorce Act*
- 94 NJLJ 1109 *Distribution of Property upon Divorce*

For background see:

From New Jersey Law Journal - Ten Year Cumulative Index

(on page 4)

Also see:

New Jersey State Bar Association. Family Law Committee
March 1966 -

Divorce—cont'd

Divorce aid for poor proposed along with other legal services
88 NJLJ 757, Nov. 25, 1965

The State Bar's family law section (editorial on need for revising N.J. divorce laws)

89 NJLJ 180, March 24, 1966

Revision of (N.J.) divorce laws

urged; would add five new grounds abolish alimony where there are no children

89 NJJ 341, May 26, 1966

Divorce law reform to be pushed

89 NJLJ 711, November 3, 1966

Divorce-California California cuts time necessary for final divorce

86 NJLJ 605, Sept. 16, 1965

Divorce-New York (State)

New York High Court upholds Mexican divorce obtained after personal appearance

88 NJLJ 469, July 22, 1965

New York City Bar Assn proposes new grounds for divorce

88 NJLJ 789, Dec. 9, 1965

Proposed statute would make sweeping changes in N.Y. divorce law; Wilson committee provides five new categories for divorce

89 NJLJ 1, Jan. 6, 1965

Domestic Relations N.J. State Bar Association

Committee on Family Law

Report. 81 NJLJ 254, May 15, 1958

Report. 82 NJLJ 245, May 5, 1959

Report. 83 NJLJ 189, April 14, 1960

Report. 87 NJLJ 290, May 7, 1964

Report. 87 NJLJ 727, Nov. 12, 1964

Report. 88 NJLJ 296, May 6, 1965

Report. 88 NJLJ 725, Nov. 11, 1965

Report. 89 NJLJ 302, May 12, 1966

N.J. State Bar Association Committee

on Divorce and Custody

Report. 76 NJLJ 424, Dec. 10, 1953

Report. 77 NJLJ 130, April 22, 1954a

Report. 77 NJLJ 407, Dec. 2, 1954

Report. 78 NJLJ 430, Dec. 15, 1955

Report. 78 NJLJ 137, April 28, 1955

Report. 79 NJLJ 165, May 3, 1956

Report. 79 NJLJ 505, Dec. 20, 1956

Report. 80 NJLJ 262, May 23, 1957

Hartman, Morris S. Tax aspects of separation agreements

88 NJLJ 145, March 11, 1965

Grossman, Charles M. Provision of legal services to the indigent in family law matters

89 NJLJ 187, March 24, 1966

Grossman, Charles M. What can State Bar Family Law Committee accomplish?

89 NJLJ 697, October 27, 1966

see also Marriage Law

Domestic Relations Courts State Bar resolution calls for state-wide family court

88 NJLJ 59, Jan. 28, 1965

Child custody case embroils two Western states; tug of war may help cause of uniform law

88 NJLJ 495, July 29, 1965

The State Bar's family law section (editorial on need of family court)

89 NJLJ 180, March 24, 1966

see also Juvenile Courts

Domestic Relations Courts-N.Y. (State)

Urge N.Y. family court jurisdiction be upped to 19 years

85 NJLJ 121, Mar. 1, 1962

Divorce N.J. State Bar Association

Committee on Divorce Study

Report. 69 NJLJ 181, June 6, 1946

Report. 72 NJLJ 161, May 19, 1949

Report. 73 NJLJ 166, May 25, 1950

Report. 73 NJLJ 412, Dec. 7, 1950

Report. 74 NJLJ 186, May 31, 1951

Report. 75 NJLJ 433, December 11, 1952

Report. 76 NJLJ 165, May 7, 1953

N.J. Supreme Court

Committee on Divorce and Custody

Report. 80 NJLJ 109, Mar. 7, 1957

Divorce conciliation plans for three cities studied by Philadelphia Bar

80 NJLJ 257, May 23, 1957

Ginsburg, I.G. The right to discovery in divorce actions: the limitation imposed by R.R. 4:98-5 should be abolished.

81 NJLJ 85, Feb. 13, 1958

Hartman, M.N. Alabama divorces (Validity in NJ)

81 NJLJ 540, Oct. 23, 1958

Curb-service divorces and full faith

83 NJLJ 164, March 31, 1960

Court sets first test under cohabitation pending-divorce law

84 NJLJ 361, July 6, 1961

Hartman addresses joint bar meeting on Alabama divorces

84 NJLJ 305, June 1, 1961

Levenson, A.D. Letter to editor on divorce law

86 NJLJ 604, Oct. 31, 1963

Pitfalls in foreign divorces discussed

88 NJLJ 325, May 20, 1965

clippings:

Of the hundreds of articles on the divorce reform bill in V.F.--N.J.-- Marriage and divorce, the following are but a small selection: (copies enclosed)

Carter, Peter

"Divorce Bill Defeat Asked", Newark Evening News, Jan.31, 1971

"Liberal Divorce Law Pros and Cons Debated", Newark Evening News, February 2, 1971

Harris, Roger

"Assembly votes to ease divorce in Jersey, 45-11", Newark Star Ledger, February 2, 1971

"Governor sees room for change in divorce bill", Newark Star Ledger, February 4, 1971

Davis, John O.

"Easy Divorce Bill slips by Senate caucus, Leads for vote", Courier-Post, March 19, 1971

Carter, Peter

"New Jersey Senate votes divorce reform", Newark Evening News March 26, 1971

"Cahill will return divorce bill to Legislature for revision" Courier-Post, April 21, 1971

Lamendola, Linda

"Governor signs divorce reform bill", Newark Star Ledger June 15, 1971

JH/EH
Encl.

CHAPTER 212 LAWS OF N. J. 19 71

APPROVED 6-14-71

[THIRD OFFICIAL COPY REPRINT]

ASSEMBLY, No. 1100

STATE OF NEW JERSEY

INTRODUCED MAY, 14, 1970

By Assemblymen DE KORTE, FRIEDLAND, RAYMOND, THOMAS,
KALTENBACHER, MABIE, CAFIERO, CRANE, GOLDFARB,
BLACK, HOLLENBECK and PFALTZ

Referred to Committee on Judiciary

AN ACT concerning actions for divorce and nullity of marriage,
alimony, maintenance and custody of children, and amending
N. J. S. 2A :34-1 through 2A :34-3, 2A :34-7 and 2A :34-8, 2A :34-20
and 2A :34-23 and repealing N. J. S. 2A :34-4, 2A :34-5, 2A :34-9,
2A :34-10 and 2A :34-22.

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

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

2 2A :34-1. Judgments of nullity of marriage may be rendered in
3 all cases, when:

4 a. Either of the parties has another wife or husband living at
5 the time of a second or other marriage;

6 b. The parties are within the degrees prohibited by law. If
7 any such marriage shall not have been annulled during the lifetime
8 of the parties the validity thereof shall not be inquired into after the
9 the death of either party.

10 c. The parties, or either of them, were at the time of marriage
11 physically and incurably impotent, provided the party making the
12 application shall have been ignorant of such impotency or incapa-
13 bility at the time of the marriage, and has not ****[subsequent]****
14 ****subsequently**** ratified the marriage.

15 **[d. The parties, or either of them, were at the time of marriage**
16 **incapable of consenting thereto and the marriage has not been**
17 **subsequently ratified, provided that where the party capable**
18 **of consent is the applicant, such party shall have been ignorant**
19 **of the marriage and shall not have confirmed the marriage sub-**
20 **sequent to the regaining of capacity by the other party.]**

21 *d. The parties, or either of them, lacked capacity to marry due*

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

22 *to want of understanding because of mental condition, or the in-*
 23 *fluence of intoxicants, drugs, or similar agents; or where there*
 24 *was a lack of mutual assent to the marital relationship; duress; or*
 25 *fraud as to the essentials of marriage; and has not subsequently*
 26 *ratified the marriage.*

27 e. The demand for such a judgment is by the wife [and she] or
 28 husband who was under the age of 18 years at the time of the mar-
 29 riage, unless such marriage be confirmed by her or him after
 30 arriving at such age.

31 [f. The demand for such a judgment is by the husband and he was
 32 under the age of 18 years at the time of the marriage, unless such
 33 marriage be confirmed by him after arriving at such age.

34 g. Allowable under the general equity jurisdiction of the su-
 35 perior court.

36 No judgment of nullity shall be made where a child of the parties
 37 has been born, either before or after the marriage, or is likely to be
 38 born, unless the court upon an examination of all the facts of the
 39 case shall be of the opinion that such judgment will not be against
 40 the best interests of the child.]

41 *f. Allowable under the general equity jurisdiction of the
 42 Superior Court.*

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

2 2A :34-2. Divorce from the bond of matrimony may be adjudged
 3 for the following causes ***heretofore or hereafter arising***:

4 a. Adultery*;* *[, which is defined to include sexual or deviant
 5 sexual intercourse voluntarily performed by the defendant without
 6 the consent of the plaintiff with a person other than the plaintiff
 7 after marriage of the plaintiff and defendant;]**

8 b. Willful[,] and continued [and obstinate] desertion for the
 9 term of [2 years] ***[6]*** ***[**11**]*** ****12**** or more
 10 months, which may be established by satisfactory proof that the
 11 parties have ceased to cohabit as man and wife ***[despite the will-*
 12 *ingness of the plaintiff to continue or to resume such cohabita-*
 12A *tion]***;

13 c. Extreme cruelty, ***[whether the acts of cruelty have been*
 14 *heretofore or are hereafter committed;]*** [provided, that no com-
 15 plaint for divorce on the ground of extreme cruelty shall be filed
 16 until after 6 months from the date of the last act of cruelty com-
 17 plained of in the complaint, but this proviso shall not be held to
 18 apply to any counterclaim] ***[extreme cruelty]*** ***which*** is
 19 defined as including any physical or mental cruelty which endangers
 20 the safety or health of the plaintiff or makes it improper or un-
 21 reasonable to expect the plaintiff to continue to cohabit with the

21A defendant; ***provided that no complaint for divorce shall be filed
 21B until after 3 months from the date of the last act of cruelty com-
 21C plained of in the complaint, but this provision shall not be held to
 21D apply to any counterclaim;***

22 d. Separation, provided that the husband and wife have lived
 23 separate and apart in different habitations for a period of at least
 24 ***[1 year]*** * **[12]***** **18***** or more consecutive months*
 24A *****[and there is no reasonable prospect of reconciliation;]***** ***,
 24B provided further that after the 18-month period there shall be a
 24C presumption that there is no reasonable prospect of recon-
 24D ciliation;***

25 e. *****[Drug addiction]***** **Voluntarily induced addiction or**
 25A **habituation to any narcotic drug as defined in the New Jersey**
 25B **Controlled Dangerous Substances Act P. L. 1970, c.**
 25C **226*** **[.]**** **or** *****[alcoholism]***** **habitual drunken-**
 25D **ness*** **[. or institutionalization for mental illness,]**** for a**
 26 **period of **[1 or more years]*** **12 or more consecutive months****
 27 **subsequent to marriage* **and** next preceding the filing of the**
 27A **complaint;****

27B ***f. Institutionalization for mental illness for a period of 24 or**
 27C **more consecutive months subsequent to marriage and next preced-**
 27D **ing the filing of the complaint;***

28 ******[f.]**** **g.**** **Imprisonment of the defendant for **[1 or more****
 29 **years]*** * **[12]***** **18***** or more consecutive months*
 30 **after **[marriage]**** **marriage**** , provided that where the**
 31 **action **[it]**** **is** not commenced until after the defendant's**
 32 **release, the parties have not resumed cohabitation following such**
 32A **imprisonment**[.]**** ;*****

33 ******[g.]**** **h.**** **Deviant sexual **[intercourse]**** **conduct******
 34 **voluntarily performed by the defendant without the consent of the**
 35 **plaintiff.*****

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

2 2A:34-3. **[Divorce from bed and board may be adjudged for the**
 3 **following causes:**

4 a. Adultery;

5 b. Willful, continued and obstinate desertion for the term of 2
 6 years;

7 c. **Extreme cruelty.]**

8 *Divorce from bed and board may be adjudged for the same*
 9 *causes as divorce from the bonds of matrimony whenever both*
 10 *parties petition or join in requesting such relief **and they or***
 11 *either of them present sufficient proof of such cause or causes to*
 12 *warrant the entry of a judgment of divorce from the bonds of*

13 *matrimony***, provided ***further*** that in the case of a reconcila-
 14 *tion thereafter the parties may apply for a revocation or suspen-*
 15 *sion of the judgment, and provided further that the granting of a*
 16 *bed and board divorce shall in no way prejudice either party from*
 17 *thereafter applying to the court for a conversion of said divorce*
 18 *to a divorce from the bonds of matrimony, which application shall*
 19 *be granted as a matter of right.*

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

2 2A:34-7. **【If it appear to the court that the adultery complained**
 3 **of shall have been occasioned by the collusion of the parties, and**
 4 **done with an intention to procure a divorce, or that the party**
 5 **complaining was consenting thereto, or that both parties have been**
 6 **guilty of adultery not condoned, no divorce shall be adjudged.】**

7 *Recrimination, condonation**【, connivance, collusion, *laches*】***
 8 *and the clean hands doctrine are hereby abolished as defenses to*
 9 *divorce from the bonds of matrimony or from bed and board, and if*
 10 *both parties make out grounds for divorce, a decree may be granted*
 11 *to each; provided that nothing herein shall preclude or abrogate the*
 12 *responsibility of a party for the penalty provided by law for perjury*
 13 *or the subornation of perjury.*

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

2 2A:34-8. **【The Superior Court shall have jurisdiction of all**
 3 **causes of divorce or nullity and of alimony and maintenance by**
 4 **this chapter directed and allowed.**

5 In an action under this chapter the Superior Court may afford
 6 incidental relief as in other cases of an equitable nature.】

7 *The Superior Court shall have jurisdiction of all causes of*
 8 *divorce, bed and board divorce, or nullity when either party is*
 9 ****【and has been】*** a *bona fide* resident of this State ***【for*
 10 *a continuous period of 1 year next preceding commencement of a*
 11 *matrimonial action】***. The Superior Court shall have juris-*
 12 *isdiction of an action for alimony and maintenance when the*
 13 *defendant is subject to the personal jurisdiction of the court, is*
 14 *a resident of this State, or has tangible or intangible real or per-*
 15 *sonal property within the jurisdiction of the court. The Superior*
 16 *Court may afford incidental relief as in other cases of an equitable*
 17 *nature and by rule of court may determine the venue of matri-*
 18 *monial actions.*

1 ***6. N. J. S. 2A:34-10 is amended to read as follows:

2 2A:34-10. *Jurisdiction in actions for divorce, either absolute*
 3 *or from bed and board, may be acquired when process is served*
 4 *upon the defendant as prescribed by the rules of the Supreme*
 5 *Court, and*

6 1. *When, at the time the cause of action arose, either party was*
 7 *a bona fide resident of this State, and has continued so to be down*
 8 *to the time of the commencement of the action; except that no*
 9 *action for absolute divorce shall be commenced for any cause other*
 10 *than adultery, unless one of the parties has been for the [2 years]*
 11 *1 year next preceding the commencement of the action a bona fide*
 12 *resident of this State; or*

13 2. *When, since the cause of action arose, either party has become,*
 14 *and for at least [2 years] 1 year next preceding the commencement*
 15 *of the action has continued to be, a bona fide resident of this*
 16 *State[; provided the cause of action alleged was recognized in the*
 17 *jurisdiction in which such party resided at the time the cause of*
 18 *action arose, as a ground for the same relief asked for in the action*
 19 *in this State].****

1 ***[6.]*** ***7.*** N. J. S. 2A:34-20 is amended to read as
 1A follows:

2 2A:34-20. [A judgment of nullity of marriage shall not render
 3 illegitimate the issue of any marriage so dissolved, except in a
 4 case where the marriage, not being a ceremonial one, is dissolved
 5 because either party had another wife or husband living at the time
 6 of a second or other marriage. In such a case the marriage shall
 7 be deemed void ab initio, and the issue thereof shall be illegitimate.]

8 *A child heretofore or hereafter born of parents who prior or*
 9 *subsequent to the birth of such child have entered into a civil or*
 10 *religious marriage, or shall have consummated a common-law*
 11 *marriage where such marriage is recognized as valid, in the manner*
 12 *authorized by the law of the place where such marriage takes place,*
 13 *is the legitimate child of both natural parents notwithstanding*
 14 *that such marriage is void or voidable or has been or shall hereafter*
 15 *be annulled or judicially declared void.*

16 *Nothing in this amendatory act shall be deemed to affect the*
 17 *construction of any will or instrument heretofore executed or any*
 18 *property right or interest or right of action vested or accrued or*
 19 *to limit the operation of any judicial determination containing an*
 20 *express provision or provisions with respect to the legitimacy,*
 21 *maintenance or custody of any child, or to affect any adoption*
 22 *proceeding heretofore commenced, or limit the effect of any judg-*
 23 *ment or order entered in such adoption proceedings.*

1 ***[7.]*** ***8.*** N. J. S. 2A:34-23 is amended to read as
 1A follows:

2 2A:34-23. Pending any matrimonial action brought in this State
 3 or elsewhere, or after judgment of divorce or maintenance, whether
 4 obtained in this State or elsewhere, the court may make such order

5 as to the alimony or maintenance of the [wife] parties, and also
 6 as to the care, custody, education and maintenance of the children,
 7 or any of them, as the circumstances of the parties and the nature
 8 of the case shall render fit, reasonable and just, and require reason-
 9 able security for the due observance of such orders. Upon neglect
 10 or refusal to give such reasonable security, as shall be required,
 11 or upon default in complying with any such order, the court may
 12 award and issue process for the immediate sequestration of the
 13 personal estate, and the rents and profits of the real estate of the
 14 party so charged, and appoint a receiver thereof, and cause such
 15 personal estate and the rents and profits of such real estate, or so
 16 much thereof as shall be necessary, to be applied toward such
 17 alimony and maintenance as to the said court shall from time to
 18 time seem reasonable and just; or the performance of the said
 19 orders may be enforced by other ways according to the practice of
 20 the court. Orders so made may be revised and altered by the court
 21 from time to time as circumstances may require.

22 *In all actions brought for divorce, divorce from bed and board,*
 23 *or nullity the court may award alimony to either party, and in so*
 24 *doing shall consider the actual need and ability to pay of the*
 25 *parties and the duration of the marriage. In all actions for divorce*
 26 *other than those where judgment is granted solely on the ground*
 27 *of separation the court may consider also the proofs made in estab-*
 28 *lishing such ground in determining an amount of alimony or main-*
 29 *tenance that is fit, reasonable and just. **In all actions for divorce*
 30 *or divorce from bed and board where judgment is granted on the*
 31 *ground of institutionalization for mental illness the court may con-*
 32 *sider the possible burden upon the taxpayers of the State as well*
 33 *as the ability of the plaintiff to pay in determining an amount of*
 34 *maintenance to be awarded.***

35 ***In all actions where a judgment of divorce or divorce from bed*
 36 *and board is entered the court may make such award or awards to*
 37 *the parties, in addition to alimony and maintenance, to effectuate*
 38 *an equitable distribution of the property, both real and personal,*
 39 *which was legally and beneficially acquired by them or either of*
 40 *them during the marriage.***

1 *****[8.]*** **9.***** The following sections are repealed: N. J. S.
 2 2A :34-4, 2A :34-5, *****[2A :34-9, 2A :34-10]***** and 2A :34-22.

1 *****[9.]*** **10.***** This act shall take effect ****[immedi-**
 2 **ately]** **90 days after enactment.****

ASSEMBLY AMENDMENTS TO
ASSEMBLY, No. 1100
[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED APRIL 22, 1971

Amend page 2, section 2, line 9, delete "11", and insert "12".

Amend page 2, section 2, line 21A, after "defendant;", insert "provided that no complaint for divorce shall be filed until after 3 months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;"

Amend page 3, section 2, line 24, delete "12", and insert "18".

Amend page 3, section 2, lines 24 and 24A, after "months", delete in its entirety and insert " , provided further that after the 18-month period there shall be a presumption that there is no reasonable prospect of reconciliation;"

Amend page 3, section 2, line 25, delete "Drug addiction", and insert "Voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P. L. 1970, c. 226"; delete "alcoholism", and insert "habitual drunkenness".

Amend page 3, section 2, line 29, delete "12", and insert "18".

Amend page 4, section 5, lines 8-10, after "is", delete "and has been"; after "State", insert ".", and delete remainder of sentence in its entirety.

Amend page 4, after section 5, insert a new section as follows:

"6 N. J. S. 2A:34-10 is amended to read as follows:

2A:34-10. Jurisdiction in actions for divorce, either absolute or from bed and board, may be acquired when process is served upon the defendant as prescribed by the rules of the Supreme Court, and

1. When, at the time the cause of action arose, either party was a bona fide resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery,

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

unless one of the parties has been for the **【2 years】** *1 year* next preceding the commencement of the action a bona fide resident of this State; or

2. When, since the cause of action arose, either party has become, and for at least **【2 years】** *1 year* next preceding the commencement of the action has continued to be, a bona fide resident of this State**【**; provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this State**】**.”.

Amend page 4, section 6, line 1, delete “6.”, and insert “7.”.

Amend page 5, section 7, line 1, delete “7.”, and insert “8.”.

Amend page 6, section 8, lines 1 and 2, delete “8.”, and insert “9.”; delete “2A :34-9, 2A :34-10”.

Amend page 6, section 9, line 1, delete “9.”, and insert “10.”.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

April 22, 1971

ASSEMBLY BILL NO. 1100 2ndOCR

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 (b) of the Constitution, I herewith return Assembly Bill No. 1100, with my objections, for reconsideration.

Assembly Bill No. 1100 is a revision of the statutes pertaining to actions for divorce, nullity of marriage, alimony, and maintenance of children.

A distinguished panel of citizens representative of varying interests, of different religious beliefs, each possessing considerable expertise, concluded unanimously after intensive study that reform of New Jersey divorce law was urgently needed. This legislation is a direct result of that study and seeks to implement the findings and recommendations of the Divorce Law Study Commission.

As a former active practicing attorney, I observed personally many of the shortcomings and invitations to fraud cited in the Commission Report and can, therefore, understand their conclusion that reform in this area is essential. The question, therefore, was not whether reform was needed but the nature of the reform and its effect on the family, the community and the state. My decision was not an easy one. It was reached only after serious and intensive study and the resolution of a deep concern for the personal and social effects on our citizens. The fact that I do not personally believe in divorce from a sacred binding contract played no role in my decision. This is indeed a pluralistic society, and I would no more seek to enforce my personal religious views on others than I would accept any effort to encroach on my personal religious liberty.

It might also be noted that while we permit some forms of legalized gambling in New Jersey, this does not require those who oppose gambling to participate. The legal sale of alcoholic beverages does not compel consumption by all. Thus, those who oppose divorce need not avail themselves of the relief provided by this legislation, while others who favor divorce under certain circumstances may avail themselves of the legislation in order to terminate lawfully an intolerable and unworkable relationship.

Yet, all of us in authority, whether we favor or oppose divorce, have a responsibility to preserve as far as possible the family unit, recognizing as we do its importance to our society and the harm that separation of parents frequently works on the children of the marriage. As a result, any legislation affecting the family relationship must be carefully and zealously examined to insure that minimum harm results. It is also essential that the language of the legislation be precise, and that it accomplish the good and eliminate the evil desired by the Legislature.

It was with these objectives in mind that I have taken the indicated executive action.

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The final report of the Commission, as well as testimony offered on the bill before the Assembly Judiciary Committee public hearing on October 30, 1970, indicates that New Jersey is relatively backward when compared with her sister states in the field of marital law. If this backwardness led to the stabilization and preservation of marriages, revision would be unnecessary and detrimental. However, the evidence tends to show the contrary. Our laws encourage migratory divorces for those who can afford them and illicit cohabitation among those who are financially unable to terminate a prior legal relationship. Uniformity in the application of our present law is, in fact, non-existent.

I know you agree with me that marriage should be severed only in those circumstances where it has lost all potential viability. The recommendations which I respectfully submit to you for consideration will, I trust, overcome certain inconsistencies in Assembly Bill No. 1100 and provide a workable structure for stabilizing savable marriages. No one desires indiscriminate divorce. A legal mechanism, therefore, must be provided which will preserve the sanctity of marriage and provide a vehicle by which an intolerable situation can be alleviated without undue burden.

N.J.S. 2A:34-2 presently provides a 6-month "cooling off" period from the date the act of extreme cruelty was allegedly committed. During that period, a complaint based on that act of cruelty is prohibited. The Commission's Final Report states that this 6-month period was established by the Blackwell Act of 1923 "so that a 'saveable' marriage would not be destroyed by hasty and angry reactions." The Commission concludes that the intent of the Blackwell Act has not been accomplished in this respect. I disagree. Many times people who love each other find themselves momentarily at odds, affected by the pressures of everyday life in our society, resulting at times in physical or verbal abuse. Once the wrongdoing has been perpetrated, pride then becomes a factor and only time can heal the hurt and preserve the marriage. When two parties elect to enter into a life-long contract involving mutual responsibility and reliance, one of those partners should not be able, by whim, caprice, or momentary disenchantment, to terminate the nuptial contract. A marriage should be seriously and fully considered

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before contracted. A similar standard of consideration should be applied when divorce is contemplated. I am recommending that a 3-month "cooling off" period be reinstated if this proposal is to become law. This is not an unreasonable waiting period, and could, in my judgment, preserve many marriages which might otherwise be terminated.

The terms "drug addiction" and "alcoholism", set forth in Section 2e. of Assembly Bill No. 1100 as separate grounds for divorce are uncertain and could lead to abuse and absurdity.

New Jersey case law has recognized addiction to heroin or its derivatives as warranting divorce on the grounds of extreme cruelty. DeMeo v. DeMeo, 110 N.J. Super. 179, 264 A.2d 751 (Ch. 1970); Melia v. Melia, 94 N.J. Super. 47, 226 A.2d 745 (Ch. 1967).

The term "drug addiction" alone, however, goes well beyond voluntarily induced dependency on narcotics or opiates. "Drugs" are defined by P.L. 1970, c. 226, New Jersey Controlled Dangerous Substances Act, as "(a) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in subsections (a), (b) and (c) of this section; but does not include devices or their components, parts, or accessories."

It is self-evident that our legislators do not want to allow divorces to be granted on the basis of everyday use of aspirin to ease arthritic pain or vitamins to supplement a diet or insulin to keep a diabetic alive. Such an interpretation, however, is not unjustified under the present language of the bill. I strongly recommend that the term "drug addiction" be changed to "voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P.L. 1970, c. 226.

The use of the term "alcoholism" presents a different type of problem. Alcoholics Anonymous, forerunner of organizations which have endeavored to combat this social ill has as one of its tenets "Once an alcoholic always an alcoholic."

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Thought of as a disease, alcoholism may be active or dormant at a particular point but according to many authorities the affected individual is always "an alcoholic."

Historically, continuous or habitual drunkenness per se has not been interpreted by the courts as extreme cruelty. Cruikshank v. Cruikshank, 115 N.J. Eq. 322, 170 A. 659 (E. & A. 1934). Only when the excessive drinking has been combined with other affirmative action, i.e., physical violence, Clutch v. Clutch, 1 N.J. Eq. 474 (Ch. 1931), Fort v. Fort, 126 N.J. Eq. 622, 11 A.2d 13 (E. & A. 1940), has the court found the plaintiff spouse to be entitled to a divorce on the grounds of extreme cruelty or constructive desertion at the end of the required period. In the creation of habitual drunkenness or excessive use of alcohol as a new and separate ground for divorce, care must be taken to protect against the filing of actions which, contrary to the true spirit of the proposal, are based on the "inactive alcoholism" of "cured" individuals or the periodic indiscretions of those individuals who might occasionally overindulge.

In order to avoid potential misapplication of this new ground I suggest that "alcoholism" be replaced by the term "habitual drunkenness."

The final report of the Commission points out that most states which have imprisonment for a specified period as grounds for divorce require that the crime for which the defendant is imprisoned be of "moral turpitude", "infamous" or a "felony". Assembly Bill No. 1100 fails to make this distinction on the basis that it is not the nature of the crime that is at issue but rather the effect of the absence and deprivation of the partner from the home. Although the courts may imply the intent of the defendant to desert his spouse through the manifestations of his wrongdoing, this is not true "willful" desertion any more than army service may be considered as such. Since we are concerned with absence from the home rather than the "fault" of the absent party, I feel that the time element should be equated to that of the "no fault" provision, that is, 18 months.

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The most significant and far-reaching of the recommendations of the Divorce Law Study Commission to be incorporated into Assembly Bill No. 1100 is Section 2d. which establishes as grounds of divorce "Separation, provided that the husband and wife have lived separate and apart in different habitations for a period of at least 12 or more consecutive months and there is no reasonable prospect of reconciliation." This has come to be known as the "no fault" concept since the the plaintiff would not be required to prove any wrongdoing on the part of the defendant in order that he or she may be adjudged divorced from the bond of matrimony.

There are those who urge the injection of this "no fault" concept in divorce law will eliminate the permanent fabric of marriage. Conversely, equally sincere persons insist the present laws lead to hypocrisy and manufacture of accusations, and wrongdoing should be eliminated as an issue. Each of these assertions possesses elements of reason and understanding.

When personal religious convictions and moral standards are not considered, the ultimate objective must be the continuation and protection of potentially savable marriages and family stability, while acknowledging the right of those married persons who have utterly failed in partnership to dissolve that partnership without the allegations and proof of accusations.

Consequently, the "no fault" concept in our divorce law can play a meaningful and valid role if not abused. The potential for abuse would be created by a short time period requirement before the commencement of an action. The present proposal establishes a 12-month waiting period. While I do not consider this to be an inordinately short period, I do believe that an 18-month period is preferable. There are several reasons to support the basis of this suggestion. First, in the final report of the Divorce Law Study Commission it is stated: "A one or two year statute, however, appears to give ample time for the spouses to consider whether or not a reconciliation might be possible. It is not so long as to discourage its use, and it cannot be said to promote hasty or early divorce." Thus, my suggestion is consistent with the report. Secondly, there must be some differentiation between the "no fault" ground and the "desertion" ground for divorce. The intent of the

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Legislature in setting the period for desertion at 11 months was obviously an attempt to distinguish it from the 12-month requirement of the "no fault" provision. This distinction is shallow. Thirdly, the extension of this "no fault" separation period to 18 months can be cited as a sufficient time period to raise a presumption that there is no reasonable prospect to reconciliation, thus obviating the necessity of the moving party to establish by a preponderance of evidence that no reasonable prospect of reconciliation exists as required under the present language of the bill. However, by extending the "no fault" time period to 18 months, coupled with an extension of the separation period required to constitute "desertion" to 12 months, the two concepts, "fault" and "no fault", would be substantively distinguishable in time and intent.

With regard to jurisdiction in actions for nullity of marriage, presently N.J.S. 2A:34-9 requires only that one party be a resident of the state at the time the action is commenced. N.J.S. 2A:34-10 sets forth 2-year residency requirements for actions of absolute divorce or divorce from bed and board based on grounds other than adultery. No residency requirement is stipulated before an action for divorce on the basis of adultery may be commenced.

Assembly Bill No. 1100 would require a one-year residency by either party before the commencement of any marital action. I can see no advantage to be derived from postponing adjudication of potentially null marriages while residency requirements are fulfilled. In the same vein, the proposal requiring a one-year wait in cases of adultery would not appear to improve New Jersey's Divorce law.

I recommend that N.J.S. 2A:34-9 remain intact and that N.J.S. 2A:34-10 be amended so that both references to "2-year" residency requirements be replaced by "1 year."

Accordingly, I herewith return Assembly Bill No. 1100, for reconsideration, and recommend that it be amended as follows:

Page 2, Section 2, Line 9: Delete "11" and insert "12".

Page 2, Section 2, Line 21a: After "defendant;" insert "provided that no complaint for divorce shall be filed until after 3 months from the

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date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;"

Page 3, Section 2, Line 24: Delete "12" and insert "18".

Page 3, Section 2, Lines 24 and 24a: After "months" delete in its entirety and insert ", provided further that after the 18-month period there shall be a presumption that there is no reasonable prospect of reconciliation;"

Page 3, Section 2, Line 25: Delete "Drug addiction" and insert "Voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P.L. 1970, c. 226"; delete "alcoholism" and insert "habitual drunkenness".

Page 3, Section 2, Lines 28 and 29: After the word "for" delete "12" and insert "18".

Page 4, Section 5, Lines 8 - 10: After "is" delete "and has been"; after "State" insert "." and delete remainder of sentence in its entirety.

Page 4: After Section 5 insert a new section as follows: "6. N.J.S. 2A:34-10 is amended to read as follows:

"2A:34-10. Jurisdiction in actions for divorce, either absolute or from bed and board, may be acquired when process is served upon the defendant as prescribed by the rules of the supreme court, and:

"1. When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery, unless one of the parties has been for the [2 years] 1 year next preceding the commencement of the action a bona fide resident of this state; or

"2. When, since the cause of action arose, either party has become, and for at least [2 years] 1 year next preceding the commencement of the action has continued to be, a bona fide resident of this state [; provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state]."

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Page 4, Section 6, Line 1: Delete "6." and insert "7."

Page 5, Section 7, Line 1: Delete "7." and insert "8."

Page 6, Section 8, Lines 1 and 2: Delete "8." and insert "9.";

delete "2A:34-9, 2A:34-10".

Page 6, Section 9, Line 1: Delete "9." and insert "10".

Respectfully,

[Seal]

/S/ WILLIAM T. CAHILL

GOVERNOR

Attest:

/S/ Jean E. Mulford

Acting Secretary to the Governor

FROM THE OFFICE OF THE GOVERNOR

JUNE 14, 1971

A-1100

FOR RELEASE:
IMMEDIATE

Governor William T. Cahill today signed into law Assembly bill 1100 known as the Divorce Reform Bill.

The Governor said that he felt that the bill will help to bring about necessary reforms in the State's antiquated divorce laws. He said that the new law will set up "realistic standards consistent with present day problems".

The Governor commended Assemblyman Richard W. DeKorte (R., Bergen) who was the principle sponsor of the bill which passed both houses of the Legislature earlier this year. The Governor also commended the members of the Divorce Law Study Commission who laid the ground work for the divorce bill. In late April, the Governor subsequently sent the bill back to the Legislature for some minor technical changes which were quickly accepted by the Legislature.

The Governor repeated what he had said in his conditional veto that our present divorce laws simply encourage out-of-state divorces for persons who can afford them and "illicit co-habitation among those who are financially unable to end a prior legal relationship". The Governor added that if our present restrictive divorce laws had led to preservation of marriage, then there would have been no need for this bill; but our experiences proved exactly the opposite.

The signing of the Divorce Reform Bill today means that the new law will be on the books in time for it to become effective when the State courts convene in September for the fall calendar.

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