

2A:34-23

LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1999 **CHAPTER:** 199

NJSA: 2A:34-23 (Limited duration alimony)

BILL NO: S54 (Substituted for A2155)

SPONSOR(S): Kavanaugh and Martin

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Senior Issues and Community Services

SENATE: Women's Issues, Children and Family Services

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** June 14, 1999

SENATE: June 21, 1999

DATE OF APPROVAL: September 13, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Senate Committee Substitute for S54 (First Reprint)
(Amendments during passage denoted by superscript numbers)

S54

SPONSORS STATEMENT: (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

SENATE COMMITTEE SUBSTITUTE: [Yes](#)
Identical to A2155, as introduced

A2155

SPONSORS STATEMENT: (Begins on page 6 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

FIRST REPRINT: (Final Version) [Yes](#)

Identical to Senate Committee Substitute for S54 (1st Reprint)

VETO MESSAGE:

No

GOVERNOR'S PRESS RELEASE ON SIGNING:

Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext. 102 or refdesk@njstatelib.org

Yes

REPORTS New Jersey. NJ Commission to Study the Law of Divorce
M359 Report...April 18, 1995
1995a Trenton, 1995

(See Recommendation #13 -- pp. 34-38)

974.90 New Jersey. NJ commission to Study the Law of Divorce
M359 Preliminary Report...March 15, 1995
1995 Trenton, 1995
(See Recommendation #13 -- pp. 42-47 -- identical wording to preceding Final Report)

HEARINGS:

No

NEWSPAPER ARTICLES:

No

P.L. 1999, CHAPTER 199, *approved September 13, 1999*
Senate Committee Substitute (*First Reprint*) for
Senate, No. 54

1 AN ACT concerning alimony and amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2A:34-23 is amended to read as follows:

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

30 The court may order one party to pay a retainer on behalf of the
31 other for expert and legal services when the respective financial
32 circumstances of the parties make the award reasonable and just. In
33 considering an application, the court shall review the financial capacity
34 of each party to conduct the litigation and the criteria for award of
35 counsel fees that are then pertinent as set forth by court rule.
36 Whenever any other application is made to a court which includes an
37 application for pendente lite or final award of counsel fees, the court
38 shall determine the appropriate award for counsel fees, if any, at the
39 same time that a decision is rendered on the other issue then before the

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:

¹ Assembly ASC committee amendments adopted March 4, 1999.

1 court and shall consider the factors set forth in the court rule on
2 counsel fees, the financial circumstances of the parties, and the good
3 or bad faith of either party.

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

- 8 (1) Needs of the child;
- 9 (2) Standard of living and economic circumstances of each parent;
- 10 (3) All sources of income and assets of each parent;
- 11 (4) Earning ability of each parent, including educational
12 background, training, employment skills, work experience, custodial
13 responsibility for children including the cost of providing child care
14 and the length of time and cost of each parent to obtain training or
15 experience for appropriate employment;
- 16 (5) Need and capacity of the child for education, including higher
17 education;
- 18 (6) Age and health of the child and each parent;
- 19 (7) Income, assets and earning ability of the child;
- 20 (8) Responsibility of the parents for the court-ordered support of
21 others;
- 22 (9) Reasonable debts and liabilities of each child and parent; and
23 (10) Any other factors the court may deem relevant.

24 b. In all actions brought for divorce, divorce from bed and board,
25 or nullity the court may award one or more of the following types of
26 alimony ^{1,1} permanent alimony; [or] rehabilitative alimony; limited
27 duration alimony or reimbursement alimony [or both] to either party
28 and in. In so doing the court shall consider, but not be limited to, the
29 following factors:

- 30 (1) The actual need and ability of the parties to pay;
- 31 (2) The duration of the marriage;
- 32 (3) The age, physical and emotional health of the parties;
- 33 (4) The standard of living established in the marriage and the
34 likelihood that each party can maintain a reasonably comparable
35 standard of living;
- 36 (5) The earning capacities, educational levels, vocational skills,
37 and employability of the parties;
- 38 (6) The length of absence from the job market ¹[and custodial
39 responsibilities for children] ¹ of the party seeking maintenance;
- 40 (7) ¹ The parental responsibilities for the children;
- 41 (8) ¹ The time and expense necessary to acquire sufficient
42 education or training to enable the party seeking maintenance to find
43 appropriate employment, the availability of the training and
44 employment, and the opportunity for future acquisitions of capital
45 assets and income;
- 46 ¹[(8)] (9) ¹ The history of the financial or non-financial

1 contributions to the marriage by each party including contributions to
2 the care and education of the children and interruption of personal
3 careers or educational opportunities;

4 ~~'[(9)] (10)'~~¹ The equitable distribution of property ordered and
5 any payouts on equitable distribution, directly or indirectly, out of
6 current income, to the extent this consideration is reasonable, just and
7 fair; **[and]**

8 ~~'[(10)] (11)'~~¹ The income available to either party through
9 investment of any assets held by that party;

10 ~~'[(11)] (12)'~~¹ The tax treatment and consequences to both parties
11 of any alimony award, including the designation of all or a portion of
12 the payment as a non-taxable payment; and

13 ~~'[(12)] (13)'~~¹ Any other factors which the court may deem
14 relevant.

15 When a share of a retirement benefit is treated as an asset for
16 purposes of equitable distribution, the court shall not consider income
17 generated thereafter by that share for purposes of determining
18 alimony.

19 c. In any case in which there is a request for an award of
20 **[rehabilitative or]** permanent alimony, the court shall consider and
21 make specific findings on the evidence about the above factors. If the
22 court determines that an award of permanent alimony is not warranted,
23 the court shall make specific findings on the evidence setting out the
24 reasons therefor. The court shall then consider whether alimony is
25 appropriate for any or all of the following: (1) limited duration; (2)
26 rehabilitative; (3) reimbursement. In so doing, the court shall consider
27 and make specific findings on the evidence about factors set forth
28 above. The court shall not award limited duration alimony as a
29 substitute for permanent alimony in those cases where permanent
30 alimony would otherwise be awarded.

31 An award of alimony for a limited duration may be modified based
32 either upon changed circumstances, or upon the nonoccurrence of
33 circumstances that the court found would occur at the time of the
34 award. The court may modify the amount of such an award, but shall
35 not modify the length of the term except in unusual circumstances.

36 In determining the length of the term, the court shall consider the
37 length of time it would reasonably take for the recipient to improve his
38 or her earning capacity to a level where limited duration alimony is no
39 longer appropriate.

40 d. Rehabilitative alimony shall be awarded based upon a plan in
41 which the payee shows the scope of rehabilitation, the steps to be
42 taken, and the time frame, including a period of employment during
43 which rehabilitation will occur. An award of rehabilitative alimony
44 may be modified based either upon changed circumstances, or upon
45 the nonoccurrence of circumstances that the court found would occur
46 at the time of the rehabilitative award.

1 This section is not intended to preclude a court from modifying
2 permanent alimony awards based upon the law.

3 e. Reimbursement alimony may be awarded under circumstances
4 in which one party supported the other through an advanced
5 education, anticipating participation in the fruits of the earning
6 capacity generated by that education. ¹Such an award may be made
7 separately or in conjunction with limited duration or rehabilitative
8 alimony only.¹

9 f. ¹Nothing in this section shall be construed to limit the court's
10 authority to award permanent alimony, limited duration alimony,
11 rehabilitative alimony or reimbursement alimony, separately or in any
12 combination, as warranted by the circumstances of the parties and the
13 nature of the case.

14 g.¹ In all actions for divorce other than those where judgment is
15 granted solely on the ground of separation the court may consider also
16 the proofs made in establishing such ground in determining an amount
17 of alimony or maintenance that is fit, reasonable and just. In all
18 actions for divorce or divorce from bed and board where judgment is
19 granted on the ground of institutionalization for mental illness the
20 court may consider the possible burden upon the taxpayers of the State
21 as well as the ability of the party to pay in determining an amount of
22 maintenance to be awarded.

23 ¹[g.]h.¹ In all actions where a judgment of divorce or divorce
24 from bed and board is entered the court may make such award or
25 awards to the parties, in addition to alimony and maintenance, to
26 effectuate an equitable distribution of the property, both real and
27 personal, which was legally and beneficially acquired by them or either
28 of them during the marriage. However, all such property, real,
29 personal or otherwise, legally or beneficially acquired during the
30 marriage by either party by way of gift, devise, or intestate succession
31 shall not be subject to equitable distribution, except that interspousal
32 gifts shall be subject to equitable distribution.

33 (cf: P.L.1997, c.302, s.1)

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

36 2A:34-25. If after the judgment of divorce a former spouse shall
37 remarry, permanent and limited duration alimony shall terminate as of
38 the date of remarriage except that any arrearages that have accrued
39 prior to the date of remarriage shall not be vacated or annulled. ¹A
40 former spouse who remarries shall promptly so inform the spouse
41 paying permanent or limited duration alimony as well as the collecting
42 agency, if any. The court may order such alimony recipient who fails
43 to comply with the notification provision of this act to pay any
44 reasonable attorney fees and court costs incurred by the recipient's
45 former spouse as a result of such non-compliance.¹

46 The remarriage of a former spouse receiving rehabilitative or

1 reimbursement alimony shall not be cause for termination of **【**the
2 rehabilitative **】** such alimony by the court unless the court finds that
3 the circumstances upon which the award was based have not occurred
4 or unless the payer spouse demonstrates an agreement or good cause
5 to the contrary.

6 Alimony shall terminate upon the death of the payer spouse, except
7 that any arrearages that have accrued prior to the date of the payer
8 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 protection of
11 the former spouse or the children of the marriage in the event of the
12 payer spouse's death.

13 (cf: P.L.1997, c.301, s.1)

14

15 3. This act shall take effect immediately.

16

17

18

19

20 Provides for limited duration and reimbursement alimony in addition
21 to permanent and rehabilitative alimony.

SENATE, No. 54

STATE OF NEW JERSEY 208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Senator WALTER KAVANAUGH

District 16 (Morris and Somerset)

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Provides for limited duration alimony.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning alimony and amending N.J.S.2A:34-23.

2

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

5

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

7 2A:34-23. Pending any matrimonial action brought in this State or
8 elsewhere, or after judgment of divorce or maintenance, whether
9 obtained in this State or elsewhere, the court may make such order as
10 to the alimony or maintenance of the parties, and also as to the care,
11 custody, education and maintenance of the children, or any of them,
12 as the circumstances of the parties and the nature of the case shall
13 render fit, reasonable and just, and require reasonable security for the
14 due observance of such orders, including, but not limited to, the
15 creation of trusts or other security devices, to assure payment of
16 reasonably foreseeable medical and educational expenses. Upon
17 neglect or refusal to give such reasonable security, as shall be required,
18 or upon default in complying with any such order, the court may
19 award and issue process for the immediate sequestration of the
20 personal estate, and the rents and profits of the real estate of the party
21 so charged, and appoint a receiver thereof, and cause such personal
22 estate and the rents and profits of such real estate, or so much thereof
23 as shall be necessary, to be applied toward such alimony and
24 maintenance as to the said court shall from time to time seem
25 reasonable and just; or the performance of the said orders may be
26 enforced by other ways according to the practice of the court. Orders
27 so made may be revised and altered by the court from time to time as
28 circumstances may require.

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

42 a. In determining the amount to be paid by a parent for support of
43 the child and the period during which the duty of support is owed, the

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

Matter underlined thus is new matter.

1 court in those cases not governed by court rule shall consider, but not
2 be limited to, the following factors:

- 3 (1) Needs of the child;
- 4 (2) Standard of living and economic circumstances of each parent;
- 5 (3) All sources of income and assets of each parent;
- 6 (4) Earning ability of each parent, including educational
7 background, training, employment skills, work experience, custodial
8 responsibility for children including the cost of providing child care
9 and the length of time and cost of each parent to obtain training or
10 experience for appropriate employment;
- 11 (5) Need and capacity of the child for education, including higher
12 education;
- 13 (6) Age and health of the child and each parent;
- 14 (7) Income, assets and earning ability of the child;
- 15 (8) Responsibility of the parents for the court-ordered support of
16 others;
- 17 (9) Reasonable debts and liabilities of each child and parent; and
18 (10) Any other factors the court may deem relevant.

19 b. In all actions brought for divorce, divorce from bed and board,
20 or nullity the court may award one or more of the following types of
21 alimony: permanent alimony; [or] rehabilitative alimony; or limited
22 duration alimony [or both] to either party[, and in]. In so doing the
23 court shall consider, but not be limited to, the following factors:

- 24 (1) The actual need and ability of the parties to pay;
- 25 (2) The duration of the marriage;
- 26 (3) The age, physical and emotional health of the parties;
- 27 (4) The standard of living established in the marriage and the
28 likelihood that each party can maintain a reasonably comparable
29 standard of living;
- 30 (5) The earning capacities, educational levels, vocational skills, and
31 employability of the parties;
- 32 (6) The length of absence from the job market and custodial
33 responsibilities for children of the party seeking maintenance;
- 34 (7) The time and expense necessary to acquire sufficient education
35 or training to enable the party seeking maintenance to find appropriate
36 employment, the availability of the training and employment, and the
37 opportunity for future acquisitions of capital assets and income;
- 38 (8) The history of the financial or non-financial contributions to the
39 marriage by each party including contributions to the care and
40 education of the children and interruption of personal careers or
41 educational opportunities;
- 42 (9) The equitable distribution of property ordered and any payouts
43 on equitable distribution, directly or indirectly, out of current income,
44 to the extent this consideration is reasonable, just and fair; and
45 (10) Any other factors which the court may deem relevant.

46 **【**When a share of a retirement benefit is treated as an asset for

1 purposes of equitable distribution, the court shall not consider income
2 generated thereafter by that share for purposes of determining
3 alimony.】

4 c. In any case in which there is a request for an award of
5 【rehabilitative or】 permanent alimony, the court shall consider and
6 make specific findings on the evidence about the above factors. If the
7 court determines that an award of permanent alimony is not warranted,
8 the court shall make specific findings on the evidence setting out the
9 reasons therefor. The court shall then consider whether alimony for
10 a specified limited duration is appropriate. In so doing, the court shall
11 consider and make specific findings on the evidence about factors set
12 forth below. The court shall not award limited duration alimony as a
13 substitute for permanent alimony in those cases involving long-term
14 marriages where permanent alimony would otherwise be awarded.

15 An award of alimony for a limited duration may be modified based
16 either upon changed circumstances, or upon the nonoccurrence of
17 circumstances that the court found would occur at the time of the
18 award. The court may modify the amount of such an award, but shall
19 not modify the length of the term.

20 In determining the length of the term, the court shall consider the
21 length of time it would reasonably take for the recipient to improve his
22 or her earning capacity to a level where limited duration alimony is no
23 longer appropriate.

24 (1) In determining whether alimony for a specified limited duration
25 is appropriate, the court shall also consider whether, in lieu of such an
26 award, equitable distribution of the marital property could be used to
27 compensate the potential alimony recipient for the recipient's financial
28 or non-financial contributions to the marriage. If equitable distribution
29 cannot be so used, the court shall then determine whether limited
30 duration alimony is appropriate, and shall make specific findings about
31 the following factors:

32 (a) The duration of the marriage;

33 (b) The payor's ability to pay;

34 (c) The age, physical health and emotional health of the parties.

35 (d) The standard of living enjoyed during the marriage.

36 (e) The contribution of the spouse seeking support to the
37 development and maintenance of the parties' marital standard of living.

38 (f) The financial and non-financial contributions of the parties to
39 the marriage.

40 (g) The educational levels, vocational skills and earning capacities
41 of the parties and how they were affected by the marriage.

42 (h) The economic impact on the parties of the child-rearing
43 responsibilities for children of the marriage.

44 (i) The distribution of property acquired during the marriage and
45 the ability of either spouse to have acquired such assets without the
46 marriage.

1 (j) The entitlement of either spouse to enjoy a standard of living
2 comparable to that enjoyed during the marriage, given the parties'
3 financial and non-financial contributions to the development,
4 maintenance and acquisition of income or assets which supported the
5 marital lifestyle.

6 (k) Whether the parties were economically advantaged or
7 disadvantaged by the marriage.

8 (l) The income or property brought to the marriage by the parties.

9 (m) The use and dissipation during the marriage of the parties'
10 pre-marital assets.

11 (n) The income generated by assets equitably distributed, except
12 for income generated by a share of a retirement benefit treated as an
13 asset and equitably distributed.

14 (o) The sale of the marital residence and the availability of the
15 proceeds for the parties' use.

16 (p) Such other factors as the court deems appropriate.

17 d. In any case in which there is a request for an award of
18 rehabilitative alimony, the court shall consider and make specific
19 findings on the evidence about the above factors. An award of
20 rehabilitative alimony may be modified based either upon changed
21 circumstances, or upon the nonoccurrence of circumstances that the
22 court found would occur at the time of the rehabilitative award.

23 This section is not intended to preclude a court from modifying
24 permanent alimony awards based upon the law.

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

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

44 When a share of a retirement benefit is treated as an asset for
45 purposes of equitable distribution, the court shall not consider income

1 generated thereafter by that share for purposes of determining
2 alimony.

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

4

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

6 2A:34-25. If after the judgment of divorce a former spouse shall
7 remarry, permanent and limited duration alimony shall terminate as of
8 the date of remarriage except that any arrearages that have accrued
9 prior to the date of remarriage shall not be vacated or annulled. The
10 remarriage of a former spouse receiving rehabilitative alimony shall not
11 be cause for termination of the rehabilitative alimony by the court
12 unless the court finds that the circumstances upon which the award
13 was based have not occurred or unless the payer spouse demonstrates
14 an agreement or good cause to the contrary.

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

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

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

23

24 3. This act shall take effect immediately.

25

26

27

STATEMENT

28

29 This bill authorizes the courts to award limited duration alimony in
30 certain cases.

31 Under current law, the courts may award two types of alimony:
32 permanent alimony, which is intended to compensate a spouse for an
33 economic dependency created by the marriage, and rehabilitative
34 alimony, which is intended for specific educational or training
35 purposes and is of short duration. This bill would establish limited
36 duration alimony as a third type of alimony, to be used in those cases
37 involving shorter-term marriages where permanent or rehabilitative
38 alimony would be inappropriate or inapplicable but where,
39 nonetheless, economic assistance for a limited period of time would be
40 just.

41 The bill provides that, in any case where a party requests an award
42 of permanent alimony, the court would first be required to consider
43 and make specific findings on a number of factors, including the need
44 and ability of the parties to pay, the duration of the marriage, the
45 health of the parties, their standard of living and their earning
46 capacities. After this threshold determination, if the court determines

1 that an award of permanent alimony is not warranted, it would then
2 consider whether limited duration alimony is warranted.

3 The court would also be required to consider whether, in lieu of a
4 limited duration alimony award, equitable distribution of the marital
5 property could be used to compensate the potential alimony recipient
6 for the recipient's financial or non-financial contributions to the
7 marriage.

8 The bill sets out specific factors for the court to consider in making
9 the determination whether limited duration alimony is warranted,
10 including, among others:

11 • The contribution of the spouse seeking support to the
12 development and maintenance of the parties' marital standard of living.

13 • The financial and non-financial contributions of the parties to the
14 marriage.

15 • The educational levels, vocational skills and earning capacities of
16 the parties and how they were affected by the marriage.

17 • The economic impact on the parties of the child-rearing
18 responsibilities for children of the marriage.

19 • The distribution of property acquired during the marriage and the
20 ability of either spouse to have acquired such assets without the
21 marriage.

22 • The entitlement of either spouse to enjoy a standard of living
23 comparable to that enjoyed during the marriage, given the parties'
24 financial and non-financial contributions to the development,
25 maintenance and acquisition of income or assets which supported the
26 marital lifestyle.

27 • Whether the parties were economically advantaged or
28 disadvantaged by the marriage.

29 • The income or property brought to the marriage by the parties.

30 • The use and dissipation during the marriage of the parties'
31 pre-marital assets.

32 The bill specifically provides that the court shall not award limited
33 duration alimony as a substitute for permanent alimony in those cases
34 involving long-term marriages where permanent alimony would
35 otherwise be awarded under current law. This bill embodies
36 Recommendation 13 of the report of the Commission to Study the
37 Law of Divorce, issued April 18, 1995.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 54

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 1999

The Assembly Senior Issues and Community Services Committee reports favorably and with committee amendments Senate Committee Substitute for Senate Bill No. 54.

This substitute authorizes the court to award, in addition to the current statutory provisions authorizing permanent alimony and rehabilitative alimony, two additional types of alimony: limited duration alimony and reimbursement alimony in appropriate cases. Limited duration alimony would be awarded when economic assistance is necessary for a limited time and reimbursement alimony would be awarded to compensate a party who supported the other party through an advanced education, anticipating participation in the fruits of the earning capacity generated by the education.

This substitute would also add two new factors which the court would consider in determining whether any type of alimony is appropriate. Under current provisions of law the court, in making this determination, must consider several factors, including the need and ability of the parties to pay, the duration of the marriage, the age and health of the parties, their standard of living and their earning capacities and educational levels, the length of absence from the job market and custodial responsibilities of the parties, the time and expense necessary for training and education to acquire appropriate employment, the history of financial and non-financial contributions of the parties and the equitable distribution of the property. The substitute would add the following factors to the list: the income available to either party through investment of any assets and the tax treatment and consequences to both parties of any alimony awarded, including the designation of all or a portion of the payment as a non-taxable payment.

The substitute provides that if after the threshold determination the court determines that an award of permanent alimony is not warranted, the court would make specific findings on the evidence setting out the

reasons therefor. The court would then consider whether any or all of the following types of alimony would be appropriate: limited duration, rehabilitative or reimbursement. In making this determination the court must consider the factors mentioned above and make specific findings.

The substitute provides that limited duration alimony would not be awarded as a substitute for permanent alimony in cases where permanent alimony would otherwise be awarded. A limited duration alimony award may be modified due to a change in circumstances or upon a nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of the award, but would not be allowed to modify the length of the term except in unusual circumstances. In determining the length of the term, the court must consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

With regard to rehabilitative alimony, the substitute provides that it shall be awarded based upon a plan in which the payee shows the scope of the rehabilitation, the steps to be taken and the time frame, including the period of employment during which rehabilitation will occur. Rehabilitative alimony may be modified based upon changed circumstances or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award.

Under the original provisions of the substitute, reimbursement alimony may be awarded separately or in conjunction with limited duration or rehabilitative alimony. The committee amendments would clarify that the substitute is not intended to limit the court's authority under current law to award permanent alimony, limited duration alimony, rehabilitative alimony or reimbursement alimony, separately or in any combination, as warranted by the circumstances of the parties and the nature of the case.

In addition, the substitute would amend N.J.S.2A:34-25 to provide that limited duration alimony, like permanent alimony under current law, would terminate upon the remarriage of the spouse receiving it. The substitute would also provide that reimbursement alimony, like rehabilitative alimony under the current law, would not terminate upon remarriage.

The committee amendments also reflect recently enacted legislation which amended the alimony statute to clarify the responsibilities of both parents, P.L.1997, c.301 and P.L.1997, c.302.

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 54

STATE OF NEW JERSEY

DATED: FEBRUARY 23, 1998

The Senate Women's Issues, Children and Family Services Committee favorably reports a Senate Committee Substitute for Senate Bill No. 54.

Presently, the courts may award two types of alimony: permanent alimony, which is intended to compensate a spouse for an economic dependency created by the marriage, and rehabilitative alimony, which is intended for specific educational or training purposes and is of short duration. This committee substitute would authorize the court to award two additional types of alimony: limited duration, which would be awarded where economic assistance is necessary for a limited time, and reimbursement alimony, which would be awarded to compensate a party who supported the other party through an advanced education, anticipating participation in the fruits of the earning capacity generated by the education.

This committee substitute would also add two new factors which the court would consider in determining whether any type of alimony is appropriate. Under current provisions of law the court, in making this determination, must consider several factors, including the need and ability of the parties to pay, the duration of the marriage, the age and health of the parties, their standard of living and their earning capacities and educational levels, the length of absence from the job market and custodial responsibilities of the parties, the time and expense necessary for training and education to acquire appropriate employment, the history of financial and non-financial contributions of the parties and the equitable distribution of the property. The substitute would add the following factors to the list: the income available to either party through investment of any assets and the tax treatment and consequences to both parties of any alimony awarded, including the designation of all or a portion of the payment as a non-taxable payment.

The committee substitute provides that if after the threshold determination the court determines that an award of permanent alimony is not warranted, the court would make specific findings on

the evidence setting out the reasons therefor. The court would then consider whether any or all of the following types of alimony would be appropriate: limited duration, rehabilitative or reimbursement. In making this determination the court must consider the factors mentioned above and make specific findings.

The committee substitute provides that limited duration alimony would not be awarded as a substitute for permanent alimony in cases where permanent alimony would otherwise be awarded. A limited duration alimony award may be modified due to a change in circumstances or upon a nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of the award, but would not be allowed to modify the length of the term except in unusual circumstances. In determining the length of the term, the court must consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

With regard to rehabilitative alimony, the committee substitute provides that it shall be awarded based upon a plan in which the payee shows the scope of the rehabilitation, the steps to be taken and the time frame, including the period of employment during which rehabilitation will occur. Rehabilitative alimony may be modified based upon changed circumstances or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award.

Under the provisions of the committee substitute, reimbursement alimony may be awarded separately or in conjunction with limited duration or rehabilitative alimony.

Section 2 of the substitute would amend N.J.S.2A:34-25 to provide that limited duration alimony, like permanent alimony under current law, would terminate upon the remarriage of the spouse receiving it. The substitute would also provide that reimbursement alimony, like rehabilitative alimony under the current law, would not terminate upon remarriage.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 54

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED FEBRUARY 23, 1998

Sponsored by:

Senator WALTER J. KAVANAUGH

District 16 (Morris and Somerset)

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Provides for limited duration and reimbursement alimony in addition to permanent and rehabilitative alimony.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Women's Issues, Children and Family Services Committee.



1 AN ACT concerning alimony and amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25.

3

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

6

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

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

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

43 a. In determining the amount to be paid by a parent for support of

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.

1 the child and the period during which the duty of support is owed, the
2 court in those cases not governed by court rule shall consider, but not
3 be limited to, the following factors:

- 4 (1) Needs of the child;
- 5 (2) Standard of living and economic circumstances of each parent;
- 6 (3) All sources of income and assets of each parent;
- 7 (4) Earning ability of each parent, including educational
8 background, training, employment skills, work experience, custodial
9 responsibility for children including the cost of providing child care
10 and the length of time and cost of each parent to obtain training or
11 experience for appropriate employment;
- 12 (5) Need and capacity of the child for education, including higher
13 education;
- 14 (6) Age and health of the child and each parent;
- 15 (7) Income, assets and earning ability of the child;
- 16 (8) Responsibility of the parents for the court-ordered support of
17 others;
- 18 (9) Reasonable debts and liabilities of each child and parent; and
19 (10) Any other factors the court may deem relevant.

20 b. In all actions brought for divorce, divorce from bed and board,
21 or nullity the court may award one or more of the following types of
22 alimony: permanent alimony; **[or]** rehabilitative alimony; limited
23 duration alimony or reimbursement alimony **[or both]** to either party**[,**
24 **and in]**. In so doing the court shall consider, but not be limited to, the
25 following factors:

- 26 (1) The actual need and ability of the parties to pay;
- 27 (2) The duration of the marriage;
- 28 (3) The age, physical and emotional health of the parties;
- 29 (4) The standard of living established in the marriage and the
30 likelihood that each party can maintain a reasonably comparable
31 standard of living;
- 32 (5) The earning capacities, educational levels, vocational skills,
33 and employability of the parties;
- 34 (6) The length of absence from the job market and custodial
35 responsibilities for children of the party seeking maintenance;
- 36 (7) The time and expense necessary to acquire sufficient education
37 or training to enable the party seeking maintenance to find appropriate
38 employment, the availability of the training and employment, and the
39 opportunity for future acquisitions of capital assets and income;
- 40 (8) The history of the financial or non-financial contributions to
41 the marriage by each party including contributions to the care and
42 education of the children and interruption of personal careers or
43 educational opportunities;
- 44 (9) The equitable distribution of property ordered and any payouts
45 on equitable distribution, directly or indirectly, out of current income,
46 to the extent this consideration is reasonable, just and fair; **[and]**

1 (10) The income available to either party through investment of
2 any assets held by that party;

3 (11) The tax treatment and consequences to both parties of any
4 alimony award, including the designation of all or a portion of the
5 payment as a non-taxable payment; and

6 (12) Any other factors which the court may deem relevant.

7 When a share of a retirement benefit is treated as an asset for
8 purposes of equitable distribution, the court shall not consider income
9 generated thereafter by that share for purposes of determining
10 alimony.

11 c. In any case in which there is a request for an award of
12 **[rehabilitative or]** permanent alimony, the court shall consider and
13 make specific findings on the evidence about the above factors. If the
14 court determines that an award of permanent alimony is not warranted,
15 the court shall make specific findings on the evidence setting out the
16 reasons therefor. The court shall then consider whether alimony is
17 appropriate for any or all of the following: (1) limited duration; (2)
18 rehabilitative; (3) reimbursement. In so doing, the court shall consider
19 and make specific findings on the evidence about factors set forth
20 above. The court shall not award limited duration alimony as a
21 substitute for permanent alimony in those cases where permanent
22 alimony would otherwise be awarded.

23 An award of alimony for a limited duration may be modified based
24 either upon changed circumstances, or upon the nonoccurrence of
25 circumstances that the court found would occur at the time of the
26 award. The court may modify the amount of such an award, but shall
27 not modify the length of the term except in unusual circumstances.

28 In determining the length of the term, the court shall consider the
29 length of time it would reasonably take for the recipient to improve his
30 or her earning capacity to a level where limited duration alimony is no
31 longer appropriate.

32 d. Rehabilitative alimony shall be awarded based upon a plan in
33 which the payee shows the scope of rehabilitation, the steps to be
34 taken, and the time frame, including a period of employment during
35 which rehabilitation will occur. An award of rehabilitative alimony
36 may be modified based either upon changed circumstances, or upon
37 the nonoccurrence of circumstances that the court found would occur
38 at the time of the rehabilitative award.

39 This section is not intended to preclude a court from modifying
40 permanent alimony awards based upon the law.

41 e. Reimbursement alimony may be awarded under circumstances
42 in which one party supported the other through an advanced
43 education, anticipating participation in the fruits of the earning
44 capacity generated by that education. Such an award may be made
45 separately or in conjunction with limited duration or rehabilitative
46 alimony only.

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

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

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

21

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

23 2A:34-25. If after the judgment of divorce a former spouse shall
24 remarry, permanent and limited duration alimony shall terminate as of
25 the date of remarriage except that any arrearages that have accrued
26 prior to the date of remarriage shall not be vacated or annulled. The
27 remarriage of a former spouse receiving rehabilitative or
28 reimbursement alimony shall not be cause for termination of [the
29 rehabilitative] such alimony by the court unless the court finds that
30 the circumstances upon which the award was based have not occurred
31 or unless the payer spouse demonstrates an agreement or good cause
32 to the contrary.

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

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

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

41

42 3. This act shall take effect immediately.

ASSEMBLY, No. 2155

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED JUNE 4, 1998

Sponsored by:

Assemblyman JOEL WEINGARTEN

District 21 (Essex and Union)

SYNOPSIS

Provides for limited duration and reimbursement alimony in addition to permanent and rehabilitative alimony.

CURRENT VERSION OF TEXT

As introduced.



A2155 WEINGARTEN

2

1 AN ACT concerning alimony and amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25.

3

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

6

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

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

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

43 a. In determining the amount to be paid by a parent for support of

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

Matter underlined thus is new matter.

1 the child and the period during which the duty of support is owed, the
2 court in those cases not governed by court rule shall consider, but not
3 be limited to, the following factors:

- 4 (1) Needs of the child;
- 5 (2) Standard of living and economic circumstances of each parent;
- 6 (3) All sources of income and assets of each parent;
- 7 (4) Earning ability of each parent, including educational
8 background, training, employment skills, work experience, custodial
9 responsibility for children including the cost of providing child care
10 and the length of time and cost of each parent to obtain training or
11 experience for appropriate employment;
- 12 (5) Need and capacity of the child for education, including higher
13 education;
- 14 (6) Age and health of the child and each parent;
- 15 (7) Income, assets and earning ability of the child;
- 16 (8) Responsibility of the parents for the court-ordered support of
17 others;
- 18 (9) Reasonable debts and liabilities of each child and parent; and
19 (10) Any other factors the court may deem relevant.

20 b. In all actions brought for divorce, divorce from bed and board,
21 or nullity the court may award one or more of the following types of
22 alimony: permanent alimony; **[or]** rehabilitative alimony; limited
23 duration alimony or reimbursement alimony **[or both]** to either party**[,**
24 **and in]**. In so doing the court shall consider, but not be limited to, the
25 following factors:

- 26 (1) The actual need and ability of the parties to pay;
- 27 (2) The duration of the marriage;
- 28 (3) The age, physical and emotional health of the parties;
- 29 (4) The standard of living established in the marriage and the
30 likelihood that each party can maintain a reasonably comparable
31 standard of living;
- 32 (5) The earning capacities, educational levels, vocational skills,
33 and employability of the parties;
- 34 (6) The length of absence from the job market and custodial
35 responsibilities for children of the party seeking maintenance;
- 36 (7) The time and expense necessary to acquire sufficient education
37 or training to enable the party seeking maintenance to find appropriate
38 employment, the availability of the training and employment, and the
39 opportunity for future acquisitions of capital assets and income;
- 40 (8) The history of the financial or non-financial contributions to
41 the marriage by each party including contributions to the care and
42 education of the children and interruption of personal careers or
43 educational opportunities;
- 44 (9) The equitable distribution of property ordered and any payouts
45 on equitable distribution, directly or indirectly, out of current income,
46 to the extent this consideration is reasonable, just and fair; **[and]**

1 (10) The income available to either party through investment of
2 any assets held by that party;

3 (11) The tax treatment and consequences to both parties of any
4 alimony award, including the designation of all or a portion of the
5 payment as a non-taxable payment; and

6 (12) Any other factors which the court may deem relevant.

7 When a share of a retirement benefit is treated as an asset for
8 purposes of equitable distribution, the court shall not consider income
9 generated thereafter by that share for purposes of determining
10 alimony.

11 c. In any case in which there is a request for an award of
12 **[rehabilitative or]** permanent alimony, the court shall consider and
13 make specific findings on the evidence about the above factors. If the
14 court determines that an award of permanent alimony is not warranted,
15 the court shall make specific findings on the evidence setting out the
16 reasons therefor. The court shall then consider whether alimony is
17 appropriate for any or all of the following: (1) limited duration; (2)
18 rehabilitative; (3) reimbursement. In so doing, the court shall consider
19 and make specific findings on the evidence about factors set forth
20 above. The court shall not award limited duration alimony as a
21 substitute for permanent alimony in those cases where permanent
22 alimony would otherwise be awarded.

23 An award of alimony for a limited duration may be modified based
24 either upon changed circumstances, or upon the nonoccurrence of
25 circumstances that the court found would occur at the time of the
26 award. The court may modify the amount of such an award, but shall
27 not modify the length of the term except in unusual circumstances.

28 In determining the length of the term, the court shall consider the
29 length of time it would reasonably take for the recipient to improve his
30 or her earning capacity to a level where limited duration alimony is no
31 longer appropriate.

32 d. Rehabilitative alimony shall be awarded based upon a plan in
33 which the payee shows the scope of rehabilitation, the steps to be
34 taken, and the time frame, including a period of employment during
35 which rehabilitation will occur. An award of rehabilitative alimony
36 may be modified based either upon changed circumstances, or upon
37 the nonoccurrence of circumstances that the court found would occur
38 at the time of the rehabilitative award.

39 This section is not intended to preclude a court from modifying
40 permanent alimony awards based upon the law.

41 e. Reimbursement alimony may be awarded under circumstances
42 in which one party supported the other through an advanced
43 education, anticipating participation in the fruits of the earning
44 capacity generated by that education. Such an award may be made
45 separately or in conjunction with limited duration or rehabilitative
46 alimony only.

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

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

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

21

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

23 2A:34-25. If after the judgment of divorce a former spouse shall
24 remarry, permanent and limited duration alimony shall terminate as of
25 the date of remarriage except that any arrearages that have accrued
26 prior to the date of remarriage shall not be vacated or annulled. The
27 remarriage of a former spouse receiving rehabilitative or
28 reimbursement alimony shall not be cause for termination of [the
29 rehabilitative] such alimony by the court unless the court finds that
30 the circumstances upon which the award was based have not occurred
31 or unless the payer spouse demonstrates an agreement or good cause
32 to the contrary.

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

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

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

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42 3. This act shall take effect immediately.

STATEMENT

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Presently, the courts may award two types of alimony: permanent alimony, which is intended to compensate a spouse for an economic dependency created by the marriage, and rehabilitative alimony, which is intended for specific educational or training purposes and is of short duration. This bill would authorize the court to award two additional types of alimony: limited duration, which would be awarded where economic assistance is necessary for a limited time, and reimbursement alimony, which would be awarded to compensate a party who supported the other party through an advanced education, anticipating participation in the fruits of the earning capacity generated by the education.

This bill would also add two new factors which the court would consider in determining whether any type of alimony is appropriate. Under current provisions of law the court, in making this determination, must consider several factors, including the need and ability of the parties to pay, the duration of the marriage, the age and health of the parties, their standard of living and their earning capacities and educational levels, the length of absence from the job market and custodial responsibilities of the parties, the time and expense necessary for training and education to acquire appropriate employment, the history of financial and non-financial contributions of the parties and the equitable distribution of the property. The bill would add the following factors to the list: the income available to either party through investment of any assets and the tax treatment and consequences to both parties of any alimony awarded, including the designation of all or a portion of the payment as a non-taxable payment.

The bill provides that if after the threshold determination the court determines that an award of permanent alimony is not warranted, the court would make specific findings on the evidence setting out the reasons therefor. The court would then consider whether any or all of the following types of alimony would be appropriate: limited duration, rehabilitative or reimbursement. In making this determination the court must consider the factors mentioned above and make specific findings.

The bill provides that limited duration alimony would not be awarded as a substitute for permanent alimony in cases where permanent alimony would otherwise be awarded. A limited duration alimony award may be modified due to a change in circumstances or upon a nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of the award, but would not be allowed to modify the length of the term except in unusual circumstances. In determining the length of the term, the court must consider the length of time it would reasonably

1 take for the recipient to improve his or her earning capacity to a level
2 where limited duration alimony is no longer appropriate.

3 With regard to rehabilitative alimony, the bill provides that it shall
4 be awarded based upon a plan in which the payee shows the scope of
5 the rehabilitation, the steps to be taken and the time frame, including
6 the period of employment during which rehabilitation will occur.
7 Rehabilitative alimony may be modified based upon changed
8 circumstances or upon the nonoccurrence of circumstances that the
9 court found would occur at the time of the rehabilitative award.

10 Under the provisions of the bill, reimbursement alimony may be
11 awarded separately or in conjunction with limited duration or
12 rehabilitative alimony.

13 Section 2 of the bill would amend N.J.S.2A:34-25 to provide that
14 limited duration alimony, like permanent alimony under current law,
15 would terminate upon the remarriage of the spouse receiving it. The
16 substitute would also provide that reimbursement alimony, like
17 rehabilitative alimony under the current law, would not terminate upon
18 remarriage.

ASSEMBLY SENIOR ISSUES AND COMMUNITY SERVICES
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2155

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 4, 1999

The Assembly Senior Issues and Community Services Committee reports favorably and with committee amendments Assembly Bill No. 2155.

This bill authorizes the court to award, in addition to the current statutory provisions authorizing permanent alimony and rehabilitative alimony, two additional types of alimony: limited duration alimony and reimbursement alimony in appropriate cases. Limited duration alimony would be awarded when economic assistance is necessary for a limited time and reimbursement alimony would be awarded to compensate a party who supported the other party through an advanced education, anticipating participation in the fruits of the earning capacity generated by the education.

This bill would also add two new factors which the court would consider in determining whether any type of alimony is appropriate. Under current provisions of law the court, in making this determination, must consider several factors, including the need and ability of the parties to pay, the duration of the marriage, the age and health of the parties, their standard of living and their earning capacities and educational levels, the length of absence from the job market and custodial responsibilities of the parties, the time and expense necessary for training and education to acquire appropriate employment, the history of financial and non-financial contributions of the parties and the equitable distribution of the property. The bill would add the following factors to the list: the income available to either party through investment of any assets and the tax treatment and consequences to both parties of any alimony awarded, including the designation of all or a portion of the payment as a non-taxable payment.

The bill provides that if after the threshold determination the court determines that an award of permanent alimony is not warranted, the court would make specific findings on the evidence setting out the reasons therefor. The court would then consider whether any or all of the following types of alimony would be appropriate: limited duration,

rehabilitative or reimbursement. In making this determination the court must consider the factors mentioned above and make specific findings.

The bill provides that limited duration alimony would not be awarded as a substitute for permanent alimony in cases where permanent alimony would otherwise be awarded. A limited duration alimony award may be modified due to a change in circumstances or upon a nonoccurrence of circumstances that the court found would occur at the time of the award. The court may modify the amount of the award, but would not be allowed to modify the length of the term except in unusual circumstances. In determining the length of the term, the court must consider the length of time it would reasonably take for the recipient to improve his or her earning capacity to a level where limited duration alimony is no longer appropriate.

With regard to rehabilitative alimony, the bill provides that it shall be awarded based upon a plan in which the payee shows the scope of the rehabilitation, the steps to be taken and the time frame, including the period of employment during which rehabilitation will occur. Rehabilitative alimony may be modified based upon changed circumstances or upon the nonoccurrence of circumstances that the court found would occur at the time of the rehabilitative award.

Under the original provisions of the bill, reimbursement alimony may be awarded separately or in conjunction with limited duration or rehabilitative alimony. The committee amendments would clarify that the bill is not intended to limit the court's authority under current law to award permanent alimony, limited duration alimony, rehabilitative alimony or reimbursement alimony, separately or in any combination, as warranted by the circumstances of the parties and the nature of the case.

In addition, the bill would amend N.J.S.2A:34-25 to provide that limited duration alimony, like permanent alimony under current law, would terminate upon the remarriage of the spouse receiving it. The bill would also provide that reimbursement alimony, like rehabilitative alimony under the current law, would not terminate upon remarriage.

The committee amendments also reflect recently enacted legislation which amended the alimony statute to clarify the responsibilities of both parents, P.L.1997, c.301 and P.L.1997, c.302.

[First Reprint]

ASSEMBLY, No. 2155

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JUNE 4, 1998

Sponsored by:

Assemblyman JOEL WEINGARTEN

District 21 (Essex and Union)

Assemblyman NEIL M. COHEN

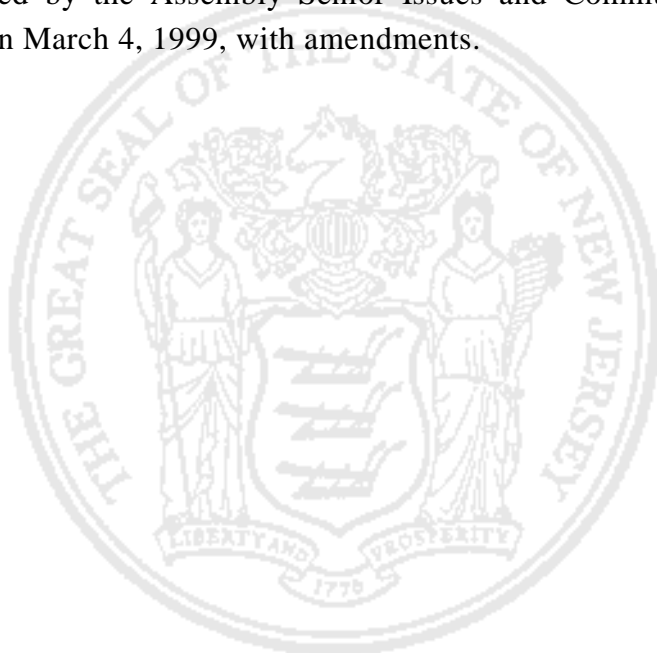
District 20 (Union)

SYNOPSIS

Provides for limited duration and reimbursement alimony in addition to permanent and rehabilitative alimony.

CURRENT VERSION OF TEXT

As reported by the Assembly Senior Issues and Community Services Committee on March 4, 1999, with amendments.



(Sponsorship Updated As Of: 5/11/1999)

1 AN ACT concerning alimony and amending N.J.S.2A:34-23 and
2 N.J.S.2A:34-25.

3

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

6

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

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

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

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ASC committee amendments adopted March 4, 1999.

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

- 5 (1) Needs of the child;
- 6 (2) Standard of living and economic circumstances of each parent;
- 7 (3) All sources of income and assets of each parent;
- 8 (4) Earning ability of each parent, including educational
9 background, training, employment skills, work experience, custodial
10 responsibility for children including the cost of providing child care
11 and the length of time and cost of each parent to obtain training or
12 experience for appropriate employment;
- 13 (5) Need and capacity of the child for education, including higher
14 education;
- 15 (6) Age and health of the child and each parent;
- 16 (7) Income, assets and earning ability of the child;
- 17 (8) Responsibility of the parents for the court-ordered support of
18 others;
- 19 (9) Reasonable debts and liabilities of each child and parent; and
20 (10) Any other factors the court may deem relevant.

21 b. In all actions brought for divorce, divorce from bed and board,
22 or nullity the court may award one or more of the following types of
23 alimony ¹: ¹ permanent alimony; **[or]** rehabilitative alimony; limited
24 duration alimony or reimbursement alimony **[or both]** to either party**],**
25 and in**].** In so doing the court shall consider, but not be limited to, the
26 following factors:

- 27 (1) The actual need and ability of the parties to pay;
- 28 (2) The duration of the marriage;
- 29 (3) The age, physical and emotional health of the parties;
- 30 (4) The standard of living established in the marriage and the
31 likelihood that each party can maintain a reasonably comparable
32 standard of living;
- 33 (5) The earning capacities, educational levels, vocational skills, and
34 employability of the parties;
- 35 (6) The length of absence from the job market ¹**[and custodial**
36 **responsibilities for children]** ¹ of the party seeking maintenance;
- 37 (7) ¹ The parental responsibilities for the children;
- 38 **(8)** ¹ The time and expense necessary to acquire sufficient education
39 or training to enable the party seeking maintenance to find appropriate
40 employment, the availability of the training and employment, and the
41 opportunity for future acquisitions of capital assets and income;
- 42 ¹**[(8)] (9)** ¹ The history of the financial or non-financial
43 contributions to the marriage by each party including contributions to
44 the care and education of the children and interruption of personal
45 careers or educational opportunities;
- 46 ¹**[(9)] (10)** ¹ The equitable distribution of property ordered and any

1 payouts on equitable distribution, directly or indirectly, out of current
2 income, to the extent this consideration is reasonable, just and fair;

3 **[and]**

4 ¹**[(10)] (11)**¹ The income available to either party through
5 investment of any assets held by that party;

6 ¹**[(11)] (12)**¹ The tax treatment and consequences to both parties
7 of any alimony award, including the designation of all or a portion of
8 the payment as a non-taxable payment; and

9 ¹**[(12)] (13)**¹ Any other factors which the court may deem relevant.

10 When a share of a retirement benefit is treated as an asset for
11 purposes of equitable distribution, the court shall not consider income
12 generated thereafter by that share for purposes of determining
13 alimony.

14 c. In any case in which there is a request for an award of
15 **[rehabilitative or]** permanent alimony, the court shall consider and
16 make specific findings on the evidence about the above factors. If the
17 court determines that an award of permanent alimony is not warranted,
18 the court shall make specific findings on the evidence setting out the
19 reasons therefor. The court shall then consider whether alimony is
20 appropriate for any or all of the following: (1) limited duration; (2)
21 rehabilitative; (3) reimbursement. In so doing, the court shall consider
22 and make specific findings on the evidence about factors set forth
23 above. The court shall not award limited duration alimony as a
24 substitute for permanent alimony in those cases where permanent
25 alimony would otherwise be awarded.

26 An award of alimony for a limited duration may be modified based
27 either upon changed circumstances, or upon the nonoccurrence of
28 circumstances that the court found would occur at the time of the
29 award. The court may modify the amount of such an award, but shall
30 not modify the length of the term except in unusual circumstances.

31 In determining the length of the term, the court shall consider the
32 length of time it would reasonably take for the recipient to improve his
33 or her earning capacity to a level where limited duration alimony is no
34 longer appropriate.

35 d. Rehabilitative alimony shall be awarded based upon a plan in
36 which the payee shows the scope of rehabilitation, the steps to be
37 taken, and the time frame, including a period of employment during
38 which rehabilitation will occur. An award of rehabilitative alimony
39 may be modified based either upon changed circumstances, or upon
40 the nonoccurrence of circumstances that the court found would occur
41 at the time of the rehabilitative award.

42 This section is not intended to preclude a court from modifying
43 permanent alimony awards based upon the law.

44 e. Reimbursement alimony may be awarded under circumstances
45 in which one party supported the other through an advanced
46 education, anticipating participation in the fruits of the earning

1 capacity generated by that education. ¹【Such an award may be made
2 separately or in conjunction with limited duration or rehabilitative
3 alimony only.】¹

4 f. ¹Nothing in this section shall be construed to limit the court's
5 authority to award permanent alimony, limited duration alimony,
6 rehabilitative alimony or reimbursement alimony, separately or in any
7 combination, as warranted by the circumstances of the parties and the
8 nature of the case.

9 g. ¹In all actions for divorce other than those where judgment is
10 granted solely on the ground of separation the court may consider also
11 the proofs made in establishing such ground in determining an amount
12 of alimony or maintenance that is fit, reasonable and just. In all
13 actions for divorce or divorce from bed and board where judgment is
14 granted on the ground of institutionalization for mental illness the
15 court may consider the possible burden upon the taxpayers of the State
16 as well as the ability of the party to pay in determining an amount of
17 maintenance to be awarded.

18 ¹【g.】h.¹ In all actions where a judgment of divorce or divorce from
19 bed and board is entered the court may make such award or awards to
20 the parties, in addition to alimony and maintenance, to effectuate an
21 equitable distribution of the property, both real and personal, which
22 was legally and beneficially acquired by them or either of them during
23 the marriage. However, all such property, real, personal or otherwise,
24 legally or beneficially acquired during the marriage by either party by
25 way of gift, devise, or intestate succession shall not be subject to
26 equitable distribution, except that interspousal gifts shall be subject to
27 equitable distribution.

28 (cf: P.L.1997, c.302, s.1)

29

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

31 2A:34-25. If after the judgment of divorce a former spouse shall
32 remarry, permanent and limited duration alimony shall terminate as of
33 the date of remarriage except that any arrearages that have accrued
34 prior to the date of remarriage shall not be vacated or annulled. ¹A
35 former spouse who remarries shall promptly so inform the spouse
36 paying permanent or limited duration alimony as well as the collecting
37 agency, if any. The court may order such alimony recipient who fails
38 to comply with the notification provision of this act to pay any
39 reasonable attorney fees and court costs incurred by the recipient's
40 former spouse as a result of such non-compliance.¹

41 The remarriage of a former spouse receiving rehabilitative or
42 reimbursement alimony shall not be cause for termination of 【the
43 rehabilitative 】 such alimony by the court unless the court finds that
44 the circumstances upon which the award was based have not occurred
45 or unless the payer spouse demonstrates an agreement or good cause
46 to the contrary.

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

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

8 (cf: P.L.1997, c.301, s.1)

9

10 3. This act shall take effect immediately.

Office of the Governor
NEWS RELEASE

PO BOX 004
TRENTON, NJ 08625

CONTACT: Gene Herman
609-777-2600

RELEASE: September 13, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

S-54, sponsored by Senators Walter J. Kavanaugh (R- Morris/Somerset) and Robert J. Martin (R- Essex/Morris/Passaic) and Assembly Members Joel M. Weingarten (R-Essex/Union) and Neil M. Cohen (D-Union), amends existing matrimonial laws by providing for limited duration alimony and reimbursement alimony and expanding the factors that a court may consider when determining whether alimony is appropriate. Under previous law, the courts could award only two types of alimony: (1) permanent alimony, which is intended to compensate a spouse for economic dependency created by the marriage; and (2) rehabilitative alimony, which is intended for specific educational or training purposes and is of short duration.

The bill authorizes the court to award two additional types of alimony: (1) limited duration, which would be awarded where economic assistance is necessary for a limited time; and (2) reimbursement alimony, which will be awarded to compensate the spouse who supported the other spouse while her or she obtained an advanced education while anticipating sharing the earning capacity generated by the education. Limited duration alimony, like permanent alimony under previous law, will terminate upon the remarriage of the receiving spouse. Reimbursement alimony, like rehabilitative alimony under previous law, will not terminate upon remarriage.

The bill continues to grant the court the authority to award permanent alimony, limited duration alimony, rehabilitative alimony or reimbursement alimony separately, or in any combination, as warranted by the specific circumstances of the parties and the nature of the case. The bill further amends the law to establish two new factors to consider when determining whether any type of alimony is appropriate: (1) the income available to either party through investment of any assets; and (2) the tax treatment consequences to both parties of any alimony awarded.

S-1092, sponsored by Senator Gerald Cardinale (R-Bergen) and Assembly Members John E. Rooney (R-Bergen) and Paul Kramer (R- Mercer/Middlesex), amends the Special Emergency Appropriations Act to allow municipalities to adopt an ordinance authorizing a special emergency appropriation for the preparation of a sanitary or storm sewer system map. The purpose of this bill is to permit municipalities to make a multi-year appropriation for sanitary and storm sewer mapping, rather than having mapping costs appropriated and paid for in one budget year, as previous law required. The multi-year appropriation will help municipalities mapping their sanitary and storm sewer systems to avoid a spike in their budgets due to the high cost of system mapping. Mapping sanitary and storm sewer systems is necessary to effectively manage non-point sources of pollution.