

# 2A:34-23

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2005 **CHAPTER:** 171

**NJSA:** 2A:34-23 (Concerns the continuation of child support under certain circumstances)

**BILL NO:** A1925 (Substituted for S614)

**SPONSOR(S):** Weinberg and others

**DATE INTRODUCED:** January 26, 2004

**COMMITTEE:** **ASSEMBLY:** Judiciary; Family, Women and Children's Services  
**SENATE:** Judiciary

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** June 30, 2005

**SENATE:** June 27, 2005

**DATE OF APPROVAL:** August 5, 2005

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) (2<sup>nd</sup> reprint enacted)

### A1925

[SPONSOR'S STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** Yes [2-19-2004 \(Judiciary\)](#)  
[9-30-2004 \(F,W & CS\)](#)

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

[LEGISLATIVE FISCAL ESTIMATE:](#) [Yes](#)

### S614

[SPONSOR'S STATEMENT:](#) (Begins on page 7 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

**SENATE:** [Yes](#)

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

IS 8/31/07

P.L. 2005, CHAPTER 171, *approved August 5, 2005*  
Assembly, No. 1925 (*Second Reprint*)

1 **AN ACT** concerning the continuation of child support under certain  
2 circumstances and amending N.J.S.2A:34-23, N.J.S.2A:34-24 and  
3 P.L.1983, c.17.

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

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

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

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly AFW committee amendments adopted September 30, 2004.

<sup>2</sup> Senate SJU committee amendments adopted June 9, 2005.

1 same time that a decision is rendered on the other issue then before the  
2 court and shall consider the factors set forth in the court rule on  
3 counsel fees, the financial circumstances of the parties, and the good  
4 or bad faith of either party.

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

9 (1) Needs of the child;

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

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

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

17 (5) Need and capacity of the child for education, including higher  
18 education;

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

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

21 (8) Responsibility of the parents for the court-ordered support of  
22 others;

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

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

25 The obligation to pay support for a child who has <sup>1</sup>[reached the  
26 age of 18 or who is still enrolled in high school, whichever is later,  
27 shall not terminate on the grounds of the child's age or on the basis of  
28 any other law if the child suffers from a mental or physical incapacity  
29 which began prior to the age of 18 or while the child was still enrolled  
30 in high school, whichever is later, and which causes the child to be  
31 financially dependent on a parent] not been emancipated by the court  
32 shall not terminate solely on the basis of the child's age if the child  
33 suffers from a severe mental or physical incapacity that causes the  
34 child to be financially dependent on a parent. The obligation to pay  
35 support for that child shall continue until the court finds that the child  
36 is relieved of the incapacity or is no longer financially dependent on  
37 the parent<sup>1</sup>. However, in assessing the financial obligation of the  
38 parent, the court shall consider <sup>1</sup>[such], in addition to the factors  
39 enumerated in this section, the<sup>1</sup> child's eligibility for public benefits  
40 and services for people with disabilities and <sup>1</sup>[shall] may<sup>1</sup> make such  
41 orders, including an order involving the creation of a trust, as are  
42 necessary to <sup>1</sup>[ensure eligibility. Nothing in this act shall be construed  
43 to change the definition of "legally responsible relative" as the term is  
44 used in Title 30 of the New Jersey Statutes] promote the well-being  
45 of the child.

46 As used in this section "severe mental or physical incapacity" shall

1 not include a child's abuse of, or addiction to, alcohol or controlled  
2 substances<sup>1</sup>.

3 b. In all actions brought for divorce, divorce from bed and board,  
4 or nullity the court may award one or more of the following types of  
5 alimony: permanent alimony; rehabilitative alimony; limited duration  
6 alimony or reimbursement alimony to either party. In so doing the  
7 court shall consider, but not be limited to, the following factors:

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

9 (2) The duration of the marriage;

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

11 (4) The standard of living established in the marriage and the  
12 likelihood that each party can maintain a reasonably comparable  
13 standard of living;

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

16 (6) The length of absence from the job market of the party seeking  
17 maintenance;

18 (7) The parental responsibilities for the children;

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

23 (9) The history of the financial or non-financial contributions to the  
24 marriage by each party including contributions to the care and  
25 education of the children and interruption of personal careers or  
26 educational opportunities;

27 (10) The equitable distribution of property ordered and any payouts  
28 on equitable distribution, directly or indirectly, out of current income,  
29 to the extent this consideration is reasonable, just and fair;

30 (11) The income available to either party through investment of any  
31 assets held by that party;

32 (12) The tax treatment and consequences to both parties of any  
33 alimony award, including the designation of all or a portion of the  
34 payment as a non-taxable payment; and

35 (13) Any other factors which the court may deem relevant.

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

40 c. In any case in which there is a request for an award of permanent  
41 alimony, the court shall consider and make specific findings on the  
42 evidence about the above factors. If the court determines that an  
43 award of permanent alimony is not warranted, the court shall make  
44 specific findings on the evidence setting out the reasons therefor. The  
45 court shall then consider whether alimony is appropriate for any or all  
46 of the following: (1) limited duration; (2) rehabilitative; (3)

1 reimbursement. In so doing, the court shall consider and make specific  
2 findings on the evidence about factors set forth above. The court shall  
3 not award limited duration alimony as a substitute for permanent  
4 alimony in those cases where permanent alimony would otherwise be  
5 awarded.

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

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

15 d. Rehabilitative alimony shall be awarded based upon a plan in  
16 which the payee shows the scope of rehabilitation, the steps to be  
17 taken, and the time frame, including a period of employment during  
18 which rehabilitation will occur. An award of rehabilitative alimony  
19 may be modified based either upon changed circumstances, or upon  
20 the nonoccurrence of circumstances that the court found would occur  
21 at the time of the rehabilitative award.

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

24 e. Reimbursement alimony may be awarded under circumstances  
25 in which one party supported the other through an advanced  
26 education, anticipating participation in the fruits of the earning  
27 capacity generated by that education.

28 f. Nothing in this section shall be construed to limit the court's  
29 authority to award permanent alimony, limited duration alimony,  
30 rehabilitative alimony or reimbursement alimony, separately or in any  
31 combination, as warranted by the circumstances of the parties and the  
32 nature of the case.

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

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

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

6 (cf: P.L.1999, c.199, s.1).

7

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

9 2A:34-24. If an obligor shall abandon an obligee or separate from  
10 the obligee and refuse or neglect to maintain and provide for the  
11 obligee, the court may order suitable support and maintenance to be  
12 paid and provided by the obligor for the obligee and their children in  
13 the manner provided in N.J.S.2A:34-23, as applicable. If the obligor  
14 fails to comply with the order of the court, entered in New Jersey or  
15 another jurisdiction, the court may impose a lien against the real and  
16 personal property of the obligor who lives in or owns property in New  
17 Jersey to secure payment of the overdue support and for such time as  
18 the nature of the case and circumstances of the parties render suitable  
19 and proper; such lien shall have priority from the time of the proper  
20 filing or recording.

21 If the circumstances warrant, for such overdue support or  
22 maintenance, upon reasonable notice, the court may compel the  
23 obligor to give reasonable security, post a bond, or other guarantee for  
24 such overdue support and for present and future support and  
25 maintenance and may, from time to time, make further orders touching  
26 the same as shall be just and equitable and enforce such judgment and  
27 orders in the manner provided in N.J.S.2A:34-23.

28 (cf: P.L.1987, c.109, s.1)

29

30 3. Section 16 of P.L.1983, c.17 (C.9:17-53) is amended to read as  
31 follows:

32 16. a. The judgment or order of the court or a Certificate of  
33 Parentage determining the existence or nonexistence of the parent and  
34 child relationship is determinative for all purposes.

35 b. If the judgment or order of the court is at variance with the  
36 child's birth certificate, the court shall order that an amendment to the  
37 original birth record be made under section 22 of P.L.1983, c.17  
38 (C.9:17-59).

39 c. The judgment or order may contain any other provision directed  
40 against the appropriate party to the proceeding concerning the duty of  
41 support, the custody and guardianship of the child, parenting time  
42 privileges with the child, the furnishing of bond or other security for  
43 the payment of the judgment, the repayment of any public assistance  
44 grant, or any other matter in the best interests of the child. The  
45 judgment or order may direct the father to pay the reasonable  
46 expenses of the mother's pregnancy and postpartum disability,

1 including repayment to an agency which provided public assistance  
2 funds for those expenses. Bills for pregnancy, childbirth and blood or  
3 genetic testing are admissible as evidence without requiring third party  
4 foundation testimony, and shall constitute prima facie evidence of the  
5 amounts incurred for these services or for testing on behalf of the  
6 child.

7 d. Support judgments or orders ordinarily shall be for periodic  
8 payments, which may vary in amount. In the best interests of the  
9 child, the purchase of an annuity may be ordered in lieu of periodic  
10 payments of support. The court may limit a parent's liability for past  
11 support of the child to the proportion of the expenses already incurred  
12 that the court deems just.

13 e. In determining the amount to be paid by a parent for support of  
14 the child and the period during which the duty of support is owed, the  
15 court shall apply the child support guidelines as defined in section 3 of  
16 P.L.1998, c.1 (C.2A:17-56.52). In cases in which the court finds that  
17 a deviation from these guidelines is appropriate, the court shall  
18 consider all relevant facts when determining the amount of support,  
19 including the:

- 20 (1) Needs of the child;
- 21 (2) Standard of living and economic circumstances of each parent;
- 22 (3) Income and assets of each parent, including any public  
23 assistance grant received by a parent;
- 24 (4) Earning ability of each parent, including educational  
25 background, training, employment skills, work experience, custodial  
26 responsibility for children and the length of time and cost for each  
27 parent to obtain training or experience for appropriate employment;
- 28 (5) Need and capacity of the child for education, including higher  
29 education;
- 30 (6) Age and health of the child and each parent;
- 31 (7) Income, assets and earning ability of the child;
- 32 (8) Responsibility of the parents for the support of others; and
- 33 (9) Debts and liabilities of each child and parent.

34 The factors set forth herein are not intended to be exhaustive. The  
35 court may consider such other factors as may be appropriate under the  
36 circumstances.

37 The obligation to pay support for a child who has <sup>2</sup>[reached the  
38 age of 18 or who is still enrolled in high school, whichever is later,  
39 shall not terminate on the grounds of the child's age or on the basis of  
40 any other law if the child suffers from a mental or physical incapacity  
41 which began prior to the age of 18 or while the child was enrolled in  
42 high school, whichever is later, and which causes the child to be  
43 financially dependent on a parent] not been emancipated by the court  
44 shall not terminate solely on the basis of the child's age if the child  
45 suffers from a severe mental or physical incapacity that causes the  
46 child to be financially dependent on a parent. The obligation to pay



1 support for that child shall continue until the court finds that the child  
2 is relieved of the incapacity or is no longer financially dependent on  
3 the parent<sup>2</sup> . However, in assessing the financial obligation of <sup>2</sup>[a]  
4 the<sup>2</sup> parent, the court shall consider <sup>2</sup>[such], in addition to the factors  
5 enumerated in this section, the<sup>2</sup> child's eligibility for public benefits  
6 and services for people with disabilities <sup>2</sup>[:]<sup>2</sup> and <sup>2</sup>[shall] may<sup>2</sup> make  
7 such orders, including an order involving the creation of a trust, as are  
8 necessary to <sup>2</sup>[ensure eligibility. Nothing in this act shall be construed  
9 to change the definition of "legally responsible relative" as the term is  
10 used in Title 30 of the New Jersey Statutes] promote the well-being  
11 of the child.

12 As used in this section "severe mental or physical incapacity" shall  
13 not include a child's abuse of , or addiction to, alcohol or controlled  
14 substances<sup>2</sup> .

15 f. Upon a motion by a party, the court shall enter a temporary  
16 support order pending a judicial determination of parentage if there is  
17 clear and convincing evidence of paternity supported by blood or  
18 genetic test results or other evidence.

19 (cf: P.L.1998, c.1, s.41)

20

21 4. This act shall take effect immediately.

22

23

24

25

26 May require child support to continue past emancipation if the child  
27 has a severe mental or physical incapacity which causes the child to be  
28 financially dependent on a parent.

# ASSEMBLY, No. 1925

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED JANUARY 26, 2004

**Sponsored by:**

**Assemblywoman LORETTA WEINBERG**

**District 37 (Bergen)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**SYNOPSIS**

Requires child support to continue past the age of majority if the child has a mental or physical disability which causes the child to be financially dependent on a parent.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/20/2004)**

1 AN ACT concerning the continuation of child support under certain  
2 circumstances and amending N.J.S.2A:34-23, N.J.S.2A:34-24 and  
3 P.L.1983, c.17.

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

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

31 The court may order one party to pay a retainer on behalf of the  
32 other for expert and legal services when the respective financial  
33 circumstances of the parties make the award reasonable and just. In  
34 considering an application, the court shall review the financial capacity  
35 of each party to conduct the litigation and the criteria for award of  
36 counsel fees that are then pertinent as set forth by court rule.  
37 Whenever any other application is made to a court which includes an  
38 application for pendente lite or final award of counsel fees, the court  
39 shall determine the appropriate award for counsel fees, if any, at the  
40 same time that a decision is rendered on the other issue then before the  
41 court and shall consider the factors set forth in the court rule on  
42 counsel fees, the financial circumstances of the parties, and the good  
43 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.**

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 The obligation to pay support for a child who has reached the age  
22 of 18 or who is still enrolled in high school, whichever is later, shall  
23 not terminate on the grounds of the child's age or on the basis of any  
24 other law if the child suffers from a mental or physical incapacity  
25 which began prior to the age of 18 or while the child was still enrolled  
26 in high school, whichever is later, and which causes the child to be  
27 financially dependent on a parent. However, in assessing the financial  
28 obligation of a parent, the court shall consider such child's eligibility  
29 for public benefits and services for people with disabilities and shall  
30 make such orders, including an order involving the creation of a trust,  
31 as are necessary to ensure eligibility. Nothing in this act shall be  
32 construed to change the definition of "legally responsible relative" as  
33 the term is used in Title 30 of the New Jersey Statutes.

34 b. In all actions brought for divorce, divorce from bed and board,  
35 or nullity the court may award one or more of the following types of  
36 alimony: permanent alimony; rehabilitative alimony; limited duration  
37 alimony or reimbursement alimony to either party. In so doing the  
38 court shall consider, but not be limited to, the following factors:

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

40 (2) The duration of the marriage;

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

42 (4) The standard of living established in the marriage and the  
43 likelihood that each party can maintain a reasonably comparable  
44 standard of living;

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

1 (6) The length of absence from the job market of the party seeking  
2 maintenance;

3 (7) The parental responsibilities for the children;

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

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

12 (10) The equitable distribution of property ordered and any payouts  
13 on equitable distribution, directly or indirectly, out of current income,  
14 to the extent this consideration is reasonable, just and fair;

15 (11) The income available to either party through investment of any  
16 assets held by that party;

17 (12) The tax treatment and consequences to both parties of any  
18 alimony award, including the designation of all or a portion of the  
19 payment as a non-taxable payment; and

20 (13) Any other factors which the court may deem relevant.

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

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

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

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

46 d. Rehabilitative alimony shall be awarded based upon a plan in

1 which the payee shows the scope of rehabilitation, the steps to be  
2 taken, and the time frame, including a period of employment during  
3 which rehabilitation will occur. An award of rehabilitative alimony  
4 may be modified based either upon changed circumstances, or upon  
5 the nonoccurrence of circumstances that the court found would occur  
6 at the time of the rehabilitative award.

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

9 e. Reimbursement alimony may be awarded under circumstances  
10 in which one party supported the other through an advanced  
11 education, anticipating participation in the fruits of the earning  
12 capacity generated by that education.

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

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

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

37 (cf: P.L.1999, c.199, s.1).

38

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

40 2A:34-24. If an obligor shall abandon an obligee or separate from  
41 the obligee and refuse or neglect to maintain and provide for the  
42 obligee, the court may order suitable support and maintenance to be  
43 paid and provided by the obligor for the obligee and their children in  
44 the manner provided in N.J.S.2A:34-23, as applicable. If the obligor  
45 fails to comply with the order of the court, entered in New Jersey or  
46 another jurisdiction, the court may impose a lien against the real and

1 personal property of the obligor who lives in or owns property in New  
2 Jersey to secure payment of the overdue support and for such time as  
3 the nature of the case and circumstances of the parties render suitable  
4 and proper; such lien shall have priority from the time of the proper  
5 filing or recording.

6 If the circumstances warrant, for such overdue support or  
7 maintenance, upon reasonable notice, the court may compel the  
8 obligor to give reasonable security, post a bond, or other guarantee for  
9 such overdue support and for present and future support and  
10 maintenance and may, from time to time, make further orders touching  
11 the same as shall be just and equitable and enforce such judgment and  
12 orders in the manner provided in N.J.S.2A:34-23.

13 (cf: P.L.1987, c.109, s.1)

14

15 3. Section 16 of P.L.1983, c.17 (C.9:17-53) is amended to read as  
16 follows:

17 16. a. The judgment or order of the court or a Certificate of  
18 Parentage determining the existence or nonexistence of the parent and  
19 child relationship is determinative for all purposes.

20 b. If the judgment or order of the court is at variance with the  
21 child's birth certificate, the court shall order that an amendment to the  
22 original birth record be made under section 22 of P.L.1983, c.17  
23 (C.9:17-59).

24 c. The judgment or order may contain any other provision directed  
25 against the appropriate party to the proceeding concerning the duty of  
26 support, the custody and guardianship of the child, parenting time  
27 privileges with the child, the furnishing of bond or other security for  
28 the payment of the judgment, the repayment of any public assistance  
29 grant, or any other matter in the best interests of the child. The  
30 judgment or order may direct the father to pay the reasonable  
31 expenses of the mother's pregnancy and postpartum disability,  
32 including repayment to an agency which provided public assistance  
33 funds for those expenses. Bills for pregnancy, childbirth and blood or  
34 genetic testing are admissible as evidence without requiring third party  
35 foundation testimony, and shall constitute prima facie evidence of the  
36 amounts incurred for these services or for testing on behalf of the  
37 child.

38 d. Support judgments or orders ordinarily shall be for periodic  
39 payments, which may vary in amount. In the best interests of the  
40 child, the purchase of an annuity may be ordered in lieu of periodic  
41 payments of support. The court may limit a parent's liability for past  
42 support of the child to the proportion of the expenses already incurred  
43 that the court deems just.

44 e. In determining the amount to be paid by a parent for support of  
45 the child and the period during which the duty of support is owed, the  
46 court shall apply the child support guidelines as defined in section 3 of

1 P.L.1998, c.1 (C.2A:17-56.52). In cases in which the court finds that  
2 a deviation from these guidelines is appropriate, the court shall  
3 consider all relevant facts when determining the amount of support,  
4 including the:

- 5 (1) Needs of the child;
- 6 (2) Standard of living and economic circumstances of each parent;
- 7 (3) Income and assets of each parent, including any public  
8 assistance grant received by a parent;
- 9 (4) Earning ability of each parent, including educational  
10 background, training, employment skills, work experience, custodial  
11 responsibility for children and the length of time and cost for each  
12 parent to obtain training or 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 support of others; and
- 18 (9) Debts and liabilities of each child and parent.

19 The factors set forth herein are not intended to be exhaustive. The  
20 court may consider such other factors as may be appropriate under the  
21 circumstances.

22 The obligation to pay support for a child who has reached the age  
23 of 18 or who is still enrolled in high school, whichever is later, shall  
24 not terminate on the grounds of the child's age or on the basis of any  
25 other law if the child suffers from a mental or physical incapacity  
26 which began prior to the age of 18 or while the child was enrolled in  
27 high school, whichever is later, and which causes the child to be  
28 financially dependent on a parent. However, in assessing the financial  
29 obligation of a parent, the court shall consider such child's eligibility  
30 for public benefits and services for people with disabilities; and shall  
31 make such orders, including an order involving the creation of a trust,  
32 as are necessary to ensure eligibility. Nothing in this act shall be  
33 construed to change the definition of "legally responsible relative" as  
34 the term is used in Title 30 of the New Jersey Statutes.

35 f. Upon a motion by a party, the court shall enter a temporary  
36 support order pending a judicial determination of parentage if there is  
37 clear and convincing evidence of paternity supported by blood or  
38 genetic test results or other evidence.

39 (cf: P.L.1998, c.1, s.41)

40

41 4. This act shall take effect immediately.

42

43

#### STATEMENT

44

45 This bill requires that child support continue beyond the age of  
46 majority if the child suffers from a mental or physical incapacity which



**A1925 WEINBERG, COHEN**

8

1 causes him to be financially dependent on the parent. This bill also  
2 expands the protection to children who have reached the age of 18,  
3 but who are still under the care of a parent because they are enrolled  
4 in high school.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1925**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 19, 2004

The Assembly Judiciary Committee reports favorably Assembly Bill No. 1925.

This bill would provide that a parent's obligation to pay child support may continue beyond the time the child reaches the age of 18 under certain circumstances. The bill provides that when the child reaches the age of 18 or is still enrolled in high school, whichever is later, child support shall not terminate on the grounds of age or any other law provided that the child suffers from a mental or physical incapacity which began prior to the age of 18 or while the child was still enrolled in high school and which causes that child to be financially dependent on the parent.

The bill also provides that the court shall consider, in assessing the parent's financial obligation, the child's eligibility for public benefits and services for people for disabilities and the court shall make any necessary orders to ensure such eligibility, including an order creating a trust. In addition, the bill states that its provisions shall not be construed to change the definition of "legally responsible relative" as the term is used throughout Title 30 of the New Jersey Statutes, concerning institutionalization.

ASSEMBLY FAMILY, WOMEN AND CHILDREN'S SERVICES  
COMMITTEE

STATEMENT TO

**ASSEMBLY, No. 1925**

with committee amendments

**STATE OF NEW JERSEY**

DATED: SEPTEMBER 30, 2004

The Assembly Family, Women and Children's Services Committee reports favorably and with committee amendments Assembly Bill No. 1925.

As amended by the committee, this bill provides that a parent's obligation to pay child support for a child who is not emancipated by the court shall not terminate solely on the basis of the child's age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent. As used in the bill, "severe mental or physical incapacity" shall not include a child's addiction to, or abuse of, alcohol or controlled substances.

The bill further stipulates that the parent's obligation to pay support shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent.

The bill also provides that the court shall consider, in assessing the parent's financial obligation, the child's eligibility for public benefits and services for people with disabilities. The court may make any necessary orders to promote the child's well-being, including an order involving the creation of a trust.

COMMITTEE AMENDMENTS:

The committee amendments:

- ! delete a provision stipulating that a parent's obligation to pay support for a child who is 18 or is enrolled in high school, whichever is later, shall not terminate on the grounds of the child's age or on the basis of any other law if the child suffers from a mental or physical incapacity that began prior to the age of 18 or while the child was enrolled in high school, whichever is later, and that causes the child to be financially dependent on the parent;
- ! provide, instead, that the obligation to pay support for a child who has not been emancipated by the court and suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent shall continue until the

court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent;

- ! delete a provision requiring the court to make any necessary orders to ensure the child's eligibility for public benefits and services for people with disabilities, when assessing the financial obligation of the parent, and provide, instead, that the court may make any orders necessary to promote the child's well-being, when assessing the financial obligation of the parent; and
- ! clarify that the term "severe mental or physical incapacity" shall not include a child's addiction to, or abuse of, alcohol or controlled substances.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

[First Reprint]

## ASSEMBLY, No. 1925

with committee amendments

# STATE OF NEW JERSEY

DATED: JUNE 9, 2005

The Senate Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 1925 (1R).

This bill amends N.J.S.A. 2A:34-23 and provides that a parent's obligation to pay child support for a child who is not emancipated by the court shall not terminate solely on the basis of the child's age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent. As used in the bill, "severe mental or physical incapacity" shall not include a child's addiction to, or abuse of, alcohol or controlled substances. The bill further stipulates that the parent's obligation to pay support shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent.

The bill also provides that the court shall consider, in assessing the parent's financial obligation, the child's eligibility for public benefits and services for people with disabilities in addition to the other factors set forth in N.J.S.A. 2A:34-23. The court may make any necessary orders to promote the child's well-being, including an order involving the creation of a trust.

Section 2 amends N.J.S.A. 2A:34-24 to add the phrase "in the manner provided in N.J.S.A. 2A:34-23, as applicable" in the first paragraph.

Section 3 amends N.J.S.A. 9:17-53 concerning certificates of parentage. The committee amended section 3 of the bill to make the language in this section consistent with the language in section 1 of the bill concerning if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent.

As amended, this bill is identical to Senate, No. 614 (1R).

# LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 1925

STATE OF NEW JERSEY

211th LEGISLATURE

DATED: JANUARY 14, 2005

## SUMMARY

- Synopsis:** Requires child support to continue past the age of majority if the child has a mental or physical disability which causes the child to be financially dependent on a parent.
- Type of Impact:** Possible expenditure increase to State and county governments.
- Agencies Affected:** Department of Human Services; the Judiciary; and county welfare and county probation departments.

### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b>Years 1 - 3</b>
<b>State Cost</b>	Unable to determine.
<b>Local Cost</b>	Unable to determine.

- ! Costs cannot be determined as information on the mental or physical disability of a children receiving child support is not collected.

## BILL DESCRIPTION

Assembly Bill No. 1925 [1R] of 2004 provides that a parent's obligation to pay child support for a child who is not emancipated by the court shall not terminate solely on the basis of the child's age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent, taking into account the child's eligibility for public benefits and services for people with disabilities.

## FISCAL ANALYSIS

### EXECUTIVE BRANCH

None received.

***OFFICE OF LEGISLATIVE SERVICES***

The Office of Legislative Services is not able to estimate whether the legislation will entail any additional administrative costs.

No information is routinely collected as to whether the more than 420,000 open child support enforcement cases involve children with a severe mental or physical disability that began prior to the age of 18 or while the child was enrolled in high school and cause the child to be financially dependent on a parent. All new and existing child support cases would have to be reviewed, at some point, to make this determination. Also, the amount of additional time it may take the court to make such a determination is not known.

It is noted that in federal FY 2003, State/county administrative expenditures for child support enforcement related activities exceeded \$170.2 million (gross).

Section: *Human Services*

Analyst: *Jay Hershberg*  
*Principal Fiscal Analyst*

Approved: *David J. Rosen*  
*Legislative Budget and Finance Officer*

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

# SENATE, No. 614

## STATE OF NEW JERSEY 211th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Senator DIANE ALLEN**

**District 7 (Burlington and Camden)**

**Senator JOSEPH F. VITALE**

**District 19 (Middlesex)**

**SYNOPSIS**

Requires child support to continue past the age of majority if the child has a mental or physical disability which causes the child to be financially dependent on a parent.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.





1 AN ACT concerning the continuation of child support under certain  
2 circumstances and amending N.J.S.2A:34-23, N.J.S.2A:34-24 and  
3 P.L.1983, c.17.

4

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

7

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

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

31 The court may order one party to pay a retainer on behalf of the  
32 other for expert and legal services when the respective financial  
33 circumstances of the parties make the award reasonable and just. In  
34 considering an application, the court shall review the financial capacity  
35 of each party to conduct the litigation and the criteria for award of  
36 counsel fees that are then pertinent as set forth by court rule.  
37 Whenever any other application is made to a court which includes an  
38 application for pendente lite or final award of counsel fees, the court  
39 shall determine the appropriate award for counsel fees, if any, at the  
40 same time that a decision is rendered on the other issue then before the  
41 court and shall consider the factors set forth in the court rule on  
42 counsel fees, the financial circumstances of the parties, and the good  
43 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.**

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 The obligation to pay support for a child who has reached the age  
22 of 18 or who is still enrolled in high school, whichever is later, shall  
23 not terminate on the grounds of the child's age or on the basis of any  
24 other law if the child suffers from a mental or physical incapacity  
25 which began prior to the age of 18 or while the child was still enrolled  
26 in high school, whichever is later, and which causes the child to be  
27 financially dependent on a parent. However, in assessing the financial  
28 obligation of a parent, the court shall consider such child's eligibility  
29 for public benefits and services for people with disabilities and shall  
30 make such orders, including an order involving the creation of a trust,  
31 as are necessary to ensure eligibility. Nothing in this act shall be  
32 construed to change the definition of "legally responsible relative" as  
33 the term is used in Title 30 of the Revised Statutes.

34 b. In all actions brought for divorce, divorce from bed and board,  
35 or nullity the court may award one or more of the following types of  
36 alimony: permanent alimony; rehabilitative alimony; limited duration  
37 alimony or reimbursement alimony to either party. In so doing the  
38 court shall consider, but not be limited to, the following factors:

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

40 (2) The duration of the marriage;

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

42 (4) The standard of living established in the marriage and the  
43 likelihood that each party can maintain a reasonably comparable  
44 standard of living;

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

1 (6) The length of absence from the job market of the party seeking  
2 maintenance;

3 (7) The parental responsibilities for the children;

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

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

12 (10) The equitable distribution of property ordered and any  
13 payouts on equitable distribution, directly or indirectly, out of current  
14 income, to the extent this consideration is reasonable, just and fair;

15 (11) The income available to either party through investment of  
16 any assets held by that party;

17 (12) The tax treatment and consequences to both parties of any  
18 alimony award, including the designation of all or a portion of the  
19 payment as a non-taxable payment; and

20 (13) Any other factors which the court may deem relevant.

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

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

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

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

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

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

10 e. Reimbursement alimony may be awarded under circumstances  
11 in which one party supported the other through an advanced  
12 education, anticipating participation in the fruits of the earning  
13 capacity generated by that education.

14 f. Nothing in this section shall be construed to limit the court's  
15 authority to award permanent alimony, limited duration alimony,  
16 rehabilitative alimony or reimbursement alimony, separately or in any  
17 combination, as warranted by the circumstances of the parties and the  
18 nature of the case.

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

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

38 (cf: P.L.1999, c.199, s.1)

39  
40 2. N.J.S.2A:34-24 is amended to read as follows:

41 2A:34-24. If an obligor shall abandon an obligee or separate from  
42 the obligee and refuse or neglect to maintain and provide for the  
43 obligee, the court may order suitable support and maintenance to be  
44 paid and provided by the obligor for the obligee and their children in  
45 the manner provided in N.J.S.2A:34-23, as applicable. If the obligor  
46 fails to comply with the order of the court, entered in New Jersey or

1 another jurisdiction, the court may impose a lien against the real and  
2 personal property of the obligor who lives in or owns property in New  
3 Jersey to secure payment of the overdue support and for such time as  
4 the nature of the case and circumstances of the parties render suitable  
5 and proper; such lien shall have priority from the time of the proper  
6 filing or recording.

7 If the circumstances warrant, for such overdue support or  
8 maintenance, upon reasonable notice, the court may compel the  
9 obligor to give reasonable security, post a bond, or other guarantee for  
10 such overdue support and for present and future support and  
11 maintenance and may, from time to time, make further orders touching  
12 the same as shall be just and equitable and enforce such judgment and  
13 orders in the manner provided in N.J.S.2A:34-23.

14 (cf: P.L.1987, c.109, s.1)

15

16 3. Section 16 of P.L.1983, c.17 (C.9:17-53) is amended to read as  
17 follows:

18 16. a. The judgment or order of the court or a Certificate of  
19 Parentage determining the existence or nonexistence of the parent and  
20 child relationship is determinative for all purposes.

21 b. If the judgment or order of the court is at variance with the  
22 child's birth certificate, the court shall order that an amendment to the  
23 original birth record be made under section 22 of P.L.1983, c.17  
24 (C.9:17-59).

25 c. The judgment or order may contain any other provision directed  
26 against the appropriate party to the proceeding concerning the duty of  
27 support, the custody and guardianship of the child, parenting time  
28 privileges with the child, the furnishing of bond or other security for  
29 the payment of the judgment, the repayment of any public assistance  
30 grant, or any other matter in the best interests of the child. The  
31 judgment or order may direct the father to pay the reasonable expenses  
32 of the mother's pregnancy and postpartum disability, including  
33 repayment to an agency which provided public assistance funds for  
34 those expenses. Bills for pregnancy, childbirth and blood or genetic  
35 testing are admissible as evidence without requiring third party  
36 foundation testimony, and shall constitute prima facie evidence of the  
37 amounts incurred for these services or for testing on behalf of the  
38 child.

39 d. Support judgments or orders ordinarily shall be for periodic  
40 payments, which may vary in amount. In the best interests of the  
41 child, the purchase of an annuity may be ordered in lieu of periodic  
42 payments of support. The court may limit a parent's liability for past  
43 support of the child to the proportion of the expenses already incurred  
44 that the court deems just.

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

1 court shall apply the child support guidelines as defined in section 3 of  
2 P.L.1998, c.1 (C.2A:17-56.52). In cases in which the court finds that  
3 a deviation from these guidelines is appropriate, the court shall  
4 consider all relevant facts when determining the amount of support,  
5 including the:

- 6 (1) [~~needs~~] Needs of the child;
- 7 (2) [~~standard~~] Standard of living and economic circumstances of  
8 each parent;
- 9 (3) [~~income~~] Income and assets of each parent, including any  
10 public assistance grant received by a parent;
- 11 (4) Earning ability of each parent, including educational  
12 background, training, employment skills, work experience, custodial  
13 responsibility for children and the length of time and cost for each  
14 parent to obtain training or experience for appropriate employment;
- 15 (5) Need and capacity of the child for education, including higher  
16 education;
- 17 (6) [~~age~~] Age and health of the child and each parent;
- 18 (7) Income, assets and earning ability of the child;
- 19 (8) Responsibility of the parents for the support of others; and
- 20 (9) Debts and liabilities of each child and parent.

21 The factors set forth herein are not intended to be exhaustive. The  
22 court may consider such other factors as may be appropriate under the  
23 circumstances.

24 The obligation to pay support for a child who has reached the age  
25 of 18 or who is still enrolled in high school, whichever is later, shall  
26 not terminate on the grounds of the child's age or on the basis of any  
27 other law if the child suffers from a mental or physical incapacity  
28 which began prior to the age of 18 or while the child was enrolled in  
29 high school, whichever is later, and which causes the child to be  
30 financially dependent on a parent. However, in assessing the financial  
31 obligation of a parent, the court shall consider such child's eligibility  
32 for public benefits and services for people with disabilities; and shall  
33 make such orders, including an order involving the creation of a trust,  
34 as are necessary to ensure eligibility. Nothing in this act shall be  
35 construed to change the definition of "legally responsible relative" as  
36 the term is used in Title 30 of the Revised Statutes.

37 f. Upon a motion by a party, the court shall enter a temporary  
38 support order pending a judicial determination of parentage if there is  
39 clear and convincing evidence of paternity supported by blood or  
40 genetic test results or other evidence.

41 (cf: P.L.1998, c.1, s.41)

42

43 4. This act shall take effect immediately.

44

45

STATEMENT

46

**S614 ALLEN, VITALE**

8

1       This bill provides that the obligation to pay child support for a child  
2 who has reached the age of 18 or who is still enrolled in high school,  
3 whichever is later, must continue, if the child suffers from a mental or  
4 physical incapacity which began prior to the age of 18 or while the  
5 child was still enrolled in high school, whichever is later, and which  
6 causes the child to be financially dependent on a parent. In assessing  
7 the financial obligation of a parent, the court shall consider the child's  
8 eligibility for public benefits and services. The bill would also  
9 authorize the court to make such orders, including an order involving  
10 the creation of a trust, to ensure eligibility.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 614**

with committee amendments

# **STATE OF NEW JERSEY**

DATED: JUNE 9, 2005

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 614.

This bill as amended by the committee amends N.J.S.A.2A:34-23 and provides that a parent's obligation to pay child support for a child who is not emancipated by the court shall not terminate solely on the basis of the child's age if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent. As used in the bill, "severe mental or physical incapacity" shall not include a child's addiction to, or abuse of, alcohol or controlled substances. The bill further stipulates that the parent's obligation to pay support shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent.

The bill also provides that the court shall consider, in assessing the parent's financial obligation, the child's eligibility for public benefits and services for people with disabilities in addition to the other factors set forth in N.J.S.A.2A:34-23. The court may make any necessary orders to promote the child's well-being, including an order involving the creation of a trust.

Section 2 amends N.J.S.A.2A:34-24 to add the phrase "in the manner provided in N.J.S.A.2A:34-23, as applicable" in the first paragraph.

Section 3 amends N.J.S.A.9:17-53 concerning certificates of parentage. The committee amended section 3 of the bill to make the language in this section consistent with the language in section 1 of the bill concerning if the child suffers from a severe mental or physical incapacity that causes the child to be financially dependent on the parent.

This bill was pre-filed for introduction in the 2004-2005 session pending technical review. As reported, the bill includes the changes required by technical review, which has been performed.

As amended, this bill is identical to Assembly, No. 1925 (2R).