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[First Reprint]

ASSEMBLY, No. 2681

STATE OF NEW JERSEY

213th LEGISLATURE

INTRODUCED MAY 12, 2008

Sponsored by:

Assemblywoman SANDRA LOVE

District 4 (Camden and Gloucester)

Assemblyman PAUL D. MORIARTY

District 4 (Camden and Gloucester)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

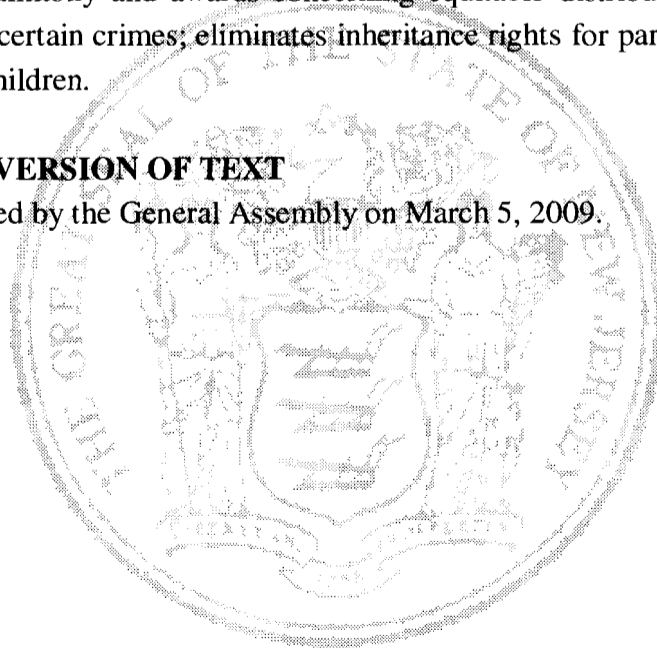
Assemblywomen Vandervalk, Wagner, Senators Weinberg and Madden

SYNOPSIS

Prohibits alimony and awards ~~concerning~~ equitable distribution to persons who commit certain crimes; ~~eliminates inheritance rights~~ for parents who abuse or abandon children.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 5, 2009.



(Sponsorship Updated As Of: 3/17/2009)

1 AN ACT concerning ¹**[alimony] divorce¹** and decedents ¹**[and],¹**
2 revising various parts of the statutory law¹, and supplementing
3 Title 3B of the New Jersey Statutes¹.
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. Alimony, maintenance.

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

33 The court may order one party to pay a retainer on behalf of the
34 other for expert and legal services when the respective financial
35 circumstances of the parties make the award reasonable and just. In
36 considering an application, the court shall review the financial
37 capacity of each party to conduct the litigation and the criteria for
38 award of counsel fees that are then pertinent as set forth by court
39 rule. Whenever any other application is made to a court which
40 includes an application for pendente lite or final award of counsel
41 fees, the court shall determine the appropriate award for counsel
42 fees, if any, at the same time that a decision is rendered on the other
43 issue then before the court and shall consider the factors set forth in
44 the court rule on counsel fees, the financial circumstances of 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 floor amendments adopted March 5, 2009.**

1 parties, and the good or bad faith of either party. 'The court may
2 not order a retainer or counsel fee of a party convicted of an attempt
3 or conspiracy to murder the other party to be paid by the party who
4 was the intended victim of the attempt or conspiracy.'

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

9 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

26 The obligation to pay support for a child who has not been
27 emancipated by the court shall not terminate solely on the basis of
28 the child's age if the child suffers from a severe mental or physical
29 incapacity that causes the child to be financially dependent on a
30 parent. The obligation to pay support for that child shall continue
31 until the court finds that the child is relieved of the incapacity or is
32 no longer financially dependent on the parent. However, in
33 assessing the financial obligation of the parent, the court shall
34 consider, in addition to the factors enumerated in this section, the
35 child's eligibility for public benefits and services for people with
36 disabilities and may make such orders, including an order involving
37 the creation of a trust, as are necessary to promote the well-being of
38 the child.

39 As used in this section "severe mental or physical incapacity"
40 shall not include a child's abuse of, or addiction to, alcohol or
41 controlled substances.

42 b. In all actions brought for divorce, dissolution of a civil
43 union, divorce from bed and board, legal separation from a partner
44 in a civil union couple or nullity the court may award one or more
45 of the following types of alimony: permanent alimony;
46 rehabilitative alimony; limited duration alimony or reimbursement
47 alimony to either party. In so doing the court shall consider, but not
48 be limited to, the following factors:

- 1 (1) The actual need and ability of the parties to pay;
- 2 (2) The duration of the marriage or civil union;
- 3 (3) The age, physical and emotional health of the parties;
- 4 (4) The standard of living established in the marriage or civil
5 union and the likelihood that each party can maintain a reasonably
6 comparable standard of living;
- 7 (5) The earning capacities, educational levels, vocational skills,
8 and employability of the parties;
- 9 (6) The length of absence from the job market of the party
10 seeking maintenance;
- 11 (7) The parental responsibilities for the children;
- 12 (8) The time and expense necessary to acquire sufficient
13 education or training to enable the party seeking maintenance to
14 find appropriate employment, the availability of the training and
15 employment, and the opportunity for future acquisitions of capital
16 assets and income;
- 17 (9) The history of the financial or non-financial contributions to
18 the marriage or civil union by each party including contributions to
19 the care and education of the children and interruption of personal
20 careers or educational opportunities;
- 21 (10) The equitable distribution of property ordered and any
22 payouts on equitable distribution, directly or indirectly, out of
23 current income, to the extent this consideration is reasonable, just
24 and fair;
- 25 (11) The income available to either party through investment of
26 any assets held by that party;
- 27 (12) The tax treatment and consequences to both parties of any
28 alimony award, including the designation of all or a portion of the
29 payment as a non-taxable payment; and
- 30 (13) Any other factors which the court may deem relevant.

31 When a share of a retirement benefit is treated as an asset for
32 purposes of equitable distribution, the court shall not consider
33 income generated thereafter by that share for purposes of
34 determining alimony.

35 c. In any case in which there is a request for an award of
36 permanent alimony, the court shall consider and make specific
37 findings on the evidence about the above factors. If the court
38 determines that an award of permanent alimony is not warranted,
39 the court shall make specific findings on the evidence setting out
40 the reasons therefor. The court shall then consider whether alimony
41 is appropriate for any or all of the following: (1) limited duration;
42 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
43 consider and make specific findings on the evidence about factors
44 set forth above. The court shall not award limited duration alimony
45 as a substitute for permanent alimony in those cases where
46 permanent alimony would otherwise be awarded.

47 An award of alimony for a limited duration may be modified
48 based either upon changed circumstances, or upon the

1 nonoccurrence of circumstances that the court found would occur at
2 the time of the award. The court may modify the amount of such an
3 award, but shall not modify the length of the term except in unusual
4 circumstances.

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

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

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

18 e. Reimbursement alimony may be awarded under
19 circumstances in which one party supported the other through an
20 advanced education, anticipating participation in the fruits of the
21 earning capacity generated by that education.

22 f. Nothing Except as provided in subsection i., nothing in
23 this section shall be construed to limit the court's authority to award
24 permanent alimony, limited duration alimony, rehabilitative
25 alimony or reimbursement alimony, separately or in any
26 combination, as warranted by the circumstances of the parties and
27 the nature of the case.

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

39 h. In Except as provided in this subsection, in¹ all actions
40 where a judgment of divorce, dissolution of civil union, divorce
41 from bed and board or legal separation from a partner in a civil
42 union couple is entered the court may make such award or awards
43 to the parties, in addition to alimony and maintenance, to effectuate
44 an equitable distribution of the property, both real and personal,
45 which was legally and beneficially acquired by them or either of
46 them during the marriage or civil union. However, all such
47 property, real, personal or otherwise, legally or beneficially
48 acquired during the marriage or civil union by either party by way

1 of gift, devise, or intestate succession shall not be subject to
2 equitable distribution, except that interspousal gifts or gifts between
3 partners in a civil union couple shall be subject to equitable
4 distribution. 'The court may not make an award concerning the
5 equitable distribution of property on behalf of a party convicted of
6 an attempt or conspiracy to murder the other party.'¹

7 i. No person convicted of Murder, N.J.S.2C:11-3;
8 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
9 '[Death by Auto or Vessel, N.J.S.2C:11-5;]' Aggravated Assault,
10 under subsection b. of N.J.S.2C:12-1; or a substantially similar
11 offense under the laws of another jurisdiction, may receive alimony
12 if: (1) the crime results in '[the death of another person; and (2)
13 the crime was committed after the divorce or dissolution of the
14 marriage or civil union.] death or serious bodily injury, as defined
15 in subsection b. of N.J.S.2C:11-1, to a family member of a
16 divorcing party; and (2) the crime was committed after the marriage
17 or civil union. A person convicted of an attempt or conspiracy to
18 commit murder may not receive alimony from the person who was
19 the intended victim of the attempt or conspiracy.' Nothing in this
20 subsection shall be construed to limit the authority of the court to
21 deny alimony for other bad acts.

22 ¹As used in this subsection:

23 "Family member" means a spouse, child, parent, sibling, aunt,
24 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
25 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
26 stepchild, stepbrother, stepsister, half brother, or half sister, whether
27 the individual is related by blood, marriage, or adoption.'¹

28 (cf: P.L.2006, c.103, s.78)

29
30 ¹2. Section 4 of P.L.1988, c.153 (C.2A:34-23.1) is amended to
31 read as follows:

32 4. In making an equitable distribution of property, the court
33 shall consider, but not be limited to, the following factors:

- 34 a. The duration of the marriage or civil union;
- 35 b. The age and physical and emotional health of the parties;
- 36 c. The income or property brought to the marriage or civil
37 union by each party;
- 38 d. The standard of living established during the marriage or
39 civil union;
- 40 e. Any written agreement made by the parties before or during
41 the marriage or civil union concerning an arrangement of property
42 distribution;
- 43 f. The economic circumstances of each party at the time the
44 division of property becomes effective;
- 45 g. The income and earning capacity of each party, including
46 educational background, training, employment skills, work
47 experience, length of absence from the job market, custodial

1 responsibilities for children, and the time and expense necessary to
2 acquire sufficient education or training to enable the party to
3 become self-supporting at a standard of living reasonably
4 comparable to that enjoyed during the marriage or civil union;

5 h. The contribution by each party to the education, training or
6 earning power of the other;

7 i. The contribution of each party to the acquisition, dissipation,
8 preservation, depreciation or appreciation in the amount or value of
9 the marital property, or the property acquired during the civil union
10 as well as the contribution of a party as a homemaker;

11 j. The tax consequences of the proposed distribution to each
12 party;

13 k. The present value of the property;

14 l. The need of a parent who has physical custody of a child to
15 own or occupy the marital residence or residence shared by the
16 partners in a civil union couple and to use or own the household
17 effects;

18 m. The debts and liabilities of the parties;

19 n. The need for creation, now or in the future, of a trust fund to
20 secure reasonably foreseeable medical or educational costs for a
21 spouse, partner in a civil union couple or children;

22 o. The extent to which a party deferred achieving their career
23 goals; and

24 p. Any other factors which the court may deem relevant.

25 In every case, except cases where the court does not make an
26 award concerning the equitable distribution of property pursuant to
27 subsection h. of N.J.S.2A:34-23, the court shall make specific
28 findings of fact on the evidence relevant to all issues pertaining to
29 asset eligibility or ineligibility, asset valuation, and equitable
30 distribution, including specifically, but not limited to, the factors set
31 forth in this section.

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

35 (cf: P.L.2006, c.103, s.80)

36
37 ¹['2.] 3. N.J.S.3B:5-4 is amended to read as follows:

38 3B:5-4. Intestate shares of heirs other than surviving spouse or
39 domestic partner.

40 Any part of the intestate estate not passing to the decedent's
41 surviving spouse or domestic partner under N.J.S.3B:5-3, or the
42 entire intestate estate if there is no surviving spouse or domestic
43 partner, passes in the following order to the individuals designated
44 below who survive the decedent:

45 a. To the decedent's descendants by representation;

46 b. ¹['(1)'] If there are no surviving descendants, to the
47 decedent's parents equally if both survive, or to the surviving parent
48 ¹['; except that any parent who abused, abandoned, or neglected the

1 minor child as defined in R.S.9:6-1, endangered the welfare of the
2 minor child as defined in N.J.S.2C:24-4, or committed any sexual
3 offense against the minor child as defined in chapter 14 of Title 2C
4 of the New Jersey Statutes, shall lose all right to the intestate
5 succession in any part of the child's estate and all right to
6 administer the estate of the child.

7 (2) In the event that a parent is disqualified from taking a
8 distributive share in the estate of a decedent under this section, the
9 estate of such decedent shall be distributed as though such parent
10 had predeceased the decedent; and

11 (3) No sibling of the half blood of the decedent whose parent is
12 disqualified shall take a distributive share in the estate of such
13 deceased child] , except as provided in section 4 of P.L. , c.
14 (C.) (pending before the Legislature as this bill)¹;

15 c. If there are no surviving descendants or parent, to the
16 descendants of the decedent's parents or either of them by
17 representation;

18 d. If there is no surviving descendant, parent or descendant of a
19 parent, but the decedent is survived by one or more grandparents,
20 half of the estate passes to the decedent's paternal grandparents
21 equally if both survive, or to the surviving paternal grandparent, or
22 to the descendants of the decedent's paternal grandparents or either
23 of them if both are deceased, the descendants taking by
24 representation; and the other half passes to the decedent's maternal
25 relatives in the same manner; but if there is no surviving
26 grandparent, or descendant of a grandparent on either the paternal
27 or the maternal side, the entire estate passes to the decedent's
28 relatives on the other side in the same manner as the half.

29 e. If there is no surviving descendant, parent, descendant of a
30 parent, or grandparent, but the decedent is survived by one or more
31 descendants of grandparents, the descendants take equally if they
32 are all of the same degree of kinship to the decedent, but if of
33 unequal degree those of more remote degree take by representation.

34 f. If there are no surviving descendants of grandparents, then
35 the decedent's step-children or their descendants by representation.

36 (cf: P.L.2005, c.331, s.3)

37
38 ¹4. (New section) a. As used in this section, "minor" means a
39 person under the age of 18 years.

40 b. A parent of a decedent shall lose all right to intestate
41 succession in any part of the decedent's estate and all right to
42 administer the estate of the decedent if:

43 (1) The parent refused to acknowledge the decedent or
44 abandoned the decedent when the decedent was a minor by willfully
45 forsaking the decedent, failing to care for and keep the control and
46 custody of the decedent so that the decedent was exposed to
47 physical or moral risk without proper and sufficient protection, or
48 failing to care for and keep the control and custody of the decedent

1 so that the decedent was in the care, custody and control of the State
2 at the time of death;

3 (2) The parent was convicted of committing any of the following
4 crimes against the decedent:

5 (a) N.J.S.2C:14-2, Sexual Assault.

6 (b) N.J.S.2C:14-3, Criminal Sexual Contact.

7 (c) N.J.S.2C:24-4, Endangering Welfare of Children;

8 (3) The parent was convicted of an attempt or conspiracy to
9 murder the decedent; or

10 (4) The parent abused or neglected the decedent, as defined in
11 subsection c. of section 1 of P.L.1974, c.119 (C.9:6-8.21), and the
12 abuse or neglect contributed to the decedent's death.

13 c. If a parent is disqualified from taking a distributive share in
14 the estate of a decedent under this section, the estate shall be
15 distributed as though the parent predeceased the decedent. '

16

17 '[3.] 5.' This act shall take effect on the first day of the third
18 month following enactment.

1 relatives in the same manner; but if there is no surviving
2 grandparent, or descendant of a grandparent on either the paternal
3 or the maternal side, the entire estate passes to the decedent's
4 relatives on the other side in the same manner as the half.

5 e. If there is no surviving descendant, parent, descendant of a
6 parent, or grandparent, but the decedent is survived by one or more
7 descendants of grandparents, the descendants take equally if they
8 are all of the same degree of kinship to the decedent, but if of
9 unequal degree those of more remote degree take by representation.

10 f. If there are no surviving descendants of grandparents, then
11 the decedent's step-children or their descendants by representation.

12 (cf: P.L.2005, c.331, s.3)

13
14 3. This act shall take effect on the first day of the third month
15 following enactment.

16
17
18 SPONSOR'S STATEMENT

19
20 The purpose of this bill is to ensure that undeserving persons are
21 not rewarded financially by the alimony and intestacy laws of this
22 State.

23 Section 1 of the bill would deny alimony to any person convicted
24 of murder, manslaughter, criminal homicide, death by auto or
25 vessel, aggravated assault, or a substantially similar offense under
26 the laws of another jurisdiction, if the crime results in the death of
27 another person and if the crime was committed after the divorce or
28 dissolution of the marriage or civil union. Section 1 also provides
29 that a court's authority to deny alimony for other bad acts is not
30 changed. Under current law, fault is irrelevant to alimony awards
31 except if: (1) the fault affects the economic life of the parties or (2)
32 the fault so violates societal norms that continuing the economic
33 bonds between the parties would confound notions of simple
34 justice. Calbi v. Calbi, 396 N.J. Super. 532, 540 (App. Div. 2007).

35 Section 2 of the bill would eliminate a parent's right to inherit
36 from the estate to their child if the parent abused, abandoned,
37 neglected, endangered the welfare of, or committed any sexual
38 offense against the minor child. If a parent is disqualified from
39 taking a distributive share in the estate of a decedent under the
40 section 2 of the bill, the estate of the child would be distributed as
41 though the parent had predeceased the decedent. Section 2 also
42 provides that no sibling of the half blood of the decedent whose
43 parent is disqualified may take a distributive share in the estate of
44 the deceased child. Under current law, the intestate share of a
45 decedent child's estate is equally distributed between the surviving
46 parents, regardless of whether that child's parents abused the child
47 prior to his death.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2681

STATE OF NEW JERSEY

DATED: JANUARY 26, 2009

The Assembly Judiciary Committee reports favorably Assembly Bill No. 2681.

This bill is intended to ensure that undeserving persons are not rewarded financially by the alimony and intestacy laws of this State.

Section 1 of the bill would deny alimony to any person convicted of murder, manslaughter, criminal homicide, death by auto or vessel, aggravated assault, or a substantially similar offense under the laws of another jurisdiction, if the crime results in the death of another person and if the crime was committed after the divorce or dissolution of the marriage or civil union. Section 1 also provides that a court's authority to deny alimony for other bad acts is not changed. Under current law, fault is irrelevant to alimony awards except if: (1) the fault affects the economic life of the parties or (2) the fault so violates societal norms that continuing the economic bonds between the parties would confound notions of simple justice. Calbi v. Calbi, 396 N.J. Super. 532, 540 (App. Div. 2007).

Section 2 of the bill would eliminate a parent's right to inherit from the estate of their child if the parent abused, abandoned, neglected, endangered the welfare of, or committed any sexual offense against the minor child. If a parent is disqualified from taking a distributive share in the estate of a decedent under the section 2 of the bill, the estate of the child would be distributed as though the parent had predeceased the decedent. Section 2 also provides that no sibling of the half blood of the decedent whose parent is disqualified may take a distributive share in the estate of the deceased child. Under current law, the intestate share of a decedent child's estate is equally distributed between the surviving parents, regardless of whether that child's parents abused the child prior to his death.

STATEMENT TO
ASSEMBLY, No. 2681

with Assembly Floor Amendments
(Proposed By Assemblywoman LOVE)

ADOPTED: MARCH 5, 2009

This bill provides that a person's actions may disqualify the person from benefitting financially in certain matrimonial and inheritance matters. These amendments make changes to both sections of the bill and add two new sections.

Section 1 of the bill amends N.J.S.A.2A:34-23 concerning alimony and equitable distribution. The amendments to this section provide that the court could not order a retainer or counsel fee of a party convicted of an attempt or conspiracy to murder the other party to be paid by the party who was the intended victim. The amendments to this section also provide that no person convicted of murder, manslaughter, criminal homicide, or aggravated assault could receive alimony if the crime results in death or serious bodily injury to a family member of a divorcing party, and the crime was committed after the marriage or civil union. In addition, a person convicted of an attempt or conspiracy to commit murder could not receive alimony from the person who was the intended victim or be awarded equitable distribution. The bill defines "family member" as "a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption."

As introduced, section 1 of the bill had provided that no person convicted of murder, manslaughter, criminal homicide, death by auto, or aggravated assault could receive alimony if the crime results in the death of another person, and the crime was committed after the divorce or dissolution of the marriage or civil union.

The amendments add a new section 2 that amends N.J.S.A.2A:34-23.1, concerning equitable distribution, to insert a reference to those cases where, pursuant to the bill, equitable distribution is not awarded.

Section 3 of the bill amends N.J.S.A.3B:5-4, concerning intestate shares of an estate, to provide that the decedent's parent will not receive an intestate share in certain situations, as set out in section 4 of the bill.

The new section 4 added by the amendments provides that a parent of a decedent would lose all right to intestate succession and all right to administer the estate if:

(1) The parent refused to acknowledge the decedent or abandoned the decedent when the decedent was a minor by willfully forsaking the decedent, failing to care for and keep the control and custody of the

decedent so that the decedent was exposed to physical or moral risk without proper and sufficient protection, or failing to care for and keep the control and custody of the decedent so that the decedent was in the care, custody and control of the State at the time of death;

(2) The parent was convicted of committing any of the following crimes against the decedent:

- (a) sexual assault;
- (b) criminal sexual contact;
- (c) endangering welfare of children;

(3) The parent was convicted of an attempt or conspiracy to murder the decedent; or

(4) The parent abused or neglected the decedent and the abuse or neglect contributed to the decedent's death.

These amendments make this bill identical to SCS for S1645 / S1640 (1R).

1 relatives in the same manner; but if there is no surviving
2 grandparent, or descendant of a grandparent on either the paternal
3 or the maternal side, the entire estate passes to the decedent's
4 relatives on the other side in the same manner as the half.

5 e. If there is no surviving descendant, parent, descendant of a
6 parent, or grandparent, but the decedent is survived by one or more
7 descendants of grandparents, the descendants take equally if they
8 are all of the same degree of kinship to the decedent, but if of
9 unequal degree those of more remote degree take by representation.

10 f. If there are no surviving descendants of grandparents, then
11 the decedent's step-children or their descendants by representation.
12 (cf: P.L.2005, c.331, s.3)

13
14 3. This act shall take effect on the first day of the third month
15 following enactment.

16
17 SPONSOR'S STATEMENT
18

19
20 The purpose of this bill is to ensure that undeserving persons are
21 not rewarded financially by the alimony and intestacy laws of this
22 State.

23 Section 1 of the bill would deny alimony to any person convicted
24 of murder, manslaughter, criminal homicide, death by auto or
25 vessel, aggravated assault, or a substantially similar offense under
26 the laws of another jurisdiction, if the crime results in the death of
27 another person and if the crime was committed after the divorce or
28 dissolution of the marriage or civil union. Section 1 also provides
29 that a court's authority to deny alimony for other bad acts is not
30 changed. Under current law, fault is irrelevant to alimony awards
31 except if: (1) the fault affects the economic life of the parties or (2)
32 the fault so violates societal norms that continuing the economic
33 bonds between the parties would confound notions of simple
34 justice. Calbi v. Calbi, 396 N.J. Super. 532, 540 (App. Div. 2007).

35 Section 2 of the bill would eliminate a parent's right to inherit
36 from the estate to their child if the parent abused, abandoned,
37 neglected, endangered the welfare of, or committed any sexual
38 offense against the minor child. If a parent is disqualified from
39 taking a distributive share in the estate of a decedent under the
40 section 2 of the bill, the estate of the child would be distributed as
41 though the parent had predeceased the decedent. Section 2 also
42 provides that no sibling of the half blood of the decedent whose
43 parent is disqualified may take a distributive share in the estate of
44 the deceased child. Under current law, the intestate share of a
45 decedent child's estate is equally distributed between the surviving
46 parents, regardless of whether that child's parents abused the child
47 prior to his death.

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3

1 or the maternal side, the entire estate passes to the decedent's
2 relatives on the other side in the same manner as the half.

3 e. If there is no surviving descendant, parent, descendant of a
4 parent, or grandparent, but the decedent is survived by one or more
5 descendants of grandparents, the descendants take equally if they
6 are all of the same degree of kinship to the decedent, but if of
7 unequal degree those of more remote degree take by representation.

8 f. If there are no surviving descendants of grandparents, then
9 the decedent's step-children or their descendants by representation.

10 (cf: P.L.2005, c.331, s.3)

11

12 2. R.S.34:15-21 is amended to read as follows:

13 34:15-21. Payments in case of death; to whom made; bond. In
14 case of death, compensation payments may be made directly to
15 dependents of full age and on behalf of infants to the surviving
16 parent, if any, or to the statutory or testamentary guardian of any
17 such infant , except that any parent who abused, abandoned, or
18 neglected the minor child as defined in R.S.9:6-1, endangered the
19 welfare of the minor child as defined in N.J.S.2C:24-4, or
20 committed any sexual offense against the minor child as defined in
21 chapter 14 of Title 2C of the New Jersey Statutes, shall not be
22 entitled to take any amount recovered. The Division of Workers'
23 Compensation, on application or when a petition has been filed,
24 may order such payments to be made to the administrator or
25 executor of the decedent, or to such person as would be appointed
26 administrator of the estate of the decedent, and may, if
27 compensation is to be paid weekly, require, in the discretion of the
28 division, the filing with the division of a bond, with satisfactory
29 surety, to the dependents, in an amount determined by the division,
30 for the proper application of the compensation payments. If a
31 commutation of the award is ordered and it is impracticable to make
32 distribution of the commuted sum among the persons entitled
33 thereto, then the division, on making the commutation, shall require
34 a bond, with such sureties and in such amount as will, in the
35 judgment of the division, fully secure the persons severally entitled
36 to portions of the commuted sum.

37 (cf: P.L.1990, c.122, s.3)

38

39 3. This act shall take effect immediately.

40

41

42 SPONSOR'S STATEMENT

43

44 Currently, the intestate share of a decedent child is equally
45 distributed between the surviving parents, regardless of whether
46 that child's parents abused that child prior to his death. This bill
47 would eliminate a parent's right to inherit if that parent abused,

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4

1 abandoned, neglected, endangered the welfare of, or committed any
2 sexual offense against the minor child while the child was alive.

3 The bill also provides that in the event that a parent is
4 disqualified from taking a distributive share in the estate of a
5 decedent under the bill, the estate of the child would be distributed
6 as though such parent had predeceased the decedent. No sibling of
7 the half blood of the decedent whose parent is disqualified shall
8 take a distributive share in the estate of such deceased child.

9 Additionally, the bill would amend R.S.34:15-21 concerning
10 recovery under the workers' compensation laws to eliminate a
11 parents' right to recover when the parent abused, abandoned,
12 neglected, endangered the welfare of, or committed any sexual
13 offense against the minor child while the child was alive.

14 This bill is in response to a recent decision of the Superior Court
15 of New Jersey, Appellate Division, which held that the mother of an
16 abused, abandoned, and neglected child was not entitled to inherit
17 the \$1 million the State paid to her son's estate to settle a lawsuit.
18 The court concluded, using its equitable powers, that allowing the
19 woman whose abuse and neglect led to the child's death to collect
20 that child's inheritance would be "cruel, ironic, and inequitable."
21 This bill seeks to fill the gap in the statutory law on this issue.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 1645 and 1640**

STATE OF NEW JERSEY

DATED: JANUARY 26, 2009

The Senate Judiciary Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 1645 and 1640.

This substitute provides that a person's actions may disqualify the person from benefiting financially in certain domestic relations or inheritance matters. Sections 1 and 2 of the substitute provide that a person who is convicted of certain crimes would be precluded from receiving alimony or equitable distribution. Sections 3 and 4 provide that under certain circumstances the parent of a decedent would lose the right to intestate succession to any part of the decedent's estate and the right to administer the estate.

The substitute in section 1 amends N.J.S.A.2A:34-23 to provide that where a party in a matrimonial action or an action for dissolution of a civil union has been convicted of an attempt or conspiracy to murder the other party, the court may not make an award concerning the equitable distribution of property on behalf of that party (subsection h.) or order that a retainer or counsel fee of that party be paid by the party who was the intended victim of the attempt or conspiracy. Section 1 also provides that the party may not receive alimony from the person who was the intended victim of the attempt or conspiracy. See new subsection i. Additionally, no person convicted of murder, manslaughter, criminal homicide, or aggravated assault may receive alimony if: (1) the crime results in death or serious bodily injury to a family member of a divorcing party; and (2) the crime was committed after the marriage or civil union. "Family member" is defined as a spouse, child, parent, sibling, aunt, uncle, niece, nephew, first cousin, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half brother, or half sister, whether the individual is related by blood, marriage, or adoption.

The substitute in section 2 amends N.J.S.A.2A:34-23.1 to make reference to the prohibition on equitable distribution awards on behalf of a party convicted of an attempt or conspiracy to murder the other party in subsection h. of N.J.S.A.2A:34-23.

Section 3 of the substitute amends N.J.S.A.3B:5-4 concerning intestate shares of heirs other than a surviving spouse or domestic partner to properly reference the provisions of new section 4 of the substitute concerning the disqualification of certain parents.

The new section 4 provides that a parent of a decedent shall lose all right to intestate succession in any part of the decedent's estate and all right to administer the estate of the decedent if:

(1) The parent refused to acknowledge or abandoned the decedent when the decedent was a minor;

(2) The parent was convicted of committing any of the following crimes against the decedent: N.J.S.2C:14-2, Sexual Assault; N.J.S.2C:14-3, Criminal Sexual Contact; or N.J.S.2C:24-4, Endangering Welfare of Children; or

(3) The parent was convicted of an attempt or conspiracy to murder the decedent.

An individual who is responsible for the intentional killing of a decedent already forfeits inheritance rights, including an intestate share, pursuant to N.J.S.A.3B:7-1.1.

If a parent is disqualified from taking a distributive share in the estate of a decedent under the provisions of this substitute, the estate shall be distributed as though the parent predeceased the decedent.

STATEMENT TO

**SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1645 and 1640**

with Senate Floor Amendments
(Proposed By Senator WEINBERG)

ADOPTED: FEBRUARY 23, 2009

These floor amendments would add a provision to the bill that specifies the acts which constitute the abandonment of the decedent. These acts are: willfully forsaking the decedent, failing to care for and keep the control and custody of the decedent so that the decedent was exposed to physical or moral risk without proper and sufficient protection, or failing to care for and keep the control and custody of the decedent so that the decedent was in the care, custody and control of the State at the time of death. The amendments would delete the reference to N.J.S.9:6-1, which concerns the abandonment of a child.

In addition, the amendments add a new paragraph providing that a parent would lose all right to intestate succession and all right to administer the decedent's estate if the parent abused or neglected the decedent, as defined in subsection c. of section 1 of P.L.1974, c.119 (C.9:6-8.21c.), and the abuse or neglect contributed to the decedent's death.