

2A:34-23

LEGISLATIVE HISTORY CHECKLIST
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(Equitable distribution--alimony--parents responsibility)

NJSA: 2A:34-23

LAWS OF: 1997 CHAPTER: 302

BILL NO: A81

SPONSOR(S): Kavanaugh

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary
SENATE: Women's Issues

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: September 26, 1996
SENATE: December 15, 1997

DATE OF APPROVAL: January 8, 1998

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:
REPORTS: No

HEARINGS: No

974.90 New Jersey. Commission to Study the Law of Divorce.
M359 Report...April 18, 1995. Trenton, 1995.
1995a [see recommendation 19 -- pp.46]

974.90 New Jersey. Commission to Study the Law of Divorce.
M359 Preliminary report... March 15, 1995. Trenton, 1995.
1995 [see recommendation 17 -- pp. 52-53]

See newspaper clipping attached:

"Divorce reform heads list of new laws," 1-9-98, Star Ledger.

KBP:pp

P.L. 1997, CHAPTER 302, *approved January 8, 1998*
Assembly, No. 81
(CORRECTED COPY)

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

2

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

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

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

29 The court may order one party to pay a retainer on behalf of the
30 other for expert and legal services when the respective financial
31 circumstances of the parties make the award reasonable and just. In
32 considering an application, the court shall review the financial capacity
33 of each party to conduct the litigation and the criteria for award of

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 counsel fees that are then pertinent as set forth by court rule.
2 Whenever any other application is made to a court which includes an
3 application for pendente lite or final award of counsel fees, the court
4 shall determine the appropriate award for counsel fees, if any, at the
5 same time that a decision is rendered on the other issue then before the
6 court and shall consider the factors set forth in the court rule on
7 counsel fees, the financial circumstances of the parties, and the good
8 or bad faith of either party.

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

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

29 b. In all actions brought for divorce, divorce from bed and board,
30 or nullity the court may award permanent or rehabilitative alimony or
31 both to either party, and in so doing shall consider, but not be limited
32 to, the following factors:

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

1 opportunity for future acquisitions of capital assets and income;

2 ~~[(8)](9)~~ The history of the financial or non-financial contributions
3 to the marriage by each party including contributions to the care and
4 education of the children and interruption of personal careers or
5 educational opportunities;

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

9 ~~[(10)](11)~~ Any other factors which the court may deem relevant.

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

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

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

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

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

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43 2. This act shall take effect immediately.

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- 3 Amends alimony statute to clarify that court must consider both
- 4 parents' responsibilities for the children.

1 STATEMENT

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3 This bill would amend N.J.S.2A:34-23, the alimony statute, to
4 clarify that the court consider the impact on both parties in awarding
5 permanent or rehabilitative alimony.

6 Currently, the statute provides that, among other factors used in
7 determining alimony, the court must consider:

8 The length of absence from the job market and custodial
9 responsibilities for children of the party seeking maintenance.

10 **【2A:34-23b.(6).】**

11 It is generally acknowledged that this factor is directed to the
12 alimony recipient's earning capacity and how that capacity has been
13 affected by two factors -- the length of the recipient's absence from the
14 job market, and the recipient's custodial responsibilities for the
15 children. However, the sponsor believes that in order to advance the
16 principles of fairness and gender neutrality which are inherent in
17 modern law, this factor should be changed to reflect not just the
18 alimony recipient's child-rearing responsibilities, but both parties'
19 child-rearing responsibilities. Consequently, the bill would split the
20 current factor (6) into two separate factors, to now read:

21 (6) The length of absence from the job market of the party seeking
22 maintenance;

23 (7) The parental responsibilities for the children.

24 This bill embodies Recommendation 19 of the report of the
25 Commission to Study the Law of Divorce, issued April 18, 1995.

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30 Amends equitable distribution statute to clarify that court must
31 consider both parents' responsibilities for the children.

[Corrected Copy]

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 81

STATE OF NEW JERSEY

DATED: JUNE 10, 1996

The Assembly Judiciary Committee reports favorably Assembly Bill No.81.

This bill would amend N.J.S.2A:34-23, the alimony statute, to clarify that the court consider the impact on both parties in awarding alimony.

Currently, the statute provides that, among other factors used in determining alimony, the court must consider:

The length of absence from the job market and custodial responsibilities for children of the party seeking maintenance. (2A:34-23b.(6)).

It is generally acknowledged that this factor is directed to the alimony recipient's earning capacity and how that capacity has been affected by two factors -- the length of the recipient's absence from the job market, and the recipient's custodial responsibilities for the children. This factor is changed to reflect not just the alimony recipient's child-rearing responsibilities, but both parties' child-rearing responsibilities. Consequently, the bill would split the current factor (6) into two separate factors, to now read:

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

(7) The parental responsibilities for the children.

This bill embodies Recommendation 19 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

SENATE WOMEN'S ISSUES, CHILDREN AND FAMILY
SERVICES COMMITTEE

STATEMENT TO

ASSEMBLY, No. 81

STATE OF NEW JERSEY

DATED: OCTOBER 7, 1996

The Senate Women's Issues, Children and Family Services Committee favorably reports Assembly Bill No. 81.

This bill would amend N.J.S.2A:34-23, concerning alimony, to clarify that the court shall consider the impact on both parties in awarding permanent or rehabilitative alimony.

Currently, the statute provides that, among other factors used in determining alimony, the court must consider the length of absence from the job market and custodial responsibilities for children of the party seeking maintenance.

It is generally acknowledged that when determining alimony, the alimony recipient's earning capacity and how that capacity has been affected by two factors -- the length of the recipient's absence from the job market, and the recipient's custodial responsibilities for the children--must be considered. This bill would change the current method of determining alimony payments based on the recipient's earning capacity to also include the child-rearing responsibility of both parents.

This bill embodies Recommendation 19 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill is identical to Senate Bill No. 708, sponsored by Senators James Cafiero and Robert Martin, which was also released by this committee on October 7, 1996.