

**P.L. 2005, c.171**  
**Approved August 5, 2005**

**ASSEMBLY, No. 1925**

**STATE OF NEW JERSEY**

**211th LEGISLATURE**

INTRODUCED JANUARY 26, 2004

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**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee on June 9, 2005, with amendments.

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

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

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

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

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

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

- (1) Needs of the child;
- (2) Standard of living and economic circumstances of each parent;
- (3) All sources of income and assets of each parent;
- (4) Earning ability of each parent, including educational background, training, employment skills, work experience, custodial responsibility for children including the cost of providing child care and the length of time and cost of each parent to obtain training or experience for appropriate employment;
- (5) Need and capacity of the child for education, including higher education;
- (6) Age and health of the child and each parent;
- (7) Income, assets and earning ability of the child;

- (8) Responsibility of the parents for the court-ordered support of others;
- (9) Reasonable debts and liabilities of each child and parent; and
- (10) Any other factors the court may deem relevant.

The obligation to pay support for a child who has <sup>1</sup>[reached the age of 18 or who is still 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 which began prior to the age of 18 or while the child was still enrolled in high school, whichever is later, and which causes the child to be financially dependent on a parent] not been 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 a parent. The obligation to pay support for that child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent<sup>1</sup>. However, in assessing the financial obligation of the parent, the court shall consider <sup>1</sup>[such], in addition to the factors enumerated in this section, the<sup>1</sup> child's eligibility for public benefits and services for people with disabilities and <sup>1</sup>[shall] may<sup>1</sup> make such orders, including an order involving the creation of a trust, as are necessary to <sup>1</sup>[ensure eligibility. Nothing in this act shall be construed to change the definition of "legally responsible relative" as the term is used in Title 30 of the New Jersey Statutes] promote the well-being of the child.

As used in this section "severe mental or physical incapacity" shall not include a child's abuse of, or addiction to, alcohol or controlled substances<sup>1</sup>.

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

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage;
- (3) The age, physical and emotional health of the parties;
- (4) The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
- (6) The length of absence from the job market of the party seeking maintenance;
- (7) The parental responsibilities for the children;
- (8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The obligation to pay support for a child who has <sup>2</sup>[reached the age of 18 or who is still 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 which began prior to the age of 18 or while the child was enrolled in high school, whichever is later, and which causes the child to be financially dependent on a parent] not been 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 a parent. The obligation to pay support for that child shall continue until the court finds that the child is relieved of the incapacity or is no longer financially dependent on the parent<sup>2</sup> . However, in assessing the financial obligation of <sup>2</sup>[a] the<sup>2</sup> parent, the court shall consider <sup>2</sup>[such], in addition to the factors enumerated in this section, the<sup>2</sup> child's eligibility for public benefits and services for people with disabilities <sup>2</sup>[.]<sup>2</sup> and <sup>2</sup>[shall] may<sup>2</sup> make such orders, including an order involving the creation of a trust, as are necessary to <sup>2</sup>[ensure eligibility. Nothing in this act shall be construed to change the definition of "legally responsible relative" as the term is used in Title 30 of the New Jersey Statutes] promote the well-being of the child.

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

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

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

4. This act shall take effect immediately.