

SENATE, No. 1388

STATE OF NEW JERSEY
215th LEGISLATURE

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Sponsored by:

Senator NICHOLAS P. SCUTARI

District 22 (Middlesex, Somerset and Union)

Senator GERALD CARDINALE

District 39 (Bergen and Passaic)

SYNOPSIS

Provides for modification of child support and certain alimony payments due to changed circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/17/2012)

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

3

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

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

8 2A:34-23. Pending any matrimonial action or action for
9 dissolution of a civil union brought in this State or elsewhere, or
10 after judgment of divorce or dissolution or maintenance, whether
11 obtained in this State or elsewhere, the court may make such order
12 as to the alimony or maintenance of the parties, and also as to the
13 care, custody, education and maintenance of the children, or any of
14 them, as the circumstances of the parties and the nature of the case
15 shall render fit, reasonable and just, and require reasonable security
16 for the due observance of such orders, including, but not limited to,
17 the 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
20 required, or upon default in complying with any such order, the
21 court may award and issue process for the immediate sequestration
22 of the personal estate, and the rents and profits of the real estate of
23 the party so charged, and appoint a receiver thereof, and cause such
24 personal estate and the rents and profits of such real estate, or so
25 much thereof as shall be necessary, to be applied toward such
26 alimony and maintenance as to the said court shall from time to
27 time seem reasonable and just; or the performance of the said orders
28 may be enforced by other ways according to the practice of the
29 court. Orders so made may be revised and altered by the court from
30 time to time as 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
35 capacity of each party to conduct the litigation and the criteria for
36 award of counsel fees that are then pertinent as set forth by court
37 rule. Whenever any other application is made to a court which
38 includes an application for pendente lite or final award of counsel
39 fees, the court shall determine the appropriate award for counsel
40 fees, if any, at the same time that a decision is rendered on the other
41 issue then before the court and shall consider the factors set forth in
42 the court rule on counsel fees, the financial circumstances of the
43 parties, and the good or bad faith of either party. The court may not
44 order a retainer or counsel fee of a party convicted of an attempt or

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

Matter underlined thus is new matter.

1 conspiracy to murder the other party to be paid by the party who
2 was the intended victim of the attempt or conspiracy.

3 a. In determining the amount to be paid by a parent for support
4 of the child and the period during which the duty of support is The
5 court may not order a retainer or counsel fee of a party convicted of
6 an attempt or conspiracy to murder the other party to be paid by the
7 party who was the intended victim of the attempt or conspiracy.

8 owed, the court in those cases not governed by court rule shall
9 consider, but not be limited to, the following factors:

10 (1) Needs of the child;

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

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

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

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

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

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

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

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

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

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

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

43 The obligation to pay child support may be modified based upon
44 changed circumstances, which may include a diminishment of the
45 obligor's income due to unemployment, temporary disability or
46 similar circumstances for a period lasting longer than six months,
47 unless the court determines that such diminution in income was
48 deliberately incurred by the obligor in order to evade such support

1 obligation or that the obligor has failed to make reasonable efforts
2 to secure alternative employment.

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

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

11 (2) The duration of the marriage or civil union;

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

13 (4) The standard of living established in the marriage or civil
14 union and the likelihood that each party can maintain a reasonably
15 comparable standard of living;

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

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

20 (7) The parental responsibilities for the children;

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

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

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

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

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

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

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

44 c. In any case in which there is a request for an award of
45 permanent alimony, the court shall consider and make specific
46 findings on the evidence about the above factors. If the court
47 determines that an award of permanent alimony is not warranted,
48 the court shall make specific findings on the evidence setting out

1 the reasons therefor. The court shall then consider whether alimony
2 is appropriate for any or all of the following: (1) limited duration;
3 (2) rehabilitative; (3) reimbursement. In so doing, the court shall
4 consider and make specific findings on the evidence about factors
5 set forth above. The court shall not award limited duration alimony
6 as a substitute for permanent alimony in those cases where
7 permanent alimony would otherwise be awarded.

8 An award of permanent alimony may be modified based either
9 upon: (1) changed circumstances, which may include a
10 diminishment of the obligor's income due to unemployment,
11 temporary disability or any other similar circumstance for a period
12 lasting longer than six months; or (2) upon the nonoccurrence of
13 circumstances that the court found would occur at the time of the
14 award. An award of permanent alimony shall not be modified if the
15 court determines that such diminution in income was deliberately
16 incurred by the obligor in order to evade such alimony obligation or
17 that the obligor has failed to make reasonable efforts to secure
18 alternative employment.

19 An award of alimony for a limited duration may be modified
20 based either upon : (1) changed circumstances, which may include a
21 diminishment of the obligor's income due to unemployment,
22 temporary disability or any other similar circumstance for a period
23 lasting longer than six months; or (2) upon the nonoccurrence of
24 circumstances that the court found would occur at the time of the
25 award. An award of limited duration alimony shall not be modified
26 if the court determines that such diminution in income was
27 deliberately incurred by the obligor in order to evade such alimony
28 obligation or that the obligor has failed to make reasonable efforts
29 to secure alternative employment.

30 The court may modify the amount of such an award, but shall not
31 modify the length of the term except in unusual circumstances.

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

36 d. Rehabilitative alimony shall be awarded based upon a plan
37 in which the payee shows the scope of rehabilitation, the steps to be
38 taken, and the time frame, including a period of employment during
39 which rehabilitation will occur. An award of rehabilitative alimony
40 may be modified based either upon: (1) changed circumstances,
41 which may include a diminishment of the obligor's income due to
42 unemployment, temporary disability or any other similar
43 circumstance for a period lasting longer than six months; or (2)
44 upon the nonoccurrence of circumstances that the court found
45 would occur at the time of the rehabilitative award. An award of
46 rehabilitative alimony shall not be modified if the court determines
47 that such diminution in income was deliberately incurred by the
48 obligor in order to evade such alimony obligation or that the obligor

1 has failed to make reasonable efforts to secure alternative
2 employment.

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

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

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

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

26 h. Except as provided in this subsection, in all actions where a
27 judgment of divorce, dissolution of civil union, divorce from bed
28 and board or legal separation from a partner in a civil union couple
29 is entered the court may make such award or awards to the parties,
30 in addition to alimony and maintenance, to effectuate an equitable
31 distribution of the property, both real and personal, which was
32 legally and beneficially acquired by them or either of them during
33 the marriage or civil union. However, all such property, real,
34 personal or otherwise, legally or beneficially acquired during the
35 marriage or civil union by either party by way of gift, devise, or
36 intestate succession shall not be subject to equitable distribution,
37 except that interspousal gifts or gifts between partners in a civil
38 union couple shall be subject to equitable distribution. The court
39 may not make an award concerning the equitable distribution of
40 property on behalf of a party convicted of an attempt or conspiracy
41 to murder the other party.

42 i. No person convicted of Murder, N.J.S.2C:11-3;
43 Manslaughter, N.J.S.2C:11-4; Criminal Homicide, N.J.S.2C:11-2;
44 Aggravated Assault, under subsection b. of N.J.S.2C:12-1; or a
45 substantially similar offense under the laws of another jurisdiction,
46 may receive alimony if: (1) the crime results in death or serious
47 bodily injury, as defined in subsection b. of N.J.S.2C:11-1, to a
48 family member of a divorcing party; and (2) the crime was

1 committed after the marriage or civil union. A person convicted of
2 an attempt or conspiracy to commit murder may not receive
3 alimony from the person who was the intended victim of the
4 attempt or conspiracy. Nothing in this subsection shall be
5 construed to limit the authority of the court to deny alimony for
6 other bad acts. As used in this subsection:

7 "Family member" means a spouse, child, parent, sibling, aunt,
8 uncle, niece, nephew, first cousin, grandparent, grandchild, father-
9 in-law, mother-in-law, son-in-law, daughter-in-law, stepparent,
10 stepchild, stepbrother, stepsister, half brother, or half sister, whether
11 the individual is related by blood, marriage, or adoption.

12 (cf: 2009, c.43, s.1)

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14 2. This act shall take effect immediately.

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STATEMENT

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19 This bill amends N.J.S.A.2A:34-23, concerning child support
20 and alimony, to provide that an obligor's child support or alimony
21 payments may be modified when an obligor's income is diminished
22 due to unemployment, temporary disability or other similar
23 circumstance.

24 Child support modification. Under the provisions of the bill,
25 subsection a. of N.J.S.A.2A:34-23 would be amended to allow the
26 court to modify child support payments based upon changed
27 circumstances, which may include a diminishment of the obligor's
28 income due to unemployment, temporary disability or similar
29 circumstances for a period lasting longer than six months, unless
30 the court determines that such diminution in income was
31 deliberately incurred by the obligor in order to evade such support
32 obligation or that the obligor has failed to make reasonable efforts
33 to secure alternative employment.

34 Alimony payment modification. The bill would amend
35 subsections c. and d. of N.J.S.A.2A:34-23 concerning permanent,
36 limited duration, and rehabilitative alimony to clarify when a
37 modification of alimony payments may be made. Those provisions
38 concerning reimbursement alimony would remain unchanged,
39 therefore this type of alimony could not be modified.

40 The bill provides that the court may modify an award of
41 permanent, limited or rehabilitative alimony based either upon
42 changed circumstances which may include a diminishment of the
43 obligor's income due to unemployment, temporary disability or any
44 other similar circumstance for a period lasting longer than six
45 months, or upon the nonoccurrence of circumstances that the court
46 found would occur at the time of the award. However, the bill
47 provides that modification of an award would not occur if the court
48 determines that such diminution in income was deliberately

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- 1 incurred by the obligor in order to evade such alimony obligation or
- 2 that the obligor has failed to make reasonable efforts to secure
- 3 alternative employment.