

P.L.2014, CHAPTER 42, *approved September 10, 2014*  
Assembly Committee Substitute for  
Assembly, Nos. 845, 971, and 1649

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:

5

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

7 2A:34-23. Alimony, maintenance.

8 Pending any matrimonial action or action for dissolution of a  
9 civil union brought in this State or elsewhere, or after judgment of  
10 divorce or dissolution or maintenance, whether obtained in this  
11 State or elsewhere, the court may make such order as to the alimony  
12 or maintenance of the parties, and also as to the care, custody,  
13 education and maintenance of the children, or any of them, as the  
14 circumstances of the parties and the nature of the case shall render  
15 fit, reasonable and just, and require reasonable security for the due  
16 observance of such orders, including, but not limited to, the creation  
17 of trusts or other security devices, to assure payment of reasonably  
18 foreseeable medical and educational expenses. Upon neglect or  
19 refusal to give such reasonable security, as shall be required, or  
20 upon default in complying with any such order, the court may  
21 award and issue process for the immediate sequestration of the  
22 personal estate, and the rents and profits of the real estate of the  
23 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

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

6 a. In determining the amount to be paid by a parent for support  
7 of the child and the period during which the duty of support is  
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 b. In all actions brought for divorce, dissolution of a civil  
44 union, divorce from bed and board, legal separation from a partner  
45 in a civil union couple or nullity the court may award one or more  
46 of the following types of alimony: **[permanent]** open durational  
47 alimony; rehabilitative alimony; limited duration alimony or

1 reimbursement alimony to either party. In so doing the court shall  
2 consider, but not be limited to, the following factors:

- 3 (1) The actual need and ability of the parties to pay;
- 4 (2) The duration of the marriage or civil union;
- 5 (3) The age, physical and emotional health of the parties;
- 6 (4) The standard of living established in the marriage or civil  
7 union and the likelihood that each party can maintain a reasonably  
8 comparable standard of living, with neither party having a greater  
9 entitlement to that standard of living than the other;
- 10 (5) The earning capacities, educational levels, vocational skills,  
11 and employability of the parties;
- 12 (6) The length of absence from the job market of the party  
13 seeking maintenance;
- 14 (7) The parental responsibilities for the children;
- 15 (8) The time and expense necessary to acquire sufficient  
16 education or training to enable the party seeking maintenance to  
17 find appropriate employment, the availability of the training and  
18 employment, and the opportunity for future acquisitions of capital  
19 assets and income;
- 20 (9) The history of the financial or non-financial contributions to  
21 the marriage or civil union by each party including contributions to  
22 the care and education of the children and interruption of personal  
23 careers or educational opportunities;
- 24 (10) The equitable distribution of property ordered and any  
25 payouts on equitable distribution, directly or indirectly, out of  
26 current income, to the extent this consideration is reasonable, just  
27 and fair;
- 28 (11) The income available to either party through investment of  
29 any assets held by that party;
- 30 (12) The tax treatment and consequences to both parties of any  
31 alimony award, including the designation of all or a portion of the  
32 payment as a non-taxable payment;
- 33 (13) The nature, amount, and length of pendente lite support  
34 paid, if any; and

35 **[(13)]** (14) Any other factors which the court may deem  
36 relevant.

37 In each case where the court is asked to make an award of  
38 alimony, the court shall consider and assess evidence with respect  
39 to all relevant statutory factors. If the court determines that certain  
40 factors are more or less relevant than others, the court shall make  
41 specific written findings of fact and conclusions of law on the  
42 reasons why the court reached that conclusion. No factor shall be  
43 elevated in importance over any other factor unless the court finds  
44 otherwise, in which case the court shall make specific written  
45 findings of fact and conclusions of law in that regard.

46 When a share of a retirement benefit is treated as an asset for  
47 purposes of equitable distribution, the court shall not consider

1 income generated thereafter by that share for purposes of  
2 determining alimony.

3 c. In any case in which there is a request for an award of  
4 **[permanent]** alimony, the court shall consider and make specific  
5 findings on the evidence about all of the statutory factors set forth  
6 in subsection b. of this section **[above factors. If the court**  
7 **determines that an award of permanent alimony is not warranted,**  
8 **the court shall make specific findings on the evidence setting out**  
9 **the reasons therefor. The court shall then consider whether alimony**  
10 **is appropriate for any or all of the following: (1) limited duration;**  
11 **(2) rehabilitative; (3) reimbursement. In so doing, the court shall**  
12 **consider and make specific findings on the evidence about factors**  
13 **set forth above. The court shall not award limited duration alimony**  
14 **as a substitute for permanent alimony in those cases where**  
15 **permanent alimony would otherwise be awarded].**

16 For any marriage or civil union less than 20 years in duration,  
17 the total duration of alimony shall not, except in exceptional  
18 circumstances, exceed the length of the marriage or civil union.  
19 Determination of the length and amount of alimony shall be made  
20 by the court pursuant to consideration of all of the statutory factors  
21 set forth in subsection b. of this section. In addition to those  
22 factors, the court shall also consider the practical impact of the  
23 parties' need for separate residences and the attendant increase in  
24 living expenses on the ability of both parties to maintain a standard  
25 of living reasonably comparable to the standard of living  
26 established in the marriage or civil union, to which both parties are  
27 entitled, with neither party having a greater entitlement thereto.

28 Exceptional circumstances which may require an adjustment to  
29 the duration of alimony include:

30 (1) The ages of the parties at the time of the marriage or civil  
31 union and at the time of the alimony award;

32 (2) The degree and duration of the dependency of one party on  
33 the other party during the marriage or civil union;

34 (3) Whether a spouse or partner has a chronic illness or unusual  
35 health circumstance;

36 (4) Whether a spouse or partner has given up a career or a career  
37 opportunity or otherwise supported the career of the other spouse or  
38 partner;

39 (5) Whether a spouse or partner has received a disproportionate  
40 share of equitable distribution;

41 (6) The impact of the marriage or civil union on either party's  
42 ability to become self-supporting, including but not limited to either  
43 party's responsibility as primary caretaker of a child;

44 (7) Tax considerations of either party;

45 (8) Any other factors or circumstances that the court deems  
46 equitable, relevant and material.

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

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

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

18 This section is not intended to preclude a court from modifying  
19 **【permanent】** alimony awards based upon the law.

20 e. Reimbursement alimony may be awarded under  
21 circumstances in which one party supported the other through an  
22 advanced education, anticipating participation in the fruits of the  
23 earning capacity generated by that education. An award of  
24 reimbursement alimony shall not be modified for any reason.

25 f. Except as provided in subsection i., nothing in this section  
26 shall be construed to limit the court's authority to award  
27 **【permanent】** open durational alimony, limited duration alimony,  
28 rehabilitative alimony or reimbursement alimony, separately or in  
29 any combination, as warranted by the circumstances of the parties  
30 and the nature of the case.

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

42 h. Except as provided in this subsection, in all actions where a  
43 judgment of divorce, dissolution of civil union, divorce from bed  
44 and board or legal separation from a partner in a civil union couple  
45 is entered the court may make such award or awards to the parties,  
46 in addition to alimony and maintenance, to effectuate an equitable  
47 distribution of the property, both real and personal, which was

1 legally and beneficially acquired by them or either of them during  
2 the marriage or civil union. However, all such property, real,  
3 personal or otherwise, legally or beneficially acquired during the  
4 marriage or civil union by either party by way of gift, devise, or  
5 intestate succession shall not be subject to equitable distribution,  
6 except that interspousal gifts or gifts between partners in a civil  
7 union couple shall be subject to equitable distribution. The court  
8 may not make an award concerning the equitable distribution of  
9 property on behalf of a party convicted of an attempt or conspiracy  
10 to murder the other party.

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

24 As used in this subsection:

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

31 j. Alimony may be modified or terminated upon the  
32 prospective or actual retirement of the obligor.

33 (1) There shall be a rebuttable presumption that alimony shall  
34 terminate upon the obligor spouse or partner attaining full  
35 retirement age, except that any arrearages that have accrued prior to  
36 the termination date shall not be vacated or annulled. The court may  
37 set a different alimony termination date for good cause shown based  
38 on specific written findings of fact and conclusions of law.

39 The rebuttable presumption may be overcome if, upon  
40 consideration of the following factors and for good cause shown,  
41 the court determines that alimony should continue:

42 (a) The ages of the parties at the time of the application for  
43 retirement;

44 (b) The ages of the parties at the time of the marriage or civil  
45 union and their ages at the time of entry of the alimony award;

46 (c) The degree and duration of the economic dependency of the  
47 recipient upon the payor during the marriage or civil union;

1 (d) Whether the recipient has foregone or relinquished or  
2 otherwise sacrificed claims, rights or property in exchange for a  
3 more substantial or longer alimony award;

4 (e) The duration or amount of alimony already paid;

5 (f) The health of the parties at the time of the retirement  
6 application;

7 (g) Assets of the parties at the time of the retirement  
8 application;

9 (h) Whether the recipient has reached full retirement age as  
10 defined in this section;

11 (i) Sources of income, both earned and unearned, of the parties;

12 (j) The ability of the recipient to have saved adequately for  
13 retirement; and

14 (k) Any other factors that the court may deem relevant.

15 If the court determines, for good cause shown based on specific  
16 written findings of fact and conclusions of law, that the  
17 presumption has been overcome, then the court shall apply the  
18 alimony factors as set forth in subsection b. of this section to the  
19 parties' current circumstances in order to determine whether  
20 modification or termination of alimony is appropriate. If the obligor  
21 intends to retire but has not yet retired, the court shall establish the  
22 conditions under which the modification or termination of alimony  
23 will be effective.

24 (2) Where the obligor seeks to retire prior to attaining the full  
25 retirement age as defined in this section, the obligor shall have the  
26 burden of demonstrating by a preponderance of the evidence that  
27 the prospective or actual retirement is reasonable and made in good  
28 faith. Both the obligor's application to the court for modification or  
29 termination of alimony and the obligee's response to the application  
30 shall be accompanied by current Case Information Statements or  
31 other relevant documents as required by the Rules of Court, as well  
32 as the Case Information Statements or other documents from the  
33 date of entry of the original alimony award and from the date of any  
34 subsequent modification.

35 In order to determine whether the obligor has met the burden of  
36 demonstrating that the obligor's prospective or actual retirement is  
37 reasonable and made in good faith, the court shall consider the  
38 following factors:

39 (a) The age and health of the parties at the time of the  
40 application;

41 (b) The obligor's field of employment and the generally  
42 accepted age of retirement for those in that field;

43 (c) The age when the obligor becomes eligible for retirement at  
44 the obligor's place of employment, including mandatory retirement  
45 dates or the dates upon which continued employment would no  
46 longer increase retirement benefits;

1       (d) The obligor's motives in retiring, including any pressures to  
2 retire applied by the obligor's employer or incentive plans offered  
3 by the obligor's employer;

4       (e) The reasonable expectations of the parties regarding  
5 retirement during the marriage or civil union and at the time of the  
6 divorce or dissolution;

7       (f) The ability of the obligor to maintain support payments  
8 following retirement, including whether the obligor will continue to  
9 be employed part-time or work reduced hours;

10       (g) The obligee's level of financial independence and the  
11 financial impact of the obligor's retirement upon the obligee; and

12       (h) Any other relevant factors affecting the obligor's decision to  
13 retire and the parties' respective financial positions.

14       If the obligor intends to retire but has not yet retired, the court  
15 shall establish the conditions under which the modification or  
16 termination of alimony will be effective.

17       (3) When a retirement application is filed in cases in which  
18 there is an existing final alimony order or enforceable written  
19 agreement established prior to the effective date of this act, the  
20 obligor's reaching full retirement age as defined in this section shall  
21 be deemed a good faith retirement age. Upon application by the  
22 obligor to modify or terminate alimony, both the obligor's  
23 application to the court for modification or termination of alimony  
24 and the obligee's response to the application shall be accompanied  
25 by current Case Information Statements or other relevant documents  
26 as required by the Rules of Court, as well as the Case Information  
27 Statements or other documents from the date of entry of the original  
28 alimony award and from the date of any subsequent modification.  
29 In making its determination, the court shall consider the ability of  
30 the obligee to have saved adequately for retirement as well as the  
31 following factors in order to determine whether the obligor, by a  
32 preponderance of the evidence, has demonstrated that modification  
33 or termination of alimony is appropriate:

34       (a) The age and health of the parties at the time of the  
35 application;

36       (b) The obligor's field of employment and the generally  
37 accepted age of retirement for those in that field;

38       (c) The age when the obligor becomes eligible for retirement at  
39 the obligor's place of employment, including mandatory retirement  
40 dates or the dates upon which continued employment would no  
41 longer increase retirement benefits;

42       (d) The obligor's motives in retiring, including any pressures to  
43 retire applied by the obligor's employer or incentive plans offered  
44 by the obligor's employer;

45       (e) The reasonable expectations of the parties regarding  
46 retirement during the marriage or civil union and at the time of the  
47 divorce or dissolution;



1       (f) The ability of the obligor to maintain support payments  
2 following retirement, including whether the obligor will continue to  
3 be employed part-time or work reduced hours;

4       (g) The obligee's level of financial independence and the  
5 financial impact of the obligor's retirement upon the obligee; and

6       (h) Any other relevant factors affecting the parties' respective  
7 financial positions.

8       (4) The assets distributed between the parties at the time of the  
9 entry of a final order of divorce or dissolution of a civil union shall  
10 not be considered by the court for purposes of determining the  
11 obligor's ability to pay alimony following retirement.

12       k. When a non-self-employed party seeks modification of  
13 alimony, the court shall consider the following factors:

14       (1) The reasons for any loss of income;

15       (2) Under circumstances where there has been a loss of  
16 employment, the obligor's documented efforts to obtain  
17 replacement employment or to pursue an alternative occupation;

18       (3) Under circumstances where there has been a loss of  
19 employment, whether the obligor is making a good faith effort to  
20 find remunerative employment at any level and in any field;

21       (4) The income of the obligee; the obligee's circumstances; and  
22 the obligee's reasonable efforts to obtain employment in view of  
23 those circumstances and existing opportunities;

24       (5) The impact of the parties' health on their ability to obtain  
25 employment;

26       (6) Any severance compensation or award made in connection  
27 with any loss of employment;

28       (7) Any changes in the respective financial circumstances of the  
29 parties that have occurred since the date of the order from which  
30 modification is sought;

31       (8) The reasons for any change in either party's financial  
32 circumstances since the date of the order from which modification  
33 is sought, including, but not limited to, assessment of the extent to  
34 which either party's financial circumstances at the time of the  
35 application are attributable to enhanced earnings or financial  
36 benefits received from any source since the date of the order;

37       (9) Whether a temporary remedy should be fashioned to provide  
38 adjustment of the support award from which modification is sought,  
39 and the terms of any such adjustment, pending continuing  
40 employment investigations by the unemployed spouse or partner;  
41 and

42       (10) Any other factor the court deems relevant to fairly and  
43 equitably decide the application.

44       Under circumstances where the changed circumstances arise  
45 from the loss of employment, the length of time a party has been  
46 involuntarily unemployed or has had an involuntary reduction in  
47 income shall not be the only factor considered by the court when an

1 application is filed by a non-self-employed party to reduce alimony  
2 because of involuntary loss of employment. The court shall  
3 determine the application based upon all of the enumerated factors,  
4 however, no application shall be filed until a party has been  
5 unemployed, or has not been able to return to or attain employment  
6 at prior income levels, or both, for a period of 90 days. The court  
7 shall have discretion to make any relief granted retroactive to the  
8 date of the loss of employment or reduction of income.

9 l. When a self-employed party seeks modification of alimony  
10 because of an involuntary reduction in income since the date of the  
11 order from which modification is sought, then that party's  
12 application for relief must include an analysis that sets forth the  
13 economic and non-economic benefits the party receives from the  
14 business, and which compares these economic and non-economic  
15 benefits to those that were in existence at the time of the entry of  
16 the order.

17 m. When assessing a temporary remedy, the court may  
18 temporarily suspend support, or reduce support on terms; direct that  
19 support be paid in some amount from assets pending further  
20 proceedings; direct a periodic review; or enter any other order the  
21 court finds appropriate to assure fairness and equity to both parties.

22 n. Alimony may be suspended or terminated if the payee  
23 cohabits with another person. Cohabitation involves a mutually  
24 supportive, intimate personal relationship in which a couple has  
25 undertaken duties and privileges that are commonly associated with  
26 marriage or civil union but does not necessarily maintain a single  
27 common household.

28 When assessing whether cohabitation is occurring, the court shall  
29 consider the following:

30 (1) Intertwined finances such as joint bank accounts and other  
31 joint holdings or liabilities;

32 (2) Sharing or joint responsibility for living expenses;

33 (3) Recognition of the relationship in the couple's social and  
34 family circle;

35 (4) Living together, the frequency of contact, the duration of the  
36 relationship, and other indicia of a mutually supportive intimate  
37 personal relationship;

38 (5) Sharing household chores;

39 (6) Whether the recipient of alimony has received an  
40 enforceable promise of support from another person within the  
41 meaning of subsection h. of R.S.25:1-5; and

42 (7) All other relevant evidence.

43 In evaluating whether cohabitation is occurring and whether  
44 alimony should be suspended or terminated, the court shall also  
45 consider the length of the relationship. A court may not find an  
46 absence of cohabitation solely on grounds that the couple does not  
47 live together on a full-time basis.

1 As used in this section:

2 “Full retirement age” shall mean the age at which a person is  
3 eligible to receive full retirement for full retirement benefits under  
4 section 216 of the federal Social Security Act (42 U.S.C. s.416).

5 (cf: P.L.2009, c.43, s.1)

6

7 2. This act shall take effect immediately and shall not be  
8 construed either to modify the duration of alimony ordered or  
9 agreed upon or other specifically bargained for contractual  
10 provisions that have been incorporated into:

- 11 a. a final judgment of divorce or dissolution;  
12 b. a final order that has concluded post-judgment litigation; or  
13 c. any enforceable written agreement between the parties.

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18 Establishes durational limits and enumerates certain factors  
19 concerning modification and termination of alimony; establishes  
20 “open durational” alimony.