

SENATE, No. 1695

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:

Senator LORETTA WEINBERG

District 37 (Bergen)

Senator HOLLY T. SCHEPISI

District 39 (Bergen and Passaic)

SYNOPSIS

Regulates the authority of the court to make provision for the educational expenses of an unemancipated child in certain instances involving child support.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/25/2021)

1 AN ACT concerning post-high school educational expenses,
2 amending N.J.S.2A:34-23 and supplementing chapter 34 of Title
3 2A of the New Jersey Statutes.

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

32 The court may order one party to pay a retainer on behalf of the
33 other for expert and legal services when the respective financial
34 circumstances of the parties make the award reasonable and just. In
35 considering an application, the court shall review the financial
36 capacity of each party to conduct the litigation and the criteria for
37 award of counsel fees that are then pertinent as set forth by court
38 rule. Whenever any other application is made to a court which
39 includes an application for pendente lite or final award of counsel
40 fees, the court shall determine the appropriate award for counsel
41 fees, if any, at the same time that a decision is rendered on the other
42 issue then before the court and shall consider the factors set forth in
43 the court rule on counsel fees, the financial circumstances of the
44 parties, and the good or bad faith of either party. The court may not
45 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
5 owed, the court in those cases not governed by court rule shall
6 consider, but not be limited to, the following factors:

7 (1) Needs of the child;

8 (2) Standard of living and economic circumstances of each
9 parent;

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

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

16 (5) Need and capacity of the child for education, including, but
17 not limited to, the factors concerning higher education enumerated
18 in section 2 of P.L. c. (C.) (pending before the Legislature
19 as this bill);

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: open durational 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, with neither party having a greater
7 entitlement to that standard of living than the other;
 - 8 (5) The earning capacities, educational levels, vocational skills,
9 and employability of the parties;
 - 10 (6) The length of absence from the job market of the party
11 seeking maintenance;
 - 12 (7) The parental responsibilities for the children;
 - 13 (8) The time and expense necessary to acquire sufficient
14 education or training to enable the party seeking maintenance to
15 find appropriate employment, the availability of the training and
16 employment, and the opportunity for future acquisitions of capital
17 assets and income;
 - 18 (9) The history of the financial or non-financial contributions to
19 the marriage or civil union by each party including contributions to
20 the care and education of the children and interruption of personal
21 careers or educational opportunities;
 - 22 (10) The equitable distribution of property ordered and any
23 payouts on equitable distribution, directly or indirectly, out of
24 current income, to the extent this consideration is reasonable, just
25 and fair;
 - 26 (11) The income available to either party through investment of
27 any assets held by that party;
 - 28 (12) The tax treatment and consequences to both parties of any
29 alimony award, including the designation of all or a portion of the
30 payment as a non-taxable payment;
 - 31 (13) The nature, amount, and length of pendente lite support
32 paid, if any; and
 - 33 (14) Any other factors which the court may deem relevant.
- 34 In each case where the court is asked to make an award of
35 alimony, the court shall consider and assess evidence with respect
36 to all relevant statutory factors. If the court determines that certain
37 factors are more or less relevant than others, the court shall make
38 specific written findings of fact and conclusions of law on the
39 reasons why the court reached that conclusion. No factor shall be
40 elevated in importance over any other factor unless the court finds
41 otherwise, in which case the court shall make specific written
42 findings of fact and conclusions of law in that regard.
- 43 When a share of a retirement benefit is treated as an asset for
44 purposes of equitable distribution, the court shall not consider
45 income generated thereafter by that share for purposes of
46 determining alimony.
- 47 c. In any case in which there is a request for an award of
48 alimony, the court shall consider and make specific findings on the

1 evidence about all of the statutory factors set forth in subsection b.
2 of this section.

3 For any marriage or civil union less than 20 years in duration,
4 the total duration of alimony shall not, except in exceptional
5 circumstances, exceed the length of the marriage or civil union.
6 Determination of the length and amount of alimony shall be made
7 by the court pursuant to consideration of all of the statutory factors
8 set forth in subsection b. of this section. In addition to those
9 factors, the court shall also consider the practical impact of the
10 parties' need for separate residences and the attendant increase in
11 living expenses on the ability of both parties to maintain a standard
12 of living reasonably comparable to the standard of living
13 established in the marriage or civil union, to which both parties are
14 entitled, with neither party having a greater entitlement thereto.

15 Exceptional circumstances which may require an adjustment to
16 the duration of alimony include:

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

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

21 (3) Whether a spouse or partner has a chronic illness or unusual
22 health circumstance;

23 (4) Whether a spouse or partner has given up a career or a career
24 opportunity or otherwise supported the career of the other spouse or
25 partner;

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

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

31 (7) Tax considerations of either party;

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

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

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

44 d. Rehabilitative alimony shall be awarded based upon a plan
45 in which the payee shows the scope of rehabilitation, the steps to be
46 taken, and the time frame, including a period of employment during
47 which rehabilitation will occur. An award of rehabilitative alimony
48 may be modified based either upon changed circumstances, or upon

1 the nonoccurrence of circumstances that the court found would
2 occur at the time of the rehabilitative award.

3 This section is not intended to preclude a court from modifying
4 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. An award of
9 reimbursement alimony shall not be modified for any reason.

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

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

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

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

1 family member of a divorcing party; and (2) the crime was
2 committed after the marriage or civil union. A person convicted of
3 an attempt or conspiracy to commit murder may not receive
4 alimony from the person who was the intended victim of the
5 attempt or conspiracy. Nothing in this subsection shall be
6 construed to limit the authority of the court to deny alimony for
7 other bad acts.

8 As used in this subsection:

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

15 j. Alimony may be modified or terminated upon the
16 prospective or actual retirement of the obligor.

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

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

26 (a) The ages of the parties at the time of the application for
27 retirement;

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

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

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

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

36 (f) The health of the parties at the time of the retirement
37 application;

38 (g) Assets of the parties at the time of the retirement
39 application;

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

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

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

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

46 If the court determines, for good cause shown based on specific
47 written findings of fact and conclusions of law, that the
48 presumption has been overcome, then the court shall apply the

1 alimony factors as set forth in subsection b. of this section to the
2 parties' current circumstances in order to determine whether
3 modification or termination of alimony is appropriate. If the
4 obligor intends to retire but has not yet retired, the court shall
5 establish the conditions under which the modification or
6 termination of alimony will be effective.

7 (2) Where the obligor seeks to retire prior to attaining the full
8 retirement age as defined in this section, the obligor shall have the
9 burden of demonstrating by a preponderance of the evidence that
10 the prospective or actual retirement is reasonable and made in good
11 faith. Both the obligor's application to the court for modification or
12 termination of alimony and the obligee's response to the application
13 shall be accompanied by current Case Information Statements or
14 other relevant documents as required by the Rules of Court, as well
15 as the Case Information Statements or other documents from the
16 date of entry of the original alimony award and from the date of any
17 subsequent modification.

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

22 (a) The age and health of the parties at the time of the
23 application;

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

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

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

33 (e) The reasonable expectations of the parties regarding
34 retirement during the marriage or civil union and at the time of the
35 divorce or dissolution;

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

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

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

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

46 (3) When a retirement application is filed in cases in which
47 there is an existing final alimony order or enforceable written
48 agreement established prior to the effective date of this act, the

1 obligor's reaching full retirement age as defined in this section shall
2 be deemed a good faith retirement age. Upon application by the
3 obligor to modify or terminate alimony, both the obligor's
4 application to the court for modification or termination of alimony
5 and the obligee's response to the application shall be accompanied
6 by current Case Information Statements or other relevant documents
7 as required by the Rules of Court, as well as the Case Information
8 Statements or other documents from the date of entry of the original
9 alimony award and from the date of any subsequent modification.
10 In making its determination, the court shall consider the ability of
11 the obligee to have saved adequately for retirement as well as the
12 following factors in order to determine whether the obligor, by a
13 preponderance of the evidence, has demonstrated that modification
14 or termination of alimony is appropriate:

15 (a) The age and health of the parties at the time of the
16 application;

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

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

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

26 (e) The reasonable expectations of the parties regarding
27 retirement during the marriage or civil union and at the time of the
28 divorce or dissolution;

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

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

34 (h) Any other relevant factors affecting the parties' respective
35 financial positions.

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

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

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

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

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

1 (4) The income of the obligee; the obligee's circumstances; and
2 the obligee's reasonable efforts to obtain employment in view of
3 those circumstances and existing opportunities;

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

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

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

11 (8) The reasons for any change in either party's financial
12 circumstances since the date of the order from which modification
13 is sought, including, but not limited to, assessment of the extent to
14 which either party's financial circumstances at the time of the
15 application are attributable to enhanced earnings or financial
16 benefits received from any source since the date of the order;

17 (9) Whether a temporary remedy should be fashioned to provide
18 adjustment of the support award from which modification is sought,
19 and the terms of any such adjustment, pending continuing
20 employment investigations by the unemployed spouse or partner;
21 and

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

24 Under circumstances where the changed circumstances arise
25 from the loss of employment, the length of time a party has been
26 involuntarily unemployed or has had an involuntary reduction in
27 income shall not be the only factor considered by the court when an
28 application is filed by a non-self-employed party to reduce alimony
29 because of involuntary loss of employment. The court shall
30 determine the application based upon all of the enumerated factors,
31 however, no application shall be filed until a party has been
32 unemployed, or has not been able to return to or attain employment
33 at prior income levels, or both, for a period of 90 days. The court
34 shall have discretion to make any relief granted retroactive to the
35 date of the loss of employment or reduction of income.

36 l. When a self-employed party seeks modification of alimony
37 because of an involuntary reduction in income since the date of the
38 order from which modification is sought, then that party's
39 application for relief must include an analysis that sets forth the
40 economic and non-economic benefits the party receives from the
41 business, and which compares these economic and non-economic
42 benefits to those that were in existence at the time of the entry of
43 the order.

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

1 n. Alimony may be suspended or terminated if the payee
2 cohabits with another person. Cohabitation involves a mutually
3 supportive, intimate personal relationship in which a couple has
4 undertaken duties and privileges that are commonly associated with
5 marriage or civil union but does not necessarily maintain a single
6 common household.

7 When assessing whether cohabitation is occurring, the court shall
8 consider the following:

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

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

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

14 (4) Living together, the frequency of contact, the duration of the
15 relationship, and other indicia of a mutually supportive intimate
16 personal relationship;

17 (5) Sharing household chores;

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

21 (7) All other relevant evidence.

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

27 As used in this section:

28 "Full retirement age" shall mean the age at which a person is
29 eligible to receive full retirement for full retirement benefits under
30 section 216 of the federal Social Security Act (42 U.S.C. s.416).
31 (cf: P.L.2014, c.42)

32

33 2. (New section) a. Pursuant to any determination made by the
34 court under subsection a. of N.J.S.2A:34-23, the court may make
35 such order for the educational expenses of an unemancipated child,
36 whether of minor or majority age. The court's authority to make
37 such provision extends, but is not limited to, periods of
38 undergraduate college education or professional or other training
39 after a child's graduation from high school. The court's authority
40 under this statute terminates when the child receives a bachelors
41 degree or a post-high school vocational certificate or similar
42 certification confirming the child's completion of the course of
43 study.

44 Educational expenses for which a court may make such order
45 may include, but shall not be limited to, tuition, room, board, dues,
46 transportation to and from school during scheduled school recesses,
47 books, supplies, nondiscretionary fees, registration and application
48 costs, lab costs, computer costs, medical expenses including

1 medical insurance and living expenses during the school year,
2 which sums may be ordered payable to the child, to either parent, or
3 to the educational institution directly or through a special account
4 or trust created for such purpose, at the discretion of the court.
5 Nothing in this section shall preclude the court from requiring the
6 child to contribute to his educational expenses in the form of
7 scholarships, grants, work-study programs, use of assets held in the
8 child's name, student loans or financial aid. The court shall have
9 the authority to allocate the child's contribution between the parents
10 and child, if warranted by the factors below.

11 When parents, regardless of their relationship or marital status,
12 are in agreement on the issue of their responsibility, if any,
13 regarding the payment of post-high school education expenses and
14 child support on behalf of a child over the age of 18, the court shall
15 not intervene on these issues unless the court determines that the
16 parties' agreement would result in harm to the child.

17 In evaluating whether to make provision for the post-high school
18 educational expenses of an unemancipated child as set forth herein,
19 the court shall consider all relevant factors, including but not
20 limited to:

21 (1) Whether the parents, if still living with the child, would have
22 contributed toward the child's educational expenses;

23 (2) The effect of the background, values, and goals of the
24 parents on the reasonableness of the expectation of the child for
25 contribution to his or her educational expenses;

26 (3) Any socioeconomic benefits that the child may gain from
27 obtaining a post-high school education, including, but not limited to
28 any benefits the child may obtain from being the first child in his or
29 her family to obtain a post-high school education;

30 (4) The amount of the contribution sought for the child's
31 educational expenses;

32 (5) The ability of the parents to pay the child's educational
33 expenses, with the court having the discretion to impute an income
34 to a parent who is underemployed without just cause for purposes of
35 determining that parent's ability to pay;

36 (6) The relationship of the requested contribution to the kind of
37 educational institution into which the child seeks entry or course of
38 study sought by the child;

39 (7) The type of institution into which the child seeks to advance
40 his or her education and the institution's graduation rate,
41 employment placement rate, student debt rate, as well as all other
42 relevant information regarding the institution;

43 (8) The availability of the course of study sought by the child at
44 a New Jersey public institution;

45 (9) The financial resources of both parents;

46 (10) The commitment to and aptitude of the child for the
47 requested education;

- 1 (11) The length of the course of study necessary to obtain the
- 2 degree or certification sought by the child and the anticipated
- 3 ability of the child to complete the course of study within that time
- 4 period, with the court having the authority to limit the parent's
- 5 contribution toward a child's undergraduate college expenses to four
- 6 tuition years;
- 7 (12) The financial resources of the child as compared with the
- 8 financial resources of both parents;
- 9 (13) The existence of custodial or trust funds for the benefit of
- 10 the child, subject to the terms of the custodial account or trust, with
- 11 the court having the authority to allocate the custodial or trust funds
- 12 established by the parents during the marriage, or, in circumstances
- 13 where the parties were unmarried, established during periods of
- 14 cohabitation equally between the parents or otherwise, if warranted;
- 15 (14) The ability of the child to earn income during the school
- 16 year or during school recesses;
- 17 (15) The availability of scholarships, grants, work-study
- 18 programs, and or student loans, financial aid to the child, as well as
- 19 the terms of repayment of any loans;
- 20 (16) The child's relationship to each parent, at the time the
- 21 contribution is sought, as well as in the years preceding the time the
- 22 contribution is sought, including mutual affection and shared goals,
- 23 responsiveness to parental advice and guidance;
- 24 (17) The date on which the contribution was first requested and
- 25 the date on which the parent was notified that contribution would be
- 26 sought;
- 27 (18) Whether the parents have children that have obtained post-
- 28 high school education and the amount the parents contributed
- 29 toward those post-high school education costs;
- 30 (19) Whether the parent from whom contribution is sought has
- 31 other children, their ages relative to the age of the child for whom
- 32 contribution is sought, and, if known, the likelihood that the child
- 33 or children will seek to obtain a post-high school education;
- 34 (20) Whether the parent is obligated by court order or agreement
- 35 to contribute to the support and maintenance of a children other
- 36 than the child for whom contribution is sought;
- 37 (21) The relationship of the education requested to any prior
- 38 training and to the overall long-range goals of the child; and
- 39 (22) Any other factors which the court may deem relevant.
- 40 b. In each case where the court is asked to make provision for
- 41 the educational expenses of an unemancipated child, the court shall
- 42 consider and assess evidence with respect to all relevant statutory
- 43 factors. If the court determines that certain factors are more or less
- 44 relevant than others, the court shall make specific written findings
- 45 of fact and conclusions of law as to the reasons why the court
- 46 reached that conclusion. No factor shall be elevated in importance
- 47 over any other factor unless the court finds otherwise, in which case

1 the court shall make specific written findings of fact and
2 conclusions of law in that regard.

3 Upon an application by either parent, the court may modify a
4 prior order directing that a parent contribute to the educational
5 expenses of the child. The following reasons may serve as a basis
6 for the modification, or termination, of a parent's obligation to
7 contribute to an unemancipated child's post-high school educational
8 expenses:

9 (1) The child's failure to enroll in a post-high school educational
10 program within 120 days after the child has graduated from high
11 school or completed a graduation equivalence degree program,
12 barring illness or disability;

13 (2) The child's failure to maintain full-time status as determined
14 by the institution at the post-high school educational program,
15 barring illness or disability;

16 (3) The child's failure to maintain grades sufficient to reenroll at
17 such institution, barring illness or disability;

18 (4) The child's failure to provide the contributing parent with a
19 transcript or similar official document provided by the post-high
20 school educational institution that includes: (a) the courses in which
21 the child is enrolled, (b) the courses that the child completed for
22 each term, (c) the grades and credits received for each such course,
23 and (d) an official document from the institution listing the courses
24 in which the child is enrolled for the upcoming term and the number
25 of credits for each such course, unless the court finds that providing
26 this information would cause harm to the child;

27 (5) The child's estrangement from a contributing parent, not due
28 to documented abuse; or

29 (6) Any other reason that makes the modification of the prior
30 order fit, reasonable, and just, given the parties' and child's
31 circumstances.

32 If the court terminates the parent's obligation to contribute to the
33 child's educational expenses for the reasons stated above, the
34 termination shall be final with the parent's obligation not eligible
35 for reinstatement.

36 c. A parent's obligation to pay child support and contribute to
37 the educational expenses of a child who has been diagnosed with a
38 developmental disability, or whose physical disability or diagnosed
39 health problem limits the child's ability to maintain full-time
40 enrollment in a post-high school educational institution shall remain
41 open to review so long as the child is enrolled in and attending an
42 institution for post-high school education and the child continues to
43 meet the other requirements of this section.

44 As used in this section "post-high school education" means any
45 postsecondary training or schooling for which the student is
46 assessed a fee and attends classes regularly including but not
47 limited to a community college, vocational school, technical school,
48 undergraduate college, or undergraduate university.

1 d. The issue of the parent's contribution, if any, toward the
2 educational expenses of a child shall be addressed with every final
3 judgment for divorce that establishes child support, as well as any
4 order establishing child support for a child who is older than 17
5 years of age, unless good cause is shown. Good cause includes (1)
6 the presence of other relevant factors that may make the issue of
7 parental contribution inapplicable and (2) the fact that an injustice
8 would result from the issue being addressed. In all cases, the
9 determination of good cause shall be within the sound discretion of
10 the court. Should good cause exist, the judgment or order shall
11 state the court's reasoning with specificity.

12
13 3. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill enumerates specific factors for the court to consider in
19 evaluating whether to make such order for the educational expenses
20 of an unemancipated child, whether of minor or majority age. The
21 authority granted under the bill extends to undergraduate college
22 education or professional or other training after graduation from
23 high school.

24 The types of educational expenses for which a court may make
25 provision include tuition, room, board, dues, transportation to and
26 from school during scheduled school recesses, books, supplies,
27 nondiscretionary fees, registration and application costs, lab costs,
28 computer costs, medical expenses including medical insurance and
29 living expenses during the school year, which sums may be ordered
30 payable to the child, to either parent, or to the educational
31 institution directly or through a special account or trust created for
32 such purpose, at the discretion of the court. Nothing shall preclude
33 the court from requiring the child to contribute to his or her
34 educational expenses in the form of scholarships, grants, work-
35 study programs, use of assets held in the child's name, student loans
36 or financial aid. The court shall have the authority to allocate the
37 child's contribution between the parents and child, if warranted by
38 the enumerated factors.

39 The factors, many of which are currently used in decisional law,
40 include: (1) Whether the parents, if still living with the child, would
41 have contributed toward the child's educational expenses; (2) The
42 effect of the background, values, and goals of the parents on the
43 reasonableness of the expectation of the child for contribution to his
44 or her educational expenses; (3) Any socioeconomic benefits that
45 the child may gain from obtaining a post-high school education,
46 including, but not limited to any benefits the child may obtain from
47 being the first child in his or her family to obtain a post-high school
48 education; (4) The amount of the contribution sought for the child's

1 educational expenses; (5) The ability of the parents to pay the
2 child's educational expenses, with the court having the discretion to
3 impute an income to a parent who is underemployed without just
4 cause for purposes of determining that parent's ability to pay; (6)
5 The relationship of the requested contribution to the kind of
6 educational institution into which the child seeks entry or course of
7 study sought by the child; (7) The type of institution into which the
8 child seeks to advance his or her education and the institution's
9 graduation rate, employment placement rate, student debt rate, as
10 well as all other relevant information regarding the institution; (8)
11 The availability of the course of study sought by the child at a New
12 Jersey public institution; (9) The financial resources of both
13 parents; (10) The commitment to and aptitude of the child for the
14 requested education; (11) The length of the course of study
15 necessary to obtain the degree or certification sought by the child
16 and the anticipated ability of the child to complete the course of
17 study within that time period, with the court having the authority to
18 limit the parent's contribution toward a child's undergraduate
19 college expenses to four tuition years; (12) The financial resources
20 of the child as compared with the financial resources of both
21 parents; (13) The existence of custodial or trust funds for the benefit
22 of the child, subject to the terms of the custodial account or trust,
23 with the court having the authority to allocate the custodial or trust
24 funds established by the parents during the marriage, or, in
25 circumstances where the parties were unmarried, established during
26 periods of cohabitation equally between the parents or otherwise, if
27 warranted; (14) The ability of the child to earn income during the
28 school year or during school recesses; (15) The availability of
29 scholarships, grants, work-study programs, and or student loans,
30 financial aid to the child, as well as the terms of repayment of any
31 loans; (16) The child's relationship to each parent, at the time the
32 contribution is sought, as well as in the years preceding the time the
33 contribution is sought, including mutual affection and shared goals,
34 responsiveness to parental advice and guidance; (17) The date on
35 which the contribution was first requested and the date on which the
36 parent was notified that contribution would be sought; (18) Whether
37 the parents have children that have obtained post-high school
38 education and the amount the parents contributed toward those post-
39 high school education costs; (19) Whether the parent from whom
40 contribution is sought has other children, their ages relative to the
41 age of the child for whom contribution is sought. and, if known, the
42 likelihood that the child or children will seek to obtain a post-high
43 school education; (20) Whether the parent is obligated by court
44 order or agreement to contribute to the support and maintenance of
45 a children other than the child for whom contribution is sought; (21)
46 The relationship of the education requested to any prior training and
47 to the overall long-range goals of the child; and (22) Any other
48 factors which the court may deem relevant. The bill provides that

1 all the factors are relevant and no factor should be elevated in
2 importance over any other factor unless the court finds otherwise.
3 In that case the court is required to make specific written findings
4 of fact and conclusions of law in that regard.

5 Under the bill, when parents are in agreement on the issue of
6 their responsibility, if any, regarding the payment of post-high
7 school education expenses and child support on behalf of a child
8 over the age of 18, the court shall not intervene on these issues
9 unless the court determines that the parties' agreement would result
10 in harm to the child.

11 Grounds for modification. The bill provides that upon an
12 application by either parent, the court may modify a prior order
13 directing that a parent contribute to the educational expenses of the
14 child. The following reasons may serve as a basis for the
15 modification or of a parent's obligation to contribute to an
16 unemancipated child's educational expenses: (1) The child's failure
17 to enroll in a post-high school educational program within 120 days
18 after the child has graduated from high school or completed a
19 graduation equivalence degree program, barring illness or
20 disability; (2) The child's failure to maintain full-time status as
21 determined by the institution at the post-high school education
22 program, barring illness or disability; (3) The child's failure to
23 maintain grades sufficient to reenroll at such institution, barring
24 illness or disability; (4) The child's failure to provide the
25 contributing parent with a transcript or similar official document
26 provided by the post-high school institution that includes: (a) the
27 courses in which the child is enrolled, (b) the courses that the child
28 completed for each term, (c) the grades and credits received for
29 each such course, and (d) an official document from the institution
30 listing the courses in which the child is enrolled for the upcoming
31 term and the number of credits for each such course, unless the
32 court finds that providing this information would cause harm to the
33 child; (5) The child's estrangement from a contributing parent, not
34 due to documented abuse; or (6) Any other reason that makes the
35 modification of the prior order fit, reasonable, and just, given the
36 parties' and child's circumstances.

37 Under the bill, if the court terminates the parent's obligation to
38 contribute to the child's educational expenses, the termination shall
39 be final with the parent's obligation not eligible for reinstatement.

40 A parent's obligation to pay child support and contribute to the
41 educational expenses of a child who has been diagnosed with a
42 developmental disability, or whose physical disability or diagnosed
43 health problem limits the child's ability to maintain full-time
44 enrollment in a post-high school institution shall remain open to
45 review so long as such child is enrolled in and attending an
46 institution for post-high school education and the child continues to
47 meet the other requirements of this section.

1 As used in the bill, “post-high school education” means any
2 postsecondary training or schooling for which the student is
3 assessed a fee and attends classes regularly including but not
4 limited to a community college, vocational school, technical school,
5 undergraduate college, or undergraduate university.