

## **New Jersey Divorce Laws**

### **TITLE 9 CHILDREN--JUVENILE AND DOMESTIC RELATIONS COURTS**

#### **9:1-1. Equal rights of parents to services and earnings of minor child; action for injuries to child**

The father and mother of a minor child are equally entitled to its services and earnings. If one of the parents be dead, has abandoned the child, or has been deprived of its custody by direction of court, the other is entitled to such services and earnings.

The parents jointly may maintain an action for the loss of the wages or services of their minor child when such loss is occasioned by an injury, wrongfully or negligently inflicted upon such child. If one of the parents be dead, has abandoned the child, has been deprived of its custody by direction of court or refuses to sue, the other may sue alone.

Nothing contained in this section shall be deemed to supersede, limit, modify or affect the provisions of chapter fifteen of Title 34 (s. 34:15-1 et seq.).

#### **9:2-1. Custody of children of parents divorced in another state or country; action in Superior Court; notice to persons interested; judgment; exclusion from hearing; records not open to public inspection**

After a divorce adjudged in any other State or country, if minor children of the marriage are inhabitants of this State, the Superior Court, in an action brought by either parent or by a guardian ad litem in behalf of the children, such notice being given to parents as the court shall direct, may make such judgment concerning their care, custody, education and maintenance as if the divorce had been obtained in this State. If the minor child or minor children have not, at the commencement of the action, reached the age of sixteen years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of such minor child or children, or that evidence will be adduced which may reflect upon the good reputation or social standing of the child or children, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter being then heard. The records of such proceedings, including all papers filed with the court, shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person or persons except by order of the court made for that purpose.

#### **9:2-2. Custody of children of divorced or separated parents within jurisdiction of Superior Court; removal from jurisdiction; consent; security**

When the Superior Court has jurisdiction over the custody and maintenance of the minor children of parents divorced, separated or living separate, and such children are natives of this State, or have resided five years within its limits, they shall not be removed out of its jurisdiction against their own consent, if of suitable age to signify the same, nor while under that age without the consent of both parents, unless the court, upon cause shown, shall otherwise order. The court, upon application of any person in behalf of such minors, may require such security and issue such writs and processes as shall be deemed proper to effect the purposes of this section.

#### **9:2-3. Custody of children of parents living separately; powers of court**

When the parents of a minor child live separately, or are about to do so, the Superior Court, in an action brought by either parent, shall have the same power to make judgments or orders concerning care, custody, education and maintenance as concerning a minor child whose parents are divorced. Until the court determines the final custody of the minor child and unless the parties agree otherwise, the court shall determine temporary custody based upon the best interests of the child with due regard to the caretaking arrangement that previously existed. No child shall be taken forcibly or against the will of the parent having custody by the other parent without a court order. If the child has not, at the time of the commencement of the action, reached the age of 16

years, and if it is represented to the court by affidavit or under oath that evidence will be adduced involving the moral turpitude of either parent, or of the minor child, or that evidence will be adduced which may reflect upon the good reputation or social standing of the child, then the court shall admit to the hearing of such case only such persons as are directly interested in the matter then being heard. The records of such proceedings, including all papers filed with the court, shall be withheld from indiscriminate public inspection, but shall be open to inspection by the parents, or their attorneys, and to no other person except by order of the court made for that purpose.

#### **9:2-4 Custody of child; rights of both parents considered.**

The Legislature finds and declares that it is in the public policy of this State to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and that it is in the public interest to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy.

In any proceeding involving the custody of a minor child, the rights of both parents shall be equal and the court shall enter an order which may include:

a. Joint custody of a minor child to both parents, which is comprised of legal custody or physical custody which shall include: (1) provisions for residential arrangements so that a child shall reside either solely with one parent or alternatively with each parent in accordance with the needs of the parents and the child; and (2) provisions for consultation between the parents in making major decisions regarding the child's health, education and general welfare;

b. Sole custody to one parent with appropriate parenting time for the noncustodial parent; or

c. Any other custody arrangement as the court may determine to be in the best interests of the child.

In making an award of custody, the court shall consider but not be limited to the following factors: the parents' ability to agree, communicate and cooperate in matters relating to the child; the parents' willingness to accept custody and any history of unwillingness to allow parenting time not based on substantiated abuse; the interaction and relationship of the child with its parents and siblings; the history of domestic violence, if any; the safety of the child and the safety of either parent from physical abuse by the other parent; the preference of the child when of sufficient age and capacity to reason so as to form an intelligent decision; the needs of the child; the stability of the home environment offered; the quality and continuity of the child's education; the fitness of the parents; the geographical proximity of the parents' homes; the extent and quality of the time spent with the child prior to or subsequent to the separation; the parents' employment responsibilities; and the age and number of the children. A parent shall not be deemed unfit unless the parents' conduct has a substantial adverse effect on the child.

The court, for good cause and upon its own motion, may appoint a guardian ad litem or an attorney or both to represent the minor child's interests. The court shall have the authority to award a counsel fee to the guardian ad litem and the attorney and to assess that cost between the parties to the litigation.

d. The court shall order any custody arrangement which is agreed to by both parents unless it is contrary to the best interests of the child.

e. In any case in which the parents cannot agree to a custody arrangement, the court may require each parent to submit a custody plan which the court shall consider in awarding custody.

f. The court shall specifically place on the record the factors which justify any custody arrangement not agreed to by both parents.

#### **9:2-4.1 Person convicted of sexual assault, custody of, visitation to minor child; denied, exceptions.**

1. a. Notwithstanding any provision of law to the contrary, a person convicted of sexual assault under N.J.S.2C:14-2 shall not be awarded the custody of or visitation rights to any minor child, including a minor child who was born as a result of or was the victim of the sexual assault, except upon a showing by clear and convincing evidence that it is in the best interest of the child for custody or visitation rights to be awarded. However, a court that awards such custody or visitation rights to a person convicted of sexual assault under N.J.S.2C:14-2 shall stay enforcement of the order or judgment for at least 10 days in order to permit the appeal of the order or judgment and application for a stay in accordance with the Rules of Court.

b. Notwithstanding any provision of law to the contrary, a person convicted of sexual contact under N.J.S.2C:14-3 or endangering the welfare of a child under N.J.S.2C:24-4 shall not be awarded the custody of or visitation rights to any minor child, except upon a showing by clear and convincing evidence that it is in the best interest of the child for such custody or visitation rights to be awarded. However, a court that awards such custody or visitation rights to a person convicted of sexual contact under N.J.S.2C:14-3 or endangering the welfare of a child under N.J.S.2C:24-4 shall stay enforcement of the order or judgment for at least 10 days in order to permit the appeal of the order or judgment and application for a stay in accordance with the Rules of Court.

c. A denial of custody or visitation under this section shall not by itself terminate the parental rights of the person denied visitation or custody, nor shall it affect the obligation of the person to support the minor child.

d. In any proceeding for establishment or enforcement of such an obligation of support the victim shall not be required to appear in the presence of the obligor and the victim's and child's whereabouts shall be kept confidential.

#### **9:2-4.2 Parental access to children's records.**

1. a. Every parent, except as prohibited by federal and State law, shall have access to records and information pertaining to his or her unemancipated child, including, but not limited to, medical, dental, insurance, child care and educational records, whether or not the child resides with the parent, unless that access is found by the court to be not in the best interest of the child or the access is found by the court to be sought for the purpose of causing detriment to the other parent.

b. The place of residence of either parent shall not appear on any records or information released pursuant to the provisions of this section.

c. A child's parent, guardian or legal custodian may petition the court to have a parent's access to the records limited. If the court, after a hearing, finds that the parent's access to the record is not in the best interest of the child or that the access sought is for the purpose of causing detriment to the other parent, the court may order that access to the records be limited.

#### **9:2-5. Death of parent having custody; reversion of custody to surviving parent; appointment of guardian by superior court; removal**

In case of the death of the parent to whom the care and custody of the minor children shall have been awarded by the Superior Court, or in the case of the death of the parent in whose custody the children actually are, when the parents have been living separate and no award as to the custody of such children has been made, the care and custody of such minor children shall not revert to the surviving parent without an order or judgment of the Superior Court to that effect. The Superior Court shall have the right, in an action brought by a guardian ad litem on behalf of the children, to appoint such friend or other suitable person, guardian of such minor children, and shall have the right to remove such guardian, and to appoint a new guardian or guardians, and to make such judgments and orders, from time to time, as the circumstances of the case and the benefit of the children shall require.

#### **9:2-7. Habeas corpus to determine custody of child; access to child**

When any husband and wife shall live in a state of separation without being divorced, and shall have any minor child of the marriage, the Superior Court, upon such child being brought before it upon habeas corpus, shall award the custody of such child and make such order or judgment relating thereto for the access of either parent to such child, at such times and under such circumstances, as it may deem proper.

##### **9:2-7.1. Visitation rights for grandparents, siblings**

1.a. A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the

burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child.

b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:

- (1) The relationship between the child and the applicant;
- (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
- (3) The time which has elapsed since the child last had contact with the applicant;
- (4) The effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing;
- (5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;
- (6) The good faith of the applicant in filing the application;
- (7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and
- (8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if the applicant had, in the past, been a full-time caretaker for the child.

#### **9:2-7.2. Concealment of child; preliminary hearing as to custody**

1. When any husband and wife shall live in a state of separation without being divorced and shall have any minor child or children of the marriage, and when either spouse shall willfully conceal the whereabouts of said child or children, the Superior Court, Chancery Division, Family Part, upon application of the aggrieved parent, shall conduct a preliminary hearing as to the custody of said child or children and shall make such order relating thereto for the access of either parent to said child at such times and under such circumstances as it may deem proper.

#### **9:2-9. Unfit parents and custodians, court action to grant relief**

When the parents of any minor child or the parent or other person having the actual care and custody of any minor child are grossly immoral or unfit to be intrusted with the care and education of such child, or shall neglect to provide the child with proper protection, maintenance and education, or are of such vicious, careless or dissolute habits as to endanger the welfare of the child or make the child a public charge, or likely to become a public charge; or when the parents of any minor child are dead or cannot be found, and there is no other person, legal guardian or agency exercising custody over such child; it shall be lawful for any person interested in the welfare of such child to institute an action in the Superior Court, Chancery Division, Family Part, in the county where such minor child is residing, for the purpose of having the child brought before the court, and for the further relief provided by this chapter. The court may proceed in the action in a summary manner or otherwise.

#### **9:2-10. Order for proper care of child**

In an action brought pursuant to R.S.9:2-9, the Superior Court, after an investigation shall have been made by the chief probation officer of the county in which the child may reside, concerning the reputation, character and ability of the plaintiff, or such other person as the court may direct, to properly care for such child, shall make an order or judgment committing the child to the care and custody of such person, who will accept the same, as the court shall for that purpose designate and appoint, until such child shall attain the age of eighteen years, or the

further direction of the court; provided, however, that in proper cases such care and custody may be exercised by supervision of the child in his own home, unless the court shall otherwise order. Such order or judgment may require the giving of a bond by the person to whose care or custody the said child may be committed, with such security and on such conditions as the court shall deem proper.

**9:2-11. Commitment of child to child caring society; cost of proceedings; consent to adoption of child; support by relative**

The court before which such proceedings shall be conducted, may, in the same manner but in lieu of committing such child, as in section 9:2-10 of this Title specified, commit such child to the care and custody of any society duly incorporated under the laws of this State for the care of children. In such case the court may, in its discretion, cause the person in whose custody such child was, or the county in which such child may reside, to pay all costs and expenses of such proceedings, and such person or society or institution to whom or to which such child is committed may, upon special authority granted in the order or judgment of commitment, give his or its consent, and such consent will be sufficient, to the legal adoption of such child; provided, however, that the granting of the right to consent to adoption shall in no wise be construed as authority to place a child for adoption except in accordance with the provisions of chapter three of this Title (s. 9:3-1 et seq.).

Whenever the court shall have made an order or judgment with respect to the care and custody of a child as contemplated by this Title, and it shall appear that the person in whose custody such child was is a relative financially able and legally liable to provide support for such child, the court may make a supplementary order requiring such relative to make such payment or payments for the support of such child as the court may deem reasonable under the circumstances.

**9:2-13. Definitions**

For the purposes of this act, the following words and phrases, unless otherwise indicated, shall be deemed to have the following meanings:

(a) The phrase "approved agency" means a legally constituted agency having its principal office within or without this State, which has been approved, pursuant to law, to place children in New Jersey for purposes of adoption.

(b) The word "child" means any person under 18 years of age.

(c) The word "custody" means continuing control and authority over the person of a child, established by natural parenthood, by order or judgment of a court of competent jurisdiction, or by written surrender to and approved agency pursuant to law.

(d) The phrase "forsaken parental obligations" means willful and continuous neglect or failure to perform the natural and regular obligations of care and support of a child.

(e) The phrase "mentally incompetent" means inability to understand and discharge the natural and regular obligations of care and support of a child by reason of mental disease, feebleness of mind, or habitual intemperance.

(f) The word "parent," when not otherwise described by the context, means a natural parent or parent by previous adoption.

(g) The word "may" shall be construed to be permissive and the word "shall" shall be construed to be mandatory.

**9:2-14. Surrender of child custody; validity**

Except as otherwise provided by law or by order or judgment of a court of competent jurisdiction or by testamentary disposition, no surrender of the custody of a child shall be valid in this State unless made to an approved agency pursuant to the provisions of this act or pursuant to the

provisions of a substantially similar law of another State or territory of the United States or of the Dominion of Canada or of one of its provinces.

**9:2-15. Surrender or termination of rights of one parent; rights of other parent**

No surrender of custody by, nor termination of the parental rights of, one parent shall affect the rights of the other parent; nor may one parent act as the agent or representative of the other parent in the surrender of custody or termination of parental rights.

**9:2-16. Voluntary surrender to approved agency**

An approved agency may take a voluntary surrender of custody of a child from the parent of such child, or from such other person or persons who, by order of a court of competent jurisdiction, have been substituted for the parent as to custody of such child. Each such surrender, when properly acknowledged in the manner and form provided by sections 46:14-6 and 46:14-7 of the Revised Statutes, shall be valid whether or not the person giving the same is a minor, and shall be irrevocable except at the discretion of the approved agency taking such surrender or upon order or judgment of a court of competent jurisdiction, setting aside such surrender upon proof of fraud, duress or misrepresentation.

**9:2-17. Form of surrender**

The form of any such surrender shall be such as to declare that the person executing the same desires to relinquish the custody of the child, acknowledge the termination of parental rights as to such custody in favor of the approved agency, and acknowledge full understanding of the effect of such surrender as provided by this act. Any such surrender may include a statement that its purpose is to permit the approved agency to place the child for adoption by such person or persons as the approved agency may select.

**9:2-18. Procedure to terminate parental rights**

6. An approved agency which is providing supervision of a child may institute an action in the Superior Court, seeking the termination of the rights of the parents of such child and the transfer of custody of such child to the agency. A prior surrender of custody as provided by Article II of this act shall not be deemed a waiver of notice or service of process in proceedings under Article III hereof. At least five days prior to the hearing, the plaintiff shall file with the court a written report as to all circumstances of the case.

**9:2-19. Grounds for terminating custody**

If the court shall determine that custody of the child has been surrendered as provided in Article II of this act, the court may declare that the person making such surrender shall have no further right to custody of the child. If the court shall determine that a parent of the child is dead, or mentally incompetent, or has forsaken parental obligation, the court may declare that such parent shall have no further right to custody of the child. If the court shall determine that a custodian or guardian has been appointed for the child, but that such custodian or guardian has willfully and continuously neglected or failed to discharge the responsibilities of such appointment, the court may declare that such custodian or guardian shall have no further control and authority over the person of the child.

**9:2-20. Judgment terminating rights; effect of judgment**

If the court shall find that the parents of the child should have no further right to custody of the child, or that the custodian or guardian, if any, should have no further control and authority over the person of the child, a judgment shall be entered terminating such right or control and authority and transferring the custody of the child to the plaintiff. The judgment so entered, unless otherwise specified therein, shall not affect the duties of the parents, custodian or guardian with respect to support and maintenance of the child.

**9:2-21. Effective date**

This act shall take effect July 1, 1955.

## **TITLE 37 MARRIAGES AND MARRIED PERSONS**

### **37:2-4. Antenuptial contracts**

All contracts made between persons in contemplation of marriage shall remain in full force after such marriage takes place.

### **Uniform Premarital Agreement Act**

#### **37:2-31. Short title**

This article shall be known and may be cited as the "Uniform Premarital Agreement Act."  
Source: New.

#### **37:2-32. Definitions**

As used in this article:

a. "Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage;

b. "Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings;

c. "Unconscionable premarital agreement" means an agreement, either due to a lack of property or unemployment:

(1) Which would render a spouse without a means of reasonable support;

(2) Which would make a spouse a public charge; or

(3) Which would provide a standard of living far below that which was enjoyed before the marriage.

#### **37:2-33. Formalities; consideration**

A premarital agreement shall be in writing, with a statement of assets annexed thereto, signed by both parties, and it is enforceable without consideration.

#### **37:2-34. Contents of premarital agreement**

Parties to a premarital agreement may contract with respect to:

a. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

b. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

c. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

d. The modification or elimination of spousal support;

e. The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

- f. The ownership rights in and disposition of the death benefit from a life insurance policy;
- g. The choice of law governing the construction of the agreement; and
- h. Any other matter, including their personal rights and obligations, not in violation of public policy.

**37:2-35. Premarital agreement not to adversely affect right of child support**

A premarital agreement shall not adversely affect the right of a child to support.

**37:2-36. When premarital agreement becomes effective**

A premarital agreement becomes effective upon marriage of the parties.

**37:2-37. Amendment or revocation of premarital agreement**

After marriage of the parties, a premarital agreement may be amended or revoked only by a written agreement signed by the parties, and the amended agreement or revocation is enforceable without consideration.

**37:2-38. Enforcement of premarital agreement; generally**

The burden of proof to set aside a premarital agreement shall be upon the party alleging the agreement to be unenforceable. A premarital agreement shall not be enforceable if the party seeking to set aside the agreement proves, by clear and convincing evidence, that:

- a. The party executed the agreement involuntarily; or
- b. The agreement was unconscionable at the time enforcement was sought; or
- c. That party, before execution of the agreement:

(1) Was not provided full and fair disclosure of the earnings, property and financial obligations of the other party;

(2) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided;

(3) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party; or

(4) Did not consult with independent legal counsel and did not voluntarily and expressly waive, in writing, the opportunity to consult with independent legal counsel.

d. The issue of unconscionability of a premarital agreement shall be determined by the court as a matter of law.

**37:2-39. Enforcement of premarital agreement; marriage determined void**

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

**37:2-40. Construction of article**

This article shall be construed to effectuate its general purpose to make uniform the law with respect to the subject of the article among states enacting the "Uniform Premarital Agreement Act."

### **37:2-41. Application of article**

This article shall apply to premarital agreements executed on and after its effective date.

## **Title 2A Administration of Civil and Criminal Justice**

### **Chapter 34. Divorce and Nullity of Marriage-Alimony and Maintenance-Care and Custody of Children.**

#### **2A:34-1. Causes for judgments of nullity**

Judgments of nullity of marriage may be rendered in all cases, when:

a. Either of the parties has another wife or husband living at the time of a second or other marriage;

b. The parties are within the degrees prohibited by law. If any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

c. The parties, or either of them, were at the time of marriage physically and incurably impotent, provided the party making the application shall have been ignorant of such impotency or incapability at the time of the marriage, and has not subsequently ratified the marriage.

d. The parties, or either of them, lacked capacity to marry due to want of understanding because of mental condition, or the influence of intoxicants, drugs, or similar agents; or where there was a lack of mutual assent to the marital relationship; duress; or fraud as to the essentials of marriage; and has not subsequently ratified the marriage.

e. The demand for such a judgment is by the wife or husband who was under the age of 18 years at the time of the marriage, unless such marriage be confirmed by her or him after arriving at such age.

f. Allowable under the general equity jurisdiction of the Superior Court.

#### **2A:34-2. Causes for divorce from bond of matrimony**

Divorce from the bond of matrimony may be adjudged for the following causes heretofore or hereafter arising:

a. Adultery;

b. Willful and continued desertion for the term of 12 or more months, which may be established by satisfactory proof that the parties have ceased to cohabit as man and wife;

c. Extreme cruelty, which is defined as including any physical or mental cruelty which endangers the safety or health of the plaintiff or makes it improper or unreasonable to expect the plaintiff to continue to cohabit with the defendant; provided that no complaint for divorce shall be filed until after 3 months from the date of the last act of cruelty complained of in the complaint, but this provision shall not be held to apply to any counterclaim;

d. Separation, provided that the husband and wife have lived separate and apart in different habitations for a period of at least 18 or more consecutive months and there is no reasonable prospect of reconciliation; provided, further that after the 18-month period there shall be a presumption that there is no reasonable prospect of reconciliation;

e. Voluntarily induced addiction or habituation to any narcotic drug as defined in the New Jersey Controlled Dangerous Substances Act, P.L.1970, c. 226 or habitual drunkenness for a period of 12 or more consecutive months subsequent to marriage and next preceding the filing of the complaint;

f. Institutionalization for mental illness for a period of 24 or more consecutive months subsequent to marriage and next preceding the filing of the complaint;

g. Imprisonment of the defendant for 18 or more consecutive months after marriage, provided that where the action is not commenced until after the defendant's release, the parties have not resumed cohabitation following such imprisonment;

h. Deviant sexual conduct voluntarily performed by the defendant without the consent of the plaintiff.

**2A:34-3. Causes for divorce from bed and board**

Divorce from bed and board may be adjudged for the same causes as divorce from the bonds of matrimony whenever both parties petition or join in requesting such relief and they or either of them present sufficient proof of such cause or causes to warrant the entry of a judgment of divorce from the bonds of matrimony, provided further that in the case of a reconciliation thereafter the parties may apply for a revocation or suspension of the judgment, and provided further that the granting of a bed and board divorce shall in no way prejudice either party from thereafter applying to the court for a conversion of said divorce to a divorce from the bonds of matrimony, which application shall be granted as a matter of right.

**2A:34-6. Divorce from bed and board; property rights**

For and during the time that any judgment for divorce from bed and board shall remain in force and effect all property rights of the parties shall be as though a judgment of absolute divorce had been entered.

In any property transaction had by either of the parties in such status the fact of the existence of such judgment shall be distinctly recited and reference to the public record thereof shall be clearly set forth.

**2A:34-7. Certain defenses abolished**

Recrimination, condonation and the clean hands doctrine are hereby abolished as defenses to divorce from the bonds of matrimony or from bed and board, and if both parties make out grounds for a divorce, a decree may be granted to each; provided that nothing herein shall preclude or abrogate the responsibility of a party for the penalty provided by law for perjury or the subornation of perjury.

**2A:34-8. Jurisdiction stated**

The Superior Court shall have jurisdiction of all causes of divorce, bed and board divorce, or nullity when either party is a bona fide resident of this State. The Superior Court shall have jurisdiction of an action for alimony and maintenance when the defendant is subject to the personal jurisdiction of the court, is a resident of this State, or has tangible or intangible real or personal property within the jurisdiction of the court. The Superior Court may afford incidental relief as in other cases of an equitable nature and by rule of court may determine the venue of matrimonial actions.

**2A:34-9. Jurisdiction in nullity proceedings; residence requirements; service of process**

Jurisdiction in actions for nullity of marriage may be acquired when:

a. Either party is a bona fide resident of this state at the time of the commencement of the action; and

b. Process is served upon the defendant as prescribed by the rules of the supreme court.

**2A:34-10. Jurisdiction in divorce proceedings; service of process; residence requirements**

Jurisdiction in actions for divorce, either absolute or from bed and board, may be acquired when process is served upon the defendant as prescribed by the rules of the Supreme Court, and

1. When, at the time the cause of action arose, either party was a bona fide resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery, unless one of the parties has been for the 1 year next preceding the commencement of the action a bona fide resident of this State; or

2. When, since the cause of action arose, either party has become, and for at least 1 year next preceding the commencement of the action has continued to be, a bona fide resident of this State.

**2A:34-11. Jurisdiction by acknowledgment of service of process, appearance, etc.**

In divorce and nullity actions, the jurisdiction of the court over the defendant's person for all purposes of the action shall be fully established by the filing of an acknowledgment of service of process, or of an appearance, or of an answer by the defendant pro se, or on his behalf by a duly authorized attorney, in such manner as may be prescribed by rules of the supreme court.

**2A:34-12. Counterclaims**

Whenever the court shall have acquired jurisdiction of any action under the provisions of this chapter, the defendant therein may, by counterclaim, state any cause of action under this chapter which exists at the time of the service of the counterclaim.

**2A:34-12.1. Short title**

1.This act shall be known and may be cited as the "Parents' Education Act."

**2A:34-12.2. "Parents' Education Fund"**

2.There is hereby established a separate, nonlapsing, revolving fund in the General Fund to be known as the "Parents' Education Fund." The Clerk of the Superior Court shall forward the \$25 registration fee collected pursuant to section 5 of P.L.1999, c.111(C.2A:34-12.5) for deposit in the fund. The fund shall be administered by the Administrative Office of the Courts and dedicated to the development, establishment, operation and maintenance of the "Parents' Education Program" created pursuant to section 3 of P.L.1999, c.111(C.2A:34-12.3).

**2A:34-12.3. "Parent's Education program"**

3. a. There is hereby established a mandatory education program to be known as the "Parents' Education Program."

b.The program shall be designed to assist and advise divorced parents on issues concerning divorce, separation and custody. The program shall be made available twice a month. The program shall be administered by the Administrative Office of the Courts. The Assignment Judge shall appoint appropriate staff to act as a program representative or representatives, as necessary, for each county.

c.The purpose of the program shall be to promote cooperation between the parties and to assist parents in resolving issues which may arise during the divorce or separation process, including, but not limited to:

(1)Understanding the legal process and cost of divorce or separation, including arbitration and mediation;

(2)Understanding the financial responsibilities for the children;

(3) Understanding the interaction between parent and child, the family relationship and any other areas of adjustment and concern during the process of divorce or separation;

(4) Understanding how children react to divorce or separation, how to spot problems, what to tell them about divorce or separation, how to keep communication open and how to answer questions and concerns the children may have about the process;

(5) Understanding how parents can help their children during the divorce or separation, specific strategies, ideas, tools, and resources for assistance;

(6) Understanding how parents can help children after the divorce or separation and how to deal with new family structures and different sets of rules; and

(7) Understanding that cooperation may sometimes be inappropriate in cases of domestic violence.

#### **2A:34-12.4. Advisory committee, duties; report**

4. a. There is hereby established an advisory committee consisting of nine members appointed by the Governor with the advice and consent of the Senate. The members shall include a former judge who specialized in family law matters, an attorney who specializes in family law matters, a mediator, the Administrative Director of the Courts, or his designee, two mental health professionals with experience in the field of child care, an educator, one custodial parent and one non-custodial parent.

b. The committee members shall select a chairman from among the members. The committee shall develop a curriculum, guidelines, program representative qualifications and requirements to be used in the "Parents' Education Program" established pursuant to section 3 of P.L.1999, c.111(C.2A: 34-12.3). The committee shall report its recommendations to the Administrative Office of the Courts three months following the organization of the committee. The Administrative Office of the Courts shall use the recommendations of the committee to develop a comprehensive education program.

#### **2A:34-12.5. Attendance at program required; fee; exceptions**

5. a. The court shall order every person who has filed an action for divorce, nullity or separate maintenance where the custody, visitation or support of the minor child is an issue to attend the "Parents' Education Program" established pursuant to section 3 of P.L.1999, c.111(C.2A: 34-12.3). Each party shall attend separate sessions of the program.

b. Each party shall be required to pay a fee of \$25 for registration in the "Parents' Education Program" which shall be forwarded by the Clerk of the Superior Court for deposit in the "Parents' Education Program Fund" established pursuant to section 2 of P.L.1999, c.111(C.2A: 34-12.2).

c. Except as provided in subsections d. and e. of this section, the court shall require all parties who have filed an action for divorce, nullity or separate maintenance where the custody, visitation or support of the minor child is an issue to complete the program prior to entry of judgment. Failure of a party to participate in the program shall be considered as a factor by the court in making any custody and visitation determinations.

d. The court may exempt a party from attending the program, if the court finds good cause for an exemption.

e. The court shall not refer a party to the program if a temporary or final order restraining either party from contact with the other has been issued pursuant to the "Prevention of Domestic Violence Act of 1991," P.L. 1991, c. 261 (C.2C:25-17 et seq.), or if either party is restrained from contact with the other party, or a child of the other party, under the criminal or civil laws of this or any other state.

#### **2A:34-12.6. Program representatives, immunity, employment restrictions**

6. a. Notwithstanding any other provision of law to the contrary, no person serving as a program representative in the "Parents' Education Program" established pursuant to section 3 of P.L.1999, c.111(C.2A:34-12.3) shall be liable for damages resulting from any exercise of judgment or discretion in connection with the person's duties unless the actions are fraudulent or evidence a reckless disregard for the duties imposed by the position. Nothing in this section shall be deemed to grant immunity to any program representative causing damage by that person's wilful, wanton or grossly negligent act of commission or omission.

b.No person serving as a program representative in the program shall solicit, accept employment from or counsel a program participant for a period of one year after the program participant has completed the program.

#### **2A:34-12.7. Confidentiality of communications**

7.All communications made by any program participant during the course of attending the "Parents' Education Program," established pursuant to section 3 of P.L.1999, c.111(C.2A:34-12.3) are confidential and shall not be admissible as evidence in any court proceeding.

#### **2A:34-12.8. Adoption of Rules by Court**

8.The Supreme Court of New Jersey may adopt Rules of Court appropriate or necessary to effectuate the purpose of this act.

#### **2A:34-13. Matrimonial action**

**2A:34-13. A person who has attained the age of 16 years may prosecute or defend any matrimonial action in person or by attorney.**

#### **2A:34-14. Parent or guardian may prosecute or defend**

A parent or guardian shall not be precluded by the provisions of this chapter from prosecuting or defending any action respecting the marriage status or relation of his minor child or ward.

#### **2A:34-15. Co-respondent in adultery actions**

Where a person is named as co-respondent in a charge of adultery, the party making the charge shall give the co-respondent written notice of the charge within the time and in the manner prescribed by the rules of the supreme court.

Any such co-respondent shall be entitled to intervene in the action on the issue of adultery.

#### **2A:34-18. Final judgment; appeal**

If after the hearing of any cause the court shall determine that the plaintiff or counterclaimant is entitled to a judgment of nullity of marriage or a judgment for divorce from the bonds of matrimony, a final judgment shall be entered.

Appeals shall be taken only from the final judgment.

#### **2A:34-20. Effect of judgment**

A child heretofore or hereafter born of parents who prior or subsequent to the birth of such child have entered into a civil or religious marriage, or shall have consummated a common-law marriage where such marriage is recognized as valid, in the manner authorized by the law of the place where such marriage takes place, is the legitimate child of both natural parents notwithstanding that such marriage is void or voidable or has been or shall hereafter be annulled or judicially declared void.

Nothing in this amendatory act shall be deemed to affect the construction of any will or instrument heretofore executed or any property right or interest or right of action vested or accrued or to limit the operation of any judicial determination containing an express provision or provisions with respect to the legitimacy, maintenance or custody of any child, or to affect any adoption proceeding heretofore commenced, or limit the effect of any judgment or order entered in such adoption proceedings.

#### **2A:34-21. Surname**

The court, upon or after granting a divorce from the bonds of matrimony to either spouse, may allow either spouse to resume any name used by the spouse before the marriage, or to assume any surname.

#### **2A:34-23 Alimony, maintenance.**

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

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

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

(1) Needs of the child;

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

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

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

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

- (6) Age and health of the child and each parent;
- (7) Income, assets and earning ability of the child;
- (8) Responsibility of the parents for the court-ordered support of others;
- (9) Reasonable debts and liabilities of each child and parent; and
- (10) Any other factors the court may deem relevant.

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

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

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

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage;
- (3) The age, physical and emotional health of the parties;
- (4) The standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
- (6) The length of absence from the job market of the party seeking maintenance;
- (7) The parental responsibilities for the children;
- (8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
- (9) The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;
- (10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;
- (11) The income available to either party through investment of any assets held by that party;
- (12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment; and

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

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

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

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

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

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

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

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

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

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

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

#### **2A:34-23a. Payment of counsel fees incurred in collection of child support**

If a party in any action to enforce and collect child support ordered by a court pursuant to the provisions of N.J.S. 2A:34-23 has incurred counsel fees, the court shall require the defaulting party

to pay those counsel fees unless the court finds that the default was substantially justified or that other circumstances make an award of counsel fees unjust. The court shall determine the appropriate award for counsel fees and shall consider the financial circumstances of the parties and whether each acted in good faith.

**2A:34-23b. Direct payments to health care provider**

1. a. Notwithstanding any provision of law to the contrary, if a child support order or separation agreement requires the non-custodial parent to provide health care insurance, the payment of benefits for any covered services under that insurance shall, upon submission of the relevant section of the order or agreement by the custodial parent to the insurer, be made directly to the health care provider.

b. Every child support order issued or separation agreement executed on or after the effective date of this act shall provide notice of the right of the custodial parent to have health insurance benefits paid directly to the health care provider pursuant to subsection a. of this section.

**2A:34-23c. Child support order; health care coverage provisions**

1. Any order or judgment that includes child support shall include provisions indicating the party responsible for maintaining health care coverage for the child and the terms and conditions by which that coverage is to be maintained.

The provisions of the order or judgment relating to health care coverage shall be enforced through the National Medical Support Notice, upon its adoption by federal regulation pursuant to the "Child Support Performance and Incentive Act of 1998," Pub.L. 105-200.

**2A:34-23d Maintenance of certain insurance coverage in action for divorce.**

1. a. Upon filing of a complaint for an action for divorce, nullity or separate maintenance, where the custody, visitation or support of a minor child is an issue, the party who has maintained all existing insurance coverage or coverage traditionally maintained during the marriage, including but not limited to, all health, disability, home or life insurance, shall continue to maintain or continue to share in the cost of maintaining the coverage.

b. If a party who has maintained the existing insurance coverage or has shared in the cost of maintaining the coverage has had a voluntary or involuntary change in employment status, which may cause the existing insurance coverage to terminate, then that party shall notify the other party that it may be necessary to reallocate the financial responsibilities of maintaining the coverage.

c. Upon receipt of this notice, the party may petition the court to reallocate financial responsibilities.

d. The court may take any action it deems appropriate to reallocate financial responsibilities including but not limited to ordering a party to obtain comparable coverage or releasing a party from the obligation or any other order.

**2A:34-23e Delinquent child support obligors, community service in addition to incarceration for contempt.**

1. In addition to incarceration of a person found by the court to be in contempt of a support order issued by the Superior Court, Chancery Division, Family Part, the court may order such person to perform community service for part, or all, of the person's period of incarceration.

**2A:34-23.1 Equitable distribution criteria.**

4. In making an equitable distribution of property, the court shall consider, but not be limited to, the following factors:

a. The duration of the marriage;

- b. The age and physical and emotional health of the parties;
- c. The income or property brought to the marriage by each party;
- d. The standard of living established during the marriage;
- e. Any written agreement made by the parties before or during the marriage concerning an arrangement of property distribution;
- f. The economic circumstances of each party at the time the division of property becomes effective;
- g. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage;
- h. The contribution by each party to the education, training or earning power of the other;
- i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a party as a homemaker;
- j. The tax consequences of the proposed distribution to each party;
- k. The present value of the property;
- l. The need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own the household effects;
- m. The debts and liabilities of the parties;
- n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse or children;
- o. The extent to which a party deferred achieving their career goals; and
- p. Any other factors which the court may deem relevant.

In every case, the court shall make specific findings of fact on the evidence relevant to all issues pertaining to asset eligibility or ineligibility, asset valuation, and equitable distribution, including specifically, but not limited to, the factors set forth in this section.

It shall be a rebuttable presumption that each party made a substantial financial or nonfinancial contribution to the acquisition of income and property while the party was married.

**2A:34-23.2 Findings, declarations relative to violation of visitation orders.**

- 1. The Legislature finds and declares that:
  - a. There has been an increase in the filings of dissolutions of marriages in the recent years; and
  - b. The best interests of the children of these marriages in maintaining close relationships with both parents regardless of which parent has the physical custody of the child is paramount; and
  - c. Proceeding criminally in cases where the terms of an order of visitation with a child has failed to be honored may be both difficult and inappropriate; and

d. Bolstering the statutory civil remedies available to a judge hearing these types of matters may provide an indication of legislative intent to promote the enforcement of these matters.

### **2A:34-23.3 Available remedies.**

2.A judge who sanctions a party for failure to comply with an order of visitation shall have these remedies available:

a. The awarding of counsel fees of the aggrieved party against the party who violated the terms of the order;

b. Community service;

c. The awarding of compensatory time for the time with the child for which the party was deprived;

d. The awarding of monetary compensation for additional costs incurred when a parent fails to appear for scheduled visitation; and

e. Other economic sanctions which may be decided on a case-by-case basis.

### **2A:34-24 Lien, security.**

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

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

#### **2A:34-24.1. Court-ordered support, maintenance**

When a spouse has secured a judgment or decree of divorce, whether absolute or from bed and board, or of nullity or annulment of marriage, in an action whether brought in this State or elsewhere, wherein jurisdiction over the person of the other spouse was not obtained, the court may make the same orders and judgments touching the suitable support and maintenance to be paid and provided by the spouse, or to be made out of the spouse's property, for the other spouse and their children, or any of them, by their marriage and for such time, as the nature of the case and circumstances of the parties render suitable and proper, pursuant to the provisions of chapter 34 of Title 2A of the New Jersey Statutes notwithstanding the securing of such judgment or decree.

#### **2A:34-25. Termination of alimony**

If after the judgment of divorce a former spouse shall remarry, permanent and limited duration alimony shall terminate as of the date of remarriage except that any arrearages that have accrued prior to the date of remarriage shall not be vacated or annulled. A former spouse who remarries shall promptly so inform the spouse paying permanent or limited duration alimony as well as the collecting agency, if any. The court may order such alimony recipient who fails to comply with the notification provision of this act to pay any reasonable attorney fees and court costs incurred by the recipient's former spouse as a result of such non-compliance.

The remarriage of a former spouse receiving rehabilitative or reimbursement alimony shall not be cause for termination of such alimony by the court unless the court finds that the circumstances upon which the award was based have not occurred or unless the payer spouse demonstrates an agreement or good cause to the contrary.

Alimony shall terminate upon the death of the payer spouse, except that any arrearages that have accrued prior to the date of the payer spouse's death shall not be vacated or annulled.

Nothing in this act shall be construed to prohibit a court from ordering either spouse to maintain life insurance for the protection of the former spouse or the children of the marriage in the event of the payer spouse's death.

**2A:34-26. Attachment of property**

When a spouse cannot be found within this State to be served with process, the spouse's estate, property and effects within this State and the rents and profits thereof may be attached to compel the spouse's appearance and performance of any judgment or order which may be made in the action. Where the proceedings are by process of attachment and the defendant does not appear, the judgment shall be enforceable only out of and against the property attached.

**2A:34-27. Bond for costs**

In any action under sections 2A:34-24 and 2A:34-26 of this title the court may order a bond to be given in the sum of \$100 with 1 or more sufficient sureties, with condition to pay such costs as may be awarded by the court to the defendant.