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**COMMISSION ON SEX DISCRIMINATION  
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**SEX DISCRIMINATION  
IN  
MARRIAGE AND FAMILY LAW**

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**SEPTEMBER 1981  
SECOND REPORT**

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SECOND REPORT





## ACKNOWLEDGEMENTS

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Legislative Interns Jeanne Fortin, Ellen Bromsen, Lucy Cerpa, Doris Lamourt and Lourdes Santiago of Rutgers University School of Law, Newark, New Jersey; and Joanne Mantz, Corinne Clarke and Maryann Nergaard of Seton Hall Law School, Newark, New Jersey;

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Consultants Honorable Rosemary Higgins Cass, Mary Jean Gallagher, Esq., Mr. Harry Wiggins, Chief, Bureau of Child Support and Paternity, New Jersey Department of Human Services, and Professor June Miller Weisberger, University of Wisconsin School of Law, Madison, Wisconsin.





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September 1981

TO THE HONORABLE BRENDAN T. BYRNE, GOVERNOR; THE HONORABLE JOSEPH P. MERLINO, SENATE PRESIDENT; THE HONORABLE CHRISTOPHER JACKMAN, SPEAKER; AND HONORABLE MEMBERS OF THE SENATE AND GENERAL ASSEMBLY:

The Commission on Sex Discrimination in the Statutes respectfully submits its second report, SEX DISCRIMINATION IN MARRIAGE AND FAMILY LAW, pursuant to the mandate of P.L. 1978, c. 68.

The report is the result of the Commission's study of sex discrimination in Marriage and Family Law from October 1979, continuing through the present. The recommendations contained herein reflect the completion of the Commission's comprehensive statutory survey of the Marriage and Family Statutes in New Jersey Statutes Annotated, Title 2A, Chapters 17, 34 and 83 (Administration of Civil and Criminal Justice), Title 9 (Children - Juvenile and Domestic Relations Courts), Title 26 (Health and Vital Statistics), Title 37 (Marriage and Married Persons), Title 44 (Poor) and Title 3A, Chapter 2A (Administration of Estates - Decedents and Others).

In this report, the Commission also supports relevant proposed legislation and discusses issues that will require further examination.

We believe that the statutes and issues identified in our recommendations will contribute to the elimination of sex discrimination in New Jersey, and urge their legislative and administrative implementation.

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Senator Wynona M. Lipman, Chair

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## TABLE OF CONTENTS

PREFACE . . . . .	i
INTRODUCTION . . . . .	1
SECTION I - STATUTORY RECOMMENDATIONS . . . . .	5
TITLE 9 RECOMMENDATIONS . . . . .	5
TITLE 2A, CHAPTER 83 RECOMMENDATIONS . . . . .	19
TITLE 2A, CHAPTER 17 RECOMMENDATIONS . . . . .	20
TITLE 2A, CHAPTER 34 RECOMMENDATIONS . . . . .	24
TITLE 3A, CHAPTER 2A RECOMMENDATIONS . . . . .	34
TITLE 26 RECOMMENDATIONS . . . . .	35
TITLE 37 RECOMMENDATIONS . . . . .	37
TITLE 44 RECOMMENDATIONS . . . . .	58
SECTION II - RECOMMENDATIONS ON PROPOSED LEGISLATION. . .	66
SURVIVING SPOUSE GRANTED RIGHT TO ELECTIVE SHARE OF DECEDENT'S ESTATE; DOWER AND CURTESY ABOLISHED	
ASSEMBLY BILL 18 (P.L. 1979, c. 483)	66
ASSEMBLY BILL 20 (P.L. 1979, c. 485) . . . . .	66
TEMPORARY ALIMONY	
SENATE BILL 1020 . . . . .	67
PROPERTY ACQUIRED DURING MARRIAGE - EXEMPT FROM EQUITABLE DISTRIBUTION	
ASSEMBLY BILL 1229 (P.L. 1980, c. 181) . . . . .	69
FORMER SPOUSE MAY BE INCLUDED IN INSURANCE POLICY OWNED BY PERSON LIABLE FOR SUPPORT	
ASSEMBLY BILL 8 (P.L. 1980, c. 113) . . . . .	70
MARRIAGE LICENSE FEES USED FOR DOMESTIC VIOLENCE VICTIMS	
ASSEMBLY BILL 618 . . . . .	71
DOMESTIC VIOLENCE AS AN AFFIRMATIVE DEFENSE BY DEFENDANT IN A DIVORCE ACTION ON GROUNDS OF DESERTION	
ASSEMBLY BILL 826 . . . . .	72
UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT	
ASSEMBLY BILL 1427 (P.L. 1981, c. 243) . . . . .	72
CHILD CARE LEAVE TO BE CONSIDERED OFFICIAL LEAVE WITHOUT PAY WHEN COMPUTING SERVICE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM	
SENATE BILL 1507 . . . . .	73
PREVENTION OF DOMESTIC VIOLENCE	
SENATE BILL 3127	
ASSEMBLY BILL 3183 . . . . .	74

## TABLE OF CONTENTS

(CONTINUED)

### SECTION II - RECOMMENDATIONS ON PROPOSED LEGISLATION

#### AMENDMENT OF THE UNEMPLOYMENT COMPENSATION DISQUALIFICATION PROVISIONS

SENATE BILL 1005 . . . . . 77

#### DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SENATE BILL 3013 (P.L. 1981, c. 124) . . . . . 78

#### AMENDMENT OF THE LAW AGAINST DISCRIMINATION

ASSEMBLY BILL 645 . . . . . 79

#### EXTENSION OF THE LIFE OF THE COMMISSION ON SEX DISCRIMINATION IN THE STATUTES

SENATE BILL 1599 (P.L. 1981, c. 94 ) . . . . . 80

### SECTION III - CONCLUSIONS . . . . . 81

### APPENDICES

SENATE BILL 3047 - UNIFORM PARENTAGE ACT A - B

SENATE BILL 1508 - INCOME ASSIGNMENT ACT C - D

PROPOSED LEGISLATION E - I

WITNESSES TESTIFYING AT PUBLIC HEARINGS J

BIBLIOGRAPHY K

## PREFACE

The need to eradicate sex discrimination in New Jersey's statutory and case law was given official recognition in July, 1978, when Governor Brendan Byrne signed into law legislation creating the Commission on Sex Discrimination in the Statutes.

The Commission is empowered to conduct a thorough review of the statutes containing sex-based classifications, and to propose a comprehensive modernization of those statutes.

Since 1978, the Commission has conducted a study of all New Jersey employment statutes containing sex-based distinctions and issued the October, 1979, report "Sex Discrimination in the Employment Statutes." The legislation implementing the Commission's statutory recommendations was signed into law ten months after introduction.

In its report the Commission not only recommended statutory changes in the area of employment, but also proposed changes relevant to all New Jersey statutes. The Commission now reaffirms its support of the following two policies:

### MEMBERSHIP OF WOMEN ON COMMISSIONS, BOARDS, AND AGENCIES:

The Commission recommends the appointment of more women to commissions, boards and agencies so that their membership is ultimately equivalent to their proportion in the population. Many of the statutes creating policy-making commissions, boards and agencies in New Jersey mandate that at least one

member must be a woman. In practice, a minimal quota has often served to limit the number of women appointed because it is interpreted to mean "only one of whom shall be a woman."

SEX-NEUTRAL LANGUAGE:

The Commission recommends that all legislation and administrative regulations be written in sex-neutral language. In keeping with contemporary standards of equality, it is no longer appropriate to use sex-based terms such as the generic "man." Using sex-neutral language demonstrates a commitment to the elimination of the legal inequities that have occurred because of differential treatment on the basis of sex.

Many of New Jersey's laws reflect policy judgments that are no longer acceptable in our society and, therefore, must be revised.

The Commission believes that equality of rights under the law should not be denied or abridged on account of sex.

## INTRODUCTION

The Commission selected Marriage and Family Law as its second area of study because this area significantly influences the lives of all New Jersey citizens.

Societal changes during the last two decades have altered the realities of family life. The relationships between men, women and children, and their roles within the family have been redefined as a result of the increasing influence of external forces such as the government, the economy, the media, the workplace, the community, and because of the emerging roles of women in society.

Today only seventeen percent of the families in this country follow the traditional pattern of a homemaker mother, a wage earner father, and one or more dependent children.<sup>1</sup> In 1979, there were 2,317,000 marriages and 1,170,000 divorces in the United States.<sup>2</sup> Both figures reflect increases over the previous year. In New Jersey, there were 54,740 marriages, 23,611 divorces and 323 nullities during 1979.

Numerous books and articles have been written analyzing these statistics. Although there is no consensus on their meaning, most commentators feel that there is a need to re-evaluate the laws governing the family.

New Jersey's legal regulation of the family stems from its common and statutory laws, and from the United States Constitution.

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<sup>1</sup>William P. Cantwell, "Man + Woman + Property = ?," The Probate Lawyer, Vol. 6 (Summer 1980).

<sup>2</sup>Id. at 4.



This Commission is mandated to review statutory and common law, and to issue comprehensive recommendations for the elimination of sexually discriminatory statutes. The Commission feels that this study will not only accomplish its goal, but will provide the state with a thorough modernization of family law.

In order to determine the specific topics to be studied, the Commission obtained data from numerous sources on the problems and trends in Marriage and Family Law. The staff attended state and national law conferences and symposiums, where legal practitioners and scholars discussed historical and current legal thinking. These sessions provided an opportunity to work with experts who assisted in the formation of the policy questions.

The Commission determined that New Jersey Statutes Annotated - Title 2A, Chapters 17, 34 and 83 (Administration of Civil and Criminal Justice), Title 9 (Children - Juvenile and Domestic Relations Courts), Title 26 (Health and Vital Statistics), Title 37 (Marriage and Married Persons), Title 44 (Poor) and Title 3A, Chapter 2A (Administration of Estates - Decedents and Others) - encompassed the subject of Marriage and Family Law, and proceeded to conduct a statute by statute review.

While a computer print-out of sex-based words provided a preliminary list of statutes for the Commission to examine, it quickly became apparent that Marriage and Family Law contained many subtle forms of discrimination reflecting stereotypic attitudes towards men's and women's roles. Testimony at two February, 1980, public hearings and a review of the literature (see bibliography) indicated that the study should focus on the following major issues:

### Child Support Enforcement

In New Jersey, approximately 80% to 90% of all cases in which there is an order for child support fall into arrears at some point within the first year.

### Child Custody Upon Divorce

With more marriages ending in divorce, parents, social workers and psychologists are exploring ways for both parents to maintain an active role in child rearing.

### Legal Rights of Out-of-Wedlock Children and Their Parents

In the United States the rate of out-of-wedlock births is increasing and currently exceeds 15%. In many urban areas, the rate is as high as 50% of all births. Although United States Supreme Court decisions have given out-of-wedlock children additional legal rights, their rights still are not comparable to those of children born in wedlock.

### Regulation of Marriage

Differentiation between the sexes in such areas as age requirements, waiting periods, and jurisdiction have been struck down under the Equal Protection Clause of the United States Constitution; New Jersey's statutes need to be revised accordingly.

### Regulation of the Welfare System

A husband is liable to the State for expenses incurred if a wife or child receives benefits, but a woman is not similarly liable under the current language of the law.

### Rights of a Husband and Wife in an Ongoing Marriage

Although the Married Women's Property Acts and probate reforms have overcome the common law disability that the husband and wife were one person, i.e., the husband, the fact remains that if a husband is the wage earner and the wife is a homemaker, she has few marital property rights in an ongoing marriage because the wage earner is usually the title holder, and controls the assets.

### Economics of Divorce

Property is divided between a husband and wife based on an equitable distribution when the marriage ends in divorce. Since the court is not required to make its determination based on comprehensive guidelines, factors such as a homemaker's contribution to the marriage may not be considered.

### Domestic Violence

A United States Department of Justice report entitled "Crimes in the United States - 1979" revealed that 30% of homicides in this country involved domestic violence. Despite these statistics, law enforcement officials, the courts and social service agencies tend not to treat the batterer as a criminal, nor to provide the victim with necessary legal protection.

## SECTION I

### STATUTORY RECOMMENDATIONS

The Commission recommends the revision of the following Marriage and Family statutes in the manner indicated:

#### TITLE 9 RECOMMENDATIONS

CITATION #1: N.J.S.A. 9:2-3  
Custody of Children of Parents Living Separately

SYNOPSIS: This statute gives the Superior Court jurisdiction to make judgments or orders concerning the care, custody, education and maintenance of a child during the period that his or her parents live apart and sets forth the procedures for closed custody hearings and sealed records. A child in the custody of his or her mother cannot be taken forcibly or against the mother's will by the father.

RECOMMENDATION: Amend.

DISCUSSION: With divorce occurring in approximately one out of two marriages, and with the increasing desire of men and women to share parenting, both parents may wish to participate in child rearing responsibilities even though they no longer live together.

This statute should be amended to exclude the maternal preference. Until the court determines the custody of the child, and unless the parents agree otherwise, the parent who has been the primary physical caretaker prior to separation shall have custody of the child. A child shall not be taken forcibly or against the will of the custodial parent by the other parent without a court order.

CITATION #2: N.J.S.A. 9:2-4  
Parents' Right To Custody Equal

SYNOPSIS: This statute provides that the custody rights of both parents are equal in the absence of misconduct, although the father shall not have preference over the mother.

RECOMMENDATION: Amend.

DISCUSSION: New Jersey's existing child custody statute declares that the rights of the parents are to be equal. Because of a combination of factors, however, including societal attitudes, traditional arrangements whereby women and men have divided their roles so that women are the primary caretakers of children, as well as judicial bias, mothers have been awarded custody in most cases. To the extent that there is judicial bias, this statute should be amended to address that bias while at the same time emphasizing the best interests of the child. Sex-based presumptions, such as the tender years doctrine, should be eliminated and each case decided on the facts. For example, it might be in the best interests of the child to be awarded to the primary caretaker.

Some judges have been hesitant to order joint custody rather than sole custody, even though the parents were in agreement about custody and requested such an order. New psychological research and social changes indicate that joint custody can be a viable alternative to sole custody when parents agree.

A recent important New Jersey case explores the joint custody concept. In Beck v. Beck, the trial court ordered joint custody even though the parents neither requested nor agreed with the concept. Although this joint custody award was reversed by the Superior Court, Appellate Division, the New Jersey Supreme Court reversed and reinstated the trial court's decision. Beck v. Beck, No. A-76 (N.J. July 2, 1981).



The Supreme Court determined that courts could award the joint custody of children as an alternative to sole custody. Joint custody is a way of allowing the involvement of both parents in the lives of their children and includes legal custody, the authority for making major decisions concerning the child's welfare, and physical custody, the living arrangements involved.

Although the court specifically authorized joint custody for the Beck children, it based its decision on the uniqueness of the case and recognized that joint custody is acceptable only in certain limited circumstances.

While affirming that parents have equal rights and responsibilities in child rearing, each case should be decided individually with the best interests of the child as the guiding principle.

To clarify the situation, this statute should be amended to provide for the following options:

- o Joint custody of a minor child or children to both parents with an equitable sharing of living experience in time and physical care, provided, however, that joint legal custody may be awarded without joint physical custody.

The judge should not fail to order joint custody when it is requested by both parents, unless it is not in the best interests of the child.

- o Sole legal and physical custody, with appropriate visitation for the non-custodial parent.

In making an award of custody, the court shall consider various factors, including parental desire for joint custody; ability of the parents to agree, communicate, and cooperate in matters relating to the child; the interaction and relationship of the child with the

parent and siblings; the safety of the child and the safety of each parent from physical abuse by the other; the preference of the child when of an age 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; and fitness of the parent. A parent shall not be deemed unfit unless the parent's conduct has a direct adverse effect on the child.

The physical custody element of a joint custody award involves certain practical considerations, including but not limited to the geographical proximity of the parents' homes, the financial resources of the parents, their employment responsibilities, and the age and number of the children.

The court should not hesitate to award joint legal custody if joint physical custody is impractical and other factors are favorable. As the Beck court noted, such an arrangement should involve liberal visitation rights for the non-custodial parent and will "preserve the decision-making role of both parents."

## Father's Failure to Support Child

SYNOPSIS: This statute provides that a father who has been able to support his child and who has failed to do so for five years shall not be entitled to the care, custody, or control of the child at any time in the future. The mother who has supported the child during that period shall be entitled at all times to the care, custody and control of the child. This shall not affect visitation rights of the non-supporting father.

RECOMMENDATION: Repeal.

DISCUSSION: This statute punishes a non-supporting father by forever denying him custody. At a time when the best interests of the child are paramount, it is unnecessarily harsh on both the father and the child to prohibit custody of the child by the father. The courts have ruled that support and visitation rights are not inter-dependent and Citation #2 recommends that both parents have equal rights to custody. The Commission therefore recommends this statute's repeal.

CITATION #4: N.J.S.A. 9:2-13  
Definitions in the Act Concerning Surrender of the Custody of Children to Agencies and the Termination of Parental Rights

SYNOPSIS: This statute defines the term parent, as used in the Act Concerning Surrender of the Custody of Children to Agencies and the Termination of Parental Rights, as meaning a natural parent or parent by previous adoption, but specifies that it does not include the father of an illegitimate child.

RECOMMENDATION: Amend.

DISCUSSION: The effect of this statute's definition is to exclude a father of an illegitimate child the rights accorded by the act to the father and mother of a legitimate child and to the mother of an illegitimate child. The act includes protection of custody rights by stating that the surrender of a child's custody by one parent, or termination of the parental rights of one parent, does not affect the rights of the other parent (N.J.S.A. 9:2-15), as well as requiring agencies that institute an action for transfer of custody and termination of parental rights to provide notice or service of process to the parents (N.J.S.A. 9:2-18).

Under common law, a child born out-of-wedlock was a filius nullius, child of no one, and had no legal relationship with either parent. Most aspects of the mother and child relationship were long ago equalized, but states continued to discriminate heavily against both the father and the out-of-wedlock child.

During the last decade, there have been several United States Supreme Court decisions striking down discriminatory laws as violative of the Equal Protection Clause of the United States Constitution.

In Stanley v. Illinois, 405 U.S. 645 (1972), the United States Supreme Court ruled that the parental rights of an unwed father who had cared for his children over a period of time must be given the same legal protection as those of married parents and unmarried mothers. A New Jersey case, Matter of Adoption of B, 152 N.J. Super. 546, 378 A.2d 90 (1977), held that in the absence of the natural father's consent, an illegitimate child could not be adopted after its mother's death.

In 1977, the New Jersey Legislature repealed its existing adoption statutes and enacted a new law (N.J.S.A. 9:3-37 et seq.). The new law redefined the term parent as "a natural parent or natural parents, including the natural father of the child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given ..." (N.J.S.A. 9:3-38).

The statute under discussion here, N.J.S.A. 9:2-13, allows the mother of an illegitimate child to surrender custody of her child without the consent of the child's father, while N.J.S.A. 9:3-45 and 9:3-46 protects the right of an unmarried father during an action for adoption by prohibiting the termination of his parental rights without cause.

N.J.S.A. 9:2-13 should be amended to redefine "parent" to include the natural father of the child. This action is consistent with the recommendation in Section I, Title 9, Citation #12 on the Uniform Parentage Act.

CITATION #5: N.J.S.A. 9:2-19  
Termination of Custodial Rights After a  
Child Has Been Surrendered by a Parent

SYNOPSIS: This statute provides for a court order to declare the termination of custodial rights after a child has been surrendered by a parent. If the court determines that the child is illegitimate, neither the putative father nor the husband of the mother if she is married has a right to custody of the child.

RECOMMENDATION: Amend.

DISCUSSION: The language of this statute is identical to language in New Jersey's repealed adoption statute (N.J.S.A. 9:3-24), which provided that a father of an out-of-wedlock child had no right to custody. The 1977 Adoption Act provided for the rights of out-of-wedlock fathers (N.J.S.A. 9:3-38). The statute should be amended to include the natural father as appropriate and consistent with the recommendations in Section I, Title 9, Citation #4 and Citation #12.

CITATION #6: N.J.S.A. 9:6-3  
Cruelty and Neglect of Children; Fine or  
Imprisonment; Order for Payment of Support;  
Failure to Pay

SYNOPSIS: This statute provides that any parent, guardian or other person with custody, care or control of a child, who is abusive toward the child, is guilty of a misdemeanor. The statute provides that the court adjudicating a monetary penalty for abuse may direct that the fine be paid "in whole or in part to the wife, or to the guardian, custodian or trustee of the child."

RECOMMENDATION: Amend.

DISCUSSION: It may be surmised that this provision was based on a presumption that the male parent would be the abuser and, as such, subject to a fine or imprisonment. As written, however, this statute does not preclude payment of



the fine to the father if the mother is the abuser ( [ payment may be made to ] "the guardian, custodian, or trustee of the child").

The intent of the statute should be clarified by amending it to provide for the fine to be paid to the non-abusing "parent" instead of to the "wife."

CITATION #7: N.J.S.A. 9:10-3  
Purpose and Personnel of County School of Detention

SYNOPSIS: This statute provides that the County School of Detention may be established by the freeholders of any county with a juvenile and domestic relations court, and that matrons may be hired.

RECOMMENDATION: Amend.

DISCUSSION: The term "matron" refers to a female who supervises children in an institution. Other statutes (N.J.S.A. 9:11-4) provide for the hiring of matrons or masters, thus recognizing that the inmates may be either male or female. This statute should be amended to include the term "master" as well as matron.

CITATION #8: N.J.S.A. 9:11-1  
Appointment of Trustees to Board of Trustees of County Youth House

SYNOPSIS: This statute provides that at least one woman be appointed as a trustee of the Board of the County Youth House.

RECOMMENDATION: Amend.

DISCUSSION: The Commission recommends the deletion of the phrase requiring the appointment of at least one woman. This action would be consistent with the Commission's recommendation on the membership of women on commissions, boards and agencies made in the "Sex Discrimination in the Employment Statutes" report, and reaffirmed in the Preface of this report.

CITATION #9: N.J.S.A. 9:12A-1  
Appointment of Trustees to Board of County  
Children's Shelter

SYNOPSIS: This statute provides that at least two women be appointed to the board of the County Children's Shelter.

RECOMMENDATION: Amend.

DISCUSSION: The Commission recommends the deletion of the phrase requiring the appointment of at least two women. This action would be consistent with the Commission's recommendation on the membership of women on commissions, boards and agencies made in the "Sex Discrimination in the Employment Statutes" report, and reaffirmed in the Preface of this report.

CITATION #10: N.J.S.A. 9:15-1 to 9:15-2  
Legitimation of Out-of-Wedlock Children

SYNOPSIS: These statutes provide that a child born out of wedlock be legitimated by the inter-marriage of his or her natural parents.

RECOMMENDATION: Repeal.

DISCUSSION: The only way a child born out of wedlock could be legitimated under the statutes of most states, i.e., have a clear legal link to the father in order to achieve full legal equality with legitimate children, is through inter-marriage of the parents.

In Section I, Title 9, Citation #12, the Commission makes a comprehensive recommendation on the laws governing out-of-wedlock children, and proposes passage of a "Uniform Parentage Act."

The Commission, therefore, recommends this statute's repeal and the enactment of the Uniform Parentage Act, Senate Bill 3047, sponsored by Senator Wynona M. Lipman. (See Appendix.)

CITATION #11: N.J.S.A. 9:16-1 to 9:16-4  
Custody and Support of Illegitimate Child

SYNOPSIS: These statutes provide that the mother of an out-of-wedlock child has the sole right to custody and the putative father has no right, although both parents are obligated to support the child.

RECOMMENDATION: Repeal.

DISCUSSION: These statutes were enacted to rectify the common law standard that a child born out of wedlock belonged to no one, by providing that he or she was the natural child of the mother.

While the existence of the father is ignored by these laws, under recent court rulings an out-of-wedlock father does have a right to custody.

In Section I, Title 9, Citations #4 and #12, the Commission recommends procedures for the establishment of parental rights for an out-of-wedlock father.

The Commission, therefore, recommends the repeal of these statutes, and the enactment of the Uniform Parentage Act, Senate Bill 3047, sponsored by Senator Wynona M. Lipman. (See Appendix.)

CITATION #12: N.J.S.A. 9:17-1 to 9:17-2  
N.J.S.A. 9:17-4 to 9:17-6  
N.J.S.A. 9:17-11 to 9:17-20  
N.J.S.A. 9:17-23 to 9:17-35  
Bastardy Proceedings

SYNOPSIS: These statutes allow the County Welfare Board to institute a bastardy proceeding if a woman gives birth to an out-of-wedlock child; provides that a warrant may be issued and the putative father apprehended in order to compel support; compels the mother to disclose the name of the father or be jailed for contempt; establishes procedures for the enforcement of a support order issued to the father, including the posting of a bond;

establishes procedures for the putative father, the welfare board or the municipality to use in appealing a lower court decision; allows the County Welfare Board to seize the goods of a father or mother who abandons an out-of-wedlock child; establishes procedures for bringing an action for breach of a bond given to secure performance of an order of filiation made in a bastardy proceeding; and allows the court to imprison a putative father for failure to execute a new bond.

RECOMMENDATION: Repeal.

DISCUSSION: Under many states' laws, there are significant differences between the legal treatment of legitimate and illegitimate children. It is true that some states have adopted the Uniform Probate Code, which provides for equal inheritance rights, and that a series of decisions rendered by the United States Supreme Court under the Equal Protection Clause of the 14th Amendment has mandated equal treatment. Nevertheless, unequal treatment continues. In the words of the United States Supreme Court: "The status of illegitimacy has expressed through the ages society's condemnation of irresponsible liaisons beyond the bonds of marriage .... Obviously, no child is responsible for his birth and penalizing the illegitimate child is an ineffectual - as well as unjust - way of deterring the parent." Weber v. Aetna Casualty & Surety Company, 92 S. Ct. 1400, 1496-7 (1972). In the case from which this quotation was taken, the court held that dependent, unacknowledged, non-marital children have a right to Workers' Compensation benefits that accrue at their father's death.

The Equal Protection Clause was cited by the court to strike down "discriminatory laws relating to status of birth where, as in this case, the classification is justified by no legitimate state interest, compelling or otherwise." In 1976, however, the Supreme Court changed its position and cited

"administrative convenience" in its decision to uphold a section of the Social Security Act "that conditions a child's eligibility for father-related benefits on dependency on the father." Lucas v. Matthews, 427 U.S. 495, 96 S. Ct. 2755 (1976).

On balance, the federal attitude toward the inclusion of out-of-wedlock children within the class of children who are eligible to receive benefits has gone far toward eliminating discrimination. While most Supreme Court decisions challenged the unconstitutionality of state illegitimacy laws, many judges and lawyers felt the need for a comprehensive document dealing with the essential issue of equal legal rights. They felt that the concept of full legal equality for out-of-wedlock children would only have meaning if the children were able to identify the person against whom to assert their rights.

There is a direct relationship between this issue and the mandate of the Commission on Sex Discrimination in the Statutes to revise statutes containing sex-based classifications. Under an equal rights doctrine, there should be no sex-based differences in the laws concerning parents and their children.

There are biological differences between men and women which have led to differential treatment in the laws concerning parent-child relationships. Nonetheless, while those differences will result in some differential treatment, parents should be treated as equally as possible.

Since the mother of an out-of-wedlock child is easily identifiable in most cases, while the identity of the natural father may be difficult to ascertain, the development of a mechanism for establishing parentage is necessary to foster the same obligations for both fathers and mothers in the parent-child relationship. Laws that hinder an unwed father's attempt to establish parenthood or stigmatize an unmarried mother must be given careful scrutiny under an equal rights principle.

As in most states, in New Jersey parentage is ascertained by a bastardy proceeding in the Juvenile and Domestic Relations Court, the municipal court or the county district court (N.J.S.A. 9:17-1). This action was designed to help welfare authorities determine parentage in order to enforce support obligations. (In 1975, Federal legislation established an elaborate child support system for both legitimate and out-of-wedlock children.)

In New Jersey, approximately 2500 bastardy cases are heard each year. Traditionally, the proceedings have been quasi-criminal; i.e., in New Jersey, a putative father who leaves the county where the action is heard may be apprehended in order to compel support (N.J.S.A. 9:17-4 to 17-6). According to the language of the law, the mother of an out-of-wedlock child has exclusive custody and the putative father has no access to the child without the mother's consent (N.J.S.A. 9:16-1). These and other statutes have penalized both fathers and mothers and have made clear distinctions between legitimate and out-of-wedlock children.

After extensive research, the Commission determined that the best approach to eliminating sex-based classifications is the Uniform Parentage Act (promulgated by the National Conference of Commissioners on Uniform State Laws in 1973, for adoption in all states as Uniform Acts), which establishes "the principle that regardless of the marital status of the parents, all children and parents have equal rights with respect to each other."

The essential component of the Uniform Parentage Act identifies a set of external circumstances which indicate a particular man as the probable father (Section 6 of the Uniform Parentage Act. See Appendix - Senate Bill 3047 sponsored by Senator Wynona M. Lipman). These presumptions are important because they facilitate the flow of benefits from the father to the child where a court proceeding has not been brought to establish paternity. While the laws of some states might include one or two of the presumptions listed in Section 6 of the Uniform

Parentage Act (i.e., marriage between the mother and a man, as in Citation #10), the Uniform Parentage Act's approach is novel in that all presumptions are grouped together in order to provide the most encompassing framework possible.

Another major component of the Uniform Parentage Act provides for the ascertainment of paternity at a preliminary hearing when no external circumstances presumptively point to a particular man as the father. This procedure will reduce the high cost and inefficiency of paternity litigation, especially since blood tests or genetic tests may be required if practicable. Currently, blood testing laboratories have the capability of excluding 97% or more of all wrongly accused men. If a party refuses to accept the judge's recommendations for settlement, the action may be set for trial.

It is in the State's best interest to insure that parents are identifiable. In the United States, the rate of out-of-wedlock births is increasing and currently exceeds 15% of all births. In many urban areas, the rate is as high as 40%, and sometimes it exceeds 50%. One-third of all children receiving assistance under the Aid to Families with Dependent Children program are born out-of-wedlock. The responsibility for supporting these children falls directly upon the mother or the taxpayer unless paternity is established.

Therefore, on January 26, 1981, Senator Wynona M. Lipman, Chair of the Commission, introduced the Uniform Parentage Act, Senate Bill 3047 (See Appendix), which emphasizes the best interests of the child and at the same time treats fathers and mothers as fairly as possible under the law. Not only does it provide a mechanism for determining paternity which will significantly impact on support enforcement, but it facilitates the flow of benefits from the father to the child because the father will be more easily identifiable.<sup>3</sup>

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<sup>3</sup>On June 25, 1981, a Judiciary Committee substitute for Senate Bill 3047 (See Appendix) was passed by the Senate (33-0).

TITLE 2A, CHAPTER 83 RECOMMENDATIONS

(ARTICLE 2. PARENTAGE THROUGH BLOOD GROUPING TESTS)

CITATION #13: N.J.S.A. 2A:83-2 and 2A:83-3  
Blood Grouping Tests in Proceedings  
Involving Child's Parentage; Examination  
of Experts

SYNOPSIS: This statute provides for the use of blood grouping tests as possible evidence of the fact of non-paternity in a criminal or civil bastardy and filiation proceeding.

RECOMMENDATION: Repeal.

DISCUSSION: In Section I, Title 9, Citation #12, the Commission recommends legislation for establishing legal rights for children regardless of the marital status of their parents. The legislation provides for blood or genetic tests during the preliminary and court hearings.

Today blood and genetic tests provide an empirical tool for evaluating a question of disputed parentage. Scientific advances have significantly changed paternity suits from an adversarial proceeding where one parent challenges the credibility of the other to a proceeding based on an objective scientific test. In well over 90% of all cases where a man is wrongly accused, non-paternity can be positively established.

The Uniform Parentage Act (See Appendix - Senate Bill 3047 sponsored by Senator Wynona M. Lipman) delineates procedures for blood and genetic testing within a framework designed to protect the best interests of the child, and to assist the child in establishment of a legal relationship with his or her father.

The Commission recommends repeal of these statutes, and the enactment of the Uniform Parentage Act.



TITLE 2A, CHAPTER 17 RECOMMENDATIONS

(ARTICLE 7. EXECUTION AGAINST WAGES, DEBTS, EARNINGS,  
SALARY, INCOME OR PROFITS)

CITATION #14: N.J.S.A. 2A:17-56.1 to 2A:17-56.3  
Failure to Make Support and Maintenance  
Payments; Prohibition Against Discrimina-  
tion in Hiring; Deduction by Employer to  
Defray Expenses

SYNOPSIS: These sections provide that a payee may go to court to get an execution against the wages of the defaulting payer after an alimony, maintenance or child support payment is 45 days overdue; that an employer may not discriminate against an employee who is subject to an execution order or refuse to hire a payer because of a potential execution; and that the employer may deduct \$1.00 to defray expenses incurred by the execution order.

RECOMMENDATION: Repeal.

DISCUSSION: Under the current New Jersey law, what frequently happens when a payer defaults on support payments is that the defaulting payer will wait until the end of the 45 days and make a token payment, thus preventing the court from garnishing the salary. Another 45 days must elapse before the defaulting payer's wages can be touched, at which point the cycle of evasion starts again.

On the recommendation of the Commission, Senator Wynona M. Lipman and Assemblyman Albert Burstein introduced legislation on September 29, 1980 (Senate Bill 1508 and Assembly Bill 2152) to provide a remedy for this serious problem.

The number of parents who default on their child support payments, leaving the other parent with the burden of supporting a family,

has reached a critical level. As a result of runaway parents, many families are forced to go on welfare. This primarily affects women since they are the traditional caretakers of children. It has been said that since women earn only 59% of what men earn, given equivalent levels of education, the surest route to poverty is for a household to lose its male breadwinner. The severe earning gap between men and women is the consequence of firmly rooted biases in this country's social, educational and economic institutions.

The Commission feels that strengthening the child support enforcement system would be an immediate step in narrowing the enormous gap in economic well-being between children who live in female-headed households without support from their fathers and children who are still supported by their fathers.

Approximately 300,000 court orders exist in the State of New Jersey which compel parents to make payments for the support of their minor children. These orders have been entered by courts in various jurisdictions throughout the state, based upon the parent's absence from the home of minor children due to marital separation, divorce, or the child's out-of-wedlock birth. In most cases support payments are ordered payable through the county probation department.

Estimates from counties throughout the state reveal that 80% to 90% of all cases in which there is an order for child support have arrearages at some point within the first year. A study conducted at the Gloucester County Welfare Board revealed that out of 1,583 ledger cards representing cases in which at least an initial child support payment had been received, only 131 payers had no arrears. Based upon these figures, 91.7% of these cases require enforcement to obtain both current support and arrearages which have accumulated. (The figure for cases in which a court order had been entered but no payment ever received by the County Welfare Agency was not available.)

Court ordered enforcement measures, such as execution against wages, to prompt and actually force the payer to comply with the order, are required in approximately 70% of all cases in which an order for payment of child support exists. Based upon these calculations, it is apparent that in a vast majority of cases, the support order itself is of negligible value in obtaining payment and only serves as a basis for the later enforcement measures which actually elicit the payment.

The poor track record of most absent parents illustrates why so many families are forced to apply for public assistance benefits as a means of survival. Public assistance payments are granted to these families in lieu of support payments. Support monies for the family are assigned to the county welfare agency as a condition of eligibility for AFDC payments and, should payments be received, they are used as reimbursement for public assistance payments. At the present time, over 140,870 families are receiving public assistance in New Jersey because support from the absent parent is not sufficient.

The Department of Human Services feels that passage of the Income Assignment Act would double current child support collections. Total child support collections for Fiscal Year 1980 were in excess of \$28,000,000, and with the enforcement tools this legislation would provide, collections could be expected to double to \$56,000,000 annually.

After extensive research the Commission concluded that the best approach was to draft legislation that provides for an automatic assignment of income as part of any maintenance, alimony, or child support order. The assignment takes effect when the payer fails to make a payment within two weeks of its due date.

After the notification procedures are followed, the employer is required to deduct the current payment plus a portion of the

arrearages and forward the amount to the county probation office. The employer may receive \$1.00 for expenses each time, which shall be deducted from the money paid the employee. If extraordinary circumstances prevent the payer from making a payment, an appeal procedure is provided to hold the assignment in abeyance until the court makes a determination.

The county probation office may enforce the income assignment provision through the "Wage Reporting Act" by locating a payer who has disappeared but is still in the state. The payer's tax records would be used to locate the most recent employer's name and address so that the county probation office<sup>4</sup> could effectuate the income assignment order.

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<sup>4</sup>After consultation with Mr. Harry Wiggins, Chief, Bureau of Child Support and Paternity, Department of Human Services, and the Commission on Sex Discrimination in the Statutes, amendments were suggested to Senate Bill 1508 by the Women's Rights and Family Law Sections of the New Jersey Bar Association to correct certain technical difficulties. The Bar Association's recommendations are contained in the Assembly Committee Substitute, released by the Assembly Judiciary Committee on June 22, 1981 (See Appendix - Assembly Committee Substitute for Senate Bill 1508). The Board of Trustees of the New Jersey Bar Association endorses the Assembly Committee Substitute for Senate Bill 1508.

On July 9, 1981, Governor Brendan T. Byrne signed into law Assembly Bill 1668 (P.L. 1981, c. 203) sponsored by Assemblywoman Barbara Kalik, which modifies New Jersey's support enforcement law by changing from forty-five to thirty the number of days that must elapse before the payee can request a garnishment proceeding. Under this legislation, the payer must pay at least fifty percent of the payment within thirty days or the court may attach the payer's wages. While this legislation improves the existing system, the burden is still on the payee to go into court to request a wage garnishment when the payer defaults in court-ordered support.

TITLE 2A, CHAPTER 34 RECOMMENDATIONS

(DIVORCE AND NULLITY OF MARRIAGE - ALIMONY AND MAINTENANCE -  
CARE AND CUSTODY OF CHILDREN)

CITATION #15: N.J.S.A. 2A:34-13  
Minors May Prosecute or Defend Matrimonial  
Actions

SYNOPSIS: This statute permits minors to prosecute or  
defend any matrimonial action. There is an  
age difference, however, for men (18) and  
women (16).

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to eliminate  
the age difference between males and females.  
The threshold age of 16 should be established  
for both sexes to enable them to equally  
prosecute or defend any matrimonial action  
as necessary.

CITATION #16: N.J.S.A. 2A:34-21  
Resumption of Name; Surname of Husband

SYNOPSIS: This statute permits the court, within its  
discretion, to allow a woman after divorce to  
resume her maiden name.

The court may also forbid the wife from using  
her husband's surname.

RECOMMENDATION: Amend.

DISCUSSION: Under common law, a person could assume any  
name so long as there was no fraudulent or  
improper motive behind the change of name.  
The New Jersey statutory law on change of  
name (N.J.S.A. 2A:52-1) has been interpreted  
to supplement the common law rather than to  
abrogate it.

This statute should be amended to permit a  
spouse to assume any surname or resume any  
name previously used.

CITATION #17: N.J.S.A. 2A:34-23  
Alimony; Maintenance; Custody and Maintenance  
of Children; Failure to Obey Order; Seque-  
stration; Receiver; Modification of Orders

SYNOPSIS: This statute permits the court to order main-  
tenance for either spouse in divorce or  
annulment proceedings and to award support  
for the care, custody, education and main-  
tenance of the child(ren). The court may  
consider the proofs made in establishing  
grounds (for divorce, other than no-fault  
separation) in determining the amount of  
alimony or maintenance. Procedures are  
established to use upon default of support  
orders. Support orders may be modified by  
the court. It may consider the parties'  
actual need and ability to pay and the duration  
of the marriage in awarding alimony. In  
addition to awarding alimony and maintenance,  
the court may make awards to effectuate an  
equitable distribution of the property, both  
real and personal, that was legally and  
beneficially acquired by both or either one  
of the spouses during the marriage.

RECOMMENDATION: Amend.

DISCUSSION: In 1971 the New Jersey Divorce Act introduced  
the concept of equitable distribution into  
the laws of the state. Before this legis-  
lative revision, property in a divorce action  
was divided by ownership or agreement between  
the parties.

Although the statutory language embodied in  
N.J.S.A. 2A:34-23 has provided an important  
basis for the development of the concept of  
equitable distribution, no criteria or guide-  
lines are provided to the courts in settling  
the division of property upon divorce. As  
the provision for equitable distribution was  
added to the New Jersey law by a floor  
amendment in the Legislature, little legis-  
lative history exists.

A significant series of cases established the  
outlines for equitable distribution. See  
Painter v. Painter, 65 N.J. 196 (1974),

Rothman v. Rothman, 65 N.J. 219 (1974) and Chalmers v. Chalmers, 65 N.J. 186 (1974).

New Jersey courts have continued to expand upon the model provided by these earlier decisions. Judicial discretion has often provided equitable results, but has proved confusing and unpredictable for litigants in divorce actions. The addition of specific factors into the law would provide judges with guidelines, thereby decreasing appeals for clarification of equitable distribution awards.

At the Commission's two marriage and family law public hearings (February, 1980), the testimony of a number of public citizens indicated that there were inequities in New Jersey's equitable distribution statute.

This view was supported by Ms. Charlotte Callahan of the League of Women Voters who testified that following a two-year League study, the League concluded that specific guidelines need to be incorporated into the equitable distribution statute. "The guidelines should recognize the career seniority benefits lost by a homemaker during the marriage years and his or her resulting diminished economic potential (upon divorce)."

A review of pertinent literature demonstrates the validity of these concerns. As Professor Ann E. Freedman states, comprehensive factors built into the law will facilitate true equitable distribution upon divorce. By recognizing factors such as the contribution of a homemaker to the marriage, equitable distribution reflects the view that marriage is a partnership to which both spouses contribute equally.<sup>5</sup> Under that philosophy, and enumerated in some cases Rothman v. Rothman, 65 N.J. 219, 228 (1974) and Gibbons

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<sup>5</sup>Brown, Barbara A. and Freedman, Ann E. et. al., Women's Rights and the Law, New York: Praeger Publishers, 1977.

v. Gibbons, 1974 N.J. Super. 107 (App. Div. 1980), the assets acquired during marriage should be divided equally and equitably between the husband and wife upon divorce. Since alimony is infrequently awarded (according to a League of Women Voters study, in only 20 of 226 cases disposed of in Bergen County during the month of April 1978) and difficult to collect, an equitable property division is the only mechanism available to provide a non-wage earner spouse with her or his share of the marital assets.

Recently New York and Pennsylvania enacted legislation based on the Uniform Marriage and Divorce Act which enumerates comprehensive factors to be considered by the judge. The bills were proposed to eliminate unconstitutional sex-based distinctions in the law, i.e., the law retained the common law property system which placed undue emphasis on how title was held. The basic premise of the legislation was that modern marriage should be viewed as a form of partnership. To assure implementation of that concept, the bills detailed factors to be considered when making an equitable distribution of assets. A law review article on the New York statute discussed the issue of judges' discretionary power to make equitable distribution and suggested that the "New Jersey Legislature would do well to add guidelines, such as those in New York's statute, to its own statute."<sup>6</sup>

A review of New Jersey cases on issues such as distribution of pension benefits demonstrates confusion over the appropriate standards to be considered. In one case the proper standard to be applied in instances of equitable distribution is whether the "property right has been acquired during the marriage and whether equity warrants its inclusion in the marital estate ..." Weir v. Weir, 173 N.J. Super. 131 (Ch. Div. 1980). As such, pension funds are available for equitable distribution. Pension funds may properly be considered as wage substitutes

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<sup>6</sup>"Equitable Distribution in New York," 45 Albany Law Review 483 (Winter 1981).



or property which is a form of deferred compensation and vesting is not required. " [I]f the court concludes that the uncertainties of payment under the plan do not warrant present division, it can allot to each spouse a fair portion of the pension fund as, if and when payments commence." Weir v. Weir, *id.* at 135. In the Weir case, the husband had qualified for a non-contributory pension and merely had to live long enough to collect it; therefore, the court determined it could properly be made available for distribution as a form of property.

An opinion converse to that in Weir was reached in Mueller v. Mueller, 166 N.J. Super. 557 (Ch.Div.1979), in which the court held a husband's fully vested pension plan was not subject to equitable distribution. The Weir court specifically objected to the result reached in Mueller, saying that the Mueller decision had incorrectly interpreted an earlier case, Mey v. Mey, 79 N.J. 121 (1979) which involved the distribution of a trust fund, not a pension plan. The Weir court stated that Mey did not require pension funds to be excluded from distribution at all, but actually supported their inclusion.

The judge in Kikkert v. Kikkert, 177 N.J. Super. 471 (App.Div.1981), held that a vested pension plan which would provide future benefits if the husband survived, was available for equitable distribution in a divorce proceeding. In reaching this decision, the court resolved a conflict between two recent decisions, Mueller v. Mueller, 166 N.J. Super. 557 (Ch. Div. 1979) and Weir v. Weir, 173 N.J. Super. 130 (Ch.Div.1980), and agreed with the judge in Weir that fully vested pension plans may properly be considered an asset. As the court in Kikkert said, "equitable considerations mandate its inclusion for distribution where, as here, the employee has already qualified for benefits and the other spouse, during the marriage, has foregone enjoyment of that additional compensation represented by the cost of the plan whether or not it requires employee contributions." Kikkert v. Kikkert, 177 N.J. Super. at 476.

The courts have also broadened the scope of the concept of property available for equitable distribution to include professional degrees. In Mahoney v. Mahoney, 175 N.J. Super. 443 (Ch. Div. 1980), the court held that a Masters Degree in Business Administration obtained during the marriage could properly be considered a property right subject to equitable offset. It is proper to permit the working spouse some credit for the degree obtained by the nonworking spouse during the marriage. To determine otherwise would permit unjust enrichment. "A working spouse who contributes to the education of another spouse does so certainly with the expectation that there will be in the future some benefit derived from such a sacrifice." Mahoney v. Mahoney, id. at 446.

In order to assure an equal and equitable distribution of a husband's and wife's assets upon divorce, the Commission recommends that the statute be amended to include the following factors adapted from the Uniform Marriage and Divorce Act, as well as the statutes of Pennsylvania, New York, Minnesota and Wisconsin:

- o The duration of the marriage.
- o The age and physical and emotional health of the parties.
- o The income or property brought to the marriage by each party.
- o The standard of living of the parties established during the marriage.
- o Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution.
- o The economic circumstances of each party at the time the division of property is to become effective.
- o The earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, opportunity of each party for future acquisitions of capital assets and income, 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.

- o The contribution by one party to the education, training, or increased earning power of the other.
- o The contribution of each party in the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, as well as the contribution of a spouse as a homemaker.
- o The sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits, whether vested or unvested.
- o The tax consequences to each party.
- o Whether the property award is in lieu of or in addition to alimony, maintenance or child support.
- o The current value and income producing capacity of the property.
- o The need of a custodial parent to own or occupy the marital residence and to use or own its household effects.
- o The debts and liabilities of the parties to the marriage.
- o Such other factors as the court may in each individual case determine to be relevant.

The provisions of an agreement made by the parties before or during the marriage concerning an arrangement for property distribution shall be incorporated in the court's order for equitable distribution except where the terms are inequitable to either party.

It shall be presumed that each party made a substantial contribution to the acquisition of income and property while the party was married.

CITATION #18: N.J.S.A. 2A:34-24  
Abandonment of Wife; Support of Wife and  
Children; Debts During Maintenance

SYNOPSIS: This statute permits the court to order a husband to pay support and maintenance if, without justifiable cause, he abandons his wife and refuses to maintain her. The court may order the defendant to give reasonable security for the maintenance and may enforce such a judgment pursuant to N.J.S.A. 2A:34-23. During the time maintenance is ordered, the husband may not be charged with his wife's debts.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to permit court-ordered maintenance payments to either spouse when the other spouse refuses to provide support. Such a revision is consistent with the availability of support awards to either sex in instances of necessity.

This statute should also be amended to eliminate the provision stating that a husband is not liable for his wife's debts during the time maintenance is ordered. In Citation #37, Title 37, the Commission's comprehensive recommendation on the liability of spouses for each other's debts, provides that neither spouse be liable for the other's debts during separation if the spouse who is liable for support has provided the dependent spouse with reasonable support.

CITATION #19: N.J.S.A. 2A:34-24.1  
Divorce by Husband in Absence of Jurisdiction  
Over Wife; Support Orders

SYNOPSIS: This section provides that where a husband has secured a divorce in an action where jurisdiction over the person of the wife was not obtained, the court may still order support and maintenance. It was intended to provide a remedy to abandoned wives whose husbands secured an ex-parte divorce (only one party is present in the proceeding).

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to provide that either spouse may obtain support and maintenance from a spouse who obtains an ex-parte divorce. In Title 2A, Citation #18, the Commission made a consistent recommendation that either dependent spouse may obtain support and maintenance from the other spouse.

CITATION #20: N.J.S.A. 2A:34-25  
Remarriage of Former Wife; No Order Touching Alimony; Vacation of Prior Order

SYNOPSIS: This statute provides that a wife's remarriage ends her former husband's support obligation upon his application to the court and proof of her remarriage. This statute is held to be mandatory.

RECOMMENDATION: Amend.

DISCUSSION: Traditionally a married woman relied on her husband for her support. If they divorced, he might be ordered to make alimony payments until her death. Should she remarry, the court could order such payments stopped upon application of her former husband.

Permanent alimony is infrequently awarded and the courts have recently granted temporary, or rehabilitative alimony. This type of grant is made for a limited period of time and for a specified purpose such as providing the dependent spouse with education, training or job experience. One aim of a rehabilitative award is to make the formerly dependent spouse self-sufficient through development of skills which may have been unused during the marriage.

As Lee Hymerling, Esq. has stated, some instances in which rehabilitative alimony might be appropriate include short-term marriages, situations in which dependent spouses at the time of divorce are pursuing

advanced degrees, and situations in which the parties enjoy comparable earnings, but one spouse is forced to vacate a home to establish a new identity.<sup>7</sup>

In Section II of this report, the Commission supports Senate Bill 1020, as amended. This bill provides that alimony may be either temporary or permanent. In certain instances, as discussed above, temporary alimony will be increasingly awarded as the court seeks to direct an alimony award towards a specific goal. The very nature of such a grant makes it comparable to a grant of alimony in gross, payable over a period of time. This award resembles a property settlement more closely than it does traditional alimony. Automatic termination of this type of grant upon the remarriage of the recipient spouse may defeat its purpose.

This statute should be amended to provide that upon remarriage, a grant of permanent alimony may be terminated by the court upon application of the supporting spouse but a grant of temporary alimony shall not be terminated unless good cause is shown to the court by the supporting spouse.

CITATION #21: N.J.S.A. 2A:34-26  
Attachment; Bond

SYNOPSIS: This statute provides that when a husband can not be located in this state, his property may be attached in order to obtain support.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to afford protection for a spouse, regardless of sex.

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<sup>7</sup>Hymerling, Lee. "Commentary on Lepis v. Lepis," 12 Rutgers Law Journal, 1 (Fall, 1980).

TITLE 3A, CHAPTER 2A RECOMMENDATIONS  
(DECEDENTS' ESTATES)

CITATION #22: N.J.S.A. 3A:2A-41  
Meaning of Child and Related Terms

SYNOPSIS: This statute defines, for purposes of intestate succession, the relationship of a parent and an out-of-wedlock child which must be established in order to determine succession. A person born out of wedlock is the child of the mother and may also be the child of the father if the parents participated in a ceremonial marriage, even though the attempted marriage is void, and if paternity is established by adjudication before the death of the father or by clear and convincing proof thereafter. The father must have supported the child and openly treated the child as his for him to be able to inherit from the child.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to define a person as the child of its parents regardless of their marital status for purposes of intestate succession. The parent and child relationship may be established by clear and convincing evidence (see Section 1, Title 9, Citation #12), or by adjudication of parentage by a court of competent jurisdiction in another state, or under prior law.

The recommended amendment conforms with the Uniform Parentage Act (See Appendix - Senate Bill 3047 sponsored by Senator Wynona M. Lipman).

## TITLE 26 RECOMMENDATIONS

CITATION #23: N.J.S.A. 26:8-40  
Birth Certificate of Legitimated Child;  
Correction or Amendment

SYNOPSIS: This statute establishes a procedure for correcting or amending the birth certificate of an out-of-wedlock child if the parents subsequently marry, or if the father is deceased and the mother submits acceptable proof under oath that the father publicly or in writing recognized the child. If the original birth record is amended or corrected, no information regarding illegitimacy shall be disclosed.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to allow both natural parents of a child born out-of-wedlock who subsequently marry or a child who is eighteen years of age or older to amend the birth certificate by changing the child's surname if both parents or the child so request. If either parent is deceased, the amendment may be accepted if there is proof under oath that the male parent was the presumed father under the Uniform Parentage Act (See Appendix - Senate Bill 3047 sponsored by Senator Wynona M. Lipman), cited in Section I, Title 9, Citation #12.

This recommended amendment conforms with the Uniform Parentage Act legislation.

CITATION #24: N.J.S.A. 26:8-40.11  
Change of Surname of Child Born Out-of-  
Wedlock; Amendment of Original Birth Record

SYNOPSIS: This statute establishes a procedure so that a mother of an out-of-wedlock child, who marries a person who is not the child's father, may change the surname of the child to the surname of the husband. A correction or amendment to the birth certificate may be made after proof of the marriage and a declaration requesting the surname change is submitted.



RECOMMENDATION: Amend.

DISCUSSION: The statute should be amended to allow the mother of an out-of-wedlock child who has the same surname as the mother to change the child's surname if she marries a man who is not the father of the child, provided, however, that the child has no presumed father under the Uniform Parentage Act, or that a presumed father under the Uniform Parentage Act does not oppose the name change (See Section I, Title 9, Citation #12).

The recommended amendment conforms with the Uniform Parentage Act legislation.

TITLE 37, CHAPTER 1 RECOMMENDATIONS  
(MARRIAGES)

CITATION #25: N.J.S.A. 37:1-3  
Obtaining a Marriage License

SYNOPSIS: This statute requires that a marriage license must be obtained in (1) the municipality of New Jersey where the female party resides; (2) where the male resides if the female is not a New Jersey resident; or (3) where the marriage will be performed (in the case of two non-residents).

RECOMMENDATION: Amend.

DISCUSSION: The statute should be amended so that a marriage license may be obtained in the municipality where either party resides or where the marriage will be performed. Establishing differential standards for males and females is not appropriate in view of contemporary standards of equality; the function of licensing is not any better served by having a couple obtain a license in the county where the female resides.

CITATION #26: N.J.S.A. 37:1-5  
Immediate Issuance of Marriage License

SYNOPSIS: This statute provides that a person arrested for bastardy, rape, fornication, or having carnal knowledge of an unmarried female may be immediately issued a marriage license, irrespective of the 72-hour waiting period or the residency requirement, to marry the female if he so requests.

RECOMMENDATION: Repeal.

DISCUSSION: Under the 1979 New Jersey Code of Criminal Justice, bastardy, fornication, and the carnal knowledge of an unmarried female are no longer crimes. Rape remains a criminal offense.

It is probable that the statute, enacted in 1914, was designed to encourage the institution of marriage when the morality of a female was in question. The 72-hour waiting period is consistent with that aim in that it was enacted to provide for a period of reflection prior to the marriage. By eliminating the waiting period, the State is in fact encouraging and facilitating the marriage of a rapist to his victim, and overlooking the violent nature of the crime of rape.

This statute should be repealed.

CITATION #27: N.J.S.A. 37:1-6  
Consent of Parents and Guardians to Marriage of Minors

SYNOPSIS: This statute provides that a parent or guardian must consent to the marriage of a minor under age 18. A male minor arrested on a charge of sexual intercourse with a single, widowed or divorced female of good reputation for chastity who becomes pregnant, may be immediately issued a marriage license without the usual consent required.

RECOMMENDATION: Amend.

DISCUSSION: Under the 1979 New Jersey Code of Criminal Justice, the crime of fornication was repealed. A male minor could not, therefore, be arrested for having intercourse with a female of good reputation for chastity who becomes pregnant.

While this provision was probably enacted to protect the woman's reputation, it is no longer appropriate and it conflicts with the intent of the parental consent law.

This statute should be amended to eliminate the provision allowing a male minor arrested on a charge of sexual intercourse to marry without parental consent.

CITATION #28: N.J.S.A. 37:1-20  
Syphilis Test

SYNOPSIS: This statute provides that an applicant for a marriage license must obtain a certificate signed by a physician stating that he or she is not infected with syphilis or is not in a stage of the disease which is communicable. A female applicant near the termination of her pregnancy is exempted from this provision.

RECOMMENDATION: Amend.

DISCUSSION: According to health officials, there is no medical prohibition against testing a pregnant woman for syphilis. Today the majority of states have statutes requiring applicants for a marriage license to present certificates showing that they are free from communicable venereal disease. Since the purpose of such a statute is to prevent the transmission of venereal disease, pregnant women should not be exempted. Failure to be tested could result in severe damage to the health of the mother or serious congenital defects in the child.

This statute was probably enacted to facilitate the marriage of a pregnant female.

This statute should be amended to remove the exemption for pregnant women from serological testing.

TITLE 37, CHAPTER 2 RECOMMENDATIONS  
(MARRIED PERSONS)

NOTE: New Jersey's legal system, like that of most states, developed from English common law. Under the English system, an unmarried woman enjoyed the same freedom to manage, own and transfer personal and real property as did a single or married man.

An unmarried woman could sue and be sued and could enjoy the income attributable to her property, but upon marriage, a woman lost her separate rights under the doctrine of coverture. Husband and wife became one person in the eyes of the law and that one person was the husband. Her personal property became her husband's property and he acquired an interest in her real property (land) which entitled him to sole possession and control during the marriage. A woman became unable to carry out any transactions regarding her own property while she was married.

During the late nineteenth and early twentieth centuries, many of these legal disabilities were overcome by the Married Women's Property Acts. These acts were passed in all the states to grant married women many of the same privileges enjoyed by single women or single men, and by married men. New Jersey adopted its first Married Women's Property Act, which gave married women contract rights, in 1877.

Although these acts removed many of the legal disabilities faced by married women, inequalities still remain. The acts were written in sex-based language and make distinctions which are unacceptable today based on contemporary standards of equality. To revise the Married Women's Property Acts, codified in Title 37, Chapter 2 of the New Jersey Statutes

Annotated, the Commission chose to repeal obviously archaic provisions and recommend the following affirmative language:

An individual is guaranteed rights in every area of law without regard to sex or marital status, except as otherwise provided in this act. Nothing in this act should be construed to revive common law disabilities based on sex or marital status.

CITATION #29: N.J.S.A. 37:2-1  
Married Woman as Executrix, Administratrix,  
Guardian or Trustee

SYNOPSIS: This statute provides that a married woman may be an executrix, administratrix, trustee or guardian of an estate and that a single woman's authority in one of these positions will not be affected by her subsequent marriage. It also ensures that a married woman can take action for the disposition of real estate which she administers under a will or appointment without joining her husband in the proceedings.

RECOMMENDATION: Repeal.

DISCUSSION: This statute as written is no longer relevant by today's standards, and should be repealed.

CITATION #30: N.J.S.A. 37:2-2  
Married Woman May Make Will

SYNOPSIS: This statute provides that a will devising real or personal property made by a married woman of at least twenty-one years of age must be upheld.

RECOMMENDATION: Repeal.

DISCUSSION: Under common law, a married woman could not own property in her own name, nor make a will devising such property. This statute was designed to remove the common law liability.

In 1977, the New Jersey Legislature determined that any person eighteen years or older could make a will. (The provision appears in N.J.S.A. 3A:2A-3.) This statute is no longer necessary and should be repealed.

CITATION #31: N.J.S.A. 37:2-3  
Domicile of Married Woman

SYNOPSIS: The statute provides that the domicile of a married woman is to be established according to the same rules as it is established for other persons for purposes of voting, holding office, inheritance, jury service and taxation.

RECOMMENDATION: Repeal.

DISCUSSION: The common law rule was that a married woman's domicile was incorporated or merged with that of her husband in keeping with the legal "unity of persons" created by marriage. Not only was there an assumption of common domicile, but penalties were often imposed on married women who chose a separate domicile. Independent choice of domicile could defeat a woman's action for support and might be characterized as desertion in a divorce suit.

Although the statute was enacted to remove the limitation imposed on selection of domicile by common law, several cases decided under the law have perpetrated the common law presumption. See Carpino v. Carpino, 7 N.J. Misc. 1121, 148 A. 615 (1930); Antonelli v. Antonelli, 16 N.J. Super. 439, 84 A.2d 753 (App. Div. 1951).

Generally, domicile is determined by physical presence in a place with intent to remain. Domicile is the place where a person voluntarily fixes his place of habitation, not for temporary or special purposes but with the present intention of making it his home unless or until something uncertain or unexpected induces him to adopt some other place as his permanent home, Cromwell v. Nield, 15 N.J. Super. 296 (App. Div. 1951).

Since special rules governing the domicile of a married woman are no longer necessary, this statute should be repealed.



CITATION #32

N.J.S.A. 37:2-5  
Right of Husband and Wife to Contract With  
or Sue Each Other

SYNOPSIS:

This statute prohibits contracts and lawsuits between spouses except as permitted at common law or as authorized by other sections of Chapter 2.

RECOMMENDATION: Repeal and Supplement.

DISCUSSION:

This statute originates from the common law proscriptions on interspousal tort and contract actions since, under common law, the wife's identity merged with that of her husband. As husband and wife were legally one, such actions would result in a husband suing himself.

Although the Married Women's Property Acts gave a woman some rights, the acts did not overrule the common law prohibition against interspousal torts and contracts. These statutes perpetuated the common law belief that permitting such actions would result in a disruption of marital harmony, or collusion between the spouses, or would place the court in the position of mediating trivial marital disputes. Today this proscription is no longer valid - women frequently have a separate income and insurance coverage extends to most tort claims.

Recent New Jersey decisions have significantly altered the ban on interspousal torts and contracts. In Merenoff v. Merenoff, 76 N.J. 535 (1978), the Supreme Court of New Jersey built a solid argument in favor of abolishing the common law prohibition against interspousal torts and noted that at least twenty jurisdictions had abolished such immunity. The court held that "there presently exists no cogent or logical reason why the doctrine of interspousal tort immunity should be continued and it is hereby abrogated as a bar to a civil suit between married persons for damages for personal injuries."

The Merenoff case formed the basis for another decision which upheld a business contract between spouses. In Romeo v. Romeo, 84 N.J. 389 (1980), Mrs. Romeo sought to receive workers' compensation for her husband who had been killed while in her employ. The Supreme Court of New Jersey concluded that "N.J.S.A. 37:2-5 does not establish a substantive rule of law on the capacity of spouses to contract with one another." The Romeo court also noted that the assumption that such actions will encourage marital discord cannot be universally applied in all situations.

In light of current judicial interpretations, the Commission recommends that the statute be repealed, and that either spouse be permitted to contract with the other. Additionally, either spouse may sue or be sued by the other.

The recommended amendment will not permit spouses to enter into an employer-employee agreement with each other for marital or domestic services in their own home. Such services have traditionally been determined to be central to the marital contract. "Any attempt by a court to enforce the duty to support or to provide services would amount to specific enforcement of a contract for marital services. Such an enforcement would violate not only elementary remedial principles, but also the proscription of involuntary servitude contained in the thirteenth amendment." <sup>8</sup>

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<sup>8</sup>"Marriage Contracts for Support and Services: Constitutionality Begins at Home," 49 New York University Law Review 1161 (December 1974).

CITATION #33: N.J.S.A. 37:2-6  
Actions or Suits By or Against Married Woman  
Without Joining Husband

SYNOPSIS: This statute permits a married woman to initiate suit without joining her husband unless he would be required to be included in the litigation were he not her husband. Similarly, a married woman may be sued, in contract or in tort, without joining the husband.

RECOMMENDATION: Repeal.

DISCUSSION: This statute should be repealed since it is no longer necessary.

CITATION #34: N.J.S.A. 37:2-7  
Marriage of Female Party Not to Abate Action

SYNOPSIS: This statute permits a married woman to institute a cause of action or to continue an action begun while single.

RECOMMENDATION: Repeal.

DISCUSSION: This statute should be repealed since it is no longer necessary.

CITATION #35: N.J.S.A. 37:2-8  
Married Woman Solely Responsible For Her Torts

SYNOPSIS: This statute provides that a married woman is solely responsible for her torts.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to provide that a married person is responsible for his or her torts.

CITATION #36: N.J.S.A. 37:2-9  
Action By Married Woman For Torts Without  
Joining Husband

SYNOPSIS: This statute permits a married woman the right to sue in her own name, without her husband, to recover for torts committed against her.

RECOMMENDATION: Repeal.

DISCUSSION: Judicial interpretations of this and similar statutes have extended the ability to sue for loss of consortium to either spouse. See Zalewski v. Gallagher, 150 N.J. Super. 360 (App. Div. 1977) and American Export Lines, Inc. v. Alvez, 100 S. Ct. 1673 (1980). These interpretations enabled women to recover necessary financial judgments which were previously unavailable to them.

This statute should be repealed since it is no longer necessary.

CITATION #37: N.J.S.A. 37:2-10  
Married Woman's Liability for Debts Contracted  
Before or After Marriage

SYNOPSIS: This statute provides that a husband is not liable for his wife's debts contracted in her own name either before or after marriage and that her separate property shall be liable to satisfy such debts.

RECOMMENDATION: Repeal and Supplement.

DISCUSSION: Because a wife's legal identity merged with her husband's at marriage, he became solely liable for her debts and necessary expenses. The Married Women's Acts exempted those debts contracted in the woman's name although the husband remained solely liable for necessary family expenses. Today's marriage is a partnership and both spouses consider family expenses to be a joint responsibility.

In light of this changing concept of joint responsibility for necessary expenses, a recent Supreme Court of New Jersey decision held that both spouses were equally liable for necessary expenses incurred by either spouse during the marriage. Jersey Shore, Etc. v. Estate of Baum, 84 N.J. 187 (1980). The court determined that the Legislature's decision in N.J.S.A. 2A:34-23 to extend alimony payments to either spouse indicated a preference for a gender-neutral approach.

The Baum court held that as it would be unfair to accord the same rights to a creditor who provides necessities on the basis of an agreement with one spouse as to a creditor who has an agreement with both spouses, "a creditor should have recourse to the property of both spouses only where the financial resources of the spouse who incurred the necessary expense are insufficient." Additionally, the court suggested that N.J.S.A. 37:2-10 be rewritten to reflect the holding in Baum along the lines of existing necessary expense statutes in other states.

After reviewing the other states' provisions, including Conn. Gen. Stat. Ann. § 46b-37 (West Supp. 1980), the Commission recommends this statute's repeal and the enactment of legislation based on the Connecticut model. This legislation should provide that a spouse is not liable for debts contracted by the other spouse prior to their marriage, and that a purchase made by a spouse in that person's name is, in the absence of contrary notice, that spouse's individual financial responsibility. It should further provide that it is the joint duty of each spouse to support the family and that each should be liable for necessary expenses incurred in meeting that duty. These enumerated expenses include: (1) the reasonable and necessary medical and dental services rendered to the husband or wife or their minor children; (2) the cost of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; and (3) any article purchased by either spouse for the reasonable and necessary support of the family. A spouse who abandons the other spouse is liable for the reasonable support of that spouse during the period of abandonment.

No action may be maintained against either spouse under the provisions of this section, either during or after any period of separation from the other spouse, for any liability incurred by the other spouse during the separation, if during the separation the spouse who is liable for support of the other spouse has provided that spouse with reasonable support.

CITATION #38: N.J.S.A. 37:2-11  
Effect of Judgments Against Married Women

SYNOPSIS: This statute permits a judgment against a married woman.

RECOMMENDATION: Repeal.

DISCUSSION: This statute should be repealed since it is no longer necessary.

CITATION #39: N.J.S.A. 37:2-12  
Property Owned at Time of Marriage and  
Property Acquired Thereafter

SYNOPSIS: This statute permits a married woman's property and the rents and profits from it to remain her separate property. In addition, a married woman's property is not subject to her husband's disposal or liable for his debts.

RECOMMENDATION: Repeal.

DISCUSSION: Under common law, the husband exercised complete control over his wife's property and was entitled to all of the rents and profits from that property.

This statute should be repealed since it is no longer necessary.

CITATION #40: N.J.S.A. 37:2-13  
Wages and Earnings of a Married Woman

SYNOPSIS: This statute provides that a married woman's wages and earnings are her separate property.

RECOMMENDATION: Repeal and Supplement.

DISCUSSION: In Section I, Title 37, Citation #37, the Commission makes a comprehensive recommendation on the joint liability of spouses for family necessary expenses.

This statute should be repealed and legislation enacted which provides that a spouse's wages and earnings are that person's separate property except for the joint responsibility to provide support.

CITATION #41: N.J.S.A. 37:2-14  
Paraphernalia of a Married Woman

SYNOPSIS: This statute permits a married woman's paraphernalia (ornaments and wearing apparel) to be considered her separate property.

RECOMMENDATION: Repeal.

DISCUSSION: Under the common law, a married woman's clothing and personal effects were her husband's personal property during his life and he was free to dispose of them as he wished. Today, women may hold personal property in their own name. This statute, therefore, is obsolete and should be repealed.

CITATION #42: N.J.S.A. 37:2-15  
Separate Property Not Subject To Disposal of Husband or Liable For His Debts

SYNOPSIS: This statute prohibits a husband from disposing of his wife's property nor is her property liable for his debts.

RECOMMENDATION: Repeal.

DISCUSSION: In Section I, Title 37, Citation #37, the Commission makes a comprehensive recommendation on the joint liability of spouses to provide for family necessary expenses. The recommended revisions in N.J.S.A. 37:2-10 (Citation #37) adequately protects a person's separate property. This statute is unnecessary and should be repealed.

CITATION #43: N.J.S.A. 37:2-16  
Contracts of Married Women Without Joinder  
or Consent of Husband

SYNOPSIS: This statute permits a married woman to contract in her own name and make such contracts enforceable as though she were not married.

RECOMMENDATION: Repeal.

DISCUSSION: In Section I, Title 37, Citation #32, the Commission recommends that spouses be permitted the right to contract with each other. This statute is unnecessary and should be repealed.

CITATION #44: N.J.S.A. 37:2-16.1  
Partnership Contracts with Husband

SYNOPSIS: This statute permits a married woman to form a partnership with her husband or any other person.

RECOMMENDATION: Repeal.

DISCUSSION: In Section I, Title 37, Citation #32, the Commission recommends that spouses be permitted the right to contract with each other. This statute is unnecessary and should be repealed.



CITATION #45: N.J.S.A. 37:2-16.2  
Prior Partnership Contracts Validated

SYNOPSIS: This statute validates certain contracts made prior to its enactment.

RECOMMENDATION: Repeal.

DISCUSSION: This statute should be repealed since it is no longer necessary.

CITATION #46: N.J.S.A. 37:2-17  
Execution by Married Woman of Instruments Affecting Real Property of Self or Husband Without Joinder Consent of Husband

SYNOPSIS: This statute permits a married woman to dispose of her estate.

RECOMMENDATION: Repeal.

DISCUSSION: Under common law, upon marriage a woman lost her ability to convey her property without her husband's consent. The Married Women's Acts enabled her to freely alienate her separate estate without her husband's agreement except for that portion in which he had an estate, interest or right.

N.J.S.A. 3A:35-5, enacted in 1979, abolishes dower and curtesy in New Jersey and provides, further, that husband and wife jointly own the principal marital residence. All other real property owned by either spouse which is not the principal marital residence may be disposed of without the other spouse's consent.

In light of the provisions of the above statute, this statute should be repealed.

CITATION #47: N.J.S.A. 37:2-17.1  
Covenants by Married Woman; Effect

SYNOPSIS: This statute permits a married woman, when she joins with her husband in executing a deed to convey lands, to enter into covenants in the deed.

RECOMMENDATION: Repeal.

DISCUSSION: At common law, a married woman had no independent right to contract, and any contracts she made were not enforceable against her. This prohibition even extended to those contracts made jointly with her husband. As a result of this rule, a covenant made in a deed for the sale of land by a husband and wife was not enforceable against the wife. This statute permitted a married woman to bind herself jointly with her husband in any covenant in a deed. This statute is no longer necessary and should be repealed.

CITATION #48 N.J.S.A. 37:2-18  
Conveyance of Real Estate Between Husband and Wife; Tenants by Entirety

SYNOPSIS: This statute provides that a married man or woman may convey real estate directly to his wife or her husband. This conveyance releases a possible future estate by curtesy or dower.

RECOMMENDATION: Repeal.

DISCUSSION: This statute is no longer necessary and should be repealed.

CITATION #49: N.J.S.A. 37:2-18.1  
Release of Rights of Curtesy or Dower

SYNOPSIS: This statute provides that a husband may release his right of curtesy to his wife, or a wife may release her right of dower in any real estate.

RECOMMENDATION: Repeal.

DISCUSSION: As both curtesy and dower have been abolished by N.J.S.A. 3A:35-5, this statute is no longer valid and should be repealed. See discussion under N.J.S.A. 37:2-17 in Section I, Title 37 (Citation #46).

CITATION #50: N.J.S.A. 37:2-19  
Conveyances By Married Woman of Record for  
Five Years or More

SYNOPSIS: Under this statute, if five years have passed since a married woman conveyed an estate, the conveyance cannot be challenged using the grounds that the acknowledgment or proof of deed is imperfect.

RECOMMENDATION: Repeal.

DISCUSSION: As a married woman could not deed or convey property in her own name at common law without her husband's consent, this statute provided protection for a conveyance made by a married woman.

The presumption that a conveyance made by a married woman might not be valid does not exist today. This statute is, therefore, obsolete and should be repealed.

CITATION #51: N.J.S.A. 37:2-20  
Presumption of Conveyance by Widows of Entire  
Fee in Real Estate in Certain Areas

SYNOPSIS: This statute legitimizes certain imperfect conveyances made by widows, probably as a result of confusion as to the effects of dower and estate by entirety. A widow may own a life estate in one-half piece of land as a result of dower and as a result of estate by entirety own a fee simple estate in the other half. If she sells the whole piece of land as a fee simple estate, then after sixty years the conveyance is valid.

RECOMMENDATION: Repeal.

DISCUSSION: N.J.S.A. 3A:35-5 abolished dower and curtesy in New Jersey, and husband and wife now jointly own the principal marital residence. Either may convey their own separate property without the other spouse's consent.

N.J.S.A. 37:2-20 is, therefore, no longer valid and should be repealed.

CITATION #52: N.J.S.A. 37:2-21  
Payment to Married Woman Living Separate From Husband of Proceeds of Real Estate Sold by Order of Court; Free From Claims of Husband

SYNOPSIS: This statute permits a married woman, separated from her husband for three or more years, to apply for a court order allowing her to sell her real property, acquired by descent, gift or devise, free of any right of curtesy from her husband. However, this right is limited to real property.

RECOMMENDATION: Repeal.

DISCUSSION: As previously discussed in Section I, Title 37, Citation #46, dower and curtesy have been abolished in New Jersey by N.J.S.A. 3A:35-5. Each spouse may alienate his or her own separate property without the other spouse's consent. The principal marital home is now jointly owned by both husband and wife.

N.J.S.A. 37:2-21 was necessary at a time when a married woman could not sell her own property without her husband's consent. It is no longer valid and should be repealed.

CITATION #53: N.J.S.A. 37:2-22  
Order or Judgment of Court Binding Interest of Married Woman in Property or Authorizing Assignment or Conveyance Thereof

SYNOPSIS: This statute provides that the court may bind a married woman's interest in any property for her benefit.

RECOMMENDATION: Repeal.

DISCUSSION: Before enactment of the Married Women's Acts, a woman upon marriage lost all power to act in her own name at law, and was presumed to be in need of guidance to protect her in legal matters affecting her property.

The presumption that a woman cannot handle her affairs on her own is not valid, and this statute should therefore be repealed.

CITATION #54 N.J.S.A. 37:2-23  
Married Woman Legally Separated from Husband; Power to Convey, Mortgage, Lease or Devise Real Property

and

N.J.S.A. 37:2-24  
Husband Legally Separated from Wife; Power to Convey, Mortgage, Lease or Devise Real Property

SYNOPSIS: These statutes provide that a separated married woman or man may convey, mortgage and lease or devise real property as if she or he were single, unless the property came to her from her husband, or came to him from his wife.

RECOMMENDATION: Repeal.

DISCUSSION: These statutes should be repealed since they are no longer necessary.

CITATION #55: N.J.S.A. 37:2-25 to 37:2-29  
Mental Incompetency of Husband; Conveyance of Real Estate by Wife Under Order of Court; Bar to Rights of Husband

SYNOPSIS: These statutes provide that a woman married to a mentally incapacitated husband may convey land without the concurrence of her husband and he will not have a right of curtesy.

RECOMMENDATION: Repeal.

DISCUSSION:

Under common law, a married woman had no legal ability to sell her land independent of her husband. These statutes provided her with that ability if her husband was mentally incompetent.

Appointment, duties and responsibilities of a guardian for a mental incompetent are provided in N.J.S.A. 3A:6-35 et seq. N.J.S.A. 3A:6-35 specifically provides for the appointment of the spouse, if possible, as guardian of a mental incompetent. A married woman now has the ability to convey her own property. Additionally, dower and curtesy in New Jersey have been abolished by N.J.S.A. 3A:35-5.

In view of the above provisions, these statutes are no longer necessary and should be repealed.

TITLE 44 RECOMMENDATIONS (POOR)

CITATION #56: N.J.S.A. 44:1-11  
Membership

SYNOPSIS: This statute provides that at least two members of the County Welfare Board shall be women.

RECOMMENDATION: Amend.

DISCUSSION: The Commission recommends the deletion of the phrase requiring the appointment of at least two women. This action would be consistent with the Commission's recommendation on the membership of women on commissions, boards and agencies made in the "Sex Discrimination in the Employment Statutes" report, and reaffirmed in the Preface of this report.

CITATION #57: N.J.S.A. 44:1-30.2  
Persons Admitted to Pledge Property; Lien; Agreement to Reimburse

SYNOPSIS: This statute provides that any person seeking and acquiring admission to the county welfare house must pledge any property, real or personal, presently owned or acquired in the future, to the County Welfare Board as reimbursement for benefits received. This includes the release of dower or curtesy of the spouse of the person so benefited.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to delete the phrase applicable to dower and curtesy, which were abolished by N.J.S.A. 3A:35-5 (see recommendation of Assembly Bill 20). The elective share of the surviving spouse upon death (N.J.S.A. 3A:38A-1 et seq.) should be cited in the statute.

CITATION #58: N.J.S.A. 44:1-43  
Constitution and Appointment of District  
Welfare Board

SYNOPSIS: This statute allows for several counties to join together to create a District Welfare Board to govern the participating counties and municipalities. The Board will be composed of five members; two of whom shall be women.

RECOMMENDATION: Amend.

DISCUSSION: The Commission recommends the deletion of the phrase requiring the appointment of at least two women. This action would be consistent with the Commission's recommendation on the membership of women on commissions, boards and agencies made in the "Sex Discrimination in the Employment Statutes" report, and reaffirmed in the Preface of this report.

CITATION #59: N.J.S.A. 44:1-75  
Qualifications

SYNOPSIS: This statute lists the required qualifications for a person appointed overseer (director of welfare). It provides that "females, as well as males, of full age shall be eligible to appointment as overseers."

RECOMMENDATION: Amend.

DISCUSSION: The statute should be amended to delete the phrase permitting female as well as male overseers (directors). In view of contemporary policies and regulations, such a statement should no longer be necessary in order to insure equal employment opportunity.



CITATION #60: N.J.S.A. 44:1-87  
Inquiry into Application for Relief

SYNOPSIS: This statute specifies certain information the overseer shall request when a person applies for relief. One such inquiry is whether or not the applicant is without children, grandchildren, parents, grandparents or husband, who are required by law to support him.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to apply equally to male and female applicants. Even though the statute may be applied equally by the welfare boards, it should be amended to reflect this practice by changing the word husband to spouse.

CITATION #61: N.J.S.A. 44:1-140  
Relatives Chargeable

SYNOPSIS: This statute provides that the father, grandfather, mother, grandmother, children, grandchildren, and husband or wife must maintain a poor person or child who is eligible to receive public assistance, thereby relieving the public of care whenever there are relatives to support. Specifically the provisions apply to the husband of a mother whose children are likely to become a public charge because the husband fails to pay support.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to apply equally to either parent so that the welfare board may seek reimbursement from a husband or wife if their minor children become public charges because of the failure to support by the non-custodial parent.

CITATION #62: N.J.S.A. 44:1-143  
Compelling Support By Husband or Wife

SYNOPSIS: This statute provides that in instances where either the husband or father deserts his wife or children, or where a woman deserts her children, the overseer may seek a court order for support and maintenance to be paid by the husband or wife.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to allow the director of welfare to apply for a court order for support when either spouse deserts the husband or wife or children.

CITATION #63: N.J.S.A. 44:1-146  
Recovery of Expenses of Support

SYNOPSIS: This statute permits the director of welfare to bring an action for the sale of any real or personal property of the defendant in order to provide for the support and maintenance of the deserted wife and children or to seek reimbursement for support.

RECOMMENDATION: Amend.

DISCUSSION: The statute should be amended to apply equally to the deserted spouse or children, instead of to the deserted wife or children.

CITATION #64: N.J.S.A. 44:1-147  
Willful Deserter as Disorderly Person;  
Punishment

SYNOPSIS: This statute provides that a father or husband is liable and subject to imprisonment upon being adjudicated a disorderly person for deserting his wife or children. A mother is liable only upon deserting her children. The statute permits the deserting father to serve his prison term on weekends so the purpose of the statute (i.e., to provide support) is not defeated.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to apply to the spouse or parent who willfully deserts the other spouse or their children.

CITATION #65: N.J.S.A. 44:1-148  
Complaint by Overseer

SYNOPSIS: This statute permits the director of welfare to make a complaint against a deserter when the desertion causes the wife, children, or parents to become a public charge. The director shall make the complaint in the county where the father, husband or child resides.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to allow the director of welfare to make a complaint in the place where the deserting parent, spouse or child resides, if the willful refusal to support the spouse, children or parents caused them to receive public assistance.

CITATION #66: N.J.S.A. 44:4-82  
Inquiry into Case by Director

SYNOPSIS: This statute provides that when a person applies for relief for himself or another to a county welfare board, the director of welfare shall inquire into the facts of the case to determine if he is a poor person who requires temporary or permanent relief. The director shall ascertain whether a person requiring permanent relief is without children, grandchildren, parents, grandparents or husband to maintain him.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to refer to the spouse, instead of to the husband, who may be required by law to maintain the person applying for public assistance.

CITATION #67: N.J.S.A. 44:4-91  
Expenses Recoverable From Poor Person or  
Estate; Insurance

SYNOPSIS: This statute provides that when a poor person who has received support from any municipality dies, leaving real or personal property, an action may be maintained in court by the board of chosen freeholders against the person's estate to recover the sums of money that have been expended by the county for support. If the person dies having insurance upon his life, the proceeds after the expense of the last illness and the funeral shall, if the terms of the policy so permit, be first applied to the reimbursement of the county for the cost of the support. No appropriation of insurance shall be made when it is shown to the satisfaction of the court that the proceeds of the estate are needed to prevent the widow or minor children of the poor person from becoming dependent upon the public.

RECOMMENDATION: Amend.

DISCUSSION: Instead of reimbursing the municipality, a husband's insurance policy is permitted to be held liable for the maintenance and support of his widow if she would otherwise become a public charge. There is no comparable liability on a wife's estate.

This statute should be amended to apply equally to the insurance policy of either spouse who received support from the municipality, with the exception that a surviving spouse and children would receive the insurance if it is necessary to prevent them from becoming dependent on the public.

CITATION #68 : N.J.S.A. 44:4-104  
Compelling Support by Husband or Wife

SYNOPSIS: This statute provides that when a husband or father deserts his wife or children, or a woman deserts her children, the director of welfare may apply to the court for support or maintenance to be paid to the husband or wife.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to apply equally to allow the director of welfare to apply for a court order for support when either spouse deserts the husband or wife or children.

CITATION #69: N.J.S.A. 44:4-107  
Recovery of Expenses of Support

SYNOPSIS: The statute provides that the county welfare board may bring an action against the defendant for the recovery of support expenses. The board may seek a judgment and commence collection by an execution sale. The sum realized from the execution sale and not immediately used for reimbursement shall be kept in a bank for the deserted wife or children.

RECOMMENDATION: Amend.

DISCUSSION: This statute should be amended to apply to the deserted spouse or children instead of to the deserted wife or children.

CITATION #70: N.J.S.A. 44:7-14  
Recipient to Pledge Property; Lien; Assignment; Dower and Curtesy Released

SYNOPSIS: This statute provides that every county welfare board shall require, as a condition of granting assistance, that all property be pledged to the board as reimbursement for the assistance. The agreement to reimburse shall contain a release of dower or curtesy.

RECOMMENDATION: Amend.

DISCUSSION: The statute should be amended to require the release of a spouse's elective share since dower and curtesy were abolished by N.J.S.A. 3A:35-5 (see recommendation of Assembly Bill 20).

CITATION # 71: N.J.S.A. 44:8-115  
Local Assistance Boards; Membership;  
Appointment

SYNOPSIS: This statute provides that at least one member of the local assistance board shall be a woman.

RECOMMENDATION: Amend.

DISCUSSION: The Commission recommends the deletion of the phrase requiring the appointment of at least one woman. This action would be consistent with the Commission's recommendation on the membership of women on commissions, boards and agencies made in the "Sex Discrimination in the Employment Statutes" report, and reaffirmed in the Preface of this report.

## SECTION II

### RECOMMENDATIONS ON PROPOSED LEGISLATION

#### SURVIVING SPOUSE GRANTED RIGHT TO ELECTIVE SHARE OF DECEDENT'S ESTATE; DOWER AND CURTESY ABOLISHED

ASSEMBLY BILL 18 (P.L. 1979, c. 483)

ASSEMBLY BILL 20 (P.L. 1979, c. 485)

The Commission supported Assembly Bills 18 and 20, sponsored by Assemblyman Albert Burstein. The legislation is part of a series of bills adapted from the Uniform Probate Code, promulgated by the National Conference of Commissioners on Uniform State Laws for adoption in all states as a uniform code.

Assembly Bill 18 introduced the concept of "elective share" into New Jersey law by providing the surviving spouse with the right to take one-third of the decedent's "augmented estate" where necessary for the survivor's support and maintenance. Prior to this legislation, a decedent could deplete the entire estate during his or her lifetime by gift or otherwise so that at the time of death the assets or estate were completely or considerably depreciated. The effect was often the complete disinheritance of a surviving spouse who needed continuous support. This had a disproportionate impact on women because the husband often is the sole wage earner, holding marital assets in his own name.

Assembly Bill 20 abolished dower (a common law principle under which a widow was guaranteed for her lifetime the

use of one-third of all real property owned by her husband at any time during the marriage) and curtesy (a lesser right accorded husbands), and established an increased value of a spouse's share on intestacy.

The legislation provides that the husband and wife are entitled to joint possession of the principal matrimonial residence, with neither party able to sell or otherwise encumber the property without the consent of the other spouse. All other real property owned in the individual name of a party to the marriage requires no consent of the spouse to sell or encumber the property. Upon the death of the owner, the property passes either under the terms of the will, subject to a possible right of an elective share, or according to the rules of intestacy if there is no will.

The effect of this law is to treat the principal marital residence as jointly held property by the husband and wife, even if the deed should happen to be in the name of only one spouse, and to treat all other real property on an equal basis with personal property, thus ending the disparities that have arisen between widows whose husbands have invested in real estate and those who have invested in personal property.

#### TEMPORARY ALIMONY

#### SENATE BILL 1020

The Commission supports Senate Bill 1020, sponsored by Senator Donald Di Francesco, as amended per its recommendation on April 17, 1980.



This legislation amends the law to permit the awarding of temporary or permanent alimony. Senator Di Francesco's bill, as introduced, provided that only the vocational skills or employability of the parties be considered when determining an award of temporary alimony.

The Commission proposed and the sponsor accepted an amendment that the court be required to consider a list of specific factors when considering whether alimony should be temporary or permanent. The factors in the amended bill are as follows: the age, physical and emotional health of the parties; the standard of living established in the marriage and the likelihood that the party seeking maintenance can become self-supporting at a reasonably comparable standard of living; the earning capacities, educational levels, vocational skills, and employability of the parties; the length of absence from the job market and custodial responsibilities for children of the party seeking maintenance; the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; and the history of the 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.

Currently New Jersey considers two major factors when awarding alimony: (1) the actual need and ability to pay of the parties, and (2) the duration of the marriage. However, with the recent trend towards awarding temporary alimony - commonly known as rehabilitative alimony - further clarification is necessary. For example, temporary alimony is defined "as alimony payable for a short, but specific and terminable period of time, which

will cease when the recipient is, in the exercise of reasonable efforts, in a position of self-support." A former spouse who has few skills or is suffering from a debilitating illness could be granted temporary alimony despite permanent need.

This bill safeguards against such a situation by clarifying the actual need of the parties through consideration of all relevant factors. The actual need of the parties will be determined by reviewing such factors as "the age, physical and emotional health of the parties, the likelihood that the party seeking maintenance can become self-supporting at a reasonably comparable standard of living, and the length of absence from the job market and custodial responsibilities for children of the party seeking maintenance." This bill considers the ability to pay of the parties by examining their "earning capacities, educational levels, vocational skills and employability."

#### PROPERTY ACQUIRED DURING MARRIAGE - EXEMPT FROM EQUITABLE DISTRIBUTION

##### ASSEMBLY BILL 1229 (P.L. 1980, c. 181)

The Commission supported the introduction of legislation sponsored by Assemblyman James R. Hurley. This bill provides that any property acquired during a marriage by gift, devise, or bequest shall not be subject to equitable distribution upon divorce.

In a common law state such as New Jersey, the person whose name is on the title has all rights to the property until it is sold or given away. Under New Jersey law, the court is

permitted, at the time of divorce, to divide all property whether separately or jointly held, which the spouses have acquired during the marriage, in an equitable manner.

The concept of equitable distribution is based on the premise that the assets to be divided resulted from the partnership of marriage, and should not be diluted. Furthermore, compulsory division of a gift, devise or bequest, which is not accrued from the marriage partnership, is contrary to the natural expectations of the recipient and the donor, who is usually a parent or a relative.

FORMER SPOUSE MAY BE INCLUDED IN INSURANCE POLICY OWNED BY  
PERSON LIABLE FOR SUPPORT

ASSEMBLY BILL 8 (P.L. 1980, c. 113)

The Commission supports the legislation introduced by Assemblyman William J. Bate. At its public hearings, the Commission heard testimony that the court often awards to a former spouse alimony or child support that includes medical coverage. However, the spouse who is obligated to provide the support can no longer cover the former wife or husband in a "family" policy, nor does an insurable interest exist as the basis of an individual policy. To a dependent former spouse who needs

insurance coverage, this lack of coverage could be financially disastrous. Since in most cases the spouse receiving support is a woman who may be economically disadvantaged, the bill permits the former spouse to be included in a family or individual policy owned by the person liable for support. While the premium may be adjusted by the insurance company to reflect the added coverage, any increase is expected to be on a modest scale.

#### MARRIAGE LICENSE FEES USED FOR DOMESTIC VIOLENCE VICTIMS

##### ASSEMBLY BILL 618

The Commission supports Assembly Bill 618 sponsored by Assemblyman John Paul Doyle.

Domestic violence is a critical problem that was addressed by the New Jersey Legislature and the Governor in 1979 when the "Shelters for Victims of Domestic Violence Act" was signed into law. While the legislation established standards for the operation of shelters, it did not include an appropriation. Assemblyman Doyle's bill would increase by \$5.00 the fee charged for marriage licenses, and provide that the additional funds be used for domestic violence shelters.

Not only do the criminal and civil statutes need strengthening (see recommendations on Assembly Bill 3183 and Senate Bill 3127), but increased funding of shelters is necessary to provide victims of domestic violence with access to vitally needed protection.

DOMESTIC VIOLENCE AS AN AFFIRMATIVE DEFENSE BY DEFENDANT  
IN A DIVORCE ACTION ON GROUNDS OF DESERTION

ASSEMBLY BILL 826

The Commission supports Assembly Bill 826 introduced by Assemblyman C. Louis Bassano.

A battered spouse who leaves the marital residence to avoid further abuse may be charged with desertion by the other spouse. This legislation clarifies New Jersey divorce law by providing that an abused spouse may use the occurrence of battering or inhumane treatment as an affirmative defense in a divorce action brought on the grounds of desertion. The increasing incidence of domestic violence (see also Senate Bill 3127 and Assembly Bill 3183) necessitates this legislation. The bill makes the abuser the "constructive deserter" since the abuser's behavior made it impossible for the abused spouse to remain in the home.

UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

ASSEMBLY BILL 1427 (P.L. 1981, c.243)

The Commission supports the legislation introduced by Assemblyman Robert C. Janiszewski. This legislation repeals New Jersey's existing reciprocal enforcement of support laws and replaces them with the 1968 Revised Uniform Reciprocal Enforcement of Support Act promulgated by the National Conference of Commissioners on Uniform State Laws for enactment in all states as a uniform code.

Under the bill, no new duties of support are created; rather procedures are established for improving support enforcement across state lines. The bill will assist the state in recovering millions of dollars by placing the duty to support children on the shoulders of those who are legally responsible for them, thus relieving the state of the burden of providing assistance.

The Commission feels that this legislation is in conformity with its recommendations in Section I, Title 2A, Citation #14, and Senate Bill 1508 sponsored by Senator Wynona M. Lipman.

CHILD CARE LEAVE TO BE CONSIDERED OFFICIAL LEAVE WITHOUT PAY  
WHEN COMPUTING SERVICE IN THE PUBLIC EMPLOYEES' RETIREMENT  
SYSTEM

SENATE BILL 1507

The Commission supports the legislation introduced by Senator Wynona M. Lipman.

At present the law permits those on official leave because of personal illness or maternity to purchase pension credits within two years following their return to service. Whether or not maternity includes child care is a question that has generated considerable confusion. The result of the law's uncertainty is that the determination of what constitutes maternity leave is left to the discretion of each agency, with some agencies allowing child care to be computed while others do not. This bill would clarify the situation by allowing child care leave for either parent to be considered official leave without pay for a period of up to two years when computing service for retirement purposes.

Due to economic necessity and changing sex roles, increasing numbers of women are entering the labor market and remain employed although they have children. This legislation reinforces New Jersey's positive public policy on families by recognizing that today's families are entitled to full employment benefits and should not be penalized for having to interrupt their employment for the birth of a child. Allowing a member of either sex of the Public Employees' Retirement System to receive pension credits for child care while on official leave without pay following the birth of a child is appropriate in view of contemporary standards of equality.

#### PREVENTION OF DOMESTIC VIOLENCE

SENATE BILL 3127

ASSEMBLY BILL 3183

The Commission supports the legislation introduced by Senator Wynona M. Lipman and Assemblywoman Barbara McConnell.

Legal Services of New Jersey and the New Jersey Coalition for Battered Women recognized that the laws dealing with family violence needed extensive changes and, consequently, presented a legislative proposal to the sponsors of this legislation and the Commission on Sex Discrimination in the Statutes. The Commission worked closely with both groups in developing the bill and strongly endorses this legislation as consistent with its mandate to eliminate sex-based classifications in the statutes.

The enforcement of laws dealing with family violence reflects an insidious form of discrimination. Because of societal attitudes towards women, a battered woman has had few legal options. This bill creates urgently needed legal remedies

and brings New Jersey up to date with the majority of other states that have already enacted similar provisions.

The increasing prevalence of domestic violence - particularly against women - is a critical national problem. The United States Department of Justice report entitled "Crimes in the United States - 1979" revealed that 30% of the homicides committed in this country take place in the home. In the vast majority of these family homicide cases, it was found that police previously had been called to the home because of physical violence. Although there are no conclusive statistics on the incidence of domestic violence in New Jersey, a recent New Jersey Advisory Committee report to the United States Commission on Civil Rights, "Battered Women in New Jersey," did document the problems facing battered women in selected localities. Many provisions of this legislation closely parallel the recommendations of the Advisory Committee report.

The bill provides training for law enforcement officers in the handling of domestic violence, clarifies the applicability of various criminal statutes, improves record keeping to monitor domestic violence complaints, and gives the juvenile and domestic relations court jurisdiction to grant civil relief to a victim of domestic violence.

Under the "Prevention of Domestic Violence Act," law enforcement officers must be trained to handle domestic violence complaints by enforcing criminal laws, protecting the victim, and using available community resources. Law enforcement agencies must establish domestic crisis teams that may be supplemented by domestic violence experts.



According to the bill, an officer may arrest an alleged abuser without a warrant if there is reason to believe that he or she committed a crime or offense, or violated a protection order. The officer responding to a domestic violence call must inform the victim of the right to both civil and criminal relief, and provide transportation to a hospital or shelter if necessary. A law enforcement official is immunized from suits for damages for any action taken in good faith to enforce the law.

To monitor the nature and scope of domestic violence, an officer must complete a detailed domestic violence offense report form. An annual report of tabulated data will be sent to the Governor, the Legislature, and the Advisory Council on Shelters for Victims of Domestic Violence, thus facilitating the evaluation of the law enforcement response to domestic violence.

The most important provisions of this act strengthen civil and criminal remedies. Traditionally, domestic violence has not been treated as a criminal matter; this bill stresses the enforcement of criminal laws. In criminal cases, the courts are provided with specific directions such as prohibiting the victim's location from being disclosed. According to the bill, the court must prohibit a charged abuser from having contact with the victim, and the abuser may be ordered to undergo counseling.

The creation of civil in addition to criminal remedies is important because the civil laws offer broader, more flexible relief. The decision to file for a civil order lies solely with the victim. The juvenile and domestic relations court may issue an order prohibiting the abuser from entering the

residence or having contact with the victim, requiring the abuser to attend a counseling program, granting child support or maintenance, or requiring the abuser to pay the victim monetary compensation for losses suffered as a direct result of the abuse.

A temporary restraining order may be issued ex parte when necessary to protect the safety of the victim. On weekends, holidays or evenings, the municipal court may issue a temporary restraining order. Violation of the temporary restraining order is a crime of the fourth degree. The Director of the Administrative Office of the Courts must report annually to the Governor, the Legislature and the Advisory Council on Shelters for Victims of Domestic Violence on the data tabulated from the records on orders.

Domestic violence has a detrimental effect on families. Alarming correlations exist between spouse and child abuse and between violent families and delinquencies. This act presents a comprehensive response to the recurrent problem of domestic violence by ensuring victims the maximum protection of the law. It prevents repeated occurrences of violence by facilitating a prompt and thorough response to complaints.

#### AMENDMENT OF THE UNEMPLOYMENT COMPENSATION DISQUALIFICATION PROVISIONS

##### SENATE BILL 1005

The Commission supports the legislation introduced by Senator Wynona M. Lipman that amends the disqualification provisions of the unemployment compensation law to allow an individual

who voluntarily leaves a job in order to accompany his or her spouse to another geographic location to collect benefits after a four-week period of disqualification.

The legislation implements a recommendation made in the October, 1979 report on "Sex Discrimination in the Employment Statutes" issued by the Commission on Sex Discrimination in the Statutes.

Under current law, those who quit their jobs are not eligible for benefits unless the termination is attributable to the work itself; thus an individual who relocated to another area because of a family move would not be covered by the unemployment compensation law. This policy has a greater impact on women than men; when a woman quits her job to accompany her spouse to another area, she loses her eligibility even though otherwise meeting all requirements. Since she is able to work and actively seeking work, the law should reflect her commitment to the labor market.

DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SENATE BILL 3013 (P.L. 1981, c. 124)

The Commission supports the legislation introduced by Senator Wynona M. Lipman.

The Division of Equal Employment and Affirmative Action in the Department of Civil Service, created by Executive Order No. 61 of 1977, is permanently constituted under this bill. The Division is responsible for developing, implementing and

administering a statewide equal employment opportunity and affirmative action program for all state agencies, specifically focusing on the employment of minority persons, physically handicapped persons and women.

Passage of the legislation would affirm New Jersey's commitment to achieve equal employment opportunities for all citizens. The bill implements a recommendation made in the October, 1979 report on "Sex Discrimination in the Employment Statutes" issued by the Commission on Sex Discrimination in the Statutes.

#### AMENDMENT OF THE LAW AGAINST DISCRIMINATION

##### ASSEMBLY BILL 645

The Commission supports legislation introduced by Assemblyman Byron Baer. In its October, 1979 "Sex Discrimination in the Employment Statutes" report, the Commission recommended passage of this bill (formerly Assembly Bill 501). It was not enacted during the last legislative session and was, therefore, reintroduced by the sponsor in January, 1981.

Civil penalties to be paid by respondents held in violation of the Law Against Discrimination may be imposed under this legislation. Any person who violated the Law Against Discrimination would be liable for a penalty of \$2,000 for the first offense and not more than \$5,000 for the second and subsequent offenses.

EXTENSION OF THE LIFE OF THE COMMISSION ON SEX DISCRIMINATION  
IN THE STATUTES

SENATE BILL 1599 (P.L. 1981, c. 94)

Senator Wynona M. Lipman, Chair of the Commission on Sex Discrimination in the Statutes, introduced legislation extending the Commission's life from January 1982 until January 1984.

The Commission's employment recommendations were made in 1979, and signed into law in August, 1980. This is the Commission's second report, constituting its research on Marriage and Family Law. The extension of time requested is necessary for the Commission to complete research in the areas of insurance and pensions, education and criminal justice.<sup>9</sup>

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<sup>9</sup>The Commission's recommendations on proposed legislation are made by majority vote. Some members may differ with the majority as to their position on certain issues. It should be understood that the legislative process involves the modification of bills. If such modification should change the intent of a bill, the Commission's support of the bill in its early stages would not necessarily be applicable.

### SECTION III

#### CONCLUSIONS

During the Commission's public hearings, testimony indicated that many married people view their marriages as a partnership and, in reality, have a "community" system regardless of the marital property laws in their state, but upon death or divorce, or in dealing with third parties or creditors, they are confronted with the reality of the law.

Although New Jersey has incorporated sharing principles into the law through the enactment of an equitable distribution divorce statute, this does not mean a fifty-fifty sharing of assets. At death or upon divorce, the reality is often that a non-wage earner spouse is left with few assets because the title holder controls all of the property.

New Jersey is one of 42 common law property states based on the separate property model. This means that married individuals function as property owners much as if they had never married. (The Married Women's Property Acts reformed the common law view that marriage suspended a woman's property rights, but it did not "create any immediate rights in a separate property jurisdiction in assets acquired if she had no title participation.")<sup>10</sup>

Recently there has been a growing interest in the marital property approach of community property states. Under a

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<sup>10</sup>Cantwell, "Man + Woman + Property = ?", at 25.

community property system, there is common ownership of property, and both spouses have equal management and control rights.<sup>11</sup>

In 1979, legislation was introduced in the State of Wisconsin to shift from a system of separate property to one of marital property. Each spouse would have an equal, individual, present interest in the marital property during the marriage. Remedies would exist to enforce these rights. The laws governing property rights at death, regardless of which spouse dies first, would provide that each spouse could dispose of half the marital property as well as his or her separate property. The Commission met with the author of the Wisconsin bill, Professor Jure Miller Weisberger, of the University of Wisconsin School of Law, in March 1981, to discuss the legislation's history and specific provisions.

In conclusion, the Commission recommends that this proposal, as well as a January, 1981 draft of A Uniform Marital Property Act made available for public comment by the National Conference of Commissioners on Uniform State Laws, should be explored. A marital property system requires a basic rethinking of property concepts as now embodied in New Jersey law. This important new concept needs further study and consultation with members of the New Jersey Bar, legal scholars, appropriate State officials and concerned public citizens.

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<sup>11</sup>Ibid. The Cantwell article is an excellent analysis of the difficult issues surrounding marital property control and distribution during marriage and upon death or divorce.

## APPENDICES





APPENDIX A

SENATE, No. 3047

STATE OF NEW JERSEY

INTRODUCED JANUARY 26, 1981

By Senator LIPMAN

Referred to Committee on Judiciary

AN ACT concerning children born out-of-wedlock, supplementing chapter 17 of Title 9 of the Revised Statutes and repealing parts of the statutory law pertaining thereto.

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

1. This act shall be known and may be cited as the "Uniform Parentage Act."
2. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.
3. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.
4. The parent and child relationship between a child and
  - a. the natural mother may be established by proof of her having given birth to the child, or under this act;
  - b. the natural father may be established under this act;
  - c. an adoptive parent may be established by proof of adoption.
5. Notwithstanding any other law concerning public hearings and records, any action or proceeding held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records and any information which may reveal the identity of any party in an

action, other than the final judgment, pertaining to the action or proceeding, whether part of the permanent record of the court or of a file with the State Registrar or elsewhere are confidential and are subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for compelling reason clearly and convincingly shown.

6. a. A man is presumed to be the natural father of a child if:

(1) he and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment or divorce;

(2) before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and,

(a) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment or divorce; or

(b) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) after the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(a) he has acknowledged his paternity of the child in writing filed with the local registrar,

(b) he has sought to have his name placed on the child's birth certificate as the child's father pursuant to P. L. 1960, c. 142 (C. 26:8-40.11); or

(c) he openly holds out the child as his natural child; or

(d) he is obligated to support the child under a written voluntary agreement or court order;

(4) his paternity has been adjudicated by a court of competent jurisdiction in another state or under prior law;

(5) while the child is under the age of majority, he receives the child into his home and openly holds out the child as his natural child;

(6) while the child is under the age of majority he provides support for the child and openly holds out the child as his natural child; or

(7) he acknowledges his paternity of the child in a writing filed with the local registrar which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the local registrar. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. Each attempted acknowledgment whether or not effective shall be kept on file by the local registrar and shall entitle the person who filed it to notice of all proceedings concerning parentage and adoption of the child as provided in section 10 of this act and pursuant to section 9 of P. L. 1977, c. 367 (C. 9:3-45).

b. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption shall be rebutted by a court decree establishing paternity of the child by another man.

7. a. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent shall be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the State Department of Health, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so shall not affect the father and child relationship. All papers and records pertaining

to the insemination, whether part of the permanent record of a court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for compelling reason clearly and convincingly shown.

b. Unless the donor of semen and the woman have entered into a written contract to the contrary the donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the father of a child thereby conceived and shall have no rights stemming from the conception of a child.

8. a. A child, the natural mother, or a man presumed to be his father under paragraph (1), (2), (3), or (4) of section 6 a. may bring an action:

(1) At any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (1), (2), (3), or (4) of section 6 a.; or

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (1), (2), (3), or (4) of section 6 a. only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

b. Any party with an interest recognized as justiciable by the court may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under paragraph (5), (6), or (7) of section 6 a.

c. An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 6 may be brought by the child, the mother or personal representative of the child, the Division of Public Welfare in the Department of Human Services or the county welfare board, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the

personal representative or a parent of the alleged father if the alleged father has died or is a minor.

d. Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 14 b., between an alleged or presumed father and the mother of the child, shall not bar an action under this section.

e. If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

f. This section does not extend the time within which a right of inheritance or a right to a succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

9. a. Without limiting the jurisdiction of any other court, the county district court has jurisdiction of an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

b. A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by service in accordance with the rules of the court.

c. The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

10. The child shall be made a party to the action. If a minor the child shall be represented by the guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may appoint the Division of Public Welfare in the Department of Human Services as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 6, each man alleged to be the natural father, anyone whose name appears on the birth certificate, and

anyone who has attempted to file an acknowledgment under section 6 whether or not effective to create a presumption of paternity shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

11. a. As soon as practicable after an action to declare the existence or non-existence of the father and child relationship has been brought, a preliminary hearing shall be held. The public shall be barred from the hearing. A record of the proceeding or any portion thereof shall be kept if any party requests, or the court orders. It is in the discretion of the court to what extent the rules of evidence shall be observed.

b. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order him to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that his testimony or evidence might tend to incriminate him, the court may grant him immunity from all criminal liability on account of the testimony or evidence he is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence he is required to produce, except for perjury committed in his testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

c. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.

12. a. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests or genetic tests. The tests shall be performed by a qualified expert appointed by the court.

b. The court, upon reasonable request by a party, shall order that independent tests be performed by other qualified experts.

c. The court shall determine the number and qualifications of the experts.

d. The refusal to submit to blood tests or genetic tests, or both, may be admitted into evidence and is subject to the sanctions within the jurisdiction of the court.

13. Evidence relating to paternity may include :

a. evidence of sexual intercourse between the mother and alleged father at any possible time of conception ;

b. an expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy ;

c. genetic or blood tests, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity ;

d. medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests ; and

e. all other evidence relevant to the issue of paternity of the child.

14. a. On the basis of the information produced at the hearing, the judge conducting the hearing shall evaluate the probability of determining the existence or non-existence of the father and child relationship in a trial and whether a judicial declaration of the relationship would be in the best interest of the child. On the basis of the evaluation, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following :

(1) that the action be dismissed with or without prejudice ;

(2) that the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor



of the child and, if appropriate, in favor of the mother, subject to approval by the judge conducting the hearing. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the judge conducting the hearing shall consider the best interest of the child, in the light of the factors enumerated in subsection e. of section 16, discounted by the improbability, as it appears to him, of establishing the alleged father's paternity or non-paternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(3) that the alleged father voluntarily acknowledge his paternity of the child.

b. If the parties accept a recommendation made in accordance with subsection a., judgment shall be entered accordingly.

c. If a party refuses to accept a recommendation made under subsection a. and blood tests or genetic tests have not been taken, the court shall require the parties to submit to blood tests or genetic tests, if practicable. Thereafter the judge shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

d. The guardian ad litem may accept or refuse to accept a recommendation under this section.

e. The preliminary hearing may be terminated and the action set for trial if the judge conducting the hearing finds it unlikely that all parties would accept a recommendation that might be made under subsection a. or c.

f. No evidence, testimony or other disclosure from the preliminary hearing shall be admitted as evidence in a civil action except by consent of the parties.

15. a. An action under this act is a civil action governed by the rules of court. The mother of the child and the alleged father are competent to testify and may be compelled to testify. Subsections b. and c. of section 11 and sections 12 and 13 apply to testimony offered under this act.

b. Testimony relating to sexual access to the mother by any man at any time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother. Before testimony relating to sexual access to the mother by an unidentified man at the probable time of conception may be introduced, the court shall hold an in camera hearing to determine whether the evidence is sufficiently probative so that the interests of justice require its admission.

c. In an action against an alleged father, evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if he has undergone and made available to the court blood tests or genetic tests the results of which do not exclude the possibility of his paternity of the child. A man who is identified and is subject to the jurisdiction of the court shall be made a defendant in the action.

d. The trial shall be by the court without a jury.

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

b. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amendment to the original birth record be made under section 24.

c. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

d. Support judgments or orders ordinarily shall be for periodic payments which may vary in amount. In the best interest of the child, a lump sum payment or the purchase of an annuity may be ordered in lieu of periodic payments of support. The court

may limit the father's liability for past support of the child to the proportion of the expenses already incurred that the court deems just.

c. 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, a court enforcing the obligation of support shall consider all relevant facts, including the:

- (1) needs of the child;
- (2) standard of living and circumstances of the parents;
- (3) relative financial means of the parents;
- (4) earning ability of the parents;
- (5) need and capacity of the child for education, including higher education;
- (6) age of the child;
- (7) financial resources and the earning ability of the child;
- (8) responsibility of the parents for the support of others; and
- (9) value of services contributed by the custodial parent.

17. The court may order reasonable fees of counsel, experts, and and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood or genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the Division of Public Welfare in the Department of Human Services or the county welfare board.

18. a. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, the child, the public agency that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or funeral, or by any other person, including a private agency, to the extent he has furnished or is furnishing these expenses.

b. The court may order support payments to be made to the mother, the clerk of the court, the appropriate county probation office, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

c. Willful failure to obey the judgment or order of the court is a civil contempt of the court.

19. The court has continuing jurisdiction to modify or revoke a judgment or order:

a. for future education and support, and

b. with respect to matters listed in subsections c. and d. of section 16 and subsection b. of section 18, except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under subsection d. of section 16 may specify that the judgment or order may not be modified or revoked.

20. a. At the pretrial hearing and in further proceedings, any party may be represented by counsel.

b. If a party is financially unable to pay the cost of a transcript, the court shall furnish on request a transcript for purposes of appeal.

21. Any interested party may bring an action to determine the existence or non-existence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

22. a. Any agreement in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to subsection d. of section 8.

b. In the best interest of the child or the mother, the court may, and upon the request of the person agreeing to furnish support shall, order the agreement to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the agreement.

23. The designation of a child's name, including surname, is the right of the child's parents. A child's surname as recorded on its birth certificate shall be the surname of either or both of the child's parents or a surname formed by combining the surname of the parents in hyphenated or other form.

24. a. Upon order of a court of this State or upon request of a court of another state, the local registrar shall prepare an amended birth record consistent with the findings of the court.

b. The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the amended birth record but the actual place and date of birth shall be shown.

c. The evidence upon which the amended birth record was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for compelling reason clearly and convincingly shown.

d. The child of a married woman and a man who is not the mother's husband, may be registered as the child of the biological father under the following conditions:

(1) The presumption of the husband's paternity has been overturned by an appropriate court order; or

(2) If a married mother states that she became pregnant by her previous husband who died less than 10 months before the child's birth, or from whom she was divorced for a similar length of time, that husband shall be named as the child's father, unless the provisions of paragraph (1) of this subsection apply; or:

(3) The mother signs, in the presence of a witness the following statement: "I, (mother's name) do hereby acknowledge that (biological father's name) and I are the true and biological parents of (infant's name) born in the (hospital's name) on (date of birth) at (time). I hereby authorize and direct the (hospital's name) to submit a birth certificate to the local registrar identifying (biological father's name) as the father of the above named infant,"; and the mother's husband signs the following statement in the presence of a witness:

"I, (husband's name), do hereby authorize the (hospital's name) to submit to the local registrar a birth certificate which identifies (biological father's name) as the father of (infant's name) who is the child of (mother's name), my lawful wife.

(4) A form shall be sent by certified mail return receipt requested to the last known address of the mother's husband. The form shall contain a clear explanation of subsection d. and the statement shall be printed in such a way that the husband, by inserting the word "not" after the word "do" within the statement may withhold his authorization.

(5) If the mother's husband withholds his authorization, he shall be identified as the child's father unless the provisions of paragraphs (1) or (2) of subsection d. of this section apply.

(6) If the postal service is unable to effect delivery to the mother's husband, or if he makes no response within 10 days of receipt, his authorization shall not be necessary to registering the child in accordance with the provisions of paragraph (3) of this section.

e. If the mother says that she is single, widowed or divorced, the name that she supplies as the name of the father of the child shall be recorded on the child's birth certificate.

f. The State registrar or a local registrar shall issue to any applicant a certified photocopy or typed copy of a birth certificate showing parents' names, provided the copy does not show any information about legitimacy or illegitimacy. For the purpose of this subsection, a discrepancy between the child's surname and the surname of either parent, or the absence of a father's name does not constitute an entry designating legitimacy or illegitimacy.

g. Unless the father named on a child's birth certificate is presumed to be the natural father of the child pursuant to paragraph (1), (2), (3) or (4) of subsection a. of section 6, the listing of his name on the birth certificate or the use of his surname as the child's surname does not establish paternity.

h. Parents of any child whose father as listed on the child's birth certificate is not presumed to be the natural father pursuant to paragraph (1), (2), (3) or (4) of subsection a. of section 6 shall be provided at the time the birth certificate is prepared with a form, to be designed by the State registrar, which explains in clear and understandable language this act's provisions concerning the establishment of paternity, including procedures for acknowledgment pursuant to this act and which attaches an acknowledgment form.

25. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it.

26. The following are repealed:

- a. R. S. 9:15-1 and R. S. 9:15-2;
- b. R. S. 9:16-1 through R. S. 9:16-4;
- c. R. S. 9:17-1 and R. S. 9:17-2;
- d. R. S. 9:17-4 through R. S. 9:17-6;
- e. R. S. 9:17-11 through R. S. 9:17-20;
- f. R. S. 9:17-23 through R. S. 9:17-35.
- g. N. J. S. 2A:83-2.

27. This act shall take effect 120 days after enactment.

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#### STATEMENT

This bill, known as the Uniform Parentage Act, is one of the acts promulgated by the National Conference of Commissioners on Uniform State Laws in 1973 for adoption in all states as Uniform Acts. The Uniform Parentage Act was proposed to establish "the principle that regardless of the marital status of the parents, all children and parents have equal rights with respect to each other." The major component of the bill is contained in section 6 which identifies a set of external circumstances that indicate a particular man as the probable father. These presumptions are important because they facilitate the flow of benefits from the father to the child where a court proceeding has not been brought to establish paternity. While the laws of some states might include one or two of the presumptions listed in section 6 (i.e., subsequent marriage between the mother and a man presumed to be the father), this legislation is innovative in that all the presumptions are grouped together in order to provide the most encompassing framework possible.

The Uniform Parentage Act sets forth procedures for the judicial determination of paternity in appropriate cases. This procedure will reduce the high cost and inefficiency of paternity litigation, especially since blood tests or genetic tests may be required if practicable. Currently, blood testing laboratories have the capacity of excluding 90% or more of all wrongly accused men. If a party refuses to accept the judge's recommendation for settlement, the action may be set for trial. The act also eliminates sex-based presumptions in the naming of children. The local registrar is authorized to prepare an amended birth record consistent with the act's provisions.

On the recommendation of the Commission on Sex Discrimination in the statutes this act was proposed to eliminate certain sex-based provisions in the existing law concerning out-of-wedlock children and their parents and to provide for the best interests of the child. While some states have adopted the Uniform Probate Code which provides for equal inheritance rights for out-of-wedlock children and a series of decisions rendered by the United States Supreme Court under the Equal Protection Clause of the 14th Amendment has mandated equal treatment, many judges and lawyers in the late 1960's felt the need for a comprehensive document dealing with the essential issue of equal legal rights for children born out-of-wedlock and their parents. They felt that the concept of full legal equality for out-of-wedlock children would only have meaning if the children were able to identify the person against whom to assert their rights. Against this background the Uniform Parentage Act was drafted to provide substantive legal equality for children regardless of the marital status of their parents.

Under the current New Jersey law parentage may be ascertained by a bastardy proceeding in the Juvenile and Domestic Relations Court, the municipal court or the county district court. The original bastardy statutes were enacted to assist welfare authorities determine parentage in order to enforce support obligations; there are now approximately 2,500 bastardy cases heard a year in New Jersey. Originally the proceedings were quasi-criminal and the putative father had no access to the child without the mother's



consent. These statutes have penalized both fathers and mothers and have made clear distinctions between legitimate and out-of-wedlock children.

This legislation, which repeals the existing law, is in the State's best interest because it facilitates the identification of parents. In the United States the rate of out-of-wedlock births is increasing and currently exceeds 15% of all births. In many urban areas the rate is as high as 40% and sometimes 50%. One-third of all children receiving assistance under the Aid to Families with Dependent Children program are born out-of-wedlock. The responsibility for supporting these children falls directly upon the mother or the taxpayer unless paternity is established. The Uniform Parentage Act not only provides a mechanism for determining paternity that will significantly impact on support enforcement, but facilitates the flow of benefits from the father to the child because the father will be more easily identifiable.

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## APPENDIX B

SENATE COMMITTEE SUBSTITUTE FOR

**SENATE, No. 3047**

# STATE OF NEW JERSEY

ADOPTED JUNE 18, 1981

AN ACT concerning children born out-of-wedlock, supplementing chapter 17 of Title 9 of the Revised Statutes and repealing parts of the statutory law pertaining thereto.

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

1. This act shall be known and may be cited as the "New Jersey Parentage Act."

2. As used in this act, "parent and child relationship" means the legal relationship existing between a child and his natural or adoptive parents incident to which the law confers or imposes rights, privileges, duties, and obligations. It includes the mother and child relationship and the father and child relationship.

3. The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents.

4. The parent and child relationship between a child and

a. The natural mother may be established by proof of her having given birth to the child, or under this act;

b. The natural father may be established by proof that his paternity has been adjudicated under prior law; under the laws governing probate; by an order of a court of competent jurisdiction in another state or under this act;

c. An adoptive parent may be established by proof of adoption.

5. Notwithstanding any other law concerning public hearings and records, any action or proceeding held under this act shall be held in closed court without admittance of any person other than those necessary to the action or proceeding. All papers and records and any information pertaining to an action or proceeding held under

this act which may reveal the identity of any party in an action, other than the final judgment or the birth certificate, whether part of the permanent record of the court or of a file with the State Registrar of Vital Statistics or elsewhere are confidential and are subject to inspection only upon consent of the court and all parties to the action who are still living, or in exceptional cases only upon an order of the court for compelling reason clearly and convincingly shown.

6. a. A man is presumed to be the natural father of a child if:

(1) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment or divorce;

(2) Before the child's birth, he and the child's natural mother have attempted to marry each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(a) if the attempted marriage could be declared invalid only by a court, the child is born during the attempted marriage, or within 300 days after its termination by death, annulment or divorce; or

(b) if the attempted marriage is invalid without a court order, the child is born within 300 days after the termination of cohabitation;

(3) After the child's birth, he and the child's natural mother have married, or attempted to marry, each other by a marriage solemnized in apparent compliance with law, although the attempted marriage is or could be declared invalid, and

(a) he has acknowledged his paternity of the child in writing filed with the local registrar of vital statistics,

(b) he has sought to have his name placed on the child's birth certificate as the child's father pursuant to R. S. 26:8-40; or

(c) he openly holds out the child as his natural child; or

(d) he is obligated to support the child under a written voluntary agreement or court order;

(4) While the child is under the age of majority, he receives the

child into his home and openly holds out the child as his natural child;

(5) While the child is under the age of majority, he provides support for the child and openly holds out the child as his natural child; or

(6) He acknowledges his paternity of the child in a writing filed with the local registrar which shall promptly inform the mother of the filing of the acknowledgment, and she does not dispute the acknowledgment within a reasonable time after being informed thereof, in a writing filed with the local registrar. If another man is presumed under this section to be the child's father, acknowledgment may be effected only with the written consent of the presumed father or after the presumption has been rebutted. Each attempted acknowledgment whether or not effective shall be kept on file by the local registrar and shall entitle the person who filed it to notice of all proceedings concerning parentage and adoption of the child as provided in section 10 of this act and pursuant to section 9 of P. L. 1977, c. 367 (C. 9:3-45).

b. A presumption under this section may be rebutted in an appropriate action only by clear and convincing evidence. If two or more presumptions arise which conflict with each other, the presumption which on the facts is founded on the weightier considerations of policy and logic controls. The presumption is rebutted by a court order terminating the presumed father's paternal rights or by establishing that another man is the child's natural or adoptive father.

7. a. If, under the supervision of a licensed physician and with the consent of her husband, a wife is inseminated artificially with semen donated by a man not her husband, the husband is treated in law as if he were the natural father of a child thereby conceived. The husband's consent shall be in writing and signed by him and his wife. The physician shall certify their signatures and the date of the insemination, and file the husband's consent with the State Department of Health, where it shall be kept confidential and in a sealed file. However, the physician's failure to do so shall not affect the father and child relationship. All papers and records pertaining to the insemination, whether part of the permanent record of a

court or of a file held by the supervising physician or elsewhere, are subject to inspection only upon an order of the court for compelling reasons clearly and convincingly shown.

b. Unless the donor of semen and the woman have entered into a written contract to the contrary, the donor of semen provided to a licensed physician for use in artificial insemination of a woman other than the donor's wife is treated in law as if he were not the father of a child thereby conceived and shall have no rights or duties stemming from the conception of a child.

8. a. A child, the natural mother, a man presumed to be the father under paragraph (1), (2), or (3) of section 6a., or the Division of Public Welfare of the Department of Human Services or the county welfare board may bring an action:

At any time for the purpose of declaring the existence of the father and child relationship presumed under paragraph (1), (2), (3) of section 6a.; or

(2) For the purpose of declaring the nonexistence of the father and child relationship presumed under paragraph (1), (2), or (3) of section 6a. only if the action is brought within a reasonable time after obtaining knowledge of relevant facts, but not later than 5 years after the child's birth.

After the presumption has been rebutted, paternity of the child by another man may be determined in the same action, if he has been made a party.

b. The child, the mother or personal representative of the child, the Division of Public Welfare in the Department of Human Services or the county welfare board, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, the personal representative or a parent of the alleged father if the alleged father has died or is a minor, or any person with an interest recognized as justiciable by the court may bring an action at any time for the purpose of determining the existence or nonexistence of the father and child relationship presumed under paragraph (4), (5) or (6) of section 6a.

c. An action to determine the existence of the father and child relationship with respect to a child who has no presumed father under section 6 may be brought by the child, the mother or personal representative of the child, the Division of Public Welfare in the

Department of Human Services or the county welfare board, the personal representative or a parent of the mother if the mother has died, a man alleged or alleging himself to be the father, or the personal representative or a parent of the alleged father if the alleged father has died or is a minor or any person with an interest recognized as justiciable.

d. Regardless of its terms, an agreement, other than an agreement approved by the court in accordance with section 11c, between an alleged or presumed father and the mother of the child, shall not bar an action under this section.

e. If an action under this section is brought before the birth of the child, all proceedings shall be stayed until after the birth, except service of process and the taking of depositions to perpetuate testimony.

f. This section does not extend the time within which a right of inheritance or a right to succession may be asserted beyond the time provided by law relating to distribution and closing of decedents' estates or to the determination of heirship, or otherwise.

9. a. Without limiting the jurisdiction of any other court, the juvenile and domestic relations court and where an action is joined with another action, the Superior Court shall have jurisdiction over an action brought under this act. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

b. A person who has sexual intercourse in this State thereby submits to the jurisdiction of the courts of this State as to an action brought under this act with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by law, personal jurisdiction may be acquired by service in accordance with the rules of the court.

c. The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

10. The child shall be made a party to the action. If the child is a minor, the child may be represented by a guardian ad litem appointed by the court. The child's mother or father may not represent the child as guardian or otherwise. The court may

appoint an attorney-at-law or an appropriate State agency as guardian ad litem for the child. The natural mother, each man presumed to be the father under section 6, each man alleged to be the natural father, anyone whose name appears on the birth certificate, and anyone who has attempted to file an acknowledgment under section 6 whether or not effective to create a presumption of paternity shall be made parties or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

11. a. As soon as practicable after an action to declare the existence or nonexistence of the father and child relationship has been brought, a consent conference shall be held by the juvenile and domestic relations court intake service, the county probation department or the county welfare board. An alternate court appearance date shall also be scheduled, in the event that a consent agreement cannot be reached.

b. On the basis of the information produced at the conference, an appropriate recommendation for settlement shall be made to the parties, which may include any of the following:

(1) That the action be dismissed with or without prejudice;

(2) That the matter be compromised by an agreement among the alleged father, the mother, and the child, in which the father and child relationship is not determined but in which a defined economic obligation is undertaken by the alleged father in favor of the child and, if appropriate, in favor of the mother, subject to approval by the court. In reviewing the obligation undertaken by the alleged father in a compromise agreement, the court shall consider the best interests of the child, in the light of the factors enumerated in subsection e. of section 16, discounted by the improbability of establishing the alleged father's paternity or non-paternity of the child in a trial of the action. In the best interest of the child, the court may order that the alleged father's identity be kept confidential. In that case, the court may designate a person or agency to receive from the alleged father and disburse on behalf of the child all amounts paid by the alleged father in fulfillment of obligations imposed on him; and

(3) That the alleged father voluntarily acknowledge his paternity of the child.

c. If the parties accept a recommendation made in accordance with subsection b. judgment shall be entered accordingly.

d. If a party refuses to accept a recommendation made under subsection b. and blood tests or genetic tests have not been taken, the court shall require the parties to submit to blood tests or genetic tests, if practicable. Thereafter the court shall make an appropriate final recommendation. If a party refuses to accept the final recommendation, the action shall be set for trial.

e. The guardian ad litem may accept or refuse to accept a recommendation under this section.

f. The consent conference may be terminated and the action set for trial if the court finds it unlikely that all parties would accept a recommendation that might be made under subsection b. or d.

g. No evidence, testimony or other disclosure from the consent conference shall be admitted as evidence in a civil action except by consent of the parties. However, blood tests or genetic tests ordered pursuant to subsection d. may be admitted as evidence.

12. a. An action under this act is a civil action governed by the rules of court.

b. The trial shall be by the court without a jury.

13. a. The mother of the child and the alleged father are competent to testify and may be compelled to testify.

b. Upon refusal of any witness, including a party, to testify under oath or produce evidence, the court may order the witness to testify under oath and produce evidence concerning all relevant facts. If the refusal is upon the ground that the testimony or evidence might tend to incriminate the witness, the court may grant the witness immunity from all criminal liability on account of the testimony or evidence that the witness is required to produce. An order granting immunity bars prosecution of the witness for any offense shown in whole or in part by testimony or evidence the witness is required to produce, except for perjury committed in the testimony. The refusal of a witness, who has been granted immunity, to obey an order to testify or produce evidence is a civil contempt of the court.

c. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth is not privileged.



d. Testimony relating to sexual access to the mother by any man at any time other than the probable time of conception of the child is inadmissible in evidence, unless offered by the mother. Before testimony relating to sexual access to the mother by an unidentified man at the probable time of conception may be introduced, the court shall hold an in camera hearing to determine whether the evidence is sufficiently probative so that the interests of justice require its admission.

e. In an action against an alleged father, uncorroborated evidence offered by him with respect to a man who is not subject to the jurisdiction of the court concerning his sexual intercourse with the mother at or about the probable time of conception of the child is admissible in evidence only if the other man has undergone blood tests or genetic tests the results of which do not exclude the possibility of his paternity of the child and which tests are made available to the court. A man who is identified and is subject to the jurisdiction of the court shall be made a party in the action.

14. a. The court may, and upon request of a party shall, require the child, mother, or alleged father to submit to blood tests or genetic tests. The tests shall be performed by a qualified expert appointed by the court.

b. The court, upon reasonable request by a party, shall order that independent tests be performed by other qualified experts.

c. The court shall determine the number and qualifications of the experts.

d. The refusal to submit to blood tests or genetic tests or both may be admitted into evidence and shall give rise to the presumption that the results of the tests would have been unfavorable to the interests of the party refusing. Refusal to submit to blood tests or genetic tests, or both, is, also, subject to the sanctions within the jurisdiction of the court.

15. Evidence relating to paternity may include:

a. Evidence of sexual intercourse between the mother and alleged father at any possible time of conception;

b. An expert's opinion concerning the statistical probability of the alleged father's paternity based upon the duration of the mother's pregnancy;

c. Genetic or blood tests, weighted in accordance with evidence, if available, of the statistical probability of the alleged father's paternity;

d. Medical or anthropological evidence relating to the alleged father's paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests; and

e. All other evidence relevant to the issue of paternity of the child.

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

b. If the judgment or order of the court is at variance with the child's birth certificate, the court shall order that an amendment to the original birth record be made under section 24.

c. The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interests of the child. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement.

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

e. In determining the amount to be paid by a parent for support of the child and the period during which the duty of support is owed, a court enforcing the obligation of support shall consider all relevant facts, including the:

- (1) Needs of the child;
- (2) Standard of living and circumstances of the parents;
- (3) Relative financial means of the parents;
- (4) Earning ability of the parents;

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

(6) Age of the child;

(7) Financial resources and the earning ability of the child;

(8) Responsibility of the parents for the support of others; and

(9) Value of services contributed by the custodial parent.

17. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood or genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the Division of Public Welfare in the Department of Human Services or the county welfare board.

17. The court may order reasonable fees of counsel, experts, and the child's guardian ad litem, and other costs of the action and pre-trial proceedings, including blood or genetic tests, to be paid by the parties in proportions and at times determined by the court. The court may order the proportion of any indigent party to be paid by the Division of Public Welfare in the Department of Human Services or the county welfare board.

18. a. If existence of the father and child relationship is declared, or paternity or a duty of support has been acknowledged or adjudicated under this act or under prior law, the obligation of the father may be enforced in the same or other proceedings by the mother, and child, the public agency that has furnished or may furnish the reasonable expenses of pregnancy, confinement, education, support, or burial, or by any other person, including a private agency, to the extent that the mother, child, person or agency has furnished or is furnishing these expenses.

b. The court may order support payments to be made to the mother, the clerk of the court, the appropriate county probation office, or a person, corporation, or agency designated to administer them for the benefit of the child under the supervision of the court.

c. Willful failure to obey the judgment or order of the court is a civil contempt of the court.

19. The court has continuing jurisdiction to modify or revoke a judgment or order:

a. For future education and support, and

b. With respect to matters listed in subsections c. and d. of section 16 and subsection b. of section 18, except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under subsection d. of section 16 may specify that the judgment or order may not be modified or revoked.

20. The child, the mother or personal representative of the child, the Division of Public Welfare in the Department of Human Services or the county welfare board, the personal representative or a parent if the mother has died, a man alleged or alleging himself to be the father, the personal representative or a parent of the alleged father if the alleged father has died or is a minor, or any person with an interest recognized as justiciable by the court may bring an action to determine the existence or non-existence of a mother and child relationship. Insofar as practicable, the provisions of this act applicable to the father and child relationship apply.

21. a. Any agreement in writing to furnish support for a child, growing out of a supposed or alleged father and child relationship, does not require consideration and is enforceable according to its terms, subject to subsection d. of section 8.

b. In the best interests of the child or the mother, the court may and upon the request of the person agreeing to furnish support shall, order the agreement to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the agreement.

22. a. Upon order of a court of this State or upon request of a court of another state, the local registrar shall prepare an amended birth record consistent with the findings of the court.

b. The fact that the father and child relationship was declared after the child's birth shall not be ascertainable from the amended birth record but the actual place and date of birth shall be shown.

c. The evidence upon which the amended birth record was made and the original birth certificate shall be kept in a sealed and confidential file and be subject to inspection only upon consent of the court and all interested persons, or in exceptional cases only upon an order of the court for compelling reasons clearly and convincingly shown.

23. The following are repealed:

- a. R. S. 9:15-1 and R. S. 9:15-2;
- b. R. S. 9:16-1 through R. S. 9:16-4;
- c. R. S. 19:17-1 and R. S. 9:17-2;
- d. R. S. 9:17-11 through R. S. 9:17-20;
- e. R. S. 9:17-23 through R. S. 9:17-35;
- f. N. J. S. 2A:83-2 and N. J. S. 2A:83-3.

24. This act shall take effect 120 days after enactment.

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APPENDIX C

SENATE, No. 1508

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 29, 1980

By Senators LIPMAN, DWYER and SCARDINO

Referred to Committee on Judiciary

AND

ASSEMBLY, No. 2152

STATE OF NEW JERSEY

INTRODUCED OCTOBER 16, 1980

By Assemblymen BURSTEIN and SMITH

Referred to Committee on Judiciary, Law, Public Safety  
and Defense

(TEXT IDENTICAL)

AN ACT concerning income assignment, supplementing chapter 17 of Title 2A of the New Jersey Statutes, amending and supplementing the "Wage Reporting Act" (P. L. 1980, c. 48), and repealing P. L. 1977, c. 292.

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

1. (New section) This act shall be known and may be cited as the "Income Assignment Act."

2. (New section) Every order of a court for alimony, maintenance

or child support payments shall direct the payer to assign commissions, earnings, salaries, wages and other current or future income due from the payer's employer or successor employers to the county probation office in the county where the action is filed, as will be sufficient to meet the payments for alimony, maintenance or child support as set forth therein and to defray arrearages in payments due at the time the assignment takes effect. If the court modifies any alimony, maintenance or child support order based upon changed circumstances, the income assignment amount shall also be changed accordingly. The execution of this order of assignment shall have priority over any other executions.

3. (New section) The payee or the county agency administering Title IV-D of the Federal Social Security Act on behalf of the payee, may apply to the county probation office in which the payee resides for an income assignment after the payer has failed to make a required alimony, maintenance or child support payment within 2 weeks of its due date. Subject to the provisions of section 4 of this act, the income assignment shall take effect as and when provided by the county probation office.

4. (New section) The county probation office shall notify the payer of the income assignment application by certified or registered mail with return receipt requested to the last known address. The notice shall be postmarked no later than 10 days after the date on which the application was filed, and shall inform the payer that the assignment shall take effect 10 days after the postmarked date of the notice.

The payer may, before the effective date of the assignment, request a court hearing on the issue of whether the income assignment should take effect. The court hearing requested under this section shall be held within 30 days after the date of the request. If at the hearing the payer establishes that extraordinary circumstances prevented fulfillment of the alimony, maintenance or child support payment and that these circumstances were beyond the control of the payer, the court may direct that the income assignment not take effect until such time, within 12 months, that another

month's payment is missed. If a delay is granted, the income assignment shall go into effect if, within the following 12 months, the payer fails to make in full any payment within 2 weeks of its due date. When all arrearages in payments have been collected, the income assignment order shall continue for 12 months, during which time only the regular payments shall be deducted. After 12 months the income assignment order shall cease.

5. (New section) An assignment made under section 3 of this act shall be binding upon the employer and successor employers 1 week after service upon the employer by the county probation office of a true copy of the assignment signed by the employee and annexed to a copy of the order by personal service or by registered or certified mail with return receipt requested until further order of the court. For each payment, the employer may receive \$1.00 which shall be deducted from the employee's salary in addition to the amount of the support order.

6. (New section) The employer may not use an assignment as a basis for the discharge of an employee or for any disciplinary action against the employee. An employer who discharges or disciplines an employee in violation of this act or who discriminates in hiring because of an income assignment or a potential execution is a disorderly person.

7. (New section) In every award for alimony, maintenance or child support payments the judgment or order shall provide that payments be made through the probation office of the county in which the payee resides, unless the court, for good cause shown, otherwise orders. Upon the signing of an order or judgment allowing alimony or support or both through the county probation office the court shall send to the county probation office a statement with the addresses, telephone numbers, social security numbers of both parties and the name and address of the payer's place of employment. Each judgment or order for alimony, maintenance or child support shall include an order that the payer and payee notify the appropriate county probation office of any change of employer or change of address within 10 days of the change.



Failure to provide this information shall be considered a violation of this order. When a county probation office is unable to locate the payer's current employer in order to effectuate an income assignment under this act, the office is authorized to utilize the procedure established in the "Wage Reporting Act," P. L. 1980, c. 48 (C. 54:1-55 et seq.).

8. (New section) A person already entitled to payments under any alimony, maintenance or child support order issued prior to the effective date of this act, may file a motion with the court for a modification of that order to include an income assignment order in accordance with the provisions of section 1 of this act. Within 30 days of the filing of the motion, the court shall schedule a hearing to determine whether an income assignment order shall be issued to enforce the existing order. If the court issues an income assignment order, any maintenance, alimony or child support payment already due to the payee but not enforced through the county probation office where the payee resides, shall be enforced through the county probation office. The court and the county probation office shall follow the procedures established in this act.

9. (New section) The Administrative Office of the Courts shall have the authority to establish a schedule of the amount of arrearages to be paid off in addition to the current amount. The schedule shall include the payer's income level and the amount of arrearages in addition to any other relevant factors.

10. (New section) The Administrative Director of the Courts whenever possible shall, every calendar quarter, provide the Director of the Division of Taxation with a list, in a form and manner prescribed by the Director of the Division of Taxation, which shall contain the name and social security number of every person ordered to assign income who has defaulted on his or her alimony, maintenance or child support payments and who has not notified the appropriate county probation office of the current employer.

11. Section 6 of P. L. 1980, c. 48 (C. 54:1-60) is amended to read as follows:

6. Upon making such comparison, the Director of the Division of Taxation shall provide to the Directors of the Divisions of Public Welfare [and], Unemployment and Disability Insurance and the Administrative Director of the Courts the name, amount of wages, social security number and employer's name and address, of each person whose social security number appears on any list provided by either division or office and on the list of persons to whom wages were paid. The respective divisions shall investigate and, if appropriate, take action against said person. *The Administrative Office of the Courts shall use the information provided by the Director of the Division of Taxation to effectuate an income assignment through the appropriate county probation office.*

12. Section 9 of P. L. 1980, c. 48 (C. 54:1-63) is amended to read as follows:

9. Notwithstanding the provisions of R. S. 54:50-8 and R. S. 54:50-9, the Division of Taxation or its employees may make only those disclosures to officers or employees of the Division of Public Welfare in the Department of Human Services, county welfare boards [and], the Division of Unemployment and Disability Insurance in the Department of Labor and Industry and the Administrative Office of the Courts required to implement the provisions of this act; provided, however, that no disclosure may be made to any receiving agency herein with respect to Federal tax information obtained directly from the Internal Revenue Service pursuant to agreement except with the consent of the Internal Revenue Service.

13. P. L. 1977, c. 292 (C. 2A:17-56.1 et seq.) is repealed.

14. This act shall take effect 120 days after enactment.

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#### STATEMENT

This bill provides for an automatic assignment of income as part of any maintenance, alimony or child support order. The assignment takes effect when the payer fails to make a payment

within 2 weeks of its due date. The employer is required to deduct the current payment plus a portion of the arrearages and forward the amount to the county probation office. The employer may receive \$1.00 for expenses which may be deducted from the money paid the employee. If extraordinary circumstances prevent the payer from making a payment, an appeal procedure is provided to hold the assignment in abeyance until the court makes a determination. The county probation office may enforce the income assign-

On the recommendation of the Commission on Sex Discrimination in the Statutes this legislation was proposed to provide a new remedy for a serious problem. The number of parents who default on their child support payments, leaving the other parent with the burden of supporting a family, has reached a critical level. As a result of runaway parents many families are forced to go on welfare; this primarily affects women since they are the traditional care-takers of children. It has been said that since women can earn only 59% of what men earn given equivalent levels of education, the surest route to poverty is for a household to lose its male breadwinner. The severe earning gap between men and women is the consequence of firmly rooted biases in our social, educational and economic institutions. By strengthening the child support enforcement system, however, we are taking an immediate step towards narrowing the enormous gap in economic well-being between children who live in female-headed households without support from their fathers and children who are still supported by their fathers.

In New Jersey over 200,000 women are on welfare. Despite the fact that the State will receive upwards of \$11.5 million this year in recoveries from the New Jersey Title IV-D Program for AFDC families, an estimated \$270 million has gone uncollected since the program began in late 1975. The State share of these overdue payments is \$101.25 million.

Under the current New Jersey law a parent has to go to court and get an order to garnish the wages of the defaulting spouse after an alimony, maintenace or child support payment is 45 days overdue. But what frequently happens is that an absent parent will wait until the end of the 45 days and make a token payment, thus preventing the court from garnishing the salary. Another 45 days must elapse before his wages can be touched. Then the cycle of evasion can start again. This legislation repeals the existing law and institutes a more effective and efficient system. Under the income assignment concept there is no delay created by scheduling new court appearances and needless paperwork is eliminated.

In 1977 Wisconsin successfully enacted an income assignment law, after which this bill is modeled. Within the first months after its enactment the amount of Wisconsin's collections increased dramatically. This legislation attempts to improve the problem of support enforcement by establishing a new, viable approach.

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APPENDIX D

ASSEMBLY COMMITTEE SUBSTITUTE FOR

SENATE, No. 1508

STATE OF NEW JERSEY

ADOPTED JUNE 22, 1981

AN ACT concerning income execution, supplementing chapter 17 of Title 2A of the New Jersey Statutes, amending and supplementing the "Wage Reporting Act" (P. L. 1980, c. 48) and repealing P. L. 1977, c. 292.

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

1. (New section) This act shall be known and may be cited as the "New Jersey Support Enforcement Act."

2. (New section) Every order of a court for alimony, maintenance or child support payments shall include a written notice to the payer stating that the order may be enforced by an income execution upon the commissions, earnings, salaries, wages and other current or future income due from the payer's employer or successor employers.

3. (New section) The payee or the county agency administering Title IV-D of the Federal Social Security Act on behalf of the payee, may apply to the county probation office of the county in which the payer resides for an income execution after the payer has failed to make a required alimony, maintenance or child support payment within 25 days of its due date. Subject to the provisions of section 4 of this act, the income execution shall take effect as and when provided by the county probation office.

4. (New section) a. The county probation office shall notify the payer of the application for income execution by certified or registered mail with return receipt requested to the last known address.

The notice shall be postmarked no later than 10 days after the date on which the application was filed, and shall inform the payer that the execution shall take effect 20 days after the postmarked date of the notice unless the payer requests a court hearing. The payer may, before the effective date of the execution request a court-hearing on the issue of whether the income execution should take effect and the amount and schedule of arrearages. The court hearing requested under this section shall be held within 30 days after the date of the request. At the hearing the burden shall be on the payer to demonstrate good cause why the income execution, including the amount or schedule of arrearages, should not take effect. Payment of arrearages after the due date shall not be good cause.

b. The county probation department shall prepare the execution which shall include the amount of the monthly payments set forth in the order and where appropriate a schedule of payments towards the arrearages due at the time the execution takes effect in accordance with the provisions of this act. If the court modifies any alimony, maintenance or child support order based upon changed circumstances, the income execution amount shall also be changed accordingly. This income execution shall have priority over any other executions.

c. An execution made under section 3 shall continue in full force and effect until such time as a court order to the contrary is entered upon a showing of good cause.

5. (New section) An execution made under section 3 of this act shall be binding upon the employer and successor employers 1 week after service upon the employer by the county probation office of a true copy of the execution and annexed to a copy of the order by personal service or by registered or certified mail with return receipt requested until further order of the court. For each payment, the employer may receive \$1.00 which shall be deducted from the employee's salary in addition to the amount of the support order.

6. (New section) The employer may not use an execution as a basis for the discharge of any employee or for any disciplinary action against the employee. An employer who discharges or disciplines an employee in violation of this act or who discriminates in hiring because of an income execution or a potential execution is a disorderly person.

7. (New section) In every award for alimony, maintenance or

child support payments the judgment or order shall provide that payments be made through the probation office of the county in which the payer resides, unless the court, for good cause shown, otherwise orders. Upon the signing of an order or judgment allowing alimony or support or both through the county probation office the court shall send to the county probation office a statement with the addresses, telephone numbers, social security numbers of both parties and the name and address of the payer's place of employment. Each judgment or order for alimony, maintenance or child support shall include an order that the payer and payee notify the appropriate county probation office of any change of employer or change of address within 10 days of the change. Failure to provide this information shall be considered a violation of this order. When a county probation office is unable to locate the payer's current employer in order to effectuate an income execution under this act, the office is authorized to utilize the procedure established in the "Wage Reporting Act," P. L. 1980, c. 48 (C. 54:1-55 et seq.).

8. (New section) Subject to the provisions of section 4 of this act, a person already entitled to payments under any alimony, maintenance or child support order issued prior to the effective date of this act or the county agency administering Title IV-D of the Federal Social Security Act on behalf of such payee may apply to the appropriate county probation office for an income execution order in accordance with the provisions of this act. A payee who does not receive payments made through the county probation office shall file an affidavit when applying for the execution stating that the payment was not made within 25 days of its due date. Alimony maintenance or child support payments not presently made through the county probation office shall be so made upon application of the payee unless the payer upon application to the court shows good cause to the contrary.

The court and the county probation office shall follow the procedures established in this act.

9. (New section) The Administrative Director of the Courts whenever possible shall, every calendar quarter, provide the Director of the Division of Taxation with a list, in a form and manner prescribed by the Director of the Division of Taxation, which shall contain the name and social security number of a person subject to an income execution and who cannot be located by the



appropriation county probation office of the payer to effectuate the execution.

10. Section 6 of P. L. 1980, c. 48 (C. 54:1-60) is amended to read as follows:

6. Upon making such comparison, the Director of the Division of Taxation shall provide to the Directors of the Divisions of Public Welfare, Unemployment and Disability Insurance and the Administrative Director of the Courts the name, amount of wages, social security number and employer's name and address, of each person whose social security number appears on any list provided by either division or office and on the list of persons to whom wages were paid. The respective divisions shall investigate and, if appropriate, take action against said person. The Administrative Office of the Courts shall use the information provided by the Director of the Division of Taxation to effectuate an income execution through the appropriate county probation office.

11. Section 9 of P. L. 1980, c. 48 (C. 54:1-63) is amended to read as follows:

9. Notwithstanding the provisions of R. S. 54:50-8 and R. S. 54:50-9, the Division of Taxation or its employees may make only those disclosures to officers or employees of the Division of Public Welfare in the Department of Human Services, county welfare boards, the Division of Unemployment and Disability Insurance in the Department of Labor and Industry and the Administrative Office of the Courts required to implement the provisions of this act; provided, however, that no disclosure may be made to any receiving agency herein with respect to Federal tax information obtained directly from the Internal Revenue Service pursuant to agreement except with the consent of the Internal Revenue Service.

12. (New section) An income execution order against a payer pursuant to this act may be docketed in any other court and from the time of its docketing, the execution order shall have the same force and operation as an order of the court in which it is docketed.

13. P. L. 1977, c. 292 (C. 2A:17-56.1 et seq.) is repealed.

14. This act shall take effect 130 days after enactment.


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## APPENDIX E

AN ACT concerning the care and custody of children and  
revising parts of the Statutory Law.

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

1. R. S. 9:2-3 is amended to read as follows:

9:2-3. When the parents of ~~[minor children]~~ live ----- a minor child  
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 ~~[their]~~ care, custody, education and main-  
tenance as concerning ~~[children]~~ whose parents are ----- a minor child  
divorced. ~~[The minor child when in the actual care~~  
and custody of the mother in such cases, shall not  
be taken by the father of such child forcibly or  
against the will of the mother from her custody,  
and the court having jurisdiction in the premises  
shall have authority to make such orders and judg-  
ments as will protect the mother in the maintenance  
of such control and custody until otherwise ordered  
by the court having jurisdiction.] Until the court  
determines the custody of the child and  
unless the parties agree otherwise, the  
parent who has been the primary physical care-  
taker of the child prior to separation shall have  
custody of the child. No child shall be taken  
forcibly or against the will of the parent hav-  
ing custody by the other parent without a court  
order.  If the ~~[minor]~~ child  
~~[or minor children have]~~ not, at the time of the com- ----- has  
mencement of the action, reached the age of six-  
teen 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 ----- the  
will be adduced which may reflect upon the good  
reputation or social standing of the child ~~[or child-~~  
ren], then the court shall admit to the hearing of  
such case only such persons as are directly inter-

ested 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[or persons] except by order of the court made for that purpose.

2. R. S. 9:2-4 is amended to read as follows:

9:2-4. [In making an order or judgment relative to the custody of the children pending a controversy between their parents, or in regard to their final possession, the rights of both parents, in the absence of misconduct, shall be held to be equal, and they shall be equally charged with their care, nurture, education and welfare, and the happiness and welfare of the children shall determine the custody or possession. *If a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody, the court shall consider and give due weight to his wishes in making an award of custody or modification thereof.*

(ROMAN EXCEPT  
WEERE UNDER-  
LINED)

The court may make the necessary orders and judgments from time to time in relation to such custody or possession, but the father, as such, shall not have preference over the mother as to the award of custody of such minor child if the best interests of the child otherwise may be protected, and in no case shall the court having jurisdiction in this State over the person and custody of any minor permit such child to be removed from this State where the mother or father resides in this State and is the suitable person who should have the custody of such child for its best welfare.]

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 awarding either:

a. Joint custody of a minor child to both parents, with an equitable sharing of living experience in time and physical care, except joint legal custody may be awarded without joint physical custody. The court shall order joint custody when it is requested by both parents unless it is contrary to the best interests of the child; or

b. Legal and physical custody to one parent with appropriate visitation for the noncustodial parent.

In making an award of custody, the court shall consider various factors, including parental desire for joint custody; the parents' ability to agree, communicate and cooperate in matters relating to the child; the interaction and relationship of the child with its parents and siblings; 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; and the fitness of the parents. A parent shall not be deemed unfit unless the parent's conduct has a direct adverse effect on the child.

The court, in determining the physical custody element of a joint custody award, shall consider, but not be limited to, the following factors: the geographical proximity of the parents' homes, the financial resources of the parents, their employment responsibilities, and the age and number of the children.

3. Section 1 of P.L. 1955, c. 232, (C.9:2-13) is amended to read as follows:

1. 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 21 years of age ----- 18

(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 an 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, but the word parent shall not include the father of an illegitimate child.

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

4. Section 7 of P.L. 1955, c. 232, (C.9:2-19) is amended to read as follows:

7. If the court shall determinè 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, or has been divorced by the other parent on grounds of adultery, desertion or extreme cruelty, the court may declare that such parent shall have no further right to custody of the child. [If the court shall determine that the child is illegitimate, the court shall declare that the father, and the husband of the mother if she be married, shall have no 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.

5. R. S. 9:6-3 is amended to read as follows:

9:6-3. Any parent, guardian or person having the care, custody or control of any child, who shall abuse, abandon, be cruel to or neglectful of such child, or any person who shall abuse, be cruel to or neglectful of any child shall be deemed to be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding five hundred dollars (\$500.00) or by imprisonment with or without hard labor, as the court may direct, for a term not exceeding three years, or both. ~~If a fine be imposed,~~ ----- crime of the  
the court may direct the same to be paid in whole fourth degree  
or in part to the ~~wife~~ or to the guardian, custodian ----- parent  
or trustee of such minor child or children; *provided, however,* that whenever in the judgment of the court it shall appear to the best interest of the child to place it in the temporary care or custody of a society or corporation, organized or incorporated under the laws of this State, having as one of its objects the prevention of cruelty to children, and the society or corporation is willing to assume such custody and control, the court may postpone sentence and place the child in the custody of such society or corporation, and may place defendant on probation, either with the county probation officers or an officer of the society or corporation to which the child is ordered, and may order the parent, guardian or person having the custody and control of such child to pay to such society or corporation a certain stated sum for the maintenance of such child. When, however, a child is so placed in the custody of such society or corporation, and defendant fails to make the payments as ordered by the court, the court shall cause the arrest and arraignment before it of such defendant, and shall impose upon ~~him~~ ----- the defendant  
the penalty provided in this section.

6. R. S. 9:10-3 is amended to read as follows:

9:10-3.

A county school of detention shall be arranged and conducted so far as practicable for the safe custody of the inmates and so far as duration of commitment permits for their training for good citizenship and self-support. There shall be ample ground for farming or gardening and shops or other means for industrial training and the institution shall be maintained or conducted as a home.

To this end a superintendent and such teachers, matrons, farmers and other employees shall be employed by the board of directors as in their judgment may be necessary for the proper maintenance of the school and grounds and the proper care, instruction and training of the children.

The superintendent shall be a competent [male or female] person of good moral character and shall reside in the school. The superintendent or principal teacher shall prepare and adopt a course of study and training for the pupils of the school subject to approval of the board of directors and the state board of education. The teachers shall have the qualifications and certificates of public school teachers in the public schools of this state. The principal teacher shall be the supervising principal and the school shall be entitled to apportionment of school moneys as a school district under the supervision of a supervising principal. The teachers and principals shall make such reports and keep such records as are required in other school districts in the county.

The superintendent shall employ, subject to the approval of the board of directors, such additional help as may be necessary for the maintenance of buildings and grounds. The compensation and terms of service of superintendent and other employees shall be fixed by the board of directors. Whatever sum in addition to money received from the state is necessary to operate the school shall be appropriated by the [board of chosen freeholders]. ~~All bills shall be paid by the custodian of the school's moneys on order signed by the president and secretary of the board of directors.~~

----- masters,

----- governing body  
of the county



7. R. S. 9:11-1 is amended to read as follows:

Superior-----9:11-1. The judges of the [County] Court [of] a-----sitting in  
county of the first class, except in counties of the  
first class having a population of more than 800,000  
inhabitants, whenever in their judgment it shall be  
necessary or proper shall so certify to the [board  
of chosen freeholders] and upon their approval of-----governing body  
the need, the judges may appoint 5 persons [at least  
1 of whom shall be a woman] who, together with-----of the county  
such judges and the judge of the juvenile and  
domestic relations court, ex officio, shall constitute  
a board to be known as the Board of Trustees of the  
Youth House of the county of ..... Such  
appointees shall be formally approved by the  
governing body-----[board of chosen freeholders] before they enter upon  
of the county-----the discharge of their duties. They shall hold office  
for 3 years and until their successors are appointed.  
They shall receive no compensation.

In counties of the first class having a population  
of more than 800,000 inhabitants, in which there is  
now established a parental school, under the pro-  
visions of the act to which this act is an amendment,  
and in all other counties of the first class having a  
population of more than 800,000 inhabitants, when-  
ever in its judgment it shall be necessary or proper,  
the [board of chosen freeholders] shall appoint 8-----governing body  
persons [at least 1 of whom shall be a woman] who,-----of the county  
together with the judges of the juvenile and do-  
mestic relations court, ex officio, shall constitute a  
board to be known as the Board of Trustees of the  
Youth House of the county of .....  
They shall serve without compensation and shall  
hold office for a term of 4 years and until their suc-  
cessors are appointed, except that of the 8 members  
first appointed, 2 shall hold office for 4 years, 2  
shall hold office for 3 years, 2 shall hold office for 2  
years, and 2 shall hold office for 1 year. The hold-  
ing of any other public office by any member of said  
board of trustees shall not be held to be incom-  
patible with [his or her] office as member of such-----the  
board of trustees. A vacancy caused by death,  
resignation or otherwise shall be filled by the board  
of chosen freeholders for the unexpired term.

8. Section 25 of P.L. 1953, c. 9, (C.9:12A-1) is amended to read as follows:

25. The ~~[board of chosen freeholders]~~ of any ----- governing body  
county may establish, equip and maintain a home  
for the temporary detention of children, separated  
entirely from any place of confinement of adults, to  
be known as "The Children's Shelter of  
County," which shall be conducted as an agency  
for the purposes of caring for the children of the  
county whose cases are pending before the juven-  
ile and domestic relations court of the county or  
who are homeless or abandoned, abused, neglected  
or cruelly treated or who, being under 16 years of  
age, are witness before such court or some other  
court.

The ~~[board]~~ may appropriate sufficient funds for ----- governing body  
the purchase of property and the building or build- of the county  
ings and the furnishing of supplies and equipment  
therefor from the annual appropriations, or if they  
consider the amount too great to add to the annual  
appropriation, they may issue bonds for such pur-  
pose.

The building may be built on property owned by  
the county or the ~~[board]~~ may acquire the same by ----- governing body  
gift, purchase or condemnation. of the county

The ~~[board]~~ may appoint a committee of 7 citizens ----- governing body  
of the county, at least 2 of whom shall be women, of the county  
who together with the judge of the juvenile and  
domestic relations court of the county and [the

director] of the board of chosen freeholders as ex- ----- a member  
officio members shall constitute the board of trus-  
tees of the children's shelter. The board of trustees  
shall make the rules and regulations for the man-  
agement of the children's shelter and the group-  
ings of the children therein.

In any county in which a children's shelter is or  
shall be established and operated pursuant to this  
section, solely for children who are homeless or  
abandoned, abused, neglected or cruelly treated,  
the ~~[board of chosen freeholders]~~ may, by resolution, ----- governing body  
determine to operate and manage such child- of the county  
ren's shelter instead of appointing a board of trus-  
tees for such purpose, in which case the [board of

chosen freeholders] shall have and may exercise all ----- governing body  
the powers of a board of trustees as provided in of the county  
this section.

The shelter shall be in charge of a superintendent, and the board of managers, or the ~~board of chosen freeholders~~ as the case may be, shall have authority to appoint the superintendent, and other employees in like manner as other county employees are appointed; the ~~board of chosen freeholders~~ shall provide the funds for carrying on the shelter and for the betterments, improvements and replacements that may be required, in the annual appropriations, but money for new buildings and the equipment thereof and other permanent improvements may be raised by bond issue.

----- governing body  
of the county

----- governing body  
of the county

9. R.S. 9:2-6 is repealed.

10. This act shall take effect 90 days following enactment.

## APPENDIX F

AN ACT concerning matrimonial actions and revising parts  
of the Statutory Law.

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

1. N.J.S. 2A:34-13 is amended to read as follows:

**2A:34-13.** A man who has attained  
the age of 18 years and a woman who has at- person  
tained the age of 16 years may prosecute or de-  
fend any matrimonial action in person or by  
attorney.

2. N.J.S. 2A:34-21 is amended to read as follows:

**2A:34-21.** The court, upon or after granting a  
divorce from the bonds of matrimony to either  
spouse, may allow the wife to resume any name either spouse  
used by her before the marriage and may also the spouse  
order the wife to refrain from using the sur-  
name of the husband as her name. ] or to  
assume any surname.

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

**2A:34-23.** Pending any matrimonial action brought in this State  
or elsewhere, or after judgment of divorce or maintenance, whether  
obtained in this State or elsewhere, the court may make such order  
as to the alimony or maintenance of the parties, and also as to  
the care, custody, education and maintenance of the children, or  
any of them, as the circumstances of the parties and the nature of  
the case shall render fit, reasonable and just, and require reason-  
able security for the due observance of such orders. 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.

In all actions brought for divorce, divorce from bed and board, or nullity the court may award alimony which may be tem-

porary or permanent in nature to either party, and in so doing shall consider the actual need and ability to pay of the parties and, but not be limited to the following

factors; the duration of the marriage, the age, physical and emotional health of the parties; the standard of living established in the marriage and the likelihood that the party seeking maintenance can become self-supporting at a reasonably comparable standard of living established in the marriage and the likelihood that the party seeking maintenance can become self-supporting at a reasonably comparable standard of living; the earning capacities, educational levels, vocational skills, and employability of the parties; the length of absence from the job market and custodial responsibilities for children of the party seeking maintenance; the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; and the history of the 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.

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 plaintiff to pay in determining an amount of maintenance to be awarded.

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 bequest shall not be subject to equitable distribution, except that interspousal gifts shall be subject to equitable distribution.* (ROMAN EX-CEPT WHERE UNDERLINED

4. (New Section) 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 for property distribution;
  - f. the economic circumstances of each party at the time the division of property becomes effective;

- g. the earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial responsibilities for children, opportunity for future acquisitions of capital assets and income, 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 increased 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 sources of income of both parties, including but not limited to medical, retirement, insurance or other benefits, whether vested or unvested;
- k. the tax consequences of the proposed distribution to each party;
- l. whether the property award is in lieu of or in addition to alimony, maintenance or child support;

- m. the current value and income producing capacity of the property;
- n. the need of a parent who has physical custody of a child to own or occupy the marital residence and to use or own its household effects;
- o. the debts and liabilities of the parties; and
- p. such other factors as the court may deem relevant.

The provisions of an agreement made by the parties before or during the marriage concerning an arrangement for property distribution shall be incorporated in the court's order for equitable distribution except where the terms are inequitable to either party.

It shall be presumed that each party made a substantial contribution to the acquisition of income and property while the party was married.

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

**2A:34-24.**

<p>a <del>[husband, without justifiable cause,</del> shall</p> <p>abandon his wife or separate <del>[himself] from [her]</del></p> <p>and refuse or neglect to maintain and provide</p> <p>for <del>[her]</del> the court may order suitable support</p> <p>and maintenance to be paid and provided by the</p> <p><del>[husband] for the [wife] and [her] children, or any of</del></p> <p><del>them, by their marriage, or to be made out of [his]</del></p> <p>property and for such time as the nature of the</p> <p>case and circumstances of the parties render</p> <p>suitable and proper. The court may compel the</p> <p>defendant to give reasonable security for such</p> <p>maintenance and allowance and may, from time</p> <p>to time, make further orders touching the same</p> <p>as shall be just and equitable and enforce such</p> <p>judgment and orders in the manner provided in</p>	<p style="text-align: center;">If</p> <p>----- spouse</p> <p>----- the other spouse</p> <p>----- that spouse</p> <p>----- other spouse</p> <p>----- their</p>
---	---

~~the spouses~~

N.J.S. . . . [section] 2A:34-23 [of this title] [During the time such maintenance shall be allowed, the husband shall not be chargeable with the debts of the wife.]



6. The title of P.L. 1954, c. 187 (C.2A:34-24.1)

is amended to read as follows:

spouse - - - - ~~An Act concerning support and maintenance of~~  
~~[wife]~~ and children and supplementing chapter 34  
of Title 2A of the New Jersey Statutes.

7. Section 1 of P.L. 1954, c. 187 (C.2A:34-24.1)

is amended to read as follows:

1. When a ~~[husband]~~ 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 else-  
where, wherein jurisdiction over the person of the  
~~[wife]~~ was not obtained, the court may make the same  
orders and judgments touching the suitable sup-  
port and maintenance to be paid and provided by  
spouse - - - - ~~the [husband]~~ or to be made out of ~~[his]~~ property, for  
other spouse - - ~~the [wife] and her~~ children, or any of them, by their  
marriage and for such time, as the nature of the  
case and circumstances of the parties render suit-  
able and proper, pursuant to the provisions of ~~the~~  
statute hereby supplemented, notwithstanding the  
securing of such judgment or decree. - - - - chapter 34 of  
of Title 2A of  
the New Jersey  
Statutes

8. N.J.S. 2A:34-25 is amended to read as follows:

permanent or - - 2A:34-25. If  
temporary - - after the judgment of divorce ~~[the wife]~~ shall re-  
marry, the court shall not make any order as to  
the alimony of ~~[such wife]~~ except that upon appli-  
cation of the ~~[former husband]~~ on notice and on  
proof of the marriage of the former ~~[wife]~~ after  
the judgment of divorce, the court shall modify  
any order or judgment as to the alimony of the  
former ~~[wife]~~ by vacating and annulling any and  
all provisions in any such order or judgment, or  
both, directing the payment of money for the  
support of the former ~~[wife]~~. The remarriage  
- - - - a former spouse  
the spouse  
payer spouse  
spouse  
permanent  
spouse  
spouse.

of a former spouse receiving temporary

alimony shall not be cause for termina-

tion of the temporary alimony by the

court unless the payer spouse demonstrates good

cause to the contrary.

9. N.J.S. 2A:34-26 is amended to read as follows:

2A:34-26. When a hus-  
band cannot be found within this state to be spouse  
served with process, his estate, property and the spouse's  
effects within this state and the rents and profits the spouse's  
thereof may be attached to compel his appear- the spouse's  
ance and performance of any judgment or order  
which may be made in the action.

Where the proceedings are by process of at-  
tachment and the defendant does not appear, the  
judgment shall be enforceable only out of and  
against the property attached.

10. This act shall take effect 90 days following  
enactment.



## APPENDIX G

AN ACT concerning children born out-of-wedlock, and amending

P.L. 1977, c.412, R.S. 26:8-40 and P.L. 1960, c.142.

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

1. Section 44 of P.L. 1977, c.412 (C. 3A:2A-41) is amended to read as follows:

44. If, for purposes of intestate succession, a relationship of parent and child must be established to determine succession by, through, or from a person.

a. The relationships and rights of an adopted minor child shall be those as provided by section 14 of P. L. 1977, c. 367 (C. 9:3-50), and the relationships and rights of an adopted adult shall be as provided in N. J. S. 2A:22-3.

subsection - - - b. In cases not covered by a., a person [born out of wedlock is a child of the mother. That person is also a child of the father, if:

(1) The natural parents, before or after the birth of the child, participated in a ceremonial 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 took place, even though the attempted marriage is void; or

(2) The paternity is established by an adjudication before the death of the father or is established thereafter by clear and convincing proof, except that the paternity established under this subparagraph is ineffective to qualify the father or his kindred to inherit from or through the child unless the father has openly treated the child as his, and has not refused to support the child.]

is the child of its natural parents regardless of their marital status. The parent and child relationship may be established by proof that parentage has been adjudicated under prior law; under the laws governing probate; by an order of a court of competent jurisdiction in another state or pursuant

to the "New Jersey Parentage Act," P.L. . . . , c.  
. . . (now pending before the Legislature as Senate  
Committee Substitute for Senate Bill No. 3047 of  
1981).

2. R.S. 26:8-40 is amended to read as follows:

26:8-40. [When a child born out of the bonds of matrimony has been legitimated by the marriage of its natural parents as prescribed by law and there shall be submitted to the State registrar proof of the marriage of the parents, the State registrar shall be authorized to accept from the father of the child a correction or amendment to the original birth record giving the child the father's surname and adding to the record the information concerning the father, now required by law upon birth certificates. Such correction or amendment shall be made under oath by the father. If the father is deceased and documentary proof of such decease is submitted, the correction or amendment may be accepted if made under oath by the mother provided that the mother was unmarried at the time of the birth or, if married, that a court of competent jurisdiction has ruled that the child was not a child of said marriage, and further provided that there is submitted acceptable proof that during his lifetime the husband publicly or in writing recognized the child as his issue. After the acceptance of such a correction or amendment no information regarding the illegitimacy shall be disclosed.]

a. The State registrar shall amend the original  
birth record of a child born out of wedlock to change  
its surname on the request of both natural parents  
or the child who is eighteen years of age or older  
and on proof under oath of the marriage of its natural  
parents. If one of the parents of the child is deceased,

the State registrar shall amend the record on proof under oath, by the surviving parent or guardian or the child who is eighteen years of age or older: (1) of the death of the other parent and (2) that the male parent was presumed to be the child's natural father pursuant to the "New Jersey Parentage Act," P.L. . . . , c. . . . (C. . . . ) (now pending before the Legislature as Senate Committee Substitute for Senate Bill No. 3047 of 1981).

b. When parentage is adjudicated by any court, the State registrar shall amend the birth record to conform it to the court decree or make any other necessary changes pursuant to a request by the parent to whom custody has been awarded, the child's guardian or the child who is eighteen years of age or older. A request for amendment shall be made under oath by the parent, guardian or the child who is eighteen years of age or older and shall be accompanied by a copy of the court decree.

3. Section 1 of P.L. 1960, c. 142, (C.26:8-40.11)

is amended to read as follows:

1. Whenever the mother of a child born out of wedlock, who has the same surname as the mother, and who has no presumed natural father pursuant to the "New Jersey Parentage Act," P.L. . . . , c. . . . (now pending before the Legislature as Senate Committee Substitute for Senate Bill No. 3047 of 1981), or the presumed father does not oppose the name change,

and a declaration signed by the presumed father setting forth his approval of the name change.

marries a person who is not the father of said child, the surname of said child may be changed to the surname of the husband of the mother by submitting proof of such marriage to the State Registrar of Vital Statistics or to any local registrar of vital statistics accompanied by a declaration, signed by said mother and her husband and acknowledged or proved in the manner required by law for deeds to real estate, setting forth that they desire the surname of said child to be changed to that of the husband of said mother. Upon the receipt of such proof and declaration the surname of said child shall be so changed and the State Registrar and any local registrar of vital statistics is authorized to accept from the said mother and her husband a correction or amendment to the original birth record giving the child the said husband's surname. Any declaration submitted to the State Registrar or to any local registrar pursuant to this section shall be filed with the original birth record of said child.

4. This act shall take effect 90 days following enactment.

## APPENDIX H

AN ACT concerning marriages and married persons, revising parts of the statutory law and supplementing Chapter 2 of Title 37 of the Revised Statutes.

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

1. R.S. 37:1-3 is amended to read as follows:

37:1-3. The licensing officer shall issue the license which shall be obtained:

- a. In the municipality of this state in which the female party to the proposed marriage resides; or
- b. In the municipality in which the male party resides, if the female party is a nonresident of this state; or
- c. In the municipality in which the proposed marriage is to be performed, if both parties are nonresidents of this state.

2. R.S. 37:1-6 is amended to read as follows:

37:1-6. A marriage license shall not be issued to a minor under the age of 18 years, unless the parents or guardian of the minor, if there be any, first certify under their hands and seals, in the presence of two reputable witnesses, their consent thereto, which consent shall be delivered to the licensing officer issuing the license. If the parents, or either of them, or guardian of any such minor shall be of unsound mind, the consent of such parent or guardian to the proposed marriage shall not be required.

When a minor is under the age of 16 years, the consent required by this section must be approved in writing by any judge of the county court of the county or any judge of the juvenile and domestic relations court of the county. Said approval shall be filed with the licensing officer. Superior Court

The licensing officer shall transmit to the State Bureau of Vital Statistics all such consents, orders, and approvals so received by him in the same manner and subject to the same penalty as in the case of certificates of marriage and marriage licenses. and Registration

[If any such male applicant for a license to marry shall be a minor under the age of 18 years, and shall have been arrested on the charge of sexual intercourse with a single, widowed or divorced female of good repute for chastity who has thereby become pregnant, a license to marry the female may be immediately issued by any licensing officer to the minor upon his application therefor, without the consent or approval required by this section.]



3. Section 1 of P.L. 1938, c. 126 (C.37:1-20) is amended to read as follows:

1. Before any person, who now is or may hereafter be authorized by law to issue marriage licenses, shall issue any such license, each applicant therefor shall file with him a certificate signed by a physician licensed to practice medicine and surgery in all its branches in this State or any other State or in any other territory of the United States, or the District of Columbia, or by a commissioned medical officer on active duty with the Armed Forces of the United States or with the Public Health Service, which certificate shall state that the applicant has submitted to an approved serological test for syphilis and that, in the opinion of such physician, the applicant either is not infected with syphilis or is not in a stage of that disease which is likely to become communicable. The physician signing such certificate shall set forth his office address therein and such certificate shall be valid for thirty days from the date of the approved serological test.

A physician licensed to practice medicine and surgery in all its branches in this State may submit to the person authorized by law to issue marriage licenses, in lieu of such certificate, a statement over his signature that [the female applicant for the license is near the termination of her pregnancy or] the death of one or both applicants is imminent [and that he has taken blood samples adequate for serological testing from such applicant or applicants, excepting those whose death is imminent, and forwarded same to the State Department of Health laboratory,] in which case a certificate shall not be required of such applicant or applicants prior to issuance of a license.

4. R.S. 37:2-8 is amended to read as follows:

37:2-8.

For all torts committed by a married	
<del>[woman] damages may be recovered from [her]</del>	<u>person</u> <u>the person</u>
<del>alone, and [her husband] shall not be responsible</del>	<u>the person's spouse</u>
<del>therefor, except in cases where [he] would be jointly</del>	<u>the spouse</u>
<del>responsible with [her] if the marriage did not exist.</del>	<u>the person</u>

5. (New section) An individual is guaranteed rights in every area of law without regard to sex or marital status, except as otherwise provided in this act. Nothing in this act should be construed to revive common law disabilities based on sex or marital status.
6. (New section) A husband and wife have the power to contract with each other and sue or be sued by one another. The spouses shall not enter into an employer-employee agreement with each other for marital or domestic services in their own home.
7. (New section) a. A spouse shall not be liable for the debts of the other spouse contracted prior to their marriage.
- b. A purchase made by a spouse in the spouse's own name shall be presumed, in the absence of notice to the contrary, to be made by that spouse as an individual and that spouse shall be liable for the purchase.
- c. Notwithstanding the provisions of subsection b. of this section, it shall be the duty of both spouses to support their family, and both shall be liable for:
- (1) reasonable and necessary medical and dental services rendered to either spouse or their minor children;

(2) the cost of any dwelling unit actually occupied by the husband and wife as a residence and reasonably necessary to them for that purpose; (3) any article purchased by either spouse for the reasonable and necessary support of the family.

d. A spouse who abandons the other spouse is liable for the reasonable support of that spouse during the period of abandonment.

e. No action may be maintained against a spouse under the provisions of this section, either during or after any period of separation from the other spouse, for any liability incurred by the other spouse during the separation if, during the separation, the spouse who is liable for the support of the other spouse has provided that spouse with reasonable support.

8. (New section) The wages and earnings of a married person are that person's separate property. Nothing in this section shall affect the duty of both spouses to support their family pursuant to section 7 of this act.

9. The following are repealed: R.S. 37:2-1 through R.S. 37:2-3, R.S. 37:2-5 through R.S. 37:2-7, R.S. 37:2-9, R.S. 37:2-11 through R.S. 37:2-16, P.L. 1945, c. 130 (C.37:2-16.1 and C.37:2-16.2), R.S. 37:2-17, R.S. 37:2-17.1, R.S. 37:2-18, P.L. 1953, c. 352 (C.37:2-18.1), and R.S. 37:2-19 through R.S. 37:2-29.

10. This act shall take effect 90 days following enactment.

## APPENDIX I

AN ACT concerning public assistance and revising parts  
of the Statutory Law.

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

1. R.S. 44:1-11 is amended to read as follows:

44:1-11. The welfare board shall be composed of not less than  
five nor more than seven citizens of the county or municipalities  
participating ~~at least two of whom shall be women,~~ to be appointed  
by the ~~board of chosen freeholders,~~ who, with two designated mem- governing  
~~bers of the board of chosen freeholders and the county adjuster,~~ body of  
~~when not serving as superintendent of welfare, as ex-officio mem-~~ the county  
~~bers, shall constitute the county welfare board and managers of~~  
the welfare-house. The holding of any other office by a member of  
~~the welfare board shall not constitute such holding as~~ incompatible office  
an the member's ~~with his office as member of the welfare board.~~

2. Section 2 of P.L. 1940, c. 119, (C.44:1-30.2) is  
amended to read as follows:

2. Every county welfare board, operating under  
chapter one of Title 44 of the Revised Statutes,  
shall require, as a condition to the admission of  
any person to the county welfare-house, that all or  
any part of the property, either real or personal,  
of such person, either presently owned or which  
may subsequently be acquired, be pledged to said  
county welfare board as a guaranty for the reim-  
bursement of the cost of the care and maintenance  
of such person at the county welfare-house, and the  
total amount of the cost thereof shall become a lien  
upon any lands owned or to be owned by such per-  
son, which lien shall have priority over all unre-  
corded encumbrances. The county welfare board

shall take from each applicant a properly acknowledged agreement to reimburse for all benefits furnished, and pursuant to such agreement said applicant shall assign to the welfare board, as collateral security for such benefits, all or any part of his real and personal property and insurance when the terms of the policy so permit, as the board shall specify.

The agreement to reimburse shall contain a release of dower or curtesy, as the case may be, of the spouse of the person so benefited, and such release shall be as valid and effectual as if the spouse had joined the applicant in a conveyance of the property to a third person; the maintenance and support furnished shall be good and valuable consideration therefor.

----- and of the  
elective  
share

3. R.S. 44:1-43 is amended to read as follows:

**44:1-43.**

In the event of the adoption by a majority of the legal voters qualified to vote on the proposition in each such county, or in such counties as shall so elect if the resolutions so provide, there shall be constituted and appointed at a joint meeting of the respective boards of chosen freeholders concerned therein a district welfare board of five persons, citizens of the district, two of whom shall be women, who with the directors of the respective boards of chosen freeholders shall constitute the managers of the district welfare-house. The members shall be elected, as nearly as may be, so as to make the quota in membership in the board equal in representation from the counties concerned. They shall hold office for five years, except that the first appointments shall be for one, two, three, four and five years, respectively, which terms as to duration shall be in the order of the appointments as made and indicated. Vacancies shall be filled for the unexpired term only. The holding of any other office by a member shall not be construed to be the holding of an incompatible office.

4. R.S. 44:1-75 is amended to read as follows:

44:1-75. No person shall be appointed as an overseer of a municipality unless ~~he~~ ----- the person shall:

a. Be a citizen of the state and the United States;

b. Be able to read and write the English language;

c. Be capable of making and keeping such records and reports as are lawfully required of ~~him~~ and

an overseer-----

d. Have such knowledge of the laws concerning the relief and maintenance of the poor as may be satisfactory to the governing body of the municipality in ~~his~~ jurisdiction, and such governing body may ascertain such qualifications of the applicants by written and oral competitive examinations, conducted by the state civil service commission pursuant to the general authority vested in it by statute, and when the results of the examinations have been ascertained the civil service commission shall certify to the governing body the lists of those who are eligible for appointment as superintendent, overseer or deputy, as the case may be.

[Females, as well as males, of full age shall be eligible to appointment as overseers.]

In cities governed by commissions under subtitle 4 of ~~the title Municipalities and Counties~~-----

Title 40 of the Revised Statutes

(§40:70-1 et seq.), if a member of the governing body, as the head of the department is overseer, ~~he~~ shall not be subject to such qualifications after examination as required in this section, but they shall apply to other overseers and deputies.

the member-----

5. R.S. 44:1-87 is amended to read as follows:

44:1-87.

When a person shall apply for relief ~~for himself~~ or another to an overseer or deputy, the overseer shall inquire into the facts, conditions and circumstances of the case, and also into the matter of the person's settlement if it shall appear that the person is unable to earn a livelihood ~~by his own labor~~ and is a poor person and requires ~~temporary~~ temporary or permanent relief ----- for the relief of

The overseer shall also ascertain the direct or indirect causes of poverty, and whether or not the person requiring permanent relief is without adequate home or without children, grandchildren, parents, grandparents, or ~~husband~~ who are by law required and able to maintain him and other persons who are willing to do so. ----- spouse ----- the person

6. R.S. 44:1-140 is amended to read as follows:

44:1-140. a. The father ~~and mother~~ of a person under 18 years of age who applies for and is eligible to receive public assistance, and the children, and husband or wife, severally and respectively, of a person who applies for and is eligible to receive public assistance, shall, if of sufficient ability, at his or their charge and expense, relieve and maintain the poor person or child in such manner as shall be ordered, after due notice and opportunity to be heard, by any county or municipal director of welfare, or by any court of competent jurisdiction upon its own initiative or the information of any person. (CLOMAN  
EXCEPT  
WHERE  
UNDER-  
LINED)

the individuals --- ~~assistance, shall, if of sufficient ability, at his or their charge and expense, relieve and maintain the poor person or child in such manner as shall be ordered, after due notice and opportunity to be heard, by any county or municipal director of welfare, or by any court of competent jurisdiction upon its own initiative or the information of any person.~~

b. The provisions of this section shall apply to the minor children of a parent ~~mother~~ whose husband shall fail properly to support and maintain such children when by reason thereof they are likely to become a public charge. --- spouse

c. The provisions of this section shall not apply to any person 55 years of age or over except with regard to his or her spouse ~~his or her~~ or his or her natural or adopte child under the age of ~~18~~ the person's 18 years.

7. R.S. 44:1-143 is amended to read as follows:

44:1-143. When a husband or father shall desert his wife, child or children or a woman shall desert her child or children and leave them or any of them as public charges, the director of welfare of a municipality may apply to the juvenile and domestic relations court; and the court may order and adjudge suitable support and maintenance to be paid and provided by the husband or wife, or either of them, to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court, and may compel the defendant to give reasonable security for such maintenance and support, and from time to time make such further orders and judgments touching the matter as shall be just, and enforce such orders and judgments. --- spouse  
shall desert the  
other spouse or  
their children

spouse ----- ~~them~~ to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court, and may compel the defendant to give reasonable security for such maintenance and support, and from time to time make such further orders and judgments touching the matter as shall be just, and enforce such orders and judgments. --- the spouse's

8. R.S. 44:1-146 is amended to read as follows:

44:1-146. The director of welfare of a municipality may bring a civil action from time to time in the juvenile and domestic relations court for the amount necessary to pay any expense incurred or unpaid. Upon recovery of judgment and the sale of any real or personal property of the defendant, the proceeds therefrom shall as in other civil actions be paid to the director and be applied by ~~him~~ the director to the support and maintenance of the deserted persons, or to the reimbursement of the municipality, county or board to the extent of the expenditures made by it for that support and maintenance.

The sum realized on execution sale and not immediately used shall be kept by the director in a separate account in a national or State bank in the place where the deserted ~~wife~~ spouse or children, or any of them, are placed or maintained. Surplus proceeds not expended for that purpose shall be the property of and payable to the defendant.

9. R.S. 44:1-147 is amended to read as follows:

44:1-147. A ~~husband or father~~ spouse who willfully deserts or refuses ~~or neglects to provide for and maintain his wife~~ the other spouse or children, or ~~or husband~~ their any of them, or a mother who willfully deserts or refuses or neglects to provide for and maintain her children, or any of them, or a child who willfully deserts or refuses or neglects to provide for and maintain ~~his~~ the parents, or either of them, is a disorderly person, and upon being so adjudged shall be committed to the workhouse or county jail of the county or of that county composing a district in which the person resided at the time of the desertion or failure to provide for a period not exceeding 60 days in the discretion of the court; provided, however, that the judge of any such court may order and direct that the sentence of imprisonment be served periodically, instead of consecutively, during periods of time between Friday at 6 P. M. and Monday at 8 A. M. or at other times or on other days, whenever ~~he~~ the in his discretion determines the existence of proper circumstances and that the ends of justice will be served thereby. For the purposes of this act the person so committed shall be given credit for each day or fraction of a day to the nearest hour actually served.



10. R.S. 44:1-148 is amended to read as follows:

44:1-148. When a director of welfare having jurisdiction in such cases believes that such desertion or willful refusal or neglect to so provide for any such ~~wife, children or parents, or any of~~ spouse, them, will cause the family to become chargeable as poor persons to any county, municipality or joint county district, ~~he~~ the director shall make complaint before a court having jurisdiction in the municipality, county or district where the persons reside or in the place where the ~~father, husband~~ parent, spouse or child resides.

11. R.S. 44:4-82 is amended to read as follows:

44:4-82. When a person shall apply for relief ~~for himself~~ for the relief or ~~an~~ of other to a county welfare board, the director of welfare, under the direction of the board, shall inquire into the facts, conditions and circumstances of the case, and also into the matter of such person's settlement if it shall appear that such person is unable to earn a livelihood ~~by his own labor~~ and is a poor person and requires temporary or permanent relief.

The director shall also ascertain the direct or indirect causes of poverty, and whether or not a person requiring permanent relief is without adequate home or without children, grandchildren, parents, grandparents or ~~husband~~ spouse, who are by law required and able to maintain ~~him~~ the person and other persons who are willing to do so.

12. R.S. 44:4-91 is amended to read as follows:

44:4-91. If it is ascertained at any time that a person who has been assisted by or has received support from any municipality or county has real or personal property over and above that necessary for his maintenance in whole or in part, ----- the person's if such poor person is maintained by the county at home, or over and above that sufficient for his ----- the person's family, or if any such person shall die, leaving real or personal property, an action may be maintained in the court of common pleas of the county by the governing body ----- board of chosen freeholders which has furnished of the county ----- or provided such assistance or support, or any part thereof, against such person or his estate, to ----- the person's recover the sums of money which have been expended by the county in the assistance and support of the person during the period for which support was furnished, and if any person shall die having received relief or maintenance as a poor person and having insurance upon his life, ----- life the proceeds of the insurance, after the payment of the expense of the last illness and the funeral expenses of the person, shall, if the terms of the policy so permit, be first applied to the reimbursement of the county, for the cost of the support and maintenance of the person, but no action shall lie, nor shall any appropriation of insurance be made against any estate when it is shown to the satisfaction of the court that the proceeds thereof, or the estate, are needed to prevent the widow or ----- surviving spouse minor children of the poor person from becoming dependent upon the public.

13. R.S. 44:4-104 is amended to read as follows:

44:4-104. When a husband or father shall desert his wife, child or children or a woman shall desert her child or children, and leave them, or any of them, as public charges, the director of welfare of the county may apply to the juvenile and domestic relations court of the county, which court may order and adjudge suitable support and maintenance to be paid and provided by the husband or wife, or either of them, to be made out of his property, and for such time as the nature of the case and circumstances of the parties render suitable and proper in the opinion of the court, and may compel the defendant to give reasonable security for such maintenance and support, and from time to time make such further orders and judgments touching such maintenance and support as shall be just, and enforce such orders and judgments.

either spouse - - - - the spouse's spouse deserts the other spouse or their children

14. R.S. 44:4-107 is amended to read as follows:

44:4-107. The county welfare board through the county director of welfare, may bring a civil action from time to time in that court for such amount as may be necessary to pay any expense incurred or unpaid, and upon recovery of judgment and the sale of any property, real or personal, of the defendant, the proceeds realized therefrom as in other civil actions shall be paid to the county welfare board and applied by it for the support and maintenance of the deserted persons, or to reimburse the county or welfare board to the extent of the expenditures made by it for such support and maintenance.

The sum realized on execution sale and not immediately used shall be kept by the county welfare board in a separate account in a national or State bank in the place where the deserted wife or children or any of them, are placed or maintained. All surplus proceeds not expended for that purpose shall be the property of and payable to the defendant.

- - - - spouse

15. R.S. 44:7-14 is amended to read as follows:

44:7-14. (a) Every county welfare board shall require, as a condition to granting assistance in any case, that all or any part of the property, either real or personal, of a person applying for old age assistance, be pledged to said county welfare board as a guaranty for the reimbursement of the funds so granted as old age assistance pursuant to the provisions of this chapter. The county welfare board shall take from each applicant a properly acknowledged agreement to reimburse for all advances granted, and pursuant to such agreement, said applicant shall assign to the welfare board, as collateral security for such advances, all or any part of his personal property as the board shall specify the applicant's

Superior - - - - -

The agreement to reimburse shall provide that the filing of notice thereof as hereinafter provided, is to have the same force and effect as a judgment of the County Court law division, of the county. It shall contain therein a release of dower or curtesy, as the case may be, of the spouse of the recipient and of the elective share of old age assistance, and the spouse shall agree to reimburse the county welfare board for all advances made to the recipient. Such release and joinder shall be as valid and effectual as if the spouse had joined the recipient in a conveyance of the property to a third person, and the grant of old age assistance, being contingent upon such joinder by the spouse, shall be good and valuable consideration therefor. Old age assistance shall not be granted to any applicant without joinder by the spouse in the agreement to reimburse except upon the showing of good and sufficient cause as the State Division shall by regulation define.

(b) Upon making a grant of old age assistance the county welfare board shall file with the county clerk or register of deeds and mortgages, as the case may be, in any county, a notice of the above mentioned agreement to reimburse, which notice as of the date of such filing shall have the same effect as a lien by judgment of the County Court, law division, of the county Superior and any real estate or lands in which the recipient or spouse has a title or interest, shall thereupon become charged and encumbered with a lien for old age assistance granted the recipient and said notice shall have priority over all unrecorded encumbrances. No fees or costs shall be paid for filing such notices.

16. Section 9 of P.L. 1947, c. 156, (C.44:8-115)  
is amended to read as follows:

9. Each local assistance board shall be composed of three or five persons as shall be fixed by the governing body of the municipality (and at least one of them shall be a woman) and they shall be appointed by the chief executive of the municipality upon the approval of the governing body and shall serve without compensation but shall be allowed their necessary and actual expenses.

17. This act shall take effect 90 days following enactment.

APPENDIX J

PUBLIC HEARINGS ON SEX DISCRIMINATION  
IN MARRIAGE AND FAMILY LAW

FEBRUARY 13, 1980  
LABOR EDUCATION CENTER AUDITORIUM  
RUTGERS UNIVERSITY  
NEW BRUNSWICK, NEW JERSEY

FEBRUARY 26, 1980  
BURLINGTON COUNTY VOCATIONAL SCHOOL  
MOUNT HOLLY, NEW JERSEY

LIST OF WITNESSES

Priss Armour, Member, Organization of Women for Legal  
Awareness

Ann Baker, National Organization for Women of New Jersey

Dr. Joseph A. Barbier, Fathers United for Equal Rights

Kathryn Brock, Esq., Women's Political Caucus of New Jersey

Charlotte Callahan, Director, Legal Status of Women -  
Women's Issues, League of Women Voters

Dr. Christine S. Cobb, New Jersey State Topic Chair for  
Families Facing Change, American Association of University  
Women, New Jersey Division

Pamela Copeland-Kaufelt, Esq., American Civil Liberties Union,  
and Member, Women's Rights Section, New Jersey Bar  
Association

Howard Danzig, Esq., Member, Family Law Section, American Bar  
Association

Jo Doig, Member, Legal Committee, New Jersey WEAL, and  
Representative, Mercer County Women's Lawyers Caucus

Donald P. Gaydos, Esq., Member, Family Law Section, New Jersey  
Bar Association

Anthony J. Gil, Coordinator, Family Law Council

June Harrison, Counselor, Women's Resource and Survival Center,  
Inc., Keyport, New Jersey

Betty Hutchinson, Vice President, Organization of Women for  
Legal Awareness

Phyllis Kinsey, Lambda Alliance

Sylvia Kordower, President, Organization of Women for Legal  
Awareness

Gilda Ligorner, Psychotherapist

Phillip T. McCabe, Lambda Alliance

Emanuel Needle, Esq., Fathers United for Equal Rights

Sally Cann Purrazella, Ocean County Commission on the Status  
of Women

Representative, Organization of Women for Legal Awareness

Marshall Resnick, Past President, Fathers United for Equal  
Rights

Elizabeth Rott, Member, Organization of Women for Legal  
Awareness

Eugene Schneyder, Fathers United for Equal Rights

Donald L. Smith

Loretta Snook

Eine Kyllikki Thompson

Harry Wiggins, Chief, Bureau of Child Support and Paternity,  
Division of Public Welfare, Department of Human Services

Joan H. Wiskowski, Deputy Commissioner, Department of Labor  
and Industry

Janice Wolk, Member, Organization of Women for Legal Awareness





## APPENDIX K

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