

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 1194

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Altman

SUBJECT: Alimony

DATE: March 26, 2010 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Walsh | Walsh | CF | Fav/CS |
| 2. | | | JU | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Committee Substitute for Senate Bill 1194 provides that before a court may make an award of any type of alimony, the court must first make a specific factual determination as to whether there is an actual need for alimony or maintenance by either party and whether either party has the ability to pay. It adds to the list of factors a court must consider when determining an alimony award

The bill provides that in addition to permanent or rehabilitative alimony, a court may also award bridge-the-gap alimony or durational alimony, or any combination of these forms, and specifies the circumstances appropriate for each type of alimony.

This bill substantially amends Section 61.08, F.S.

II. Present Situation:

Alimony

Under Florida law, the court may grant alimony to either party in a dissolution of marriage proceeding, either to balance an inequitable property division or to ensure support to a financially dependent spouse.¹ Alimony is based primarily on need and ability to pay, so an alimony award is not appropriate when the requesting spouse has no need for support or when the paying spouse does not have the ability to pay.²

In determining a proper award of alimony, the court is required to consider all relevant factors including:

- The standard of living established during the marriage;
- The duration of the marriage;³
- The age, physical, and emotional condition of each party;
- The financial resources and liabilities of each party, both marital and nonmarital;
- If applicable, the time necessary for either party to acquire the education or training necessary for the party to find employment;
- Each party's contribution to the marriage, including, but not limited to, homemaking services, child care, education, and career building of the other party; and
- All sources of income available to either party.⁴

The court may consider any other factor necessary to do equity and justice between the parties,⁵ and may order that the alimony be secured with life insurance or other assets.⁶

Alimony may be temporary or permanent and paid periodically or in a lump sum or both.⁷ Lump sum alimony⁸ may take the form of “bridge-the-gap” alimony, which although not codified in

¹ Section 61.08(1), F.S. *See also* Victoria M. Ho and Jennifer L. Johnson, *Overview of Florida Alimony*, 78 Fla. B.J. 71, 71 (Oct. 2004).

² *See Schlagel v. Schlagel*, 973 So. 2d 672, 676 (Fla. 2d DCA 2008); Victoria M. Ho and Jennifer L. Johnson, *supra* note 1, at 71.

³ There is a presumption in favor of permanent alimony in a long-term marriage. *Schlagel*, 973 So. 2d at 676. The definition of a long-term marriage, however, is not settled, although several courts have held that 17 years or longer is considered long-term. *See Cruz v. Cruz*, 574 So. 2d 1117, 1118 (Fla. 3d DCA 1990); *Moorehead v. Moorehead*, 745 So. 2d 549, 551 (Fla. 4th DCA 1999); *Hill v. Hooten*, 776 So. 2d 1004, 1007 (Fla. 5th DCA 2001). The Second District Court of Appeal has explicitly held that 14 years is a long-term marriage. *See Cardillo v. Cardillo*, 707 So. 2d 350, 351 (Fla. 2d DCA 1998); *Knoff v. Knoff*, 751 So. 2d 167, 169 n.1 (Fla. 2d DCA 2000) (finding that not every 14-year marriage will be considered long-term, without consideration of other relevant factors). Still other courts recognize that some marriages fall within a “grey area.” *See Zeigler v. Zeigler*, 635 So. 2d 50, 54 (Fla. 1st DCA 1994) (holding that a marriage of 13.5 years is “neither a short-term nor a long-term marriage, but rather falls in the ‘grey area’ where a determination of entitlement to permanent alimony will be decided based upon a review of the other pertinent factors without the benefit of a presumption in favor or against permanent alimony”); *Young v. Young*, 677 So. 2d 1301, 1305 (Fla. 5th DCA 1996) (finding that a 15-year marriage fell in the grey area); *Levy v. Levy*, 862 So. 2d 48, 51 (Fla. 3d DCA 2003) (finding that a 14-year marriage fell in the “upper portion of grey area marriages”); *Grimes v. Grimes*, 770 So. 2d 293, 294 (Fla. 1st DCA 2000) (finding that a marriage that lasted 12 years is neither a long-term nor short-term marriage).

⁴ Section 61.08(2), F.S.

⁵ *Id.*

⁶ Section 61.08(3), F.S.

statute, has been recognized by Florida courts; it is intended only for short-term assistance with legitimate, identifiable short-term needs.⁹ A court can also award rehabilitative alimony, which requires the party seeking support to provide the court with a rehabilitative plan including the purpose of the rehabilitation, the areas in which rehabilitation is desired, and the actual amount of money necessary for rehabilitation.¹⁰

Modification of Alimony

Either party subject to an award of support, maintenance, or alimony may petition a court with jurisdiction to decrease or increase the amount of support, maintenance, or alimony.¹¹ Section 61.14(1)(b), F.S., provides that the court may reduce or terminate an award of alimony if it finds that, since the granting of a divorce and the award of alimony, a supportive relationship has existed between the obligee and a person with whom the obligee resides and who is not related by consanguinity or affinity.¹² The obligor has the burden of proving, by a preponderance of the evidence, that a supportive relationship exists.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1194 makes changes to s. 61.08, F.S., regarding alimony and provides statutory guidelines for when and what types of alimony may be used in dissolution of marriage cases. Specifically, this bill provides that before a court may make an award of any type of alimony, the court must first make a specific factual determination as to whether there is an actual need for alimony or maintenance by either party and whether either party has the ability to pay. If the court finds that a party has a need and the other party has the ability to pay alimony or maintenance, then the court must consider all relevant factors, including those listed in s. 61.08(2), F.S. This bill broadens the list of factors to consider from all relevant "economic" factors to all relevant factors.

In addition, this bill adds the following to the current list of factors a court must consider in determining an award for alimony:

- The earning capacities, education levels, vocational skills, and employability of the parties;
- The responsibilities each party will have with regard to any minor children they have in common;
- The tax treatment and consequences to both parties of an alimony award, including designation of all or a portion of the payment as nontaxable, nondeductible income; and
- Any income available to either party through investments of any asset held by that party.

⁷ Section 61.08(1), F.S.

⁸ Lump sum alimony may be paid in periodic payments. Victoria M. Ho and Jennifer L. Johnson, *supra* note 1, at 72.

⁹ *Id.*

¹⁰ *Id.* at 72-73.

¹¹ Section 61.14(1)(a), F.S.

¹² Consanguinity means "the relationship of persons of the same blood or origin." Affinity means, in part, "relationship by marriage." BLACK'S LAW DICTIONARY (8th ed. 2004).

This bill provides that in addition to permanent or rehabilitative alimony, a court may also provide bridge-the-gap alimony, which is currently recognized in Florida case law, or durational alimony, which has never been used in Florida, or any combination of these forms.

Bridge-the-gap Alimony (lines 74-81)

This bill adds bridge-the-gap alimony as a type of alimony a judge may award. It may be awarded to a party in order to provide support by allowing the party to make a transition from being married to being single. Bridge-the-gap is intended to assist a party with his or her short-term needs, and may be awarded for a maximum of two years.

The bill provides that bridge-the-gap alimony terminates on the death of either party or the remarriage of the party receiving the award, and is not modifiable in amount or duration.

Rehabilitative Alimony (lines 82-96)

Rehabilitative alimony may be awarded under this bill to assist a party in "establishing the capacity for self-support" by either redeveloping previous skills or credentials or acquiring additional education, training, or work experience. This bill requires that there must be a specific and defined rehabilitative plan which must be included as part of the order for rehabilitative alimony. This provision is consistent with current case law.

Rehabilitative alimony may be modified or terminated in accordance with s. 61.14, F.S., if there is a substantial change in circumstances; if the party does not comply with the plan; or when the plan is completed.

Durational Alimony (lines 97-107)

This bill creates durational alimony, which may be provided when permanent periodic alimony is not appropriate. The purpose of durational alimony is to provide economic assistance for a set period of time following a short- or moderate-duration marriage.

The award terminates upon the death of either party or the remarriage of the party receiving alimony and can be modified or terminated upon a substantial change of circumstances in accordance with s. 61.14, F.S. However, the length of durational alimony may not be modified under this bill, except under "exceptional circumstances."

Permanent Alimony (lines 108-122)

This bill provides that permanent alimony may be awarded for the need and necessities of life as established during the marriage when a party lacks the financial ability to meet his or her needs and necessities of life. Permanent alimony may be awarded following a long-duration marriage, which is not defined within the statute but has typically been held as seventeen years or more;¹³ following a marriage of moderate duration, if it is appropriate based on the factors in s. 61.08(2), F.S.; or following a short-duration marriage if the circumstances are "exceptional."

¹³ See fn 3, *infra*.

An award of permanent alimony under this bill terminates upon the death of either party or the remarriage of the party receiving the award. An award may also be modified or terminated if there is a substantial change in circumstances or upon the existence of a supportive relationship as provided in s. 61.14, F.S., which is consistent with current law.

The bill has an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because durational alimony is not currently available under Florida law, this bill may provide an indeterminate positive fiscal impact to spouses who were previously not otherwise entitled to an award of alimony. This bill may also provide a corresponding negative fiscal impact to payor spouses.

C. Government Sector Impact:

The Office of State Courts Administrator reports that this bill appears to have a minimal indeterminate positive fiscal impact on court revenues resulting from a potential increase in alimony case filings, and a minimal indeterminate negative fiscal impact on court expenditures due to an increase in the judicial workload.¹⁴

VI. Technical Deficiencies:

The lengths of marriages of “short or moderate duration” are not specified within the bill.

¹⁴ Office of the State Court Administrator 2010 Judicial Impact Statement, House Bill 277 (Similar to Senate Bill 1194), March 2, 2010 (on file with the committee).

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 26, 2010:

The Committee Substitute adds a limitation on an award of bridge-the-gap alimony to a term of two years.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
