

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 Judiciary Committee

BILL: CS/SB 1194

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

SUBJECT: Alimony

DATE: April 6, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.	Daniell	Maclure	JU	Favorable
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

This bill provides that before a court may make an award of any type of alimony, the court must 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 also 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, Florida Statutes.

II. Present Situation:

Alimony

Traditionally, alimony was more often awarded to a woman based on the premise that she was the dependent spouse, having foregone or sacrificed career opportunities to fulfill the dual role of homemaking and child rearing. Today, alimony is considered to be gender-neutral.¹

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.² Alimony is based primarily on need and ability to pay; thus, 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.³

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;⁴
- The age and 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 income⁵ available to either party.⁶

¹ Comm. on Judiciary, The Florida Senate, *Review of Alimony Payments*, 1 (Interim Report 2005-146) (Nov. 2004), available at http://www.flsenate.gov/data/Publications/2005/Senate/reports/interim_reports/pdf/2005-146ju.pdf (last visited April 2, 2010).

² 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).

³ *Schlagel v. Schlagel*, 973 So. 2d 672, 676 (Fla. 2d DCA 2008); Ho and Johnson, *supra* note 2, at 71.

⁴ 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).

⁵ Income is defined, in part, as "any form of payment . . . regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government." Section 61.046(8), F.S.

The court may consider any other factor necessary to do equity and justice between the parties,⁷ and may order that the alimony be secured with life insurance or other assets.⁸

Alimony may be rehabilitative or permanent and paid periodically or in a lump sum, or both.⁹ Lump sum alimony¹⁰ may take the form of “bridge-the-gap” alimony, and it is intended only for short-term assistance with legitimate, identifiable short-term needs.¹¹ Although bridge-the-gap alimony has not been codified in statute, it has been recognized by Florida courts.¹² 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.¹³

Modification of Alimony

When the circumstances or financial ability of either party changes, either party is authorized to petition the court to modify the amount of alimony.¹⁴ 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.¹⁵ The obligor has the burden of proving, by a preponderance of the evidence, that a supportive relationship exists.

If alimony is changed, the court may apply the modification retroactively to the date of the filing of the action, based on what is equitable. When a modification order is entered, the new order is transferred to the original court of jurisdiction, and becomes a part of the original action.¹⁶

III. Effect of Proposed Changes:

This bill amends s. 61.08, F.S., relating to alimony, to provide 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

⁶ Section 61.08(2), F.S.

⁷ *Id.*

⁸ Section 61.08(3), F.S.

⁹ Section 61.08(1), F.S.

¹⁰ Lump sum alimony may be paid in periodic payments. Ho and Johnson, *supra* note 2, at 72.

¹¹ *Id.*

¹² See *Borchard v. Borchard*, 730 So. 2d 748 (Fla. 2d DCA 1999); *Wofford v. Wofford*, 20 So. 3d 470 (Fla. 4th DCA 2009); *Alcantara v. Alcantara*, 15 So. 3d 844 (Fla. 3d DCA 2009).

¹³ Ho and Johnson, *supra* note 2, at 72-73.

¹⁴ Section 61.14, F.S.

¹⁵ Consanguinity means “[t]he relationship of persons of the same blood or origin.” Affinity means, in part, “[t]he relation that one spouse has to the blood relatives of the other spouse; relationship by marriage.” BLACK’S LAW DICTIONARY (8th ed. 2004).

¹⁶ Comm. on Judiciary, *supra* note 1, at 4.

court must consider all relevant factors, including those listed in s. 61.08(2), F.S. This bill broadens the list of factors a court must consider by eliminating the modifier “economic” from “all relevant economic factors” and simply requiring a court to look at “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.

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 74-82)

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 while the party makes the transition from being married to being single. Bridge-the-gap alimony is intended to assist a party with his or her short-term needs, and may only 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 83-97)

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 requirement is consistent with current case law.¹⁷

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

¹⁷ See *Kalmanson v. Kalmanson*, 796 So. 2d 1249 (Fla. 5th DCA 2001).

Durational Alimony (lines 98-108)

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 bill does not define a marriage of short or moderate duration.

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 109-123)

This bill provides that permanent alimony may be awarded for the needs 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 17 years or more;¹⁸
- A marriage of moderate duration, if it is appropriate based on the factors in s. 61.08(2), F.S.; or
- A short-duration marriage if the circumstances are “exceptional.”

As mentioned previously, the bill does not specify what is meant by “short or moderate.” 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.

¹⁸ See *supra* note 4.

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 will have a minimal impact on judicial and court workload.¹⁹

VI. Technical Deficiencies:

None.

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.

¹⁹ Office of the State Courts Administrator, *Judicial Impact Statement SB 1194* (Mar. 24, 2010) (on file with the Committee on Judiciary).