

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 1395 Dissolution of Marriage

**SPONSOR(S):** Judiciary Committee and Civil Justice & Property Rights Subcommittee, Persons-Mulicka and others

**TIED BILLS:**           **IDEN./SIM. BILLS:** CS/CS/SB 1796

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**FINAL HOUSE FLOOR ACTION:** 74 Y's           42 N's           **GOVERNOR'S ACTION:** Vetoed

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### SUMMARY ANALYSIS

CS/CS/HB 1395 passed the House on March 9, 2022, as CS/CS/SB 1796, as amended.

Chapter 61, F.S., governs domestic relations, including actions for dissolution of marriage (DOM), child custody, child support, and alimony. Alimony is a court-ordered payment from one spouse to another, most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final.

Florida currently recognizes five main types of alimony: temporary, bridge-the-gap, rehabilitative, durational, and permanent. In determining the type, amount, duration, and later modification or termination of an alimony award, the court has broad discretion but may only award alimony after initially determining that one spouse needs alimony and the other spouse is able to pay alimony. An alimony award may be modified or terminated when the circumstances or financial ability of either party changes, including changes due to a receiving spouse's supportive relationship or a paying spouse's retirement.

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting and time-sharing of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents.

The bill prohibits the award of permanent alimony. As such, the types of alimony that a court may award include temporary, bridge-the-gap, rehabilitative, and durational alimony. The bill prohibits an award of alimony if the obligor has met certain requirements for retirement prior to the date the petition for DOM was filed unless the obligee would otherwise be left in a financially destitute situation. The bill authorizes modification or termination of alimony based on the obligor's retirement with certain exceptions. The bill allows for bifurcation of a DOM proceeding after 2 years has elapsed since the petition was filed, and authorizes the court to enter temporary orders on substantial issues until such issues can be ultimately decided.

The bill creates a presumption that equal time-sharing is in the best interest of the minor child or children in common to the parties. The bill also provides that a parent's permanent relocation from more than 50 miles away from his or her child to within 50 miles of his or her child's primary residence is presumed to be a "substantial, material, and unanticipated change of circumstances" for purposes of modifying parental responsibility and time-sharing.

The bill is not likely to have a fiscal impact on state or local government, but may have a fiscal impact on the private sector and spouses who rely on alimony payments.

The effective date of this bill was July 1, 2022, however, this bill was vetoed by the Governor on June 24, 2022.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

Chapter 61, F.S., governs domestic relations actions including actions for dissolution of marriage (DOM), alimony, parental rights, timesharing, and child support.

While alimony is created and guided by statute, it is also governed by case law. The leading alimony case, *Canakaris v. Canakaris*,<sup>1</sup> sets forth many of the general concepts of alimony but confirms that the ultimate decision in awarding alimony should be within the court's discretion.<sup>2</sup>

However, the Florida Supreme Court has also explained that:

[t]he discretionary power that is exercised by a trial judge is not, however, without limitation...The trial court's discretionary power is subject only to the test of reasonableness...Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.<sup>3</sup>

In the 42 years since *Canakaris* was decided, the Legislature has provided greater statutory guidance by codifying many alimony concepts in case law; and case law has continued to narrow the exercise of judicial discretion. Despite these changes, disagreement exists regarding the court's exercise of broad discretion in determining alimony awards.<sup>4</sup>

#### Alimony Generally

##### Background

Alimony, also known as spousal support or spousal maintenance, is a court-ordered payment from one spouse to another at any time before, during, and after DOM. Alimony is most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final, but it may also be awarded without an accompanying DOM action.<sup>5</sup> A person who receives payment pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligee,<sup>6</sup> and a person responsible for making payments pursuant to an order is called an obligor.<sup>7</sup>

The court may award alimony only after determining that one spouse actually needs alimony and the other spouse is able to pay alimony.<sup>8</sup> When determining the appropriateness of a particular alimony award, there is a rebuttable presumption that a:

- Short-term marriage lasts less than 7 years;
- Moderate-term marriage lasts more than 7 years but less than 17 years; and
- Long-term marriage lasts 17 years or more.<sup>9</sup>

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<sup>1</sup> *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

<sup>2</sup> *Id.* at 1200-02 ("In considering the appropriate criteria for the award of the different types of alimony, it is important that appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible. . . . Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose. . . . As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme").

<sup>3</sup> *Id.* at 1203.

<sup>4</sup> See *Bacon v. Bacon*, 819 So. 2d 950, 954 (Fla. 4th DCA 2002) (Farmer, J., concurring) (opining that broad discretion in alimony awards is no longer justifiable and should be discarded in favor of guidelines; proposing that 35 percent of obligor's income is a reasonable range).

<sup>5</sup> S. 61.09, F.S.

<sup>6</sup> S. 61.046(12), F.S.

<sup>7</sup> S. 61.046(13), F.S.

<sup>8</sup> S. 61.08(2), F.S.

<sup>9</sup> S. 61.08(4), F.S.

In determining the appropriate amount of alimony, the court's award may not leave an obligor with significantly less net income than the obligee, absent exceptional circumstances.<sup>10</sup> The court may order an obligor to pay alimony in periodic payments, lump sum payments, or a combination of the two.<sup>11</sup> The court may also require an obligor to maintain life insurance or a bond, or to otherwise secure an alimony award, to safeguard an obligee's support in the event the obligor dies unexpectedly or untimely.

### Types of Alimony

Florida recognizes five main types of alimony:<sup>12</sup> temporary, bridge-the-gap, rehabilitative, durational, and permanent.

#### *Temporary Alimony*

Temporary alimony may be awarded to either spouse while a DOM action is pending.<sup>13</sup> The standard for awarding temporary alimony is the same as when a trial court considers a request for permanent alimony which includes substantial evidence of each party's need and ability to pay.<sup>14</sup> Temporary alimony may be awarded regardless of the duration of the marriage.<sup>15</sup> Temporary alimony may be paid by reimbursement or prepayment.<sup>16</sup>

#### *Bridge-The-Gap Alimony*

Bridge-the-gap alimony is awarded to "assist a spouse with any legitimate, identifiable, short-term need" while a spouse is transitioning from married life to single life.<sup>17</sup> An award of bridge-the-gap alimony must be based upon competent, substantial evidence of the obligee's legitimate, identifiable short-term needs and may not exceed two years in duration.<sup>18</sup> Bridge-the-gap alimony may be paid to the obligee and may be tailored for specific expenses and needs.

#### *Rehabilitative Alimony*

An award of rehabilitative alimony must include the obligee's rehabilitative plan.<sup>19</sup> There is no statutorily-defined maximum duration of an award of rehabilitative alimony; however, the length of time for the award must be identified in the order and must specify when such award may be modified or terminated.<sup>20</sup> Generally, rehabilitative alimony is used for a spouse to cover the costs of obtaining the skills or education necessary to support himself or herself.<sup>21</sup> However, a spouse who was self-sufficient at the time of the DOM may still be eligible for rehabilitative alimony to pursue training or education to allow him or her greater earning potential in his or her chosen career.<sup>22</sup>

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<sup>10</sup> S. 61.08(9), F.S.

<sup>11</sup> For lump sum alimony to be awarded, there must be a showing of need and ability to pay as well as unusual circumstances which require non-modifiable support and justification that does not substantially endanger the payor's economic status. *Rosario v. Rosario*, 945 So. 2d 629, 632 (Fla. 4th DCA 2006).

<sup>12</sup> Alimony may also be awarded to a spouse in an action for support unrelated to a DOM action. If a spouse has the ability to contribute to the maintenance and support of his or her spouse and minor children but fails to do so, the spouse in need may apply to the court for alimony and child support without seeking a DOM. S. 61.09, F.S.

<sup>13</sup> S. 61.071, F.S.

<sup>14</sup> *De Gutierrez v. Gutierrez*, 19 So. 3d 1110 (Fla. 2d DCA 2009); *Fonderson v. Lairp*, 98 So. 3d 715 (Fla. 2d DCA 2012); *Driscoll v. Driscoll*, 915 So. 2d 771, 773 (Fla. 2d DCA 2005).

<sup>15</sup> *Littlejohn v. Littlejohn*, 495 So. 2d 271, 272 (Fla. 2d DCA 1986).

<sup>16</sup> S. 61.08(5), F.S. is silent as to the manner of payment for a bridge-the-gap alimony award. See *Horowitz v. Horowitz*, 273 So. 3d 263 (Fla. 2d DCA 2019).

<sup>17</sup> *Borchard v. Borchard*, 730 So. 2d 748, 753 (Fla. 2d DCA 1999); see also *Landow v. Landow*, 824 So. 2d 278, 279 n. 1 (Fla. 4th DCA 2002) (noting that bridge-the-gap alimony may be appropriate to "cushion the blow" for the recipient spouse adjusting to single life and living on his or her own).

<sup>18</sup> S. 61.08(5), F.S.

<sup>19</sup> S. 61.08(6), F.S.

<sup>20</sup> *Id.* See also *Draulans v. Draulans*, 69 So. 3d 401 (Fla. 2d DCA 2011).

<sup>21</sup> *Frye v. Frye*, 385 So. 2d 1383 (Fla. 2d DCA 1980).

<sup>22</sup> *Short v. Short*, 747 So. 2d 411 (Fla. 5th DCA 1999).

### *Durational Alimony*

Durational alimony was codified by the legislature in 2010.<sup>23</sup> Durational alimony may be awarded following a short-term marriage or moderate-term marriage.<sup>24</sup> Durational alimony may also be appropriate following a long-term marriage if the court determines there is not a need for ongoing support on a permanent basis.<sup>25</sup> The length of an award of durational alimony may not exceed the length of the marriage.<sup>26</sup> Unlike other forms of alimony, the length of the award of durational alimony is not modifiable once it has been ordered; however, the amount is modifiable based upon a substantial change in circumstances.

### *Permanent Alimony*

Permanent alimony may only be awarded when no other form of alimony is appropriate or reasonable. The court's order must include an express finding that no other form of alimony is fair and reasonable under the circumstances of the parties.<sup>27</sup> Final judgments that do not include such specific findings are subject to reversal.<sup>28</sup> In granting an award of permanent alimony, the trial court is required to make a finding that no other form of alimony is fair and equitable.<sup>29</sup> However, such award of permanent alimony may not leave the obligor with significantly less net income than the net income of the obligee.<sup>30</sup>

Each type of alimony has a defined purpose, duration, and requirement for modification or termination, as illustrated in the following chart:

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<sup>23</sup> Ch. 2010-99, Laws of Fla.

<sup>24</sup> S. 61.08(7), F.S.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> S. 61.08(8), F.S.

<sup>28</sup> *Julia v. Julia*, 263 So. 3d 795 (Fla. 2d DCA 2019).

<sup>29</sup> *Jordan v. Jordan*, 199 So. 3d 343 (Fla. 4th DCA 2016).

<sup>30</sup> S. 61.08(9), F.S.

| Type   | Purpose   | Duration  | Modification/<br>Termination   | Automatic<br>Termination                          |
|--|---|---|--|---|
| <b>Temporary (Pendente-Lite)</b><br>S. 61.071, F.S.      | A reasonable sum awarded after initiation of DOM proceedings for support during the pending litigation.   | Only during the pending DOM litigation.   | Good cause.  | Final Judgment in DOM action (including appeals). |
| <b>Bridge-the-Gap</b> <sup>31</sup><br>S. 61.08(5), F.S. | To provide transitional assistance to a party who must adjust their life from married to single.  | May not exceed 2 years.   | Not modifiable in amount or duration.  | Remarriage of recipient or death of either party. |
| <b>Rehabilitative</b><br>S. 61.08(6)(a), F.S.            | To assist in establishing the capacity for self-support through: <ul style="list-style-type: none"> <li>Redevelopment of previous skills or credentials; or</li> <li>Education, training, or work experience to develop appropriate employment skills or credentials.<sup>32</sup></li> </ul>   | Requires a specific, defined rehabilitative plan; duration varies depending on circumstances. | Substantial change in circumstances; non-compliance with rehabilitation plan; or completion of rehabilitation plan.                          | Death of either party.                            |
| <b>Durational</b><br>S. 61.08(7), F.S.                   | Awarded when permanent alimony is not appropriate to assist with economic assistance for a set period of time following a marriage of short or moderate duration. <sup>33</sup>   | May not exceed the duration of the marriage; duration varies.                                 | <ul style="list-style-type: none"> <li>Amount: Substantial change in circumstances.</li> <li>Duration: Exceptional circumstances.</li> </ul> | Remarriage or recipient or death of either party. |
| <b>Permanent</b><br>S. 61.08(8), F.S.                    | To provide for needs and necessities of life as established during marriage for a party lacking financial ability to meet such needs on his/her own following a: <ul style="list-style-type: none"> <li>Long duration marriage;</li> <li>Moderate duration marriage, if appropriate considering enumerated factors;<sup>34</sup> or</li> <li>Short duration marriage, in exceptional circumstances.<sup>35</sup></li> </ul> | Perpetual (unless modified or terminated)   | Substantial change in circumstances, including the existence of a recipient's supportive relationship. <sup>36</sup>                         | Remarriage of recipient or death of either party. |

## Effect of the Bill

### *Length of the Marriage*

For the purposes of determining alimony, the bill removes presumptions in current law regarding the length of marriage.

### *Definitions*

The bill provides the following statutory definitions:

- “Active Gross Income” means salary or wages, bonuses, commissions, allowances, overtime, tip, and other similar payments, and business income from sources such as self-employment,

<sup>31</sup> See *Murray v. Murray*, 374 So. 2d 622, 624 (Fla. 4th DCA 1979) (“[P]roof would justify a brief period of alimony sufficient to allow the wife to ‘bridge’ the gap between the high standard of living enjoyed during the brief marriage and the more modest standard that the wife can provide for herself”).

<sup>32</sup> *Canakaris*, 382 So. 2d at 1202.

<sup>33</sup> S. 61.08(4), F.S.

<sup>34</sup> S. 61.08(2), F.S., lists these factors.

<sup>35</sup> A permanent alimony award is generally inappropriate in a short-term marriage unless the DOM created a genuine inequity. *Segall v. Segall*, 708 So. 2d 983 (Fla. 4th DCA 1998).

<sup>36</sup> S. 61.14(1)(b), F.S.

partnerships, corporations, and independent contracts. The definition clarifies that “business income” means gross receipts minus ordinary expenses required to produce income and requires business income be “actively earned” and not simply “passive income.”

- “Alimony” means a court-ordered or voluntary payment of support by one spouse to the other spouse. Alimony includes any voluntary payment made after an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common to the parties.
- “Gross Income” means income as determined in accordance with s. 61.30(2), F.S. Gross income includes, but is not limited to:
  - Salary or wages.
  - Bonuses, commissions, allowances, overtime, tips, and other similar payments.
  - Business income from sources such as self-employment, partnership, close corporations, and independent contracts.
  - Disability benefits.
  - Workers’ compensation benefits and settlements.
  - Reemployment assistance or unemployment compensation.
  - Pension, retirement, or annuity payments.
  - Social security benefits.<sup>37</sup>
  - Spousal support received from a previous marriage or court ordered in the marriage present before the court.
  - Interest and dividends.
  - Rental income.
  - Income from royalties, trusts, or estates.
  - Reimbursed expenses or in-kind payments to the extent that they reduce living expenses.
  - Gains derived from dealings in property, unless the gain is nonrecurring.
- “Income” is amended to clarify that distributions from trusts are considered income for the purposes of alimony.
- “Net income” means income that is determined by subtracting allowable deductions from gross income. “Allowable deductions” includes:
  - Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities;
  - Federal insurance contributions or self-employment tax;
  - Mandatory union dues;
  - Health insurance payments, excluding payments for coverage of a minor child;
  - Court-ordered support for other children which is actually paid; and
  - Spousal support paid pursuant to a court order from a previous marriage.<sup>38</sup>

### *Types of Alimony*

The bill eliminates the ability to award permanent alimony. As such, the available forms of alimony under the bill include temporary, bridge-the-gap, rehabilitative, or durational alimony, or a combination thereof. The court may award a combination of types of alimony only to provide greater economic assistance to the obligee in order to achieve rehabilitation. In such case, the court must make written findings.

The bill prohibits a rehabilitative alimony award from exceeding five years in length. The bill further provides for the termination of a rehabilitative alimony award upon the completion of the obligee’s rehabilitation plan before the length of the award expires.

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<sup>37</sup> The bill prohibits the imputation of social security retirement benefits to the obligor unless those benefits are actually being paid.

<sup>38</sup> The allowable deductions are comparable to the deductions used by the Department of Revenue in calculating a parent’s child support obligation.

The bill prohibits an award of durational alimony in a marriage of three years or less. For marriages longer than 3 years, an award of durational alimony may not exceed:

- 50% of the duration of the marriage, for a marriage between 3 to 10 years in duration.
- 60% of the duration of the marriage, for a marriage between 10 to 20 years in duration.
- 75% of the duration of the marriage, for a marriage lasting 20 years or more.

The length of the marriage is the date of marriage until the date the petition for DOM was filed. The bill permits durational alimony to be awarded only upon written findings that another type of alimony or combination of alimony is insufficient. However, a court may extend durational alimony past the outlined limits if the party seeking alimony (recipient):

- Is either permanently mentally or physically disabled and unable to provide for his or her own support; or
- Is the full-time, in-home caregiver to a totally and permanently disabled child common to the parties.

In the above scenarios, the court has the authority to extend durational alimony until the death of the subject child or until the court determines there is no longer a need for alimony.

The bill further provides that the amount of a durational alimony award shall be the obligee or recipient spouse's reasonable need, or 35% of the difference between the parties' net incomes, whichever is less.

### *Life Insurance*

The bill removes a provision allowing a court to order an obligor to purchase life insurance and instead clarifies that an obligee may purchase or maintain a life insurance policy on the obligor's life, when necessary to secure or protect an alimony award. If such life insurance is obtained, the obligor must cooperate in the process of procuring the issuance and underwriting of the policy, including complying with any necessary medical evaluations and documentation.

## **Determination of an Initial Alimony Award**

### Background

The court must determine each party's need and ability to pay alimony before the court may order an award of alimony.<sup>39 40</sup> Once the respective need and ability to pay alimony have been established, the court must consider the following factors, in determining an alimony award:

- The standard of living established during the marriage.
  - However, the award may not be so high as to cause the obligor spouse to be unable to meet his or her own needs,<sup>41</sup> and an alimony award that is over 50 percent of the obligor spouse's income is considered too high.<sup>42</sup>
- The duration of the marriage.<sup>43</sup>
- The age and the physical and emotional condition of each party.
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.

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<sup>39</sup> S. 61.08(2), F.S.

<sup>40</sup> Florida statute does not specifically provide factors to be considered in determining a party's need or ability to pay alimony. The Court in *Canakaris* specified that a court should consider the parties' earning ability, age, health, education, duration of marriage, standard of living during the marriage, and the value of the parties' estates. *Canakaris*, 382 So. 2d at 1201.

<sup>41</sup> *Rashotsky v. Rashotsky*, 782 So. 2d 542 (Fla. 3d DCA 2001).

<sup>42</sup> *O'Conner v. O'Conner*, 782 So. 2d 502 (Fla. 2d DCA 2001).

<sup>43</sup> See s. 61.08(4), F.S.

- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- The responsibilities each party will have regarding any minor children they have in common.
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- All sources of income<sup>44</sup> available to either party, including income available to either party through investments of any asset held by that party.
  - Income may be imputed to a voluntarily unemployed or underemployed spouse, whether the spouse is an obligee or obligor.<sup>45</sup>
- Any other factor necessary to do equity and justice between the parties.

While the statutory guidelines provide the framework within which the court may exercise its discretion to determine the type, amount, and duration of an alimony award, there are no bright line rules to determine whether alimony is appropriate in a particular case, and if so, which type of alimony must be awarded. No single factor justifies an alimony award; rather, all factors must be considered as a whole, and the court may analyze the entire marital situation to make an alimony award.

### *Adultery*

In addition to the enumerated factors, s. 61.08(2)(c), F.S., specifically provides that the court may also consider the adultery of either spouse and the circumstances surrounding the adultery. The spouse seeking to prove adultery has the burden of proof.<sup>46</sup>

### Effect of the Bill

#### *Alimony Factors*

Under the bill, a court may consider any other factor necessary in a DOM proceeding as long as such factor is specifically identified in the award with findings of fact justifying the application of that factor.

#### *Standard of Living During the Marriage and Presumption*

Under the bill, when making an alimony determination, the court must consider the standard of living established during the marriage, including the needs and necessities of life for each party after the dissolution of marriage, taking into consideration the presumption<sup>47</sup> that both parties will have a lower standard of living after the dissolution than was enjoyed during the marriage.

### *Adultery*

The bill removes all references to adultery in s. 61.08, F.S., relating to the determination of an alimony award.

#### *Supportive Relationship*

Under the bill, the court may consider whether the party seeking alimony is presently or was in a supportive relationship with another person (not related by blood or marriage) at any point during the

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<sup>44</sup> This is defined broadly as "any form of payment to an individual, 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. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support." S. 61.046(8), F.S.

<sup>45</sup> See *Keyser v. Keyser*, 204 So. 3d 159 (Fla. 1st DCA 2016); *Lostaglio v. Lostaglio*, 199 So. 3d 560 (Fla. 5th DCA 2016); *Kovar v. Kovar*, 648 So. 2d 177 (Fla. 4th DCA 2003); *Rojas v. Rojas*, 656 So. 2d 563 (Fla. 3d DCA 1995).

<sup>46</sup> *Engbretsen v. Engbretsen*, 151 Fla. 372, 11 So. 2d 322 (1942).

<sup>47</sup> This presumption may be overcome by a preponderance of the evidence.



180 days prior to the date the petition for DOM was filed. In considering such a supportive relationship, the court must consider all relevant factors relating to the nature and extent of the alleged relationship. In such a case, the party against whom alimony is sought (obligor or payor) has the burden to prove, by a preponderance of the evidence, that such a supportive relationship exists or existed and that the court should deny or reduce the award of alimony. If the obligor proves the existence of a supportive relationship by a preponderance of the evidence, the burden shifts to the party seeking alimony (recipient) to disprove, by a preponderance of the evidence, the existence of a supportive relationship which warrants a reduction or denial of alimony. The court must make written findings of fact in making its determination, including, but not limited to, the following factors:

- The extent to which the party seeking alimony and the other person held themselves out as a couple;
- Whether the party seeking alimony and the other person resided together and for how long;
- The extent to which the members of the couple have pooled their assets or demonstrate financial interdependence;
- The extent to which the party seeking alimony or the other person has financially or economically supported the other;
- The financial or economic services performed by the party seeking alimony to the other person, or visa versa;
- The extent to which the party seeking alimony or the other person performed services for the other's business or employer;
- Whether the party seeking alimony and the other person have acquired assets or real property together;
- Whether the party seeking alimony and the other person have provided support to each other's children; and
- Whether the party seeking alimony and the other person are engaged.

A conjugal relationship need not be proven for the court to determine that a supportive relationship exists.

#### *Calculation of an Alimony Award*

Under the bill, alimony may not be awarded to a party who has a monthly net income that is equal to or greater than the other party's monthly net income. When making a determination of whether to award alimony, the court's factual determination relating to the obligee's need for and the obligor's ability to pay alimony must be in writing. Further, social security benefits may not be imputed to the obligor unless such benefits are actually being paid out.

When making a determination of durational alimony, the court must consider any payments of alimony made by the obligor during the period between when the petition was filed and when the final order making the alimony determination is entered. The court must apply any such payments when making a determination of the amount and length of such award.

Further, in cases where an obligee alleges that a physical disability has impaired his or her capability to earn an income, thus demonstrating the need for alimony, the bill provides a standard by which to determine such disability. An obligee must demonstrate that he or she has qualified for disability benefits under the Social Security Administration Disability Insurance (SSDI) Program or must show the court that he or she meets the disability qualification standards of the SSDI Program.

#### **Modification or Termination of an Alimony Award**

##### Background

A former spouse may petition the court to modify or terminate the terms of an alimony award only upon a showing of a substantial change in circumstances that:<sup>48</sup>

- Was not contemplated at the time the final judgment of DOM was issued;<sup>49</sup> and
- Is sufficient, material, involuntary, and permanent in nature.<sup>50</sup>

### *Retirement*

The impact of retirement on alimony obligations is not specifically addressed in statute, but the Supreme Court of Florida has addressed the issue in *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992). The *Pimm* Court held that if a final judgment does not address the impact of retirement on an alimony award, the court may consider whether the retirement constitutes a substantial change in circumstances which warrants a modification or termination of alimony. As such, retirement may be a factor to be considered at the court's discretion, on a case-by-case basis.

### Effect of the Bill

#### *Supportive Relationship*

Under the bill, the court may reduce or terminate an existing award of alimony upon specific findings that since the finalization of the dissolution, a supportive relationship exists or existed between the recipient party and another person at any time during the 180 days before the filing of a petition for modification of alimony. The court must make written findings of fact relating to the existence of the alleged supportive relationship in the same manner that is required during an initial determination of alimony. An obligor's subsequent remarriage or cohabitation does not constitute a basis for a modification of alimony by either party.

#### *Retirement*

Under the bill, if an obligor reaches age 65 and actually retires before the end of the durational period ordered by the court, the award of durational alimony will end on the obligor's retirement date, and meets other conditions, including the filing of a notice of intent to retire. If the obligor chooses not to retire and continues to work past age 65 and earns an active gross income of more than 50% of the obligor's average active gross income for the three years prior to attaining retirement age, the court may extend an award of alimony until the previously ordered durational limits have been satisfied, the obligor actually retires, or the obligor's active income falls below the 50% threshold.

If the obligor has met the requirements for retirement prior to the filing date of the petition for dissolution, he or she may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony unless the court determines that:

- As a result of the dissolution, the obligee has an annual income at or below 130% of the federal poverty level for individuals according to the most recent report by the U.S. Census Bureau;
- The obligee would be left with an inability to meet his or her basic needs and necessities of life;
- The obligee is the full-time, in-home caregiver to a permanently mentally or physically disabled child of the parties; or
- The obligee is permanently mentally or physically disabled and unable to provide for his or her full or partial support.<sup>51</sup>

However, if the obligor continues to work beyond his or her retirement age and earns an active gross income of more than 50% of his or her average preretirement annual active gross income for the three

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<sup>48</sup> S. 61.14(1), F.S.

<sup>49</sup> *Chastain v. Chastain*, 73 So. 2d 66 (Fla. 1954)

<sup>50</sup> *Dykes v. Dykes*, 712 So. 2d 453 (Fla. 1st DCA 1998); *Hanskat v. Hanskat*, 716 So. 2d 347 (Fla. 1st DCA 1998).

<sup>51</sup> If the party seeking alimony alleges that a disability has impaired his or her ability to earn the income imputed by the court, he or she must qualify for benefits under the Social Security Disability Insurance program or must demonstrate that the alleged disability meets the qualification requirements of the SSDI program.

years preceding retirement age, the court may order durational alimony to continue until the durational limits have been satisfied or the obligor retires or his or her active gross income falls below the 50% threshold.

In anticipation of retirement, an obligor may file a “Notice of Retirement and Intent to Terminate Alimony” with the court and serve it on the obligee up to 12 months before seeking to reduce or terminate alimony. The obligee has 20 days after the date of service to respond to the notice and request that the court make any of the following findings:

- The obligee’s income and assets would put him or her at or below 130% of the federal poverty level for individuals;
- The obligee would be left without the ability to meet his or her basic needs and necessities for daily life;
- The terms of the marital settlement agreement between the parties do not allow for such modification or termination;
- The obligee is the full-time, in-home caregiver to a permanently mentally or physically disabled child of the parties; or
- The obligee is permanently mentally or physically disabled and unable to provide for his or her own support.

If the court makes any of the above findings, the court must consider the following factors and make specific written findings regarding reducing the amount and duration of an existing alimony award:

- The length of the marriage;
- The financial resources of the obligee;
- The sources of income available to the obligee and access to those assets without penalty;
- The effort and sacrifices of time and leisure necessary for the obligor to continue to provide alimony, taking into consideration the presumption that the obligor has a right to retire when he or she reaches full retirement age;
- The age and health of the obligor;
- The terms governing modification or termination of alimony between the parties as established in the marital settlement agreement; and
- Whether the obligor and obligee agreed to permanent alimony or an extraordinary term of alimony in exchange for the obligor retaining significant marital assets, as reflected in the marital settlement agreement.

If the court does not make any of the above findings, the alimony award must decrease by 25% per year when the obligor turns 65 or one year after the notice of intent to retire was filed, whichever is later. As such, the alimony award would fully terminate when the obligor turns 68, or four years after the notice of intent to retire is filed, whichever occurs later.

Notwithstanding the impact of actual retirement discussed above, if the obligor continues to work beyond his or her retirement age and earns an active gross income of more than 50% of his or her average preretirement annual active gross income for the three years preceding retirement age, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50% threshold.

Additionally, any amount of social security or disability benefits or retirement payments received by an obligee after an initial award and determination of alimony constitutes a change in circumstances for which an obligor may seek a modification. The bill provides that an agreement or court order allowing for modification or termination of an alimony award based upon a specific event or threshold is considered to be expressly modifiable or eligible for termination after that specified condition is met.

If the obligor chooses to retire after he or she reaches the age of 66, the court may terminate an alimony award upon a finding that the obligor’s retirement is reasonable based on its application of statutory factors. Up to 12 months before the obligor’s anticipated actual retirement date, he or she may

file a petition to modify or terminate the alimony award, to be effective upon the actual retirement date. Such modification or termination must be granted unless the court makes written findings that the obligor's retirement is not reasonable.

## **Time-Sharing of a Minor Child and Parental Responsibility**

### Background

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Although the right to integrity of the family is among the most fundamental rights, when married parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

### *Time-Sharing*

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting<sup>52</sup> and time-sharing<sup>53</sup> of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:<sup>54</sup>

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

Therefore, current law does not provide a presumption in favor of a specific time-sharing schedule, and the court sets a time-sharing schedule when the parties are unable to agree. In establishing time-sharing, the court must consider the best interests of the child<sup>55</sup> and evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:

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<sup>52</sup> Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

<sup>53</sup> Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

<sup>54</sup> S. 61.13(2)(c)1., F.S.

<sup>55</sup> S. 61.13(2)(c), F.S.

- Provide a consistent routine; and
- Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.
- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

### *Time-sharing and Child Support*

A time-sharing order entered by a court may impact the child support obligation of the parents. In a chapter 61, F.S., proceeding, the court may order either or both parents to pay child support in accordance with the child support guidelines provided in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when a court orders substantial time-sharing.

Section 61.30(11)(b), F.S., provides that a court must adjust the basic child support obligation if the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement agreed upon by the parties provides that a child spend a substantial amount of time with each parent.<sup>56</sup> The adjustment of a child support award based on substantial time-sharing usually results in a reduction in the child support payment.<sup>57</sup> Failure to regularly exercise a substantial time-sharing schedule that caused the adjustment of child support pursuant to s. 61.30(11)(b), F.S., constitutes grounds to modify the adjusted child support award, and the modification is retroactive to the date of non-compliance with the time-sharing schedule.<sup>58</sup>

Current law provides that there is no presumption for or against either parent of a child or for any specific time-sharing schedule when the court is creating or modifying a parenting plan.

### Effect of the Bill

The bill amends s. 61.13, F.S., to create a presumption that equal time-sharing (commonly referred to as "50/50 time-sharing") is in the best interests of a minor child common to both parties, unless otherwise agreed to by the parties. The bill does not eliminate the statutory best interest factors listed under s. 61.13, F.S. Under the bill, the presumption for equal time-sharing may be overcome by a showing, based on the best interest factors, that unequal timesharing is in the child's best interests.

The bill also provides that a parent's permanent relocation from more than 50 miles from his or her child to within 50 miles of his or her child's primary residence is presumed to be a "substantial, material, and

<sup>56</sup> A substantial amount of time means exercising time-sharing at least 20 percent of overnights per year. S. 61.30(11)(b)8., F.S.

<sup>57</sup> The court may deviate from the child support amount calculated under the required "substantial time-sharing" adjustment based upon a number of factors, including the "likelihood that either parent will actually exercise the time-sharing schedule." S. 61.30(11)(b)7., F.S.

<sup>58</sup> S. 61.30(11)(c), F.S.

unanticipated change of circumstances” for purposes of modifying parental responsibility and time-sharing.

## **Separate Adjudication of Issues (Bifurcation)**

### Background

Bifurcation is a split procedure in which the court grants a dissolution of marriage and reserves jurisdiction regarding property settlement, debts, alimony and child support. While bifurcation is permitted in limited circumstances, current case law discourages the use of bifurcation. Specifically, in *Cloughton v. Cloughton*, the Florida Supreme Court explained that “trial judges should avoid this split procedure . . . . [S]plit procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.”<sup>59</sup>

Under current law, a final judgment of DOM may not be entered until at least twenty days from the date the petition was filed.

### Effect of the Bill

The bill amends s. 61.19, F.S., to allow the court, upon request of either party, to grant a final judgment of dissolution with a reservation of jurisdiction on all outstanding substantive issues when the case has been pending for more 2 years. Before entering a final order of dissolution, the court must enter temporary orders necessary to protect the parties and their children until the issues can be permanently adjudicated by the court. This provision of the bill applies to all petitions for dissolution filed on or after July 1, 2022.

## **Effective Date and Application**

The effective date of this bill was July 1, 2022, however, this bill was vetoed by the Governor on June 24, 2022.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### 1. Revenues:

None.

#### 2. Expenditures:

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<sup>59</sup> *Cloughton v. Cloughton*, 393 So. 2d 1061, 1062 (Fla. 1981).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a direct economic impact on the private sector relating to the amount of alimony and duration of an alimony award that a spouse may receive, although the particular economic impacts are indeterminate.

D. FISCAL COMMENTS:

None.