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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/28/2022	.	
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The Committee on Appropriations (Gruters) recommended the following:

Senate Substitute for Amendment (797882) (with title amendment)

Delete lines 316 - 625
and insert:
combination of the other forms of alimony, is insufficient.

(b) The amount of durational alimony is the amount determined to be the obligee's reasonable need or an amount not to exceed 35 percent of the difference between the parties' net incomes, whichever amount is less.

(c) In determining the length of an award of durational alimony, the court shall reduce the length of an award of durational alimony for the length of time during which the obligor made temporary support payments to the obligee, either voluntarily or pursuant to a court order, after the date of filing of a petition for dissolution of marriage.

(d) In determining the extent to which alimony should be granted because a supportive relationship exists or has existed between the party seeking alimony and another person who is not related by consanguinity or affinity at any time since 180 days before the filing of the petition of dissolution of marriage, the court shall consider all relevant factors presented concerning the nature and extent of the supportive relationship in question. The burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists. If a supportive relationship is proven to exist, the burden shifts to the obligee to disprove by a preponderance of the evidence that the court should deny or reduce the initial award of alimony. The court must make written findings of fact concerning the circumstances of the supportive relationship, including, but not limited to, the factors set forth in s. 61.14(1)(b)2.

(e) In the event that the obligor reaches full retirement age as determined by the Social Security Administration before the end of the durational period indicated by paragraph (a), and has reached at least 65 years of age, the durational alimony shall end on such retirement date if all of the following conditions are met:

1. The obligor files a notice of retirement and intent to

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terminate alimony with the court and personally serves the alimony recipient and his or her last known attorney of record, if such attorney is still practicing in the same county, at least 1 year before the date that the obligor's retirement is intended to become effective.

2. The obligee has not contested the notice of retirement and intent to terminate alimony according to the factors specified in s. 61.14(12)(b) or the court has determined that such factors do not apply. If the court makes any of the findings specified in s. 61.14(12)(b), the court must consider and make written findings regarding the factors listed in s. 61.14(12)(c) to determine whether to extend the length of the alimony award as set forth in s. 61.08(8)(a).

However, if the obligor continues to work beyond his or her retirement age as provided under this paragraph and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may extend alimony until the durational limitations established in this subsection have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(9)(a) A party against whom alimony is sought who has attained his or her full retirement age as determined by the Social Security Administration before the adjudication of the petition for dissolution of marriage may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony, unless the court determines that:

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1. As a result of the dissolution of marriage, the party seeking alimony would have an income of less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the income and investable assets available after the dissolution is final, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties;

2. The party seeking alimony would be left with the inability to meet his or her basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation; or

3. The party seeking alimony is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties, or the party is permanently and mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(b) However, if the obligor continues to work beyond his or her retirement age as provided under this subsection and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, the court may award durational alimony until the durational limitations established in subsection (8) have been satisfied or the obligor retires and reduces his or her active gross income below the 50 percent threshold established in this paragraph.

(10) Notwithstanding any other law, alimony may not be awarded to a party who has a monthly net income that is equal to or more than the other party's monthly net income.

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(11) Social security retirement benefits may not be imputed to the obligor as demonstrated by a social security retirement benefits entitlement letter unless those benefits are actually being paid.

(12) If the obligee alleges that a physical disability has impaired his or her capability to earn income, the obligee must have qualified for benefits under the Social Security Administration Disability Insurance Program or, in the event the obligee is not eligible for the program, must demonstrate that his or her disability meets the disability qualification standards of the Social Security Administration Disability Insurance Program.

~~(8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. Permanent alimony may be awarded following a marriage of long duration if such an award is appropriate upon consideration of the factors set forth in subsection (2), following a marriage of moderate duration if such an award is appropriate based upon clear and convincing evidence after consideration of the factors set forth in subsection (2), or following a marriage of short duration if there are written findings of exceptional circumstances. In awarding permanent alimony, the court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties. An award of permanent alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award may be modified or~~


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~~terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship in accordance with s. 61.14.~~

~~(9) The award of alimony may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.~~

(13)(a) ~~(10)(a)~~ With respect to any order requiring the payment of alimony entered on or after January 1, 1985, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall direct in the order that the payments of alimony be made through the appropriate depository as provided in s. 61.181.

(b) With respect to any order requiring the payment of alimony entered before January 1, 1985, upon the subsequent appearance~~,~~ on or after that date~~,~~ of one or both parties before the court having jurisdiction for the purpose of modifying or enforcing the order or in any other proceeding related to the order~~,~~ or upon the application of either party, unless ~~the provisions of~~ paragraph (c) or paragraph (d) applies ~~apply~~, the court shall modify the terms of the order as necessary to direct that payments of alimony be made through the appropriate depository as provided in s. 61.181.

(c) If there is no minor child, alimony payments need not be directed through the depository.

(d)1. If there is a minor child of the parties and both parties so request, the court may order that alimony payments need not be directed through the depository. In this case, the order of support must ~~shall~~ provide, or be deemed to provide,

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that either party may subsequently apply to the depository to require that payments be made through the depository. The court shall provide a copy of the order to the depository.

2. If ~~the provisions of~~ subparagraph 1. applies ~~apply~~, either party may subsequently file with the depository an affidavit alleging default or arrearages in payment and stating that the party wishes to initiate participation in the depository program. The party shall provide copies of the affidavit to the court and the other party or parties. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be directed to the depository.

3. In IV-D cases, the IV-D agency has ~~shall have~~ the same rights as the obligee in requesting that payments be made through the depository.

(14) The court shall apply this section to all petitions for dissolution of marriage which have not been adjudicated before July 1, 2022, and to any petitions for dissolution of marriage filed on or after July 1, 2022.

Section 3. Paragraph (c) of subsection (2) and subsection (3) of section 61.13, Florida Statutes, are amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.—

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan

and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. 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. Unless otherwise provided in this section or agreed to by the parties, there is a presumption that equal time-sharing of a minor child is in the best interests of the minor child who is common to the parties ~~Except as otherwise provided in this paragraph, 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.

2. The court shall order that the parental responsibility for a minor child be shared by both parents unless the court finds that shared parental responsibility would be detrimental to the child. The following evidence creates a rebuttable presumption of detriment to the child:

a. A parent has been convicted of a misdemeanor of the first degree or higher involving domestic violence, as defined in s. 741.28 and chapter 775;

b. A parent meets the criteria of s. 39.806(1)(d); or

c. A parent has been convicted of or had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

(I) The parent was 18 years of age or older.

(II) The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

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If the presumption is not rebutted after the convicted parent is advised by the court that the presumption exists, shared parental responsibility, including time-sharing with the child, and decisions made regarding the child, may not be granted to the convicted parent. However, the convicted parent is not relieved of any obligation to provide financial support. If the court determines that shared parental responsibility would be detrimental to the child, it may order sole parental responsibility and make such arrangements for time-sharing as specified in the parenting plan as will best protect the child or abused spouse from further harm. Whether or not there is a conviction of any offense of domestic violence or child abuse or the existence of an injunction for protection against domestic violence, the court shall consider evidence of domestic violence or child abuse as evidence of detriment to the child.

3. In ordering shared parental responsibility, the court may consider the expressed desires of the parents and may grant to one party the ultimate responsibility over specific aspects of the child’s welfare or may divide those responsibilities between the parties based on the best interests of the child. Areas of responsibility may include education, health care, and any other responsibilities that the court finds unique to a particular family.

4. The court shall order sole parental responsibility for a minor child to one parent, with or without time-sharing with the other parent if it is in the best interests of the minor child.

5. There is a rebuttable presumption against granting time-sharing with a minor child if a parent has been convicted of or

had adjudication withheld for an offense enumerated in s. 943.0435(1)(h)1.a., and at the time of the offense:

a. The parent was 18 years of age or older.

b. The victim was under 18 years of age or the parent believed the victim to be under 18 years of age.

A parent may rebut the presumption upon a specific finding in writing by the court that the parent poses no significant risk of harm to the child and that time-sharing is in the best interests of the minor child. If the presumption is rebutted, the court shall consider all time-sharing factors in subsection (3) when developing a time-sharing schedule.

6. Access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, may not be denied to either parent. Full rights under this subparagraph apply to either parent unless a court order specifically revokes these rights, including any restrictions on these rights as provided in a domestic violence injunction. A parent having rights under this subparagraph has the same rights upon request as to form, substance, and manner of access as are available to the other parent of a child, including, without limitation, the right to in-person communication with medical, dental, and education providers.

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a parenting plan, including a time-sharing schedule, which governs each parent’s relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the

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primary consideration. A determination of parental responsibility, a parenting plan, or a time-sharing schedule may not be modified without a showing of a substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child. For purposes of the modification of a parenting plan and time-sharing schedule, a parent's permanent relocation to a residence within 50 miles of the primary residence of the child is presumed to be a substantial, material, and unanticipated change in circumstances. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the particular minor child and the circumstances of that family, including, but not limited to:

(a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.

(b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

(c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.

(d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(e) The 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. This factor does not create a presumption for or against relocation of either parent with a child.

(f) The moral fitness of the parents.

(g) The mental and physical health of the parents.

(h) The home, school, and community record of the child.

(i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.

(j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child's friends, teachers, medical care providers, daily activities, and favorite things.

(k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.

(l) The demonstrated capacity of each parent to 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.

(m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was

considered when evaluating the best interests of the child.

(n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.

(o) The particular parenting tasks customarily performed by each parent and the division of parental responsibilities before the institution of litigation and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.

(p) The demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.

(q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.

(r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.

(s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

(t) Any other factor that is relevant to the determination of a specific parenting plan, including the time-sharing schedule.

Section 4. Paragraph (b) of subsection (1) of section

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61.14, Florida Statutes, is amended, and paragraph (c) is added to subsection (11) of that section, and subsections (12), (13), and (14) are added to that section, to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(1)

(b)1. The court may reduce or terminate an award of alimony or order reimbursement to the obligor for any amount the court determines is equitable upon specific written findings by the court that since the granting of a divorce and the award of alimony, a supportive relationship exists or ~~has~~ existed between the obligee and another ~~a~~ person at any time during the 180 days before the filing of a petition for modification of alimony ~~with whom the obligee resides~~. On the issue of whether alimony should be reduced or terminated under this paragraph, the burden is on the obligor to prove by a preponderance of the evidence that a supportive relationship exists or existed. If a supportive relationship is proven to exist or have existed, the burden shifts to the obligee to disprove, by a preponderance of the evidence, that the court should terminate an existing award of alimony.

2. In determining the extent to which ~~whether~~ an existing award of alimony should be reduced or terminated because of an alleged supportive relationship between an obligee and a person who is not related by consanguinity or affinity ~~and with whom the obligee resides~~, the court must make written findings of fact concerning the nature and the extent of the supportive relationship in question and the circumstances of the supportive relationship, including, but not limited to, the following

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factors ~~shall elicit the nature and extent of the relationship in question. The court shall give consideration, without limitation, to circumstances, including, but not limited to, the following, in determining the relationship of an obligee to another person~~:

a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.

b. The period of time that the obligee has resided with the other person in a permanent place of abode.

c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

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j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

3. This paragraph does not abrogate the requirement that every marriage in this state be solemnized under a license, does not recognize a common law marriage as valid, and does not recognize a de facto marriage. This paragraph recognizes only that relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph. The existence of a conjugal relationship, though it may be relevant to the nature and extent of the relationship, is not necessary for the application of the provisions of this paragraph.

(11)

(c) An obligor's subsequent remarriage or cohabitation does not constitute a basis for either party to seek a modification of an alimony award.

(12)(a) Up to 12 months before seeking to terminate alimony as provided under this section, an obligor may file a notice of retirement and intent to terminate alimony with the court and shall personally serve the obligee and his or her last known attorney of record, if such attorney is still practicing in the same county, with such notice.

(b) The obligee shall have 20 days after the date of

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service of the notice to request the court to enter findings that as of the date of filing of the notice:

1. The reduction or termination of alimony would result in any of the following:

a. The obligee's income would be less than 130 percent of the federal poverty guidelines for a one-person household, as published by the United States Department of Health and Human Services, based on the obligee's income and investable assets, including any retirement assets from which the obligee can access income without incurring early withdrawal penalties.

b. The obligee would be left with the inability to meet the obligee's basic needs and necessities of life, including, but not limited to, housing, utilities, food, and transportation.

c. A violation of the terms of the marital settlement agreement between the parties because the marital settlement agreement either does not allow for modification or termination of the alimony award or the proposed reduction in alimony does not comply with applicable terms for modification of alimony specified in the agreement;

2. The obligee is the full-time in-home caregiver to a fully and permanently mentally or physically disabled child who is common to the parties; or

3. The obligee is permanently mentally or physically disabled and unable to provide for his or her own support, either partially or fully.

(c) If the court makes any of the findings specified in paragraph (b), the court must consider and make written findings regarding the following factors when deciding whether to reduce either the amount or duration of alimony:

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1. The duration of the marriage.

2. The financial resources of the obligee, including the nonmarital and marital assets and liabilities distributed to the obligee, as well as the obligee's role in conserving or depleting the marital assets distributed at the dissolution of marriage.

3. The sources of income available to the obligee, including income available to the obligee through investments of any asset, including retirement assets from which the obligee can access income without incurring early withdrawal penalties.

4. The effort and sacrifices of time and leisure necessary for the obligor to continue to provide such alimony and consideration of the presumption that the obligor has a right to retire when attaining full retirement age as per the Social Security Administration.

5. The age and health of the obligor.

6. The terms of the marital settlement agreement between the parties which govern modification of alimony.

(d) If the court does not make any of the findings specified in paragraph (b), the alimony award amount shall decrease by 25 percent on the date the obligor reaches 65 years of age or 1 year after the date on which the notice of retirement and intent to terminate alimony is filed, whichever occurs later, and shall continue to decrease by 25 percent each year thereafter until the date the obligor reaches 68 years of age or 4 years after the date on which the notice is filed, whichever occurs later, at which time alimony shall terminate.

(e) Notwithstanding paragraphs (a)-(d), if the obligor continues to work beyond full retirement age as determined by

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the United States Social Security Administration or beyond the reasonable retirement age for his or her profession or line of work as determined in paragraph (f), whichever occurs earlier, and earns active gross income of more than 50 percent of the obligor's average preretirement annual active gross income for the 3 years preceding his or her retirement age, actual retirement date, or reasonable retirement age, as applicable, the court may extend alimony until the obligor retires and reduces his or her active gross income below the 50 percent active gross income threshold established under this paragraph.

(f) If an obligor, so long as he or she is older than 65 years of age, seeks to retire at an age that is

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Between lines 61 and 62

insert:

s. 61.13, F.S.; creating a presumption that equal time-sharing is in the best interest of the child, with exceptions; creating a presumption for purposes of modifying a parenting plan or time-sharing schedule; amending