

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/HB 1409 Dissolution of Marriage  
**SPONSOR(S):** Civil Justice Subcommittee, Temple and others  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 1416

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**FINAL HOUSE FLOOR ACTION:** 102 Y's 12 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/HB 1409 passed the House on May 2, 2023, as CS/SB 1416.

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 law 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.

In every case for modifying a parenting plan, including a time-sharing schedule, the best interest of the child at issue should be the primary consideration. Pursuant to s. 61.13(2)(c), F.S., a court may only modify a parenting plan and time-sharing schedule after a substantial, material, and unanticipated change in circumstances has been established.

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 increases the current presumptions relating to the length of a marriage and clarifies which types of alimony are available depending on the length of the marriage in question. The bill also amends s. 61.14, F.S., to modify the process by which an award of alimony, support, or maintenance may be reduced or terminated, especially with respect to situations where there is a supportive relationship or where the obligor has reached or is soon to reach retirement age.

The bill removes the requirement that the alleged substantial and material change in circumstances which warrants modification must also be unanticipated. The bill also clarifies that a parent's relocation to be closer to his or her child, under certain circumstances, is a substantial and material change in circumstances for the purpose of modifying the time-sharing schedule and parenting plan.

The changes made by the bill to s. 61.08, F.S., relating to alimony, are only applicable to initial petitions for dissolution of marriage or petitions for support unconnected to dissolution of marriage filed or pending as of July 1, 2023. 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 bill was approved by the Governor on June 30, 2023, ch. 2023-315, L.O.F., and became effective on July 1, 2023.

## 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 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 generally 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> Permanent alimony is based upon maintaining the needs and necessities of life for a former spouse as he or she was accustomed to and was established during the marriage.<sup>29</sup> However, such award 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 below:

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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/ Termination	Automatic Termination
<b>Temporary (Pendente-Lite)</b> 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> 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> 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> 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> 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 changes the current presumptions relating to the duration of a marriage. The bill specifies that a:

- Short-term marriage is a marriage of less than 10 years (previously less than 7).
- Moderate-term marriage is a marriage of 10 years or more but less than 20 years (previously 7-17 years).
- Long-term marriage is a marriage of 20 years or more (previously 17 or more).

### *Types of Alimony*

<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 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.

The bill eliminates a court's 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, including lump sum payments, to provide greater economic assistance to allow the obligee to achieve self-support.

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.

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 not appropriate. However, a court may extend durational alimony past the outlined limits under exceptional circumstances upon a finding of clear and convincing evidence that the extension is necessary after reviewing the circumstances and specifically considering the extent to which the:

- Obligee's age and employability limit his or her ability for self-support, either in whole or in part.
- Obligee's available financial resources limit his or her ability for self-support, in whole or in part
- Obligee is mentally or physically disabled or has been diagnosed with a mental or physical condition that has rendered, or will render, him or her incapable of self-support, either in whole or in part.
- The obligee is a caregiver to a mentally or physically disabled child, whether or not the child has reached the age of majority, who is common to the parties. Any extension granted under this factor will terminate when the child no longer requires the caregiving from the obligee or when the child dies.

The bill provides that the amount of a durational alimony award shall be the obligee or recipient spouse's reasonable need, or no more than 35% of the difference between the parties' net incomes, whichever is less. A party's net income is calculated pursuant to s. 61.30(2) and (3), F.S., excluding spousal support paid pursuant to a court order in the action between the parties.

#### *Life Insurance*

The bill 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. The court must make specific findings that there are special circumstances which warrant insuring the support award with a life insurance policy or bond. If the court orders a party to obtain life insurance or a bond, the court may apportion the costs of such to either or both parties based upon a determination of the ability of the obligor and obligee to pay those costs.

## **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>37 38</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>39</sup> and an alimony award that is over 50 percent of the obligor spouse's income is considered too high.<sup>40</sup>
- The duration of the marriage.<sup>41</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.
- 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>42</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>43</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. 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>44</sup>

### Effect of the Bill

#### *Alimony Factors*

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<sup>37</sup> S. 61.08(2), F.S.

<sup>38</sup> The Florida statutes do not specifically provide factors to be considered in determining a party's need or ability to pay alimony. The Court in *Canakar* 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.

<sup>39</sup> *Rashotsky v. Rashotsky*, 782 So. 2d 542 (Fla. 3d DCA 2001).

<sup>40</sup> *O'Conner v. O'Conner*, 782 So. 2d 502 (Fla. 2d DCA 2001).

<sup>41</sup> See s. 61.08(4), F.S.

<sup>42</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>43</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>44</sup> *Engbreetsen v. Engbreetsen*, 11 So. 2d 322 (Fla. 1942).

The bill amends the current factors a court must rely upon when ordering an award of alimony. Under the bill, must consider all relevant factors, including, but not limited to:

- The standard of living established during the marriage and the anticipated needs and necessities of life for each party after the entry of the final judgment.
- The duration of the marriage.
- The age, physical, mental, and emotional condition of each party, including:
  - Whether either party is physically or mentally disabled;
  - The resulting impact of such disability on either the obligee's ability to provide for his or her own needs or the obligor's ability to pay alimony; and
  - Whether the disability or conditions are expected to be temporary or permanent.
- The resources and income of each party, including the income generated from both marital and nonmarital assets.
- The earning capacities, educational levels, vocational skills, and employability of the parties, including:
  - The ability of either party to obtain the necessary skills or education to become self-supporting, or
  - The ability of either party to contribute to his or her self-support prior to the termination of the support award.
- The contribution of each party to the marriage, including, but not limited to, homemaking, child care, education, and career building of the other party.
- The responsibilities each party will have with regard to any minor children they share in common.
  - Under this factor, a court should give special consideration to the need to care for a child with a mental or physical disability.

Additionally, a court may consider any other factor necessary for equity and justice between the parties. Such additional considerations or factors must be specifically identified in the written findings of fact. Any other factor may also encompass a finding of a supportive relationship or a reasonable retirement. The bill removes the tax treatment and consequences to both parties of any alimony award and sources of income available through investments from the current statutory list of factors.

#### *Adultery*

Under the bill, the court may consider the adultery of either spouse and any subsequent economic impact in determining whether to award alimony and the amount of such alimony.

#### *Supportive Relationship*

Under the bill, the court must reduce or terminate an award of support, alimony, or maintenance, upon written findings that a supportive relationship has existed with another person (not related by blood or marriage). 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 has existed in the 365 days prior to the filing of the petition for dissolution of marriage or the supplemental petition for modification.

If the obligor proves the existence of a supportive relationship by a preponderance of the evidence, the burden shifts to the party seeking alimony (obligee/recipient) to prove, by a preponderance of the evidence, that the court should not deny or reduce an initial award or a modification of an award of alimony.

The court must make written findings of fact in making its determination and shall consider all of the relevant factors under s. 61.08(3), F.S. The court must also consider:

- The extent to which the obligee and the other person have held themselves out as a couple.
- The period of time that the obligee has resided with the other person.



- The extent to which the members of the couple have pooled their assets or income, acquired or maintained a joint bank account or other financial accounts, or otherwise exhibited financial interdependence.
- The extent to which the party seeking alimony or the other person has financially or supported the other, in whole or in part, including payment of the other party's debts, expenses, or liabilities.
- The extent to which the party seeking alimony or the other person performed valuable services for the other's business or employer.
- The extent to which the party seeking alimony and the other person have worked together to acquire assets or to enhance the value of any assets.
- The extent to which the obligee and the other person have jointly contributed to the purchase of any real or personal property.
- The extent to which the obligee and the other person have an express or implied agreement regarding property sharing or financial support.
- The extent to which the obligor has paid the existing alimony award or failed to do so and the existence and amount of any arrearage.
- The extent to which the obligee and the other person have provided support to the children or other family members of one another, regardless of any legal duty to do so.

## **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>45</sup>

- Was not contemplated at the time the final judgment of DOM was issued;<sup>46</sup> and
- Is sufficient, material, involuntary, and permanent in nature.<sup>47</sup>

### *Retirement*

The impact of retirement on alimony obligations is not specifically addressed in statute. Rather, 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

Under the bill, the court must reduce or terminate an existing award of alimony upon specific written findings that a supportive relationship exists or existed between the recipient party and another person unrelated by blood or marriage.

### *Retirement*

Under the bill, the court may reduce or terminate an award of alimony upon specific written findings of fact that the obligor has reached normal retirement age as defined by the U.S. Social Security Administration (SSA), or the customary retirement age for his or her specific profession and that the obligor has taken measurable efforts to retire or has actually retired. The burden is on the obligor to prove, by a preponderance of the evidence, that such retirement reduces his or her ability to pay alimony and support. If the court determines that the obligor's retirement will actually reduce or has

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<sup>45</sup> S. 61.14(1), F.S.

<sup>46</sup> *Chastain v. Chastain*, 73 So. 2d 66 (Fla. 1954).

<sup>47</sup> *Dykes v. Dykes*, 712 So. 2d 453 (Fla. 1st DCA 1998); *Hanskat v. Hanskat*, 716 So. 2d 347 (Fla. 1st DCA 1998).

reduced his or her ability to pay, the burden then shifts to the obligee to prove, by a preponderance of the evidence, that the support should not be reduced or terminated.

In determining that a support award should be reduced or terminated due to the obligor's voluntary retirement, the court must consider:

- The age and health of the obligor.
- The nature and type of work performed by the obligor.
- The customary age of retirement in the obligor's profession.
- The obligor's motivation for retirement and likelihood of returning to work.
- The needs of the obligee and the ability of the obligee to contribute to his or her own basic needs.
- The economic impact that such termination or reduction in support would have on the obligee.
- All assets of the obligee and the obligor that were accumulated prior to the marriage, during the marriage, or after the dissolution.
- The obligor and obligee's respectful roles in the wasteful depletion of any marital assets received at the time of the final judgment.
- The income of the obligee and the obligor earned during or after the marriage.
- The social security benefits, retirement plan benefits, or pension benefits payable to the obligor and the obligee following the final judgment of dissolution.
- The obligor's compliance with the existing alimony obligation.

The court must make specific written findings of fact related to these considerations.

In anticipation of retirement, an obligor may file a petition for modification of his or her support, maintenance, or alimony obligation, no more than 6 months before the anticipated retirement date, to be effective on his or her retirement. The court must consider and make written findings of fact regarding the enumerated factors for consideration in modifying an existing support award.

## **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>48</sup> and time-sharing<sup>49</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>50</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.

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<sup>48</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>49</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>50</sup> S. 61.13(2)(c)1., F.S.

Under current law, 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>51</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:
  - 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.

### *Parenting Plan*

A court may prescribe a "parenting plan"<sup>52</sup> by which the parents are ordered to share decision-making and physical custody of the minor child. The parenting plan may order parents to exercise shared parental responsibility, it may delegate decision-making authority over specific matters to one parent, or it may grant a parent sole parental responsibility over the minor child. Common issues concerning a minor child may include education, healthcare, and social or emotional wellbeing.

A parenting plan is a document created to govern the relationship between parents relating to decisions that must be made regarding the minor child at issue.<sup>53</sup> A parenting plan must contain a time-sharing

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<sup>51</sup> S. 61.13(2)(c), F.S.

<sup>52</sup> A "parenting plan" is a document created to govern the relationship between the parents relating to decisions which must be made regarding the child and must contain a time-sharing schedule for the parents and child. S. 61.046(14), F.S. If a parenting plan is agreed to by the parties, it must be approved by the court.

<sup>53</sup> S. 61.046(14), F.S.

schedule for the parents and the child.<sup>54</sup> The parenting plan should attempt to address all issues concerning the minor child, including, but not limited to, the child's education, health care, and physical, social, and emotional well-being.<sup>55</sup> In creating the parenting plan, the court must consider all circumstances between the parents, including their historic relationship, domestic violence, and other factors.<sup>56</sup> A parenting plan is either created and agreed to by both parents and approved by the court, or is established by the court if the parents cannot agree to a plan or the parents agree to a plan that is not approved by the court.<sup>57</sup> A parenting plan may be utilized in cases involving minor children unrelated to a dissolution of marriage or in connection to a dissolution of marriage.

Pursuant to s. 61.13(2)(b), F.S., a parenting plan approved by the court must, at a minimum:

- Describe in adequate detail how the parents will share and be responsible for the daily tasks associated with raising the minor child;
- Include the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent;
- Designate which parent will be responsible for healthcare, school-related matters, and other activities; and
- Describe in adequate detail the methods and technologies the parents will use to communicate with the child.<sup>58</sup>

Given the potential for heated disputes in matters involving a minor child, it is imperative that the parenting plan be as detailed as possible to eliminate ambiguity surrounding each parent's responsibilities and specific time-sharing with the minor child. This generally includes a detailed description of the various holidays and with which parent the child will spend each holiday,<sup>59</sup> the location of the exchange from one parent's timesharing to the other parent's timesharing, who is responsible for the child's travel expenses, the times during which one parent will ensure the minor child is available to communicate with the other parent, the delegation of specific decision-making topics, and more.<sup>60</sup>

To assist parties with creating a parenting plan that meets the requirements under s. 61.13, F.S., the Florida Supreme Court has published a standardized parenting plan form, Form 12.995(a).<sup>61</sup> The form attempts to cover all possible aspects of an acceptable parenting plan including which parent can enroll the child in extra-curricular activities, the specific meaning of academic breaks and holidays, the process by which a parent should request a temporary schedule change, the specific days the child should be with each parent, and the specific time the exchange should occur.

#### *Modification of Time-sharing or a Parenting Plan*

In every case for modifying a parenting plan, including a time-sharing schedule, the best interest of the child should be the primary consideration.<sup>62</sup> Pursuant to s. 61.13(2)(c), F.S., a court has may only modify a parenting plan and time-sharing schedule after a substantial, material, and unanticipated change in circumstances has been established. The requirement for a substantial change in circumstances promotes the finality of the judicial determination of custody and reflects the general

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<sup>54</sup> *Id.*

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<sup>58</sup> S. 61.13(2)(b), F.S.

<sup>59</sup> See *Mills v. Johnson*, 147 So. 3d 1023 (Fla. 2d DCA 2014) (trial court erred by adopting a time-sharing schedule that did not address holiday timesharing given the historically contentious parenting relationship between the parties).

<sup>60</sup> See generally *Magdziak v. Sullivan*, 185 So. 3d 1291 (Fla. 5th DCA 2016); see also *Scudder v. Scudder*, 296 So. 3d 426 (Fla. 4th DCA 2020).

<sup>61</sup> Florida Supreme Court Approved Family Law Form 12.995(a), Parenting Plan (Feb. 2018), [https://www.flcourts.gov/content/download/686031/file\\_pdf/995a.pdf](https://www.flcourts.gov/content/download/686031/file_pdf/995a.pdf) (last visited May 4, 2023).

<sup>62</sup> S. 61.13(3), F.S. The best interest of the child shall be determined by evaluating all of the factors affecting the welfare and interests of the child and the circumstances of the family provided under s. 61.13, F.S.

belief that stability is good for children.<sup>63</sup> As such, in order to modify time-sharing (commonly referred to as custody) of a minor child, the court must find that:

- Circumstances have substantially and materially changed since the original custody determination;
- The change was not reasonably contemplated by the parties; and
- The child's best interests justify changing custody.<sup>64</sup>

Although the welfare and best interests of the child are of paramount concern, the final order delineating parental responsibility is "res judicata."<sup>65</sup> <sup>66</sup> The concept of res judicata promotes the finality of the judicial determination which, in turn, infers a presumption in favor of the reasonableness of the original decree.<sup>67</sup>

Demonstrating that there has been a substantial change in circumstances places an extraordinary burden on the party seeking to modify a time-sharing schedule or child custody order, by design.<sup>68</sup> The high burden is intended to preclude parties from continually disrupting the lives of children by initiating repeated custody disputes.<sup>69</sup> However, the substantial change test should not serve to prohibit legitimate review in the best interests of the child where there have been significant changes affecting the well-being of the child, especially when the change of circumstances has occurred over a substantial period of time.<sup>70</sup>

As such, a court is unlikely to lightly consider the potential modification of a time-sharing arrangement. It is the court's responsibility to look at the situation as a whole in a light that is most favorable to the well-being of the child at issue, including considerations for stability.

There is no current presumption in favor of or against a request to relocate with a child when the relocation will materially affect the current time-sharing and contact with the other parent entitled to time-sharing.<sup>71</sup> In making a determination regarding a temporary or permanent relocation, a court must consider:

- The nature, quality, extent of involvement, and duration of the child's relationship with the parent or other person proposing to relocate with the child and with the nonrelocating parent, other persons, siblings, half-siblings, and other significant persons in the child's life;
- The age and developmental stage of the child, the needs of the child, and the likely impact the relocation will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child;
- The feasibility of preserving the relationship between the nonrelocating parent or other person and the child through substitute arrangements that take into consideration the logistics of contact, access, and time-sharing, as well as the financial circumstances of the parties; whether those factors are sufficient to foster a continuing meaningful relationship between the child and the nonrelocating parent or other person; and the likelihood of compliance with the substitute arrangements by the relocating parent or other person once he or she is out of the jurisdiction of the court;
- The child's preference, taking into consideration the age and maturity of the child;
- Whether the relocation will enhance the general quality of life for both the parent or other person seeking the relocation and the child, including, but not limited to, financial or emotional benefits or educational opportunities;

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<sup>63</sup> Sanchez v. Hernandez, 45 So. 3d 57 (Fla. 4th DCA 2010).

<sup>64</sup> 25A Fla. Jur. 2d Family Law s. 961.

<sup>65</sup> Wade v. Hirschman, 903 So. 2d 928 (Fla. 2005).

<sup>66</sup> Res judicata is a term used to describe an issue that has already been adjudicated. Black's Law Dictionary 1336 (8th ed. 2004). Res judicata bars a party from further pursuing a claim that has already been decided or from re-litigating a decision that has already been reached.

<sup>67</sup> Wade, 903 So. 2d at 934.

<sup>68</sup> Reed v. Reed, 182 So. 3d 837 (Fla. 4th DCA 2016); see generally Wade, 903 So. 2d 928.

<sup>69</sup> Sanchez v. Hernandez, 45 So. 3d 57, 62 (Fla. 4th DCA 2010).

<sup>70</sup> 25A Fla. Jur. 2d Family Law s. 961 citing Reed, 182 So. 3d 837.

<sup>71</sup> S. 61.13001(7), F.S.

- The reasons each parent or other person is seeking or opposing the relocation;
- The current employment and economic circumstances of each parent or other person and whether the proposed relocation is necessary to improve the economic circumstances of the parent or other person seeking relocation of the child;
- Whether the relocation is sought in good faith and the extent to which the objecting parent has fulfilled his or her financial obligations to the parent or other person seeking relocation, including child support, spousal support, and marital property and marital debt obligations;
- The career and other opportunities available to the objecting parent or other person if the relocation occurs;
- A history of substance abuse or domestic violence as defined in s. 741.28 or which meets the criteria of s. 39.806(1)(d) by either parent, including a consideration of the severity of such conduct and the failure or success of any attempts at rehabilitation; and
- Any other factor affecting the best interest of the child or as set forth in s. 61.13.<sup>72</sup>

Relocation alone is not a substantial change in circumstances sufficient to warrant such modification of a parenting plan or time-sharing schedule.<sup>73</sup> The party seeking to modify time-sharing must still overcome the substantial change test before a court may address the requested modification. In custody disputes involving the relocation of a parent, courts generally conclude that the relocation does not amount to a substantial change if the relocation is not a significant distance away from the child's current location.<sup>7475</sup>

As such, a parent's relocation alone is not sufficient to trigger a modification of time-sharing and custody under current law.

### Effect of the Bill

The bill removes the requirement that a party who demonstrates the alleged substantial and material change in circumstances which warrants modification must also demonstrate that the change be unanticipated.

Under the bill, if the parents of a child live more than 50 miles apart when the last order establishing time-sharing is entered and a parent subsequently moves within 50 miles of the other parent, then that move may be considered a substantial and material change in circumstances for the purpose of modifying the time-sharing schedule. The move does not need to be unanticipated to warrant a modification of the time-sharing schedule. However, modification of the time-sharing schedule may not be permitted if the modification is not in the best interests of the child upon an analysis of the statutorily provided best interest factors.

### **Application of the Bill**

The provisions of the bill amending s. 61.08, F.S., apply to all initial petitions for dissolution of marriage or petitions for support unconnected with a dissolution of marriage pending or filed on or after July 1, 2023.

The bill amends s. 741.0306, F.S., to remove a reference to permanent alimony and to include a reference to durational alimony in the Florida Family Law Handbook.

The bill was approved by the Governor on June 30, 2023, ch. 2023-315, L.O.F., and became effective on July 1, 2023.

<sup>72</sup> S. 61.13001(7)(a)-(k), F.S.

<sup>73</sup> *Ragle v. Ragle*, 82 So. 3d 109 (Fla. 1st DCA 2011); see also *Ness v. Martinez*, 249 So. 3d 754 (Fla 1st DCA 2018).

<sup>74</sup> 25A Fla. Jur. 2d Family Law s. 963, citing *D.M.J. v. A.J.T.*, 190 So. 3d 1129 (Fla. 2d DCA 2016).

<sup>75</sup> See *Villalba v. Villalba*, 316 So. 3d 366 (Fla. 4th DCA 2021) (father changing his living situation from living with his parents with no extra bedroom for children at the time of the final judgment, but subsequently moving to a location with an extra bedroom for children, did not constitute a substantial, material, and unanticipated change in circumstances justifying a modification of child custody).

## 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:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates the ability to order permanent alimony and provides a pathway to modification of an alimony award due to the existence of a supportive relationship or due to the obligor's retirement.

### D. FISCAL COMMENTS:

None.