



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

HB5613

by Rep. Thaddeus Jones

SYNOPSIS AS INTRODUCED:

750 ILCS 5/502	from Ch. 40, par. 502
750 ILCS 5/504	from Ch. 40, par. 504
750 ILCS 5/510	from Ch. 40, par. 510

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that any agreement or provision of an agreement regarding the disposition of maintenance in which the obligor is the petitioner in an order of protection under the Illinois Domestic Violence Act of 1986 and the obligee is the respondent in the order of protection is unconscionable. Provides that a court shall not grant a maintenance award to a spouse if the intended obligor spouse has been granted an order of protection under the Illinois Domestic Violence Act of 1986 against the intended obligee spouse. Provides that an order for maintenance shall be terminated if the obligor spouse is granted an order of protection under the Domestic Violence Act of 1986 against the obligee spouse. Makes corresponding changes.

LRB101 20010 LNS 69539 b

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Marriage and Dissolution of
5 Marriage Act is amended by changing Sections 502, 504, and 510
6 as follows:

7 (750 ILCS 5/502) (from Ch. 40, par. 502)

8 Sec. 502. Agreement.

9 (a) To promote amicable settlement of disputes between
10 parties to a marriage attendant upon the dissolution of their
11 marriage, the parties may enter into an agreement containing
12 provisions for disposition of any property owned by either of
13 them, maintenance of either of them, support, parental
14 responsibility allocation of their children, and support of
15 their children as provided in Sections 513 and 513.5 after the
16 children attain majority. The parties may also enter into an
17 agreement allocating the sole or joint ownership of or
18 responsibility for a companion animal. As used in this Section,
19 "companion animal" does not include a service animal as defined
20 in Section 2.01c of the Humane Care for Animals Act. Any
21 agreement pursuant to this Section must be in writing, except
22 for good cause shown with the approval of the court, before
23 proceeding to an oral prove up.

1 (b) The terms of the agreement, except those providing for
2 the support and parental responsibility allocation of
3 children, are binding upon the court unless it finds, after
4 considering the economic circumstances of the parties and any
5 other relevant evidence produced by the parties, on their own
6 motion or on request of the court, that the agreement is
7 unconscionable. Any agreement or provision of an agreement
8 regarding the disposition of maintenance in which the obligor
9 is the petitioner in an order of protection under the Illinois
10 Domestic Violence Act of 1986 and the obligee is the respondent
11 in the order of protection is unconscionable. The terms of the
12 agreement incorporated into the judgment are binding if there
13 is any conflict between the terms of the agreement and any
14 testimony made at an uncontested prove-up hearing on the
15 grounds or the substance of the agreement.

16 (c) If the court finds the agreement unconscionable, it may
17 request the parties to submit a revised agreement or upon
18 hearing, may make orders for the disposition of property,
19 maintenance, child support and other matters. If the agreement
20 is unconscionable under subsection (b) due to an order of
21 protection under the Illinois Domestic Violence Act of 1986,
22 the court shall require the parties to submit a revised
23 agreement, as it relates to the disposition of maintenance, or
24 upon hearing, shall deny any order or provision of an order for
25 the disposition of maintenance.

26 (d) Unless the agreement provides to the contrary, its

1 terms shall be set forth in the judgment, and the parties shall
2 be ordered to perform under such terms, or if the agreement
3 provides that its terms shall not be set forth in the judgment,
4 the judgment shall identify the agreement and state that the
5 court has approved its terms.

6 (e) Terms of the agreement set forth in the judgment are
7 enforceable by all remedies available for enforcement of a
8 judgment, including contempt, and are enforceable as contract
9 terms.

10 (f) Child support, support of children as provided in
11 Sections 513 and 513.5 after the children attain majority, and
12 parental responsibility allocation of children may be modified
13 upon a showing of a substantial change in circumstances. The
14 parties may provide that maintenance is non-modifiable in
15 amount, duration, or both. If the parties do not provide that
16 maintenance is non-modifiable in amount, duration, or both,
17 then those terms are modifiable upon a substantial change of
18 circumstances. Property provisions of an agreement are never
19 modifiable. The judgment may expressly preclude or limit
20 modification of other terms set forth in the judgment if the
21 agreement so provides. Otherwise, terms of an agreement set
22 forth in the judgment are automatically modified by
23 modification of the judgment.

24 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17; 100-422,
25 eff. 1-1-18.)

1 (750 ILCS 5/504) (from Ch. 40, par. 504)

2 Sec. 504. Maintenance.

3 (a) Entitlement to maintenance. In a proceeding for
4 dissolution of marriage, legal separation, declaration of
5 invalidity of marriage, or dissolution of a civil union, a
6 proceeding for maintenance following a legal separation or
7 dissolution of the marriage or civil union by a court which
8 lacked personal jurisdiction over the absent spouse, a
9 proceeding for modification of a previous order for maintenance
10 under Section 510 of this Act, or any proceeding authorized
11 under Section 501 of this Act, the court may grant a
12 maintenance award for either spouse in amounts and for periods
13 of time as the court deems just, without regard to marital
14 misconduct unless the marital misconduct involves an order of
15 protection under the Illinois Domestic Violence Act of 1986,
16 and the maintenance may be paid from the income or property of
17 the other spouse. The court shall first make a finding as to
18 whether a maintenance award is appropriate, after
19 consideration of all relevant factors, including:

20 (1) the income and property of each party, including
21 marital property apportioned and non-marital property
22 assigned to the party seeking maintenance as well as all
23 financial obligations imposed on the parties as a result of
24 the dissolution of marriage;

25 (2) the needs of each party;

26 (3) the realistic present and future earning capacity

1 of each party;

2 (4) any impairment of the present and future earning
3 capacity of the party seeking maintenance due to that party
4 devoting time to domestic duties or having forgone or
5 delayed education, training, employment, or career
6 opportunities due to the marriage;

7 (5) any impairment of the realistic present or future
8 earning capacity of the party against whom maintenance is
9 sought;

10 (6) the time necessary to enable the party seeking
11 maintenance to acquire appropriate education, training,
12 and employment, and whether that party is able to support
13 himself or herself through appropriate employment;

14 (6.1) the effect of any parental responsibility
15 arrangements and its effect on a party's ability to seek or
16 maintain employment;

17 (7) the standard of living established during the
18 marriage;

19 (8) the duration of the marriage;

20 (9) the age, health, station, occupation, amount and
21 sources of income, vocational skills, employability,
22 estate, liabilities, and the needs of each of the parties;

23 (10) all sources of public and private income
24 including, without limitation, disability and retirement
25 income;

26 (11) the tax consequences to each party;

1 (12) contributions and services by the party seeking
2 maintenance to the education, training, career or career
3 potential, or license of the other spouse;

4 (13) any valid agreement of the parties; and

5 (14) any other factor that the court expressly finds to
6 be just and equitable.

7 A court shall not grant a maintenance award to a spouse if
8 the intended obligor spouse has been granted an order of
9 protection under the Illinois Domestic Violence Act of 1986
10 against the intended obligee spouse.

11 (b) (Blank).

12 (b-1) Amount and duration of maintenance. Unless the court
13 finds that a maintenance award is appropriate, it shall bar
14 maintenance as to the party seeking maintenance regardless of
15 the length of the marriage at the time the action was
16 commenced. Only if the court finds that a maintenance award is
17 appropriate, the court shall order guideline maintenance in
18 accordance with paragraph (1) or non-guideline maintenance in
19 accordance with paragraph (2) of this subsection (b-1). If the
20 application of guideline maintenance results in a combined
21 maintenance and child support obligation that exceeds 50% of
22 the payor's net income, the court may determine non-guideline
23 maintenance in accordance with paragraph (2) of this subsection
24 (b-1), non-guideline child support in accordance with
25 paragraph (3.4) of subsection (a) of Section 505, or both.

26 (1) Maintenance award in accordance with guidelines.

1 If the combined gross annual income of the parties is less
2 than \$500,000 and the payor has no obligation to pay child
3 support or maintenance or both from a prior relationship,
4 maintenance payable after the date the parties' marriage is
5 dissolved shall be in accordance with subparagraphs (A) and
6 (B) of this paragraph (1), unless the court makes a finding
7 that the application of the guidelines would be
8 inappropriate.

9 (A) The amount of maintenance under this paragraph
10 (1) shall be calculated by taking 33 1/3% of the
11 payor's net annual income minus 25% of the payee's net
12 annual income. The amount calculated as maintenance,
13 however, when added to the net income of the payee,
14 shall not result in the payee receiving an amount that
15 is in excess of 40% of the combined net income of the
16 parties.

17 (A-1) Modification of maintenance orders entered
18 before January 1, 2019 that are and continue to be
19 eligible for inclusion in the gross income of the payee
20 for federal income tax purposes and deductible by the
21 payor shall be calculated by taking 30% of the payor's
22 gross annual income minus 20% of the payee's gross
23 annual income, unless both parties expressly provide
24 otherwise in the modification order. The amount
25 calculated as maintenance, however, when added to the
26 gross income of the payee, may not result in the payee

1 receiving an amount that is in excess of 40% of the
2 combined gross income of the parties.

3 (B) The duration of an award under this paragraph
4 (1) shall be calculated by multiplying the length of
5 the marriage at the time the action was commenced by
6 whichever of the following factors applies: less than 5
7 years (.20); 5 years or more but less than 6 years
8 (.24); 6 years or more but less than 7 years (.28); 7
9 years or more but less than 8 years (.32); 8 years or
10 more but less than 9 years (.36); 9 years or more but
11 less than 10 years (.40); 10 years or more but less
12 than 11 years (.44); 11 years or more but less than 12
13 years (.48); 12 years or more but less than 13 years
14 (.52); 13 years or more but less than 14 years (.56);
15 14 years or more but less than 15 years (.60); 15 years
16 or more but less than 16 years (.64); 16 years or more
17 but less than 17 years (.68); 17 years or more but less
18 than 18 years (.72); 18 years or more but less than 19
19 years (.76); 19 years or more but less than 20 years
20 (.80). For a marriage of 20 or more years, the court,
21 in its discretion, shall order maintenance for a period
22 equal to the length of the marriage or for an
23 indefinite term.

24 (1.5) In the discretion of the court, any term of
25 temporary maintenance paid by court order under Section 501
26 may be a corresponding credit to the duration of

1 maintenance set forth in subparagraph (b-1) (1) (B).

2 (2) Maintenance award not in accordance with
3 guidelines. Any non-guidelines award of maintenance shall
4 be made after the court's consideration of all relevant
5 factors set forth in subsection (a) of this Section.

6 (b-2) Findings. In each case involving the issue of
7 maintenance, the court shall make specific findings of fact, as
8 follows:

9 (1) the court shall state its reasoning for awarding or
10 not awarding maintenance and shall include references to
11 each relevant factor set forth in subsection (a) of this
12 Section;

13 (2) if the court deviates from applicable guidelines
14 under paragraph (1) of subsection (b-1), it shall state in
15 its findings the amount of maintenance (if determinable) or
16 duration that would have been required under the guidelines
17 and the reasoning for any variance from the guidelines; and

18 (3) the court shall state whether the maintenance is
19 fixed-term, indefinite, reviewable, or reserved by the
20 court.

21 (b-3) Gross income. For purposes of this Section, the term
22 "gross income" means all income from all sources, within the
23 scope of that phrase in Section 505 of this Act, except
24 maintenance payments in the pending proceedings shall not be
25 included.

26 (b-3.5) Net income. As used in this Section, "net income"

1 has the meaning provided in Section 505 of this Act, except
2 maintenance payments in the pending proceedings shall not be
3 included.

4 (b-4) Modification of maintenance orders entered before
5 January 1, 2019. For any order for maintenance or unallocated
6 maintenance and child support entered before January 1, 2019
7 that is modified after December 31, 2018, payments thereunder
8 shall continue to retain the same tax treatment for federal
9 income tax purposes unless both parties expressly agree
10 otherwise and the agreement is included in the modification
11 order.

12 (b-4.5) Maintenance designation.

13 (1) Fixed-term maintenance. If a court grants
14 maintenance for a fixed term, the court shall designate the
15 termination of the period during which this maintenance is
16 to be paid. Maintenance is barred after the end of the
17 period during which fixed-term maintenance is to be paid.

18 (2) Indefinite maintenance. If a court grants
19 maintenance for an indefinite term, the court shall not
20 designate a termination date. Indefinite maintenance shall
21 continue until modification or termination under Section
22 510.

23 (3) Reviewable maintenance. If a court grants
24 maintenance for a specific term with a review, the court
25 shall designate the period of the specific term and state
26 that the maintenance is reviewable. Upon review, the court

1 shall make a finding in accordance with subdivision (b-8)
2 of this Section, unless the maintenance is modified or
3 terminated under Section 510.

4 (b-5) Interest on maintenance. Any maintenance obligation
5 including any unallocated maintenance and child support
6 obligation, or any portion of any support obligation, that
7 becomes due and remains unpaid shall accrue simple interest as
8 set forth in Section 505 of this Act.

9 (b-7) Maintenance judgments. Any new or existing
10 maintenance order including any unallocated maintenance and
11 child support order entered by the court under this Section
12 shall be deemed to be a series of judgments against the person
13 obligated to pay support thereunder. Each such judgment to be
14 in the amount of each payment or installment of support and
15 each such judgment to be deemed entered as of the date the
16 corresponding payment or installment becomes due under the
17 terms of the support order, except no judgment shall arise as
18 to any installment coming due after the termination of
19 maintenance as provided by Section 510 of the Illinois Marriage
20 and Dissolution of Marriage Act or the provisions of any order
21 for maintenance. Each such judgment shall have the full force,
22 effect and attributes of any other judgment of this State,
23 including the ability to be enforced. Notwithstanding any other
24 State or local law to the contrary, a lien arises by operation
25 of law against the real and personal property of the obligor
26 for each installment of overdue support owed by the obligor.

1 (b-8) Review of maintenance. Upon review of any previously
2 ordered maintenance award, the court may extend maintenance for
3 further review, extend maintenance for a fixed non-modifiable
4 term, extend maintenance for an indefinite term, or permanently
5 terminate maintenance in accordance with subdivision
6 (b-1) (1) (A) of this Section.

7 (c) Maintenance during an appeal. The court may grant and
8 enforce the payment of maintenance during the pendency of an
9 appeal as the court shall deem reasonable and proper.

10 (d) Maintenance during imprisonment. No maintenance shall
11 accrue during the period in which a party is imprisoned for
12 failure to comply with the court's order for the payment of
13 such maintenance.

14 (e) Fees when maintenance is paid through the clerk. When
15 maintenance is to be paid through the clerk of the court in a
16 county of 500,000 inhabitants or less, the order shall direct
17 the obligor to pay to the clerk, in addition to the maintenance
18 payments, all fees imposed by the county board under paragraph
19 (4) of subsection (bb) of Section 27.1a of the Clerks of Courts
20 Act. When maintenance is to be paid through the clerk of the
21 court in a county of more than 500,000 but less than 3,000,000
22 inhabitants, the order shall direct the obligor to pay to the
23 clerk, in addition to the maintenance payments, all fees
24 imposed by the county board under paragraph (4) of subsection
25 (bb) of Section 27.2 of the Clerks of Courts Act. Unless paid
26 in cash or pursuant to an order for withholding, the payment of

1 the fee shall be by a separate instrument from the support
2 payment and shall be made to the order of the Clerk.

3 (f) Maintenance secured by life insurance. An award ordered
4 by a court upon entry of a dissolution judgment or upon entry
5 of an award of maintenance following a reservation of
6 maintenance in a dissolution judgment may be reasonably
7 secured, in whole or in part, by life insurance on the payor's
8 life on terms as to which the parties agree or, if the parties
9 do not agree, on such terms determined by the court, subject to
10 the following:

11 (1) With respect to existing life insurance, provided
12 the court is apprised through evidence, stipulation, or
13 otherwise as to level of death benefits, premium, and other
14 relevant data and makes findings relative thereto, the
15 court may allocate death benefits, the right to assign
16 death benefits, or the obligation for future premium
17 payments between the parties as it deems just.

18 (2) To the extent the court determines that its award
19 should be secured, in whole or in part, by new life
20 insurance on the payor's life, the court may only order:

21 (i) that the payor cooperate on all appropriate
22 steps for the payee to obtain such new life insurance;
23 and

24 (ii) that the payee, at his or her sole option and
25 expense, may obtain such new life insurance on the
26 payor's life up to a maximum level of death benefit

1 coverage, or descending death benefit coverage, as is
2 set by the court, such level not to exceed a reasonable
3 amount in light of the court's award, with the payee or
4 the payee's designee being the beneficiary of such life
5 insurance.

6 In determining the maximum level of death benefit coverage,
7 the court shall take into account all relevant facts and
8 circumstances, including the impact on access to life
9 insurance by the maintenance payor. If in resolving any
10 issues under paragraph (2) of this subsection (f) a court
11 reviews any submitted or proposed application for new
12 insurance on the life of a maintenance payor, the review
13 shall be in camera.

14 (3) (Blank).

15 (Source: P.A. 99-90, eff. 1-1-16; 99-763, eff. 1-1-17; 100-520,
16 eff. 1-1-18 (see Section 5 of P.A. 100-565 for the effective
17 date of P.A. 100-520); 100-923, eff. 1-1-19.)

18 (750 ILCS 5/510) (from Ch. 40, par. 510)

19 Sec. 510. Modification and termination of provisions for
20 maintenance, support, educational expenses, and property
21 disposition.

22 (a) Except as otherwise provided in paragraph (f) of
23 Section 502 and in subsection (b), clause (3) of Section 505.2,
24 the provisions of any judgment respecting maintenance or
25 support may be modified only as to installments accruing

1 subsequent to due notice by the moving party of the filing of
2 the motion for modification. An order for child support may be
3 modified as follows:

4 (1) upon a showing of a substantial change in
5 circumstances; and

6 (2) without the necessity of showing a substantial
7 change in circumstances, as follows:

8 (A) upon a showing of an inconsistency of at least
9 20%, but no less than \$10 per month, between the amount
10 of the existing order and the amount of child support
11 that results from application of the guidelines
12 specified in Section 505 of this Act unless the
13 inconsistency is due to the fact that the amount of the
14 existing order resulted from a deviation from the
15 guideline amount and there has not been a change in the
16 circumstances that resulted in that deviation; or

17 (B) upon a showing of a need to provide for the
18 health care needs of the child under the order through
19 health insurance or other means. In no event shall the
20 eligibility for or receipt of medical assistance be
21 considered to meet the need to provide for the child's
22 health care needs.

23 The provisions of subparagraph (a) (2) (A) shall apply only
24 in cases in which a party is receiving child support
25 enforcement services from the Department of Healthcare and
26 Family Services under Article X of the Illinois Public Aid

1 Code, and only when at least 36 months have elapsed since the
2 order for child support was entered or last modified.

3 The court may grant a petition for modification that seeks
4 to apply the changes made to subsection (a) of Section 505 by
5 Public Act 99-764 to an order entered before the effective date
6 of Public Act 99-764 only upon a finding of a substantial
7 change in circumstances that warrants application of the
8 changes. The enactment of Public Act 99-764 itself does not
9 constitute a substantial change in circumstances warranting a
10 modification.

11 (a-5) Except as otherwise provided in subsection (a-7), An
12 order for maintenance may be modified or terminated only upon a
13 showing of a substantial change in circumstances. The court may
14 grant a petition for modification that seeks to apply the
15 changes made to Section 504 by this amendatory Act of the 100th
16 General Assembly to an order entered before the effective date
17 of this amendatory Act of the 100th General Assembly only upon
18 a finding of a substantial change in circumstances that
19 warrants application of the changes. The enactment of this
20 amendatory Act of the 100th General Assembly itself does not
21 constitute a substantial change in circumstances warranting a
22 modification. In all such proceedings, as well as in
23 proceedings in which maintenance is being reviewed, the court
24 shall consider the applicable factors set forth in subsection
25 (a) of Section 504 and the following factors:

26 (1) any change in the employment status of either party

1 and whether the change has been made in good faith;

2 (2) the efforts, if any, made by the party receiving
3 maintenance to become self-supporting, and the
4 reasonableness of the efforts where they are appropriate;

5 (3) any impairment of the present and future earning
6 capacity of either party;

7 (4) the tax consequences of the maintenance payments
8 upon the respective economic circumstances of the parties;

9 (5) the duration of the maintenance payments
10 previously paid (and remaining to be paid) relative to the
11 length of the marriage;

12 (6) the property, including retirement benefits,
13 awarded to each party under the judgment of dissolution of
14 marriage, judgment of legal separation, or judgment of
15 declaration of invalidity of marriage and the present
16 status of the property;

17 (7) the increase or decrease in each party's income
18 since the prior judgment or order from which a review,
19 modification, or termination is being sought;

20 (8) the property acquired and currently owned by each
21 party after the entry of the judgment of dissolution of
22 marriage, judgment of legal separation, or judgment of
23 declaration of invalidity of marriage; and

24 (9) any other factor that the court expressly finds to
25 be just and equitable.

26 (a-6) (Blank).

1 (a-7) An order for maintenance shall be terminated if the
2 obligor spouse is granted an order of protection under the
3 Domestic Violence Act of 1986 against the obligee spouse.

4 (b) The provisions as to property disposition may not be
5 revoked or modified, unless the court finds the existence of
6 conditions that justify the reopening of a judgment under the
7 laws of this State.

8 (c) Unless otherwise agreed by the parties in a written
9 agreement set forth in the judgment or otherwise approved by
10 the court, the obligation to pay future maintenance is
11 terminated upon the death of either party, or the remarriage of
12 the party receiving maintenance, or if the party receiving
13 maintenance cohabits with another person on a resident,
14 continuing conjugal basis. An obligor's obligation to pay
15 maintenance or unallocated maintenance terminates by operation
16 of law on the date the obligee remarries or the date the court
17 finds cohabitation began. The obligor is entitled to
18 reimbursement for all maintenance paid from that date forward.
19 Any termination of an obligation for maintenance as a result of
20 the death of the obligor, however, shall be inapplicable to any
21 right of the other party or such other party's designee to
22 receive a death benefit under such insurance on the obligor's
23 life. An obligee must advise the obligor of his or her
24 intention to marry at least 30 days before the remarriage,
25 unless the decision is made within this time period. In that
26 event, he or she must notify the obligor within 72 hours of

1 getting married.

2 (c-5) In an adjudicated case, the court shall make specific
3 factual findings as to the reason for the modification as well
4 as the amount, nature, and duration of the modified maintenance
5 award.

6 (d) Unless otherwise provided in this Act, or as agreed in
7 writing or expressly provided in the judgment, provisions for
8 the support of a child are terminated by emancipation of the
9 child, or if the child has attained the age of 18 and is still
10 attending high school, provisions for the support of the child
11 are terminated upon the date that the child graduates from high
12 school or the date the child attains the age of 19, whichever
13 is earlier, but not by the death of a parent obligated to
14 support or educate the child. An existing obligation to pay for
15 support or educational expenses, or both, is not terminated by
16 the death of a parent. When a parent obligated to pay support
17 or educational expenses, or both, dies, the amount of support
18 or educational expenses, or both, may be enforced, modified,
19 revoked or commuted to a lump sum payment, as equity may
20 require, and that determination may be provided for at the time
21 of the dissolution of the marriage or thereafter.

22 (e) The right to petition for support or educational
23 expenses, or both, under Sections 505, 513, and 513.5 is not
24 extinguished by the death of a parent. Upon a petition filed
25 before or after a parent's death, the court may award sums of
26 money out of the decedent's estate for the child's support or

1 educational expenses, or both, as equity may require. The time
2 within which a claim may be filed against the estate of a
3 decedent under Sections 505 and 513 and subsection (d) and this
4 subsection shall be governed by the provisions of the Probate
5 Act of 1975, as a barrable, noncontingent claim.

6 (f) A petition to modify or terminate child support or the
7 allocation of parental responsibilities, including parenting
8 time, shall not delay any child support enforcement litigation
9 or supplementary proceeding on behalf of the obligee,
10 including, but not limited to, a petition for a rule to show
11 cause, for non-wage garnishment, or for a restraining order.

12 (Source: P.A. 99-90, eff. 1-1-16; 99-764, eff. 7-1-17; 100-15,
13 eff. 7-1-17; 100-201, eff. 8-18-17; 100-923, eff. 1-1-19.)