



## 101ST GENERAL ASSEMBLY

### State of Illinois

2019 and 2020

HB5006

Introduced 2/18/2020, by Rep. William Davis

#### SYNOPSIS AS INTRODUCED:

750 ILCS 5/504

from Ch. 40, par. 504

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that in determining whether a maintenance award is appropriate, the court shall consider any payments made as a lump sum at the time of the dissolution of marriage. Provides that in an award for maintenance, the court shall deduct any payments made as a lump sum at the time of the dissolution of marriage from the calculation of maintenance.

LRB101 18728 LNS 68183 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 Section 504 as follows:

6 (750 ILCS 5/504) (from Ch. 40, par. 504)

7 Sec. 504. Maintenance.

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

23 (1) the income and property of each party, including

1 marital property apportioned and non-marital property  
2 assigned to the party seeking maintenance, ~~as well as~~ all  
3 financial obligations imposed on the parties as a result of  
4 the dissolution of marriage, and any payments made as a  
5 lump sum at the time of the dissolution of marriage;

6 (2) the needs of each party;

7 (3) the realistic present and future earning capacity  
8 of each party;

9 (4) any impairment of the present and future earning  
10 capacity of the party seeking maintenance due to that party  
11 devoting time to domestic duties or having forgone or  
12 delayed education, training, employment, or career  
13 opportunities due to the marriage;

14 (5) any impairment of the realistic present or future  
15 earning capacity of the party against whom maintenance is  
16 sought;

17 (6) the time necessary to enable the party seeking  
18 maintenance to acquire appropriate education, training,  
19 and employment, and whether that party is able to support  
20 himself or herself through appropriate employment;

21 (6.1) the effect of any parental responsibility  
22 arrangements and its effect on a party's ability to seek or  
23 maintain employment;

24 (7) the standard of living established during the  
25 marriage;

26 (8) the duration of the marriage;

1           (9) the age, health, station, occupation, amount and  
2 sources of income, vocational skills, employability,  
3 estate, liabilities, and the needs of each of the parties;

4           (10) all sources of public and private income  
5 including, without limitation, disability and retirement  
6 income;

7           (11) the tax consequences to each party;

8           (12) contributions and services by the party seeking  
9 maintenance to the education, training, career or career  
10 potential, or license of the other spouse;

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

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

14           (b) (Blank).

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

1 (b-1), non-guideline child support in accordance with  
2 paragraph (3.4) of subsection (a) of Section 505, or both.

3 (1) Maintenance award in accordance with guidelines.

4 If the combined gross annual income of the parties is less  
5 than \$500,000 and the payor has no obligation to pay child  
6 support or maintenance or both from a prior relationship,  
7 maintenance payable after the date the parties' marriage is  
8 dissolved shall be in accordance with subparagraphs (A) and  
9 (B) of this paragraph (1), unless the court makes a finding  
10 that the application of the guidelines would be  
11 inappropriate. The court shall deduct any payments made as  
12 a lump sum at the time of the dissolution of marriage from  
13 the calculation of maintenance.

14 (A) The amount of maintenance under this paragraph

15 (1) shall be calculated by taking 33 1/3% of the  
16 payor's net annual income minus 25% of the payee's net  
17 annual income. The amount calculated as maintenance,  
18 however, when added to the net income of the payee,  
19 shall not result in the payee receiving an amount that  
20 is in excess of 40% of the combined net income of the  
21 parties.

22 (A-1) Modification of maintenance orders entered  
23 before January 1, 2019 that are and continue to be  
24 eligible for inclusion in the gross income of the payee  
25 for federal income tax purposes and deductible by the  
26 payor shall be calculated by taking 30% of the payor's

1 gross annual income minus 20% of the payee's gross  
2 annual income, unless both parties expressly provide  
3 otherwise in the modification order. The amount  
4 calculated as maintenance, however, when added to the  
5 gross income of the payee, may not result in the payee  
6 receiving an amount that is in excess of 40% of the  
7 combined gross income of the parties.

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

1 equal to the length of the marriage or for an  
2 indefinite term.

3 (1.5) In the discretion of the court, any term of  
4 temporary maintenance paid by court order under Section 501  
5 may be a corresponding credit to the duration of  
6 maintenance set forth in subparagraph (b-1) (1) (B).

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

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

14 (1) the court shall state its reasoning for awarding or  
15 not awarding maintenance and shall include references to  
16 each relevant factor set forth in subsection (a) of this  
17 Section;

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

23 (3) the court shall state whether the maintenance is  
24 fixed-term, indefinite, reviewable, or reserved by the  
25 court.

26 (b-3) Gross income. For purposes of this Section, the term

1 "gross income" means all income from all sources, within the  
2 scope of that phrase in Section 505 of this Act, except  
3 maintenance payments in the pending proceedings shall not be  
4 included.

5 (b-3.5) Net income. As used in this Section, "net income"  
6 has the meaning provided in Section 505 of this Act, except  
7 maintenance payments in the pending proceedings shall not be  
8 included.

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

17 (b-4.5) Maintenance designation.

18 (1) Fixed-term maintenance. If a court grants  
19 maintenance for a fixed term, the court shall designate the  
20 termination of the period during which this maintenance is  
21 to be paid. Maintenance is barred after the end of the  
22 period during which fixed-term maintenance is to be paid.

23 (2) Indefinite maintenance. If a court grants  
24 maintenance for an indefinite term, the court shall not  
25 designate a termination date. Indefinite maintenance shall  
26 continue until modification or termination under Section



1           510.

2           (3) Reviewable maintenance. If a court grants  
3 maintenance for a specific term with a review, the court  
4 shall designate the period of the specific term and state  
5 that the maintenance is reviewable. Upon review, the court  
6 shall make a finding in accordance with subdivision (b-8)  
7 of this Section, unless the maintenance is modified or  
8 terminated under Section 510.

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

14           (b-7) Maintenance judgments. Any new or existing  
15 maintenance order including any unallocated maintenance and  
16 child support order entered by the court under this Section  
17 shall be deemed to be a series of judgments against the person  
18 obligated to pay support thereunder. Each such judgment to be  
19 in the amount of each payment or installment of support and  
20 each such judgment to be deemed entered as of the date the  
21 corresponding payment or installment becomes due under the  
22 terms of the support order, except no judgment shall arise as  
23 to any installment coming due after the termination of  
24 maintenance as provided by Section 510 of the Illinois Marriage  
25 and Dissolution of Marriage Act or the provisions of any order  
26 for maintenance. Each such judgment shall have the full force,

1 effect and attributes of any other judgment of this State,  
2 including the ability to be enforced. Notwithstanding any other  
3 State or local law to the contrary, a lien arises by operation  
4 of law against the real and personal property of the obligor  
5 for each installment of overdue support owed by the obligor.

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

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

15 (d) Maintenance during imprisonment. No maintenance shall  
16 accrue during the period in which a party is imprisoned for  
17 failure to comply with the court's order for the payment of  
18 such maintenance.

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

1 inhabitants, the order shall direct the obligor to pay to the  
2 clerk, in addition to the maintenance payments, all fees  
3 imposed by the county board under paragraph (4) of subsection  
4 (bb) of Section 27.2 of the Clerks of Courts Act. Unless paid  
5 in cash or pursuant to an order for withholding, the payment of  
6 the fee shall be by a separate instrument from the support  
7 payment and shall be made to the order of the Clerk.

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

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

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

26 (i) that the payor cooperate on all appropriate

1 steps for the payee to obtain such new life insurance;  
2 and

3 (ii) that the payee, at his or her sole option and  
4 expense, may obtain such new life insurance on the  
5 payor's life up to a maximum level of death benefit  
6 coverage, or descending death benefit coverage, as is  
7 set by the court, such level not to exceed a reasonable  
8 amount in light of the court's award, with the payee or  
9 the payee's designee being the beneficiary of such life  
10 insurance.

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

19 (3) (Blank).

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