

SB1137



101ST GENERAL ASSEMBLY

State of Illinois

2019 and 2020

SB1137

Introduced 2/5/2019, by Sen. Neil Anderson

SYNOPSIS AS INTRODUCED:

750 ILCS 5/504

from Ch. 40, par. 504

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that notwithstanding any other provision of law, federal veterans' disability benefits received by a party shall not be considered to be income of that party for purposes of any maintenance determination. Provides that the court may not require that a party use federal veterans' disability benefits to pay maintenance.

LRB101 07765 LNS 52814 b

A BILL FOR

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;

5 (2) the needs of each party;

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

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

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

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

20 (6.1) the effect of any parental responsibility
21 arrangements and its effect on a party's ability to seek or
22 maintain employment;

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

25 (8) the duration of the marriage;

26 (9) the age, health, station, occupation, amount and

1 sources of income, vocational skills, employability,
2 estate, liabilities, and the needs of each of the parties;

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

6 (11) the tax consequences to each party;

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

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

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

13 (b) (Blank).

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

1 paragraph (3.4) of subsection (a) of Section 505, or both.

2 (1) Maintenance award in accordance with guidelines.

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

11 (A) The amount of maintenance under this paragraph

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

19 (A-1) Modification of maintenance orders entered
20 before January 1, 2019 that are and continue to be
21 eligible for inclusion in the gross income of the payee
22 for federal income tax purposes and deductible by the
23 payor shall be calculated by taking 30% of the payor's
24 gross annual income minus 20% of the payee's gross
25 annual income, unless both parties expressly provide
26 otherwise in the modification order. The amount

1 calculated as maintenance, however, when added to the
2 gross income of the payee, may not result in the payee
3 receiving an amount that is in excess of 40% of the
4 combined gross income of the parties.

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

26 (1.5) In the discretion of the court, any term of

1 temporary maintenance paid by court order under Section 501
2 may be a corresponding credit to the duration of
3 maintenance set forth in subparagraph (b-1) (1) (B).

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

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

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

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

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

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

1 included.

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

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

14 (b-4.5) Maintenance designation.

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

20 (2) Indefinite maintenance. If a court grants
21 maintenance for an indefinite term, the court shall not
22 designate a termination date. Indefinite maintenance shall
23 continue until modification or termination under Section
24 510.

25 (3) Reviewable maintenance. If a court grants
26 maintenance for a specific term with a review, the court

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

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

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

1 of law against the real and personal property of the obligor
2 for each installment of overdue support owed by the obligor.

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

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

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

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

1 (bb) of Section 27.2 of the Clerks of Courts Act. Unless paid
2 in cash or pursuant to an order for withholding, the payment of
3 the fee shall be by a separate instrument from the support
4 payment and shall be made to the order of the Clerk.

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

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

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

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

26 (ii) that the payee, at his or her sole option and

1 expense, may obtain such new life insurance on the
2 payor's life up to a maximum level of death benefit
3 coverage, or descending death benefit coverage, as is
4 set by the court, such level not to exceed a reasonable
5 amount in light of the court's award, with the payee or
6 the payee's designee being the beneficiary of such life
7 insurance.

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

16 (3) (Blank).

17 (g) Federal veterans' benefits. Notwithstanding any other
18 provision of law, federal veterans' disability benefits
19 received by a party shall not be considered to be income of
20 that party for purposes of any maintenance determination under
21 this Section. The court may not require that a party use
22 federal veterans' disability benefits to pay maintenance.

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