



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

HB0861

Introduced 2/10/2021, by Rep. Thaddeus Jones

SYNOPSIS AS INTRODUCED:

750 ILCS 5/502
750 ILCS 5/504

from Ch. 40, par. 502
from Ch. 40, par. 504

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that any agreement between parties for the disposition of maintenance is unconscionable if the obligee spouse is the respondent in an order of protection under the Illinois Domestic Violence Act of 1986 and the obligor spouse is the petitioner for the order of protection. Provides that a court shall not grant a maintenance award to a spouse who is the respondent in an order of protection under the Illinois Domestic Violence Act of 1986 if the petitioner is granted an order of protection and is the intended obligor and the respondent is the intended obligee. Makes corresponding changes.

LRB102 12717 LNS 18056 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 and 504 as
6 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
19 Section, "companion animal" does not include a service animal
20 as defined in Section 2.01c of the Humane Care for Animals Act.
21 Any agreement pursuant to this Section must be in writing,
22 except for good cause shown with the approval of the court,
23 before 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 is unconscionable if
9 the obligor is the petitioner for an order of protection under
10 the Illinois Domestic Violence Act of 1986 and the obligee is
11 the respondent to the petition for the order of protection.
12 The terms of the agreement incorporated into the judgment are
13 binding if there is any conflict between the terms of the
14 agreement and any testimony made at an uncontested prove-up
15 hearing on the grounds or the substance of the agreement.

16 (c) If the court finds the agreement unconscionable, it
17 may 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;
25 100-422, 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
10 maintenance under Section 510 of this Act, or any proceeding
11 authorized 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
24 of 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
4 party devoting time to domestic duties or having forgone
5 or 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
16 or 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
6 to be just and equitable.

7 A court shall not grant a maintenance award to a spouse who
8 is the respondent to a petition for an order of protection
9 under the Illinois Domestic Violence Act of 1986 if the
10 petitioner is granted an order of protection and is the
11 intended obligor and the respondent is the intended obligee.

12 (b) (Blank).

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

1 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
7 is dissolved shall be in accordance with subparagraphs (A)
8 and (B) of this paragraph (1), unless the court makes a
9 finding 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
22 payee for federal income tax purposes and deductible
23 by the payor shall be calculated by taking 30% of the
24 payor's gross annual income minus 20% of the payee's
25 gross annual income, unless both parties expressly
26 provide otherwise in the modification order. The

1 amount calculated as maintenance, however, when added
2 to the gross income of the payee, may not result in the
3 payee receiving an amount that is in excess of 40% of
4 the 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
9 5 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
24 period 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
2 501 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,
10 as follows:

11 (1) the court shall state its reasoning for awarding
12 or not awarding maintenance and shall include references
13 to each relevant factor set forth in subsection (a) of
14 this 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)
18 or duration that would have been required under the
19 guidelines and the reasoning for any variance from the
20 guidelines; and

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

24 (b-3) Gross income. For purposes of this Section, the term
25 "gross income" means all income from all sources, within the
26 scope of that phrase in Section 505 of this Act, except

1 maintenance payments in the pending proceedings shall not be
2 included.

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

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

15 (b-4.5) Maintenance designation.

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

22 (2) Indefinite maintenance. If a court grants
23 maintenance for an indefinite term, the court shall not
24 designate a termination date. Indefinite maintenance shall
25 continue until modification or termination under Section
26 510.

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

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

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

1 this State, including the ability to be enforced.
2 Notwithstanding any other State or local law to the contrary,
3 a lien arises by operation of law against the real and personal
4 property of the obligor for each installment of overdue
5 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
8 for further review, extend maintenance for a fixed
9 non-modifiable term, extend maintenance for an indefinite
10 term, or permanently terminate maintenance in accordance with
11 subdivision (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
9 ordered by a court upon entry of a dissolution judgment or upon
10 entry 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
19 other relevant data and makes findings relative thereto,
20 the 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
10 life insurance.

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

19 (3) (Blank).

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