



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB1520

Introduced 2/6/2015, by Rep. Robert W. Pritchard

SYNOPSIS AS INTRODUCED:

750 ILCS 5/503

from Ch. 40, par. 503

Amends the Illinois Marriage and Dissolution of Marriage Act. Provides that in determining the issue of dissipation, the court may consider a party's conviction for domestic battery, aggravated domestic battery, violation of an order of protection, or any forcible felony where the victim was the opposing party in the proceedings.

LRB099 09139 HEP 29336 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 503 as follows:

6 (750 ILCS 5/503) (from Ch. 40, par. 503)

7 Sec. 503. Disposition of property.

8 (a) For purposes of this Act, "marital property" means all
9 property acquired by either spouse subsequent to the marriage,
10 except the following, which is known as "non-marital property":

11 (1) property acquired by gift, legacy or descent;

12 (2) property acquired in exchange for property
13 acquired before the marriage or in exchange for property
14 acquired by gift, legacy or descent;

15 (3) property acquired by a spouse after a judgment of
16 legal separation;

17 (4) property excluded by valid agreement of the
18 parties;

19 (5) any judgment or property obtained by judgment
20 awarded to a spouse from the other spouse;

21 (6) property acquired before the marriage;

22 (7) the increase in value of property acquired by a
23 method listed in paragraphs (1) through (6) of this

1 subsection, irrespective of whether the increase results
2 from a contribution of marital property, non-marital
3 property, the personal effort of a spouse, or otherwise,
4 subject to the right of reimbursement provided in
5 subsection (c) of this Section; and

6 (8) income from property acquired by a method listed in
7 paragraphs (1) through (7) of this subsection if the income
8 is not attributable to the personal effort of a spouse.

9 (b) (1) For purposes of distribution of property pursuant to
10 this Section, all property acquired by either spouse after the
11 marriage and before a judgment of dissolution of marriage or
12 declaration of invalidity of marriage, including non-marital
13 property transferred into some form of co-ownership between the
14 spouses, is presumed to be marital property, regardless of
15 whether title is held individually or by the spouses in some
16 form of co-ownership such as joint tenancy, tenancy in common,
17 tenancy by the entirety, or community property. The presumption
18 of marital property is overcome by a showing that the property
19 was acquired by a method listed in subsection (a) of this
20 Section.

21 (2) For purposes of distribution of property pursuant to
22 this Section, all pension benefits (including pension benefits
23 under the Illinois Pension Code) acquired by either spouse
24 after the marriage and before a judgment of dissolution of
25 marriage or declaration of invalidity of the marriage are
26 presumed to be marital property, regardless of which spouse

1 participates in the pension plan. The presumption that these
2 pension benefits are marital property is overcome by a showing
3 that the pension benefits were acquired by a method listed in
4 subsection (a) of this Section. The right to a division of
5 pension benefits in just proportions under this Section is
6 enforceable under Section 1-119 of the Illinois Pension Code.

7 The value of pension benefits in a retirement system
8 subject to the Illinois Pension Code shall be determined in
9 accordance with the valuation procedures established by the
10 retirement system.

11 The recognition of pension benefits as marital property and
12 the division of those benefits pursuant to a Qualified Illinois
13 Domestic Relations Order shall not be deemed to be a
14 diminishment, alienation, or impairment of those benefits. The
15 division of pension benefits is an allocation of property in
16 which each spouse has a species of common ownership.

17 (3) For purposes of distribution of property under this
18 Section, all stock options granted to either spouse after the
19 marriage and before a judgment of dissolution of marriage or
20 declaration of invalidity of marriage, whether vested or
21 non-vested or whether their value is ascertainable, are
22 presumed to be marital property. This presumption of marital
23 property is overcome by a showing that the stock options were
24 acquired by a method listed in subsection (a) of this Section.
25 The court shall allocate stock options between the parties at
26 the time of the judgment of dissolution of marriage or

1 declaration of invalidity of marriage recognizing that the
2 value of the stock options may not be then determinable and
3 that the actual division of the options may not occur until a
4 future date. In making the allocation between the parties, the
5 court shall consider, in addition to the factors set forth in
6 subsection (d) of this Section, the following:

7 (i) All circumstances underlying the grant of the stock
8 option including but not limited to whether the grant was
9 for past, present, or future efforts, or any combination
10 thereof.

11 (ii) The length of time from the grant of the option to
12 the time the option is exercisable.

13 (b-5) As to any policy of life insurance insuring the life
14 of either spouse, or any interest in such policy, that
15 constitutes marital property, whether whole life, term life,
16 group term life, universal life, or other form of life
17 insurance policy, and whether or not the value is
18 ascertainable, the court shall allocate ownership, death
19 benefits or the right to assign death benefits, and the
20 obligation for premium payments, if any, equitably between the
21 parties at the time of the judgment for dissolution or
22 declaration of invalidity of marriage.

23 (c) Commingled marital and non-marital property shall be
24 treated in the following manner, unless otherwise agreed by the
25 spouses:

26 (1) When marital and non-marital property are

1 commingled by contributing one estate of property into
2 another resulting in a loss of identity of the contributed
3 property, the classification of the contributed property
4 is transmuted to the estate receiving the contribution,
5 subject to the provisions of paragraph (2) of this
6 subsection; provided that if marital and non-marital
7 property are commingled into newly acquired property
8 resulting in a loss of identity of the contributing
9 estates, the commingled property shall be deemed
10 transmuted to marital property, subject to the provisions
11 of paragraph (2) of this subsection.

12 (2) When one estate of property makes a contribution to
13 another estate of property, or when a spouse contributes
14 personal effort to non-marital property, the contributing
15 estate shall be reimbursed from the estate receiving the
16 contribution notwithstanding any transmutation; provided,
17 that no such reimbursement shall be made with respect to a
18 contribution which is not retraceable by clear and
19 convincing evidence, or was a gift, or, in the case of a
20 contribution of personal effort of a spouse to non-marital
21 property, unless the effort is significant and results in
22 substantial appreciation of the non-marital property.
23 Personal effort of a spouse shall be deemed a contribution
24 by the marital estate. The court may provide for
25 reimbursement out of the marital property to be divided or
26 by imposing a lien against the non-marital property which

1 received the contribution.

2 (d) In a proceeding for dissolution of marriage or
3 declaration of invalidity of marriage, or in a proceeding for
4 disposition of property following dissolution of marriage by a
5 court which lacked personal jurisdiction over the absent spouse
6 or lacked jurisdiction to dispose of the property, the court
7 shall assign each spouse's non-marital property to that spouse.
8 It also shall divide the marital property without regard to
9 marital misconduct in just proportions considering all
10 relevant factors, including:

11 (1) the contribution of each party to the acquisition,
12 preservation, or increase or decrease in value of the
13 marital or non-marital property, including (i) any such
14 decrease attributable to a payment deemed to have been an
15 advance from the parties' marital estate under subsection
16 (c-1)(2) of Section 501 and (ii) the contribution of a
17 spouse as a homemaker or to the family unit;

18 (2) the dissipation by each party of the marital or
19 non-marital property, provided that a party's claim of
20 dissipation is subject to the following conditions:

21 (i) a notice of intent to claim dissipation shall
22 be given no later than 60 days before trial or 30 days
23 after discovery closes, whichever is later;

24 (ii) the notice of intent to claim dissipation
25 shall contain, at a minimum, a date or period of time
26 during which the marriage began undergoing an

1 irretrievable breakdown, an identification of the
2 property dissipated, and a date or period of time
3 during which the dissipation occurred;

4 (iii) the notice of intent to claim dissipation
5 shall be filed with the clerk of the court and be
6 served pursuant to applicable rules;

7 (iv) no dissipation shall be deemed to have
8 occurred prior to 5 years before the filing of the
9 petition for dissolution of marriage, or 3 years after
10 the party claiming dissipation knew or should have
11 known of the dissipation;

12 in determining the issue of dissipation, the court may
13 consider a party's conviction for domestic battery under
14 Section 12-3.2 of the Criminal Code of 2012, aggravated
15 domestic battery under Section 12-3.3 of the Criminal Code
16 of 2012, violation of an order of protection under Section
17 12-3.4 of the Criminal Code of 2012, or any forcible
18 felony, as defined in Section 2-8 of the Criminal Code of
19 2012, where the victim in the criminal proceeding was the
20 opposing party in the proceeding for dissolution of
21 marriage or declaration of invalidity of marriage;

22 (3) the value of the property assigned to each spouse;

23 (4) the duration of the marriage;

24 (5) the relevant economic circumstances of each spouse
25 when the division of property is to become effective,
26 including the desirability of awarding the family home, or

1 the right to live therein for reasonable periods, to the
2 spouse having custody of the children;

3 (6) any obligations and rights arising from a prior
4 marriage of either party;

5 (7) any antenuptial agreement of the parties;

6 (8) the age, health, station, occupation, amount and
7 sources of income, vocational skills, employability,
8 estate, liabilities, and needs of each of the parties;

9 (9) the custodial provisions for any children;

10 (10) whether the apportionment is in lieu of or in
11 addition to maintenance;

12 (11) the reasonable opportunity of each spouse for
13 future acquisition of capital assets and income; and

14 (12) the tax consequences of the property division upon
15 the respective economic circumstances of the parties.

16 (e) Each spouse has a species of common ownership in the
17 marital property which vests at the time dissolution
18 proceedings are commenced and continues only during the
19 pendency of the action. Any such interest in marital property
20 shall not encumber that property so as to restrict its
21 transfer, assignment or conveyance by the title holder unless
22 such title holder is specifically enjoined from making such
23 transfer, assignment or conveyance.

24 (f) In a proceeding for dissolution of marriage or
25 declaration of invalidity of marriage or in a proceeding for
26 disposition of property following dissolution of marriage by a

1 court that lacked personal jurisdiction over the absent spouse
2 or lacked jurisdiction to dispose of the property, the court,
3 in determining the value of the marital and non-marital
4 property for purposes of dividing the property, shall value the
5 property as of the date of trial or some other date as close to
6 the date of trial as is practicable.

7 (g) The court if necessary to protect and promote the best
8 interests of the children may set aside a portion of the
9 jointly or separately held estates of the parties in a separate
10 fund or trust for the support, maintenance, education, physical
11 and mental health, and general welfare of any minor, dependent,
12 or incompetent child of the parties. In making a determination
13 under this subsection, the court may consider, among other
14 things, the conviction of a party of any of the offenses set
15 forth in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,
16 12-3.3, 12-4, 12-4.1, 12-4.2, 12-4.3, 12-13, 12-14, 12-14.1,
17 12-15, or 12-16, or Section 12-3.05 except for subdivision
18 (a) (4) or (g) (1), of the Criminal Code of 1961 or the Criminal
19 Code of 2012 if the victim is a child of one or both of the
20 parties, and there is a need for, and cost of, care, healing
21 and counseling for the child who is the victim of the crime.

22 (h) Unless specifically directed by a reviewing court, or
23 upon good cause shown, the court shall not on remand consider
24 any increase or decrease in the value of any "marital" or
25 "non-marital" property occurring since the assessment of such
26 property at the original trial or hearing, but shall use only

1 that assessment made at the original trial or hearing.

2 (i) The court may make such judgments affecting the marital
3 property as may be just and may enforce such judgments by
4 ordering a sale of marital property, with proceeds therefrom to
5 be applied as determined by the court.

6 (j) After proofs have closed in the final hearing on all
7 other issues between the parties (or in conjunction with the
8 final hearing, if all parties so stipulate) and before judgment
9 is entered, a party's petition for contribution to fees and
10 costs incurred in the proceeding shall be heard and decided, in
11 accordance with the following provisions:

12 (1) A petition for contribution, if not filed before
13 the final hearing on other issues between the parties,
14 shall be filed no later than 30 days after the closing of
15 proofs in the final hearing or within such other period as
16 the court orders.

17 (2) Any award of contribution to one party from the
18 other party shall be based on the criteria for division of
19 marital property under this Section 503 and, if maintenance
20 has been awarded, on the criteria for an award of
21 maintenance under Section 504.

22 (3) The filing of a petition for contribution shall not
23 be deemed to constitute a waiver of the attorney-client
24 privilege between the petitioning party and current or
25 former counsel; and such a waiver shall not constitute a
26 prerequisite to a hearing for contribution. If either

1 party's presentation on contribution, however, includes
2 evidence within the scope of the attorney-client
3 privilege, the disclosure or disclosures shall be narrowly
4 construed and shall not be deemed by the court to
5 constitute a general waiver of the privilege as to matters
6 beyond the scope of the presentation.

7 (4) No finding on which a contribution award is based
8 or denied shall be asserted against counsel or former
9 counsel for purposes of any hearing under subsection (c) or
10 (e) of Section 508.

11 (5) A contribution award (payable to either the
12 petitioning party or the party's counsel, or jointly, as
13 the court determines) may be in the form of either a set
14 dollar amount or a percentage of fees and costs (or a
15 portion of fees and costs) to be subsequently agreed upon
16 by the petitioning party and counsel or, alternatively,
17 thereafter determined in a hearing pursuant to subsection
18 (c) of Section 508 or previously or thereafter determined
19 in an independent proceeding under subsection (e) of
20 Section 508.

21 (6) The changes to this Section 503 made by this
22 amendatory Act of 1996 apply to cases pending on or after
23 June 1, 1997, except as otherwise provided in Section 508.

24 (k) The changes made to this Section by Public Act 97-941
25 ~~this amendatory Act of the 97th General Assembly~~ apply only to
26 petitions for dissolution of marriage filed on or after January

1 1, 2013 (the effective date of Public Act 97-941) ~~this~~
2 ~~amendatory Act of the 97th General Assembly.~~

3 (Source: P.A. 96-583, eff. 1-1-10; 96-1551, Article 1, Section
4 985, eff. 7-1-11; 96-1551, Article 2, Section 1100, eff.
5 7-1-11; 97-608, eff. 1-1-12; 97-941, eff. 1-1-13; 97-1109, eff.
6 1-1-13; 97-1150, eff. 1-25-13; revised 12-10-14.)