



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5752

by Rep. David R. Leitch

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 history or pattern of family violence. Deletes language providing that: (i) the amount of maintenance awarded under certain circumstances shall be calculated by taking 30% of the payor's gross income minus 20% of the payee's gross income; and (ii) the amount calculated as maintenance when added to the gross income of the payee may not result in the payee receiving an amount that is in excess of 40% of the combined gross income of the parties. Provides that when there is no child support obligation between the parties, the amount of maintenance shall be calculated by taking 30% of the payor's gross income minus 40% of the payee's gross income. Provides that when there is a child support obligation between the parties, the amount of maintenance shall be calculated by taking 28% of the payor's gross income minus 48% of the payee's gross income.

LRB099 19110 HEP 43499 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 or legal separation or declaration of
10 invalidity of marriage, or a proceeding for maintenance
11 following dissolution of the marriage by a court which lacked
12 personal jurisdiction over the absent spouse, the court may
13 grant a maintenance award for either spouse in amounts and for
14 periods of time as the court deems just, without regard to
15 marital misconduct, and the maintenance may be paid from the
16 income or property of the other spouse. The court shall first
17 determine whether a maintenance award is appropriate, after
18 consideration of all relevant factors, including:

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

1 (2) the needs of each party;

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

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

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

12 (6) the time necessary to enable the party seeking
13 maintenance to acquire appropriate education, training,
14 and employment, and whether that party is able to support
15 himself or herself through appropriate employment or any
16 parental responsibility arrangements and its effect on the
17 party seeking employment;

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

20 (8) the duration of the marriage;

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

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

1 (11) the tax consequences of the property division upon
2 the respective economic circumstances of the parties;

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

6 (12.5) any history or pattern of family violence, as
7 defined by the Illinois Domestic Violence Act of 1986;

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

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

11 (b) (Blank).

12 (b-1) Amount and duration of maintenance. If the court
13 determines that a maintenance award is appropriate, the court
14 shall order maintenance in accordance with either paragraph (1)
15 or (2) of this subsection (b-1):

16 (1) Maintenance award in accordance with guidelines.

17 In situations when the combined gross income of the parties
18 is less than \$250,000 and the payor has no obligation to
19 pay child support or maintenance or both from a prior
20 relationship, maintenance payable after the date the
21 parties' marriage is dissolved shall be in accordance with
22 subparagraphs (A) and (B) of this paragraph (1), unless the
23 court makes a finding that the application of the
24 guidelines would be inappropriate.

25 (A) When there is no child support obligation
26 between the parties, the ~~The~~ amount of maintenance

1 under this paragraph (1) shall be calculated by taking
2 30% of the payor's gross income minus 40% ~~20%~~ of the
3 payee's gross income. ~~The amount calculated as~~
4 ~~maintenance, however, when added to the gross income of~~
5 ~~the payee, may not result in the payee receiving an~~
6 ~~amount that is in excess of 40% of the combined gross~~
7 ~~income of the parties.~~

8 (A-5) When there is a child support obligation
9 between the parties, the amount of maintenance under
10 this paragraph (1) shall be calculated by taking 28% of
11 the payor's gross income minus 48% of the payee's gross
12 income. This subparagraph (A-5) does not apply if there
13 are no children born to the marriage.

14 (B) The duration of an award under this paragraph
15 (1) shall be calculated by multiplying the length of
16 the marriage at the time the action was commenced by
17 whichever of the following factors applies: 5 years or
18 less (.20); more than 5 years but less than 10 years
19 (.40); 10 years or more but less than 15 years (.60);
20 or 15 years or more but less than 20 years (.80). For a
21 marriage of 20 or more years, the court, in its
22 discretion, shall order either permanent maintenance
23 or maintenance for a period equal to the length of the
24 marriage.

25 (2) Maintenance award not in accordance with
26 guidelines. Any non-guidelines award of maintenance shall

1 be made after the court's consideration of all relevant
2 factors set forth in subsection (a) of this Section.

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

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

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

16 (b-3) Gross income. For purposes of this Section, the term
17 "gross income" means all income from all sources, within the
18 scope of that phase in Section 505 of this Act.

19 (b-4) Unallocated maintenance. Unless the parties
20 otherwise agree, the court may not order unallocated
21 maintenance and child support in any dissolution judgment or in
22 any post-dissolution order. In its discretion, the court may
23 order unallocated maintenance and child support in any
24 pre-dissolution temporary order.

25 (b-4.5) Fixed-term maintenance in marriages of less than 10
26 years. If a court grants maintenance for a fixed period under

1 subsection (a) of this Section at the conclusion of a case
2 commenced before the tenth anniversary of the marriage, the
3 court may also designate the termination of the period during
4 which this maintenance is to be paid as a "permanent
5 termination". The effect of this designation is that
6 maintenance is barred after the ending date of the period
7 during which maintenance is to be paid.

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 Marriage
24 and Dissolution of Marriage Act or the provisions of any order
25 for maintenance. Each such judgment shall have the full force,
26 effect and attributes of any other judgment of this State,

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

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

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

12 (e) Fees when maintenance is paid through the clerk. When
13 maintenance is to be paid through the clerk of the court in a
14 county of 1,000,000 inhabitants or less, the order shall direct
15 the obligor to pay to the clerk, in addition to the maintenance
16 payments, all fees imposed by the county board under paragraph
17 (3) of subsection (u) of Section 27.1 of the Clerks of Courts
18 Act. Unless paid in cash or pursuant to an order for
19 withholding, the payment of the fee shall be by a separate
20 instrument from the support payment and shall be made to the
21 order of the Clerk.

22 (f) Maintenance secured by life insurance. An award ordered
23 by a court upon entry of a dissolution judgment or upon entry
24 of an award of maintenance following a reservation of
25 maintenance in a dissolution judgment may be reasonably
26 secured, in whole or in part, by life insurance on the payor's

1 life on terms as to which the parties agree, or, if they do not
2 agree, on such terms determined by the court, subject to the
3 following:

4 (1) With respect to existing life insurance, provided
5 the court is apprised through evidence, stipulation, or
6 otherwise as to level of death benefits, premium, and other
7 relevant data and makes findings relative thereto, the
8 court may allocate death benefits, the right to assign
9 death benefits, or the obligation for future premium
10 payments between the parties as it deems just.

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

14 (i) that the payor cooperate on all appropriate
15 steps for the payee to obtain such new life insurance;
16 and

17 (ii) that the payee, at his or her sole option and
18 expense, may obtain such new life insurance on the
19 payor's life up to a maximum level of death benefit
20 coverage, or descending death benefit coverage, as is
21 set by the court, such level not to exceed a reasonable
22 amount in light of the court's award, with the payee or
23 the payee's designee being the beneficiary of such life
24 insurance.

25 In determining the maximum level of death benefit coverage,
26 the court shall take into account all relevant facts and

1 circumstances, including the impact on access to life
2 insurance by the maintenance payor. If in resolving any
3 issues under paragraph (2) of this subsection (f) a court
4 reviews any submitted or proposed application for new
5 insurance on the life of a maintenance payor, the review
6 shall be in camera.

7 (3) A judgment shall expressly set forth that all death
8 benefits paid under life insurance on a payor's life
9 maintained or obtained pursuant to this subsection to
10 secure maintenance are designated as excludable from the
11 gross income of the maintenance payee under Section
12 71(b)(1)(B) of the Internal Revenue Code, unless an
13 agreement or stipulation of the parties otherwise
14 provides.

15 (Source: P.A. 98-961, eff. 1-1-15; 99-90, eff. 1-1-16.)