



Civil Justice & Courts Policy Committee

**Thursday, January 21, 2010
10:00 AM - 12:00 PM
Reed Hall (102 HOB)**

Meeting Packet

**Larry Cretul
Speaker**

**Carl J. Domino
Chair**

Committee Meeting Notice
HOUSE OF REPRESENTATIVES

Civil Justice & Courts Policy Committee

Start Date and Time: Thursday, January 21, 2010 10:00 am

End Date and Time: Thursday, January 21, 2010 12:00 pm

Location: Reed Hall (102 HOB)

Duration: 2.00 hrs

Consideration of the following bill(s):

HB 277 Alimony by Frishe

NOTICE FINALIZED on 01/14/2010 16:16 by Ingram.Michele

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 277

Alimony

SPONSOR(S): Frishe

TIED BILLS: None

IDEN./SIM. BILLS: SB 1194

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee		DeZego <i>MD</i>	De La Paz <i>[Signature]</i>
2)	Policy Council			
3)	Criminal & Civil Justice Policy Council			
4)				
5)				

SUMMARY ANALYSIS

Alimony is generally used to provide support to a financially dependent spouse. Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony in a dissolution of marriage case. The trial court is also given broad discretion to consider any other factor necessary to do equity and justice between the parties.

There are three basic types of alimony: permanent periodic, rehabilitative, and bridge-the-gap. Florida statutes expressly provide for permanent and rehabilitative alimony, and Florida courts have consistently recognized bridge-the-gap alimony. Permanent periodic alimony is usually awarded to meet the needs of a dependent spouse and is permanent in nature. Rehabilitative alimony is non-permanent alimony used to establish self support in the receiving spouse by redeveloping previous skills or training to obtain necessary new skills. Bridge-the-gap alimony is short-term alimony that is intended to ease the transition from married life to single.

The court has the discretion to modify alimony, giving due regard to the changed circumstances or the financial ability of the parties. In addition, a court may reduce or terminate alimony upon specific written findings that a supportive relationship exists between the receiving spouse and another person.

This bill makes changes to s. 61.08, F.S., regarding alimony and provides statutory guidelines for when and what type of alimony may be used in dissolution of marriage cases. Specifically, this bill adds two more types of alimony that a court may award to the statute: bridge-the-gap alimony, which is currently recognized in Florida case law although not in statute, and durational alimony, which has never been recognized in Florida. According to the bill, durational alimony is intended for use when permanent periodic alimony is inappropriate. A court may make an award of durational alimony for a set period of time following a marriage of short or moderate duration. This bill also adds more factors to a list of factors to be considered when determining an award of alimony.

This bill provides that all alimony awards, except for rehabilitative alimony, end upon the death of either party or the remarriage of the receiving spouse. In addition, this bill provides specifics regarding when each type of alimony may be modified or terminated.

This bill appears to have an indeterminate minimal fiscal impact on court revenues and expenditures.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Alimony is generally used to provide support to a financially dependent spouse.¹ In Florida, the primary basis for determining alimony is whether there is need and ability to pay; alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.² Before a court can make an award of alimony, equitable distribution of the former spouse's assets must occur.³

Section 61.08(2), F.S., provides factors that a court must consider in awarding alimony in a dissolution of marriage case. These factors include:

- The standard of living established during the marriage;
- The duration of the marriage;
- The age, physical, and emotional condition of each party;
- The financial resources of each party, both marital and nonmarital, and the liabilities of each of them;
- If applicable, the time necessary for either party to acquire the education or training necessary for the party to find employment;
- Each party's contribution to the marriage, including, but not limited to, homemaking services, child care, education, and career building of the other party; and
- All sources of income available to either party.

In addition, the trial court is given broad discretion to consider any other factor necessary to do equity and justice between the parties.⁴ A court may also consider the adultery of either party and the circumstances surrounding that adultery in determining an award of alimony.⁵

There are three basic types of alimony: permanent periodic, rehabilitative, and bridge-the-gap. Florida statutes provide expressly for permanent and rehabilitative alimony,⁶ and Florida courts have

¹ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78-OCT Fla. B. J. 71, 71 (2004).

² *Id.*

³ *Id.*

⁴ Section 61.08(2), F.S.

⁵ Section 61.08(1), F.S.

⁶ *Id.*

recognized bridge-the-gap alimony in addition to these. The court may order periodic payments, lump sum payments or both for these types of alimony.

Section 61.14, F.S., provides that the court may modify an alimony award by increasing or decreasing the amount, giving due regard to the changed circumstances or the financial ability of the parties. In addition, the court "may reduce or terminate an award of alimony upon specific written findings by the court that since the granting of a divorce and the award of alimony a supportive relationship has existed between the obligee and a person with whom the obligee resides." Section 61.14(1)(b)2., F.S., provides a non-exclusive list of circumstances for the court to consider when determining whether to modify an existing award of alimony based on a supportive relationship.

Permanent Periodic Alimony

Permanent periodic alimony is usually awarded to meet the needs of a dependent spouse. In a long-term marriage, Florida courts have held that there is a presumption in favor of permanent alimony, regardless of the spouse's age or ability to earn income, although the district courts of Florida do not agree as to what constitutes a long-term marriage.⁷ Generally, a marriage of seventeen years or longer is considered long-term.⁸ A marriage which is neither short-term nor long-term falls in a middle "grey area," where there is neither a presumption for nor against permanent alimony.⁹ In a short-term marriage, courts have generally found that there is a presumption against alimony.¹⁰

There are three prerequisites found in Florida case law for modification of permanent alimony: a substantial change in circumstances; the circumstance was not contemplated at the time of the final judgment of dissolution; and the circumstance is sufficient, material, involuntary and permanent in nature.¹¹ Permanent periodic alimony generally terminates on the death of either spouse or the remarriage of either recipient spouse, unless the parties agree otherwise.

Rehabilitative Alimony

Rehabilitative alimony is used to establish self-support in the receiving spouse, either by redevelopment of previous skills, or by training necessary to develop new skills.¹² To receive an award of rehabilitative alimony, the party seeking support must provide the court with a rehabilitative plan including the purpose of the rehabilitation, the areas in which rehabilitation is needed, and the actual amount of money necessary for rehabilitation.¹³

A party seeking an extension of rehabilitative alimony must generally show that he or she has not been rehabilitated despite reasonable and diligent efforts.¹⁴ However, an unanticipated change in circumstances has also been held to support a continuation of rehabilitative alimony.¹⁵ Case law provides that rehabilitative alimony does not automatically terminate upon the remarriage of the recipient spouse; but, rather, the paying spouse must show a material and substantial change in circumstances.¹⁶

Bridge-the-gap Alimony

Bridge-the-gap Alimony refers to awards of non-permanent alimony provided to ease the transition from married life to being single. This type of alimony is intended not to retrain or rehabilitate divorcing

⁷ *Young v. Young*, 677 So. 2d 1301 (Fla. 5th DCA 1996).

⁸ *Cruz v. Cruz*, 574 So. 2d 1117 (Fla. 3d DCA 1990).

⁹ *Levy v. Levy*, 862 So. 2d 48 (Fla. 3d DCA 2003).

¹⁰ *Reeves v. Reeves*, 821 So. 2d 333 (Fla. 5th DCA 2002).

¹¹ *Eisemann v. Eisemann*, 5 So. 3d 760 (Fla. 2d DCA 2009); *Damiano v. Damiano*, 855 So. 2d 708 (Fla. 4th DCA 2003).

¹² *Holmes v. Holmes*, 579 So. 2d 769 (Fla. 2d DCA 1991).

¹³ *Id.*

¹⁴ *Wilson v. Wilson*, 585 So. 2d 1179 (Fla. 5th DCA 1991).

¹⁵ *Garramore v. Garramore*, 559 So. 2d 422 (Fla. 4th DCA 1990).

¹⁶ *Owens v. Owens*, 559 So. 2d 321 (Fla. 1st DCA 1990).

spouses,¹⁷ but rather, is intended only for short-term assistance with legitimate, identifiable short-term needs.¹⁸ Bridge-the-gap alimony typically lasts no longer than two years.¹⁹ This type of alimony is often payable as a lump sum in installments or as a single lump sum.

Although s. 61.14, F.S., provides that an alimony award may be modified giving due regard to a change in circumstances or financial ability, bridge-the-gap alimony is generally not subject to modification under current case law.

Effect of Bill

This bill makes changes to s. 61.08, F.S., regarding alimony and provides statutory guidelines for when and what type of alimony may be used in dissolution of marriage cases. Specifically, this bill provides that before a court may make an award of any type of alimony, the court must first make a specific factual determination as to whether there is an actual need for alimony by either party and whether either party has the ability to pay. If the court finds that a party has a need and the other party has the ability to pay alimony or maintenance, then the court must consider all relevant factors, including those listed in s. 61.08(2), F.S. This bill broadens the list of factors to consider from all relevant "economic" factors to all relevant factors.

In addition, this bill adds the following to the current list of factors a court must consider in determining an award for alimony:

- The earning capacities, education levels, vocational skills, and employability of the parties;
- The responsibilities each party will have with regard to any minor children they have in common;
- The tax treatment and consequences to both parties of an alimony award, including designation of all or a portion of the payment as nontaxable, nondeductible income; and
- Any income available to either party through investments of any asset held by that party.

This bill provides that in addition to permanent or rehabilitative alimony, a court may also provide bridge-the-gap alimony, which is currently recognized in Florida case law, or durational alimony, which has never been used in Florida, or any combination of these forms.

Permanent Alimony

This bill provides that permanent alimony may be awarded for the need and necessities of life as established during the marriage when a party lacks the financial ability to meet his or her needs and necessities of life. Permanent alimony may be awarded following a long-duration marriage, which is not defined within the statute but has typically been held as seventeen years or more; following a marriage of moderate duration, if it is appropriate based on the factors in s. 61.08(2), F.S.; or following a short-duration marriage if the circumstances are "exceptional."

An award of permanent alimony under this bill terminates upon the death of either party or the remarriage of the party receiving the award. An award may also be modified or terminated if there is a substantial change in circumstances or upon the existence of a supportive relationship as provided in s. 61.14, F.S., which is consistent with current law.

¹⁷ *Green v. Green*, 672 So. 2d 49 (Fla. 4th DCA 1996).

¹⁸ *Borchard v. Borchard*, 730 So.2d 748, 753 (Fla. 2nd DCA 1999).

¹⁹ *Borchard v. Borchard*, 730 So.2d 748 (Fla. 2nd DCA 1999).

Rehabilitative Alimony

Rehabilitative alimony may be awarded under this bill to assist a party in "establishing the capacity for self-support" by either redeveloping previous skills or credentials or acquiring additional education, training, or work experience. This bill requires that there must be a specific and defined rehabilitative plan which must be included as part of the order for rehabilitative alimony. This provision is consistent with current case law.

Rehabilitative alimony may be modified or terminated in accordance with s. 61.14, F.S.,²⁰ if there is a substantial change in circumstances, if the party does not comply with the plan, or when the plan is completed.

Bridge-the-gap Alimony

This bill adds bridge-the-gap alimony as a type of alimony a judge may award under s. 61.08, F.S. Under this bill, bridge-the-gap alimony may be awarded to a party in order to provide support by allowing the party to make a transition from being married to being single. It is intended to assist a party with their short-term needs and terminates on the death of either party or the remarriage of the party receiving the award.

This bill does not specify the duration for an award for bridge-the-gap alimony but does provide that it terminates upon death or remarriage of the party receiving alimony. Therefore, it is unclear whether a court may make this award for an indefinite duration or only for the specific short-term duration for which it is intended. This bill also provides that an award of bridge-the-gap alimony is not modifiable in amount or duration.

Durational Alimony

This bill creates durational alimony, which has not been recognized in Florida statute or case law, and which may be provided when permanent periodic alimony is not appropriate. The purpose of durational alimony under this bill is to provide economic assistance for a set period of time following a short-duration or moderate-duration marriage. What constitutes short or moderate duration is not defined within the bill.

The award terminates upon the death of either party or the remarriage of the party receiving alimony and can be modified or terminated upon a substantial change of circumstances in accordance with s. 61.14, F.S. However, the length of durational alimony may not be modified under this bill, except under "exceptional circumstances."

This bill does not provide a specific length of time for durational alimony, so a court would have discretion to decide how long an award of durational alimony would last in each case. Durational alimony may provide recipient spouses, who would otherwise be denied alimony, an award of durational alimony.

B. SECTION DIRECTORY:

Section 1 amends s. 61.08, F.S., relating to alimony.

Section 2 provides an effective date of July 1, 2010.

²⁰ Section 61.14, F.S., provides in part that a court may modify an award of alimony giving due regard to the change in circumstances or financial ability. In addition, the statute provides that court may reduce or terminate alimony upon specific written findings that a supportive relationship exists between the receiving spouse and another person.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a minimal indeterminate positive fiscal impact on court revenues resulting from a potential increase in alimony case filings, according to the Office of the State Courts Administrator.

2. Expenditures:

This bill appears to have a minimal indeterminate negative fiscal impact on court expenditures due to an increase in the judicial workload, according to the Office of the State Courts Administrator.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may provide an indeterminate positive fiscal impact to spouses who receive durational alimony who were previously not entitled to an award of alimony. This bill may also provide a corresponding negative fiscal impact to payor spouses.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to alimony; amending s. 61.08, F.S.;
 3 allowing for award of more than one type of alimony;
 4 revising factors to be considered in whether to award
 5 alimony or maintenance; providing for award of bridge-the-
 6 gap alimony; providing that such an award is not
 7 modifiable; providing for award of rehabilitative alimony
 8 in certain circumstances; providing for modification or
 9 termination of such an award; providing for award of
 10 durational alimony in certain circumstances; providing for
 11 modification or termination of such an award; providing
 12 for award of permanent alimony in certain circumstances;
 13 providing for modification or termination of such an
 14 award; providing an effective date.

15
 16 Be It Enacted by the Legislature of the State of Florida:

17
 18 Section 1. Section 61.08, Florida Statutes, is amended to
 19 read:

20 61.08 Alimony.--
 21 (1) In a proceeding for dissolution of marriage, the court
 22 may grant alimony to either party, which alimony may be bridge-
 23 the-gap, rehabilitative, durational, or permanent in nature or
 24 any combination of these forms of alimony. In any award of
 25 alimony, the court may order periodic payments or payments in
 26 lump sum or both. The court may consider the adultery of either
 27 spouse and the circumstances thereof in determining the amount
 28 of alimony, if any, to be awarded. In all dissolution actions,

29 | the court shall include findings of fact relative to the factors
 30 | enumerated in subsection (2) supporting an award or denial of
 31 | alimony.

32 | (2) In determining whether to ~~a proper~~ award of alimony or
 33 | maintenance, the court shall first make a specific factual
 34 | determination as to whether either party has an actual need for
 35 | alimony or maintenance and whether either party has the ability
 36 | to pay alimony or maintenance. If the court finds that a party
 37 | has a need for alimony or maintenance and that the other party
 38 | has the ability to pay alimony or maintenance, then in
 39 | determining the proper type and amount of alimony or
 40 | maintenance, the court shall consider all relevant ~~economic~~
 41 | factors, including, but not limited to:

42 | (a) The standard of living established during the
 43 | marriage.

44 | (b) The duration of the marriage.

45 | (c) The age and the physical and emotional condition of
 46 | each party.

47 | (d) The financial resources of each party, including the
 48 | nonmarital and the marital assets and liabilities distributed to
 49 | each.

50 | (e) The earning capacities, educational levels, vocational
 51 | skills, and employability of the parties and, when applicable,
 52 | the time necessary for either party to acquire sufficient
 53 | education or training to enable such party to find appropriate
 54 | employment.

55 (f) The contribution of each party to the marriage,
 56 including, but not limited to, services rendered in homemaking,
 57 child care, education, and career building of the other party.

58 (g) The responsibilities each party will have with regard
 59 to any minor children they have in common.

60 (h) The tax treatment and consequences to both parties of
 61 any alimony award, including the designation of all or a portion
 62 of the payment as a nontaxable, nondeductible payment.

63 (i) ~~(g)~~ All sources of income available to either party,
 64 including income available to either party through investments
 65 of any asset held by that party.

66
 67 (j) ~~The court may consider~~ Any other factor necessary to
 68 do equity and justice between the parties.

69 (3) To the extent necessary to protect an award of
 70 alimony, the court may order any party who is ordered to pay
 71 alimony to purchase or maintain a life insurance policy or a
 72 bond, or to otherwise secure such alimony award with any other
 73 assets which may be suitable for that purpose.

74 (4) Bridge-the-gap alimony may be awarded to assist a
 75 party by providing support to allow the party to make a
 76 transition from being married to being single. Bridge-the-gap
 77 alimony is designed to assist a party with legitimate
 78 identifiable short-term needs. An award of bridge-the-gap
 79 alimony terminates upon the death of either party or upon the
 80 remarriage of the party receiving alimony. An award of bridge-
 81 the-gap alimony shall not be modifiable in amount or duration.

82 (5) (a) Rehabilitative alimony may be awarded to assist a
 83 party in establishing the capacity for self-support through
 84 either:

- 85 1. The redevelopment of previous skills or credentials; or
- 86 2. The acquisition of education, training, or work
 87 experience necessary to develop appropriate employment skills or
 88 credentials.

89 (b) In order to award rehabilitative alimony, there must
 90 be a specific and defined rehabilitative plan which shall be
 91 included as a part of any order awarding rehabilitative alimony.

92 (c) An award of rehabilitative alimony may be modified or
 93 terminated in accordance with s. 61.14 based upon a substantial
 94 change in circumstances, upon noncompliance with the
 95 rehabilitative plan, or upon completion of the rehabilitative
 96 plan.

97 (6) Durational alimony may be awarded when permanent
 98 periodic alimony is inappropriate. The purpose of durational
 99 alimony is to provide a party with economic assistance for a set
 100 period of time following a marriage of short or moderate
 101 duration. An award of durational alimony terminates upon the
 102 death of either party or upon the remarriage of the party
 103 receiving alimony. The amount of an award of durational alimony
 104 may be modified or terminated based upon a substantial change in
 105 circumstances in accordance with s. 61.14. However, the length
 106 of an award of durational alimony may not be modified except
 107 under exceptional circumstances.

108 (7) Permanent alimony may be awarded to provide for the
 109 needs and necessities of life as they were established during

110 | the marriage of the parties for a party who lacks the financial
 111 | ability to meet his or her needs and necessities of life
 112 | following a dissolution of marriage. Permanent alimony may be
 113 | awarded following a marriage of long duration, following a
 114 | marriage of moderate duration if such an award is appropriate
 115 | upon consideration of the factors set forth in subsection (2),
 116 | or following a marriage of short duration if there are
 117 | exceptional circumstances. An award of permanent alimony
 118 | terminates upon the death of either party or upon the remarriage
 119 | of the party receiving alimony. An award may be modified or
 120 | terminated based upon a substantial change in circumstances or
 121 | upon the existence of a supportive relationship in accordance
 122 | with s. 61.14.

123 | ~~(8)~~~~(4)~~(a) With respect to any order requiring the payment
 124 | of alimony entered on or after January 1, 1985, unless the
 125 | provisions of paragraph (c) or paragraph (d) apply, the court
 126 | shall direct in the order that the payments of alimony be made
 127 | through the appropriate depository as provided in s. 61.181.

128 | (b) With respect to any order requiring the payment of
 129 | alimony entered before January 1, 1985, upon the subsequent
 130 | appearance, on or after that date, of one or both parties before
 131 | the court having jurisdiction for the purpose of modifying or
 132 | enforcing the order or in any other proceeding related to the
 133 | order, or upon the application of either party, unless the
 134 | provisions of paragraph (c) or paragraph (d) apply, the court
 135 | shall modify the terms of the order as necessary to direct that
 136 | payments of alimony be made through the appropriate depository
 137 | as provided in s. 61.181.

138 (c) If there is no minor child, alimony payments need not
 139 be directed through the depository.

140 (d)1. If there is a minor child of the parties and both
 141 parties so request, the court may order that alimony payments
 142 need not be directed through the depository. In this case, the
 143 order of support shall provide, or be deemed to provide, that
 144 either party may subsequently apply to the depository to require
 145 that payments be made through the depository. The court shall
 146 provide a copy of the order to the depository.

147 2. If the provisions of subparagraph 1. apply, either
 148 party may subsequently file with the depository an affidavit
 149 alleging default or arrearages in payment and stating that the
 150 party wishes to initiate participation in the depository
 151 program. The party shall provide copies of the affidavit to the
 152 court and the other party or parties. Fifteen days after receipt
 153 of the affidavit, the depository shall notify all parties that
 154 future payments shall be directed to the depository.

155 3. In IV-D cases, the IV-D agency shall have the same
 156 rights as the obligee in requesting that payments be made
 157 through the depository.

158 Section 2. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 277 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Civil Justice & Courts Policy
2 Committee

3 Representative(s) Frishe offered the following:

4
5 **Amendment**

6 Remove lines 76-78 and insert:

7 transition from being married to being single. Bridge-the-gap
8 alimony is designed to assist a party with legitimate
9 identifiable short-term needs, and the length of an award may
10 not exceed two years. An award of bridge-the-gap