

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1559 Dissolution of Marriage

SPONSOR(S): Civil Justice & Property Rights Subcommittee, Rodriguez and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 1922

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Property Rights Subcommittee	11 Y, 6 N, As CS	Mathews	Jones
2) Judiciary Committee		Mathews	Kramer

SUMMARY ANALYSIS

Chapter 61, F.S., governs domestic relations, including actions for dissolution of marriage (DOM), child custody, child support, and alimony. Alimony is a court ordered payment from one spouse to another, most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final.

Florida currently recognizes five main types of alimony: temporary, bridge-the-gap, rehabilitative, durational, and permanent. In determining the type, amount, duration, and later modification or termination of an alimony award, the court has broad discretion but may only award alimony after initially determining that one spouse needs alimony and the other spouse is able to pay alimony. If a court awards or denies an alimony request, it must consider enumerated factors and may consider the adultery of either spouse or any other factor it finds necessary to achieve equity and justice between the parties. An alimony award may be modified or terminated when the circumstances or financial ability of either party changes, including changes due to a receiving spouse's supportive relationship or a paying spouse's retirement.

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting and time-sharing of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents.

CS/HB 1559 prohibits permanent alimony unless expressly agreed to by the parties. As such, the bill requires a court to prioritize bridge-the-gap alimony first, followed by rehabilitative and durational alimony, respectively. The bill removes any presumption for alimony based upon the duration of the marriage and places caps on the duration and amount of certain alimony awards. The bill creates a rebuttable presumption that both parties will have a lower standard of living after DOM than was enjoyed during the marriage.

The bill prohibits an award of alimony if the obligor has met certain requirements for retirement prior to the date the petition for DOM was filed unless the obligee would otherwise be left in a financially destitute situation. Further, the bill permits the court to consider the reasonableness of an obligor's voluntary retirement as a reason to terminate an alimony award.

The bill creates a rebuttable presumption that equal time-sharing between parents, commonly referred to as "50/50 time-sharing," is in the best interest of a child. Therefore, under the bill, 50/50 timesharing is the default when determining time-sharing of children after DOM.

The bill allows for bifurcation of a DOM proceeding after 365 days has elapsed since the petition was filed, and authorizes the court to enter temporary orders on substantial issues until such issues can be ultimately decided.

The bill does not have a fiscal impact on state or local government, but may have a fiscal impact on the private sector and spouses who rely on alimony payments.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapter 61, F.S., governs domestic relations actions including actions for dissolution of marriage (DOM), alimony, parental rights, timesharing, and child support.

While alimony is created and guided by statute, it is also governed by case law. The leading alimony case, *Canakaris v. Canakaris*,¹ sets forth many of the general concepts of alimony but confirms that the ultimate decision in awarding alimony should be within the court's discretion.²

However, the Florida Supreme Court has also explained that:

[t]he discretionary power that is exercised by a trial judge is not, however, without limitation...The trial court's discretionary power is subject only to the test of reasonableness...Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.³

In the 36 years since *Canakaris* was decided, the Legislature has provided greater statutory guidance by codifying many alimony concepts in case law; and case law has continued to narrow the exercise of judicial discretion. Despite these changes, disagreement exists regarding the court's exercise of broad discretion in determining alimony awards.⁴

Alimony Generally

Background

Alimony, also known as spousal support or spousal maintenance, is a court-ordered payment from one spouse to another at any time before, during, and after DOM. Alimony is most commonly awarded for support or maintenance during a pending action for DOM and after a DOM is final, but it may also be awarded without an accompanying DOM action.⁵ A person who receives payment pursuant to an order establishing, enforcing, or modifying an alimony obligation is called an obligee,⁶ and a person responsible for making payments pursuant to an order is called an obligor.⁷

The court may award alimony only after determining that one spouse actually needs alimony and the other spouse is able to pay alimony.⁸ When determining the appropriateness of a particular alimony award, there is a rebuttable presumption that a:

- Short-term marriage lasts less than 7 years;
- Moderate-term marriage lasts more than 7 years but less than 17 years; and
- Long-term marriage lasts 17 years or more.⁹

¹ *Canakaris v. Canakaris*, 382 So. 2d 1197 (Fla. 1980).

² *Id.* at 1200-02 ("In considering the appropriate criteria for the award of the different types of alimony, it is important that appellate courts avoid establishing inflexible rules that make the achievement of equity between the parties difficult, if not impossible . . . Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose . . . As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme").

³ *Id.* at 1203.

⁴ See *Bacon v. Bacon*, 819 So. 2d 950, 954 (Fla. 4th DCA 2002) (Farmer, J., concurring) (Opining that broad discretion in alimony awards is no longer justifiable and should be discarded in favor of guidelines; proposing that 35 percent of obligor's income is a reasonable range).

⁵ S. 61.09, F.S.

⁶ S. 61.046(12), F.S.

⁷ S. 61.046(13), F.S.

⁸ S. 61.08(2), F.S.

⁹ S. 61.08(4), F.S.

In determining the appropriate amount of alimony, the court's award may not leave an obligor with significantly less net income than the obligee, absent exceptional circumstances.¹⁰ The court may order an obligor to pay alimony in periodic payments, lump sum payments, or a combination of the two.¹¹ The court may also require an obligor to maintain life insurance or a bond, or to otherwise secure an alimony award, to safeguard an obligee's support in the event the obligor dies untimely.

Types of Alimony

Florida recognizes five main types of alimony:¹² temporary, bridge-the-gap, rehabilitative, durational, and permanent.

Temporary Alimony

Temporary alimony may be awarded to either spouse while a DOM action is pending.¹³ The standard for awarding temporary alimony is the same as when a trial court considers a request for permanent alimony which includes substantial evidence of each party's need and ability to pay.¹⁴ Temporary alimony may be awarded regardless of the duration of the marriage.¹⁵ Temporary alimony may be paid by reimbursement or prepayment.¹⁶

Bridge-The-Gap Alimony

Bridge-the-gap alimony is awarded to "assist a spouse with any legitimate, identifiable, short-term need" while a spouse is transitioning from married life to single life.¹⁷ An award of bridge-the-gap alimony must be based upon competent, substantial evidence of the obligee's legitimate, identifiable short-term needs and may not exceed two years in duration.¹⁸ Bridge-the-gap alimony may be paid to the obligee and may be tailored for specific expenses and needs.

Rehabilitative Alimony

An award of rehabilitative alimony must include the requesting party's rehabilitative plan.¹⁹ There is no statutorily-defined maximum duration of an award of rehabilitative alimony; however, the length of time for the award must be identified in the order and must specify when such award may be modified or terminated.²⁰ Generally, rehabilitative alimony is used for a spouse to cover the costs of obtaining the skills or education necessary to support himself or herself.²¹ However, a spouse who was self-sufficient at the time of DOM may still be eligible for rehabilitative alimony to pursue training or education to allow him or her greater earning potential in his or her chosen career.²²

Durational Alimony

¹⁰ S. 61.08(9), F.S.

¹¹ For lump sum alimony to be awarded, there must be a showing of need and ability to pay as well as unusual circumstances which require non-modifiable support and justification that does not substantially endanger the payor's economic status. *Rosario v. Rosario*, 945 So. 2d 629, 632 (Fla. 4th DCA 2006).

¹² Alimony may also be awarded to a spouse in an action for support unrelated to a DOM action. If a spouse has the ability to contribute to the maintenance and support of his or her spouse and minor children but fails to do so, the spouse in need may apply to the court for alimony and child support without seeking a DOM. S. 61.09, F.S.

¹³ S. 61.071, F.S.

¹⁴ *de Gutierrez v. Guttierrez*, 19 So. 3d 1110 (Fla. 2d DCA 2009); *Fonderson v. Lairp*, 98 So. 3d 715 (Fla. 2d DCA 2012); *Driscoll v. Driscoll*, 915 So. 2d 771, 773 (Fla. 2d DCA 2005).

¹⁵ *Littlejohn v. Littlejohn*, 495 So. 2d 271, 272 (Fla. 2d DCA 1986).

¹⁶ S. 61.08(5), F.S. is silent as to the manner of payment for a bridge-the-gap alimony award; see *Horowitz v. Horowitz*, 273 So. 3d 263 (Fla. 2d DCA 2019).

¹⁷ *Borchard v. Borchard*, 730 So. 2d 748, 753 (Fla. 2d DCA 1999); see also *Landow v. Landow*, 824 So. 2d 278, 279 n. 1 (Fla. 4th DCA 2002) (noting that bridge-the-gap alimony may be appropriate to "cushion the blow" for the recipient spouse adjusting to single life and living on his or her own).

¹⁸ S. 61.08(5), F.S.

¹⁹ S. 61.08(6), F.S.

²⁰ *Id.* See also *Draulans v. Draulans*, 69 So. 3d 401 (Fla. 2d DCA 2011).

²¹ *Frye v. Frye*, 385 So. 2d 1383 (Fla. 2d DCA 1980).

²² *Short v. Short*, 747 So. 2d 411 (Fla. 5th DCA 1999).

Durational alimony was created by the legislature in 2010.²³ Durational alimony may be awarded following a short-term marriage or moderate-duration marriage.²⁴ Durational alimony may also be appropriate following a long-term marriage if the court determines there is not a need for ongoing support on a permanent basis.²⁵ The length of an award of durational alimony may not exceed the length of the marriage.²⁶ Unlike other forms of alimony, the length of the award of alimony is not modifiable once it has been ordered; however, the amount is modifiable based upon a substantial change in circumstances.

Permanent Alimony

Permanent alimony may only be awarded when no other form of alimony is appropriate or reasonable. The court's order must include an express finding that no other form of alimony is fair and reasonable under the circumstances of the parties.²⁷ Final judgments that do not include such specific findings are subject to reversal.²⁸ Permanent alimony is based upon maintaining the needs and necessities of life for a former spouse as he or she was accustomed to and was established during the marriage.²⁹ However, such award may not leave the obligor with significantly less net income than the net income of the obligee.³⁰

Each type of alimony has a defined purpose, duration, and requirement for modification or termination, as illustrated below:

²³ Ch. 2010-99, Laws of Fla.

²⁴ S. 61.08(7), F.S.

²⁵ *Id.*

²⁶ *Id.*

²⁷ S. 61.08(8), F.S.

²⁸ *Julia v. Julia*, 263 So. 3d 795 (Fla. 2d DCA 2019).

²⁹ *Jordan v. Jordan*, 199 So. 3d 343 (Fla. 4th DCA 2016).

³⁰ S. 61.08(9), F.S.

Type	Purpose	Duration	Modification/Termination	Automatic Termination
Temporary (Pendente-Lite) S. 61.071, F.S.	A reasonable sum awarded after initiation of DOM proceedings for support during the pending litigation.	Only during the pending DOM litigation.	Good cause.	Final Judgment in DOM action (including appeals).
Bridge-the-Gap ³¹ S. 61.08(5), F.S.	To provide transitional assistance to a party who must adjust their life from married to single.	May not exceed 2 years.	Not modifiable in amount or duration.	Remarriage of recipient or death of either party.
Rehabilitative S. 61.08(6)(a), F.S.	To assist in establishing the capacity for self-support through: <ul style="list-style-type: none"> • Redevelopment of previous skills or credentials; or • Education, training, or work experience to develop appropriate employment skills or credentials.³² 	Requires a specific, defined rehabilitative plan; duration varies depending on circumstances.	Substantial change in circumstances; non-compliance with rehabilitation plan; or completion of rehabilitation plan.	Death of either party.
Durational S. 61.08(7), F.S.	Awarded when permanent alimony is not appropriate to assist with economic assistance for a set period of time following a marriage of short or moderate duration. ³³	May not exceed the duration of the marriage; duration varies.	<ul style="list-style-type: none"> • Amount: Substantial change in circumstances. • Duration: Exceptional circumstances. 	Remarriage or recipient or death of either party.
Permanent S. 61.08(8), F.S.	To provide for needs and necessities of life as established during marriage for a party lacking financial ability to meet such needs on his/her own following a: <ul style="list-style-type: none"> • Long duration marriage; • Moderate duration marriage, if appropriate considering enumerated factors;³⁴ or • Short duration marriage, in exceptional circumstances.³⁵ 	Perpetual (unless modified or terminated)	Substantial change in circumstances, including the existence of a recipient's supportive relationship. ³⁶	Remarriage of recipient or death of either party.

Effect of Proposed Changes

Definitions

CS/HB 1559 provides the following statutory definitions within s. 61.08, F.S.:

- “Alimony” means a court-ordered or voluntary payment of support by one spouse to the other spouse. Alimony includes any voluntary payment made after the an order for maintenance, spousal support, temporary support, or separate support when the payment is not intended for the benefit of a child in common to the parties.
- “Gross income” has the same meaning as gross income defined under s. 61.30 in relation to calculations for child support. Gross income includes, but is not limited to:
 - Salary or wages.
 - Bonuses, commissions, allowances, overtime, tips, and other similar payments.

³¹ See *Murray v. Murray*, 374 So. 2d 622, 624 (Fla. 4th DCA 1979) (“[P]roof would justify a brief period of alimony sufficient to allow the wife to ‘bridge’ the gap between the high standard of living enjoyed during the brief marriage and the more modest standard that the wife can provide for herself”).

³² *Canakaris*, 382 So. 2d at 1202.

³³ S. 61.08(4), F.S.

³⁴ S. 61.08(2), F.S., lists these factors.

³⁵ A permanent alimony award is generally inappropriate in a short-term marriage unless DOM created a genuine inequity. *Segall v. Segall*, 708 So. 2d 983 (Fla. 4th DCA 1998).

³⁶ S. 61.14(1)(b), F.S.

- Business income from sources such as self-employment, partnership, close corporations, and independent contracts.
- Disability benefits.
- Workers' compensation benefits and settlements.
- Reemployment assistance or unemployment compensation.
- Pension, retirement, or annuity payments.
- Social security benefits.³⁷
- Spousal support received from a previous marriage or court ordered in the marriage present before the court.
- Interest and dividends.
- Rental income.
- Income from royalties, trusts, or estates.
- Reimbursed expenses or in kind payments to the extent that they reduce living expenses.
- Gains derived from dealings in property, unless the gain is nonrecurring.
- "Net income" means income that is determined by subtracting allowable deductions from gross income. "Allowable deductions" includes:
 - Federal, state, or local income tax deductions, adjusted for actual filing status and allowable dependents and income tax liabilities;
 - Federal insurance contributions or self-employment tax;
 - Mandatory union dues;
 - Health insurance payments, excluding payments for coverage of a minor child;
 - Court-ordered support for other children which is actually paid; and
 - Spousal support paid pursuant to a court order from a previous marriage.³⁸

The bill also amends the definition of "income" for purposes of chapter 61, F.S. (which deals with dissolution of marriage, support, and time-sharing), to clarify that "support" means "child support."

Types of Alimony

The bill amends s. 61.08, F.S., to eliminate permanent alimony, except for a situation when it is expressly agreed to by the parties.

The bill prohibits a rehabilitative alimony award from exceeding five years in length or the limitations of durational alimony, whichever period is shorter. The bill further provides for the termination of a rehabilitative alimony award upon the completion of the recipient's rehabilitation plan before the length of the award expires.

The bill limits durational alimony to no more than 50 percent of the length of the marriage. The length of the marriage is the date of marriage until the date the petition for DOM was filed. The bill permits durational alimony to be awarded only upon written findings that another type of alimony or combination of alimony is not appropriate. The bill requires the court to prioritize alimony awards in the following order: first, bridge-the-gap; second, rehabilitative; and third, durational. The court may award a combination of types of alimony only to provide greater economic assistance to the obligee in order to achieve rehabilitation. In such case, the court must make written findings.

The bill provides that the amount of a durational alimony award shall be the recipient spouse's reasonable need or 25 percent of the difference between the parties' net incomes, whichever is less.

Retirement

Under the bill, if the obligor has met the requirements for retirement under s. 61.14(12), F.S., prior to the date of filing of the petition for DOM, he or she may not be ordered to pay bridge-the-gap, rehabilitative, or durational alimony unless the court determines that the obligee:

- Has not reached the age to qualify for social security retirement benefits; and

³⁷ The bill prohibits the imputation of social security retirement benefits to the obligor unless those benefits are actually being paid.

³⁸ The allowable deductions are comparable to the deductions used by the Department of Revenue in calculating a parent's child support obligation.

- Without alimony, would meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409.

Alimony Factors

Background

The court must determine each party's need and ability to pay alimony before the court may order an award of alimony.^{39 40} Once the respective need and ability to pay alimony have been established, the court must consider the following factors, in determining an alimony award:

- The standard of living established during the marriage.
 - However, the award may not be so high as to cause the obligor spouse to be unable to meet his or her own needs,⁴¹ and an alimony award that is over 50 percent of the obligor spouse's income is considered too high.⁴²
- The duration of the marriage.⁴³
- The age and the physical and emotional condition of each party.
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- The responsibilities each party will have regarding any minor children they have in common.
- The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- All sources of income⁴⁴ available to either party, including income available to either party through investments of any asset held by that party.
 - Income may be imputed to a voluntarily unemployed or underemployed spouse, whether the spouse is an obligee or obligor.⁴⁵
- Any other factor necessary to do equity and justice between the parties.

While the statutory guidelines provide the framework within which the court may exercise its discretion to determine the type, amount, and duration of an alimony award, there are no bright line rules to determine whether alimony is appropriate in a particular case, and if so, which type of alimony. No single factor justifies an alimony award; rather, all factors must be considered as a whole, and the court may analyze the entire marital situation to make an alimony award.

Adultery

In addition to the enumerated factors, the court may also consider the adultery of either spouse and the circumstances surrounding the adultery.⁴⁶ However, an obligee's adultery is not a complete bar from receiving alimony,⁴⁷ and a spouse's adulterous behavior may not be the basis for requiring him or her

³⁹ S. 61.08(2), F.S.

⁴⁰ Florida statute does not specifically provide factors to be considered in determining a party's need or ability to pay alimony. The Court in *Canakaris* specified that a court should consider the parties' earning ability, age, health, education, duration of marriage, standard of living during the marriage, and the value of the parties' estates.

⁴¹ *Rashotsky v. Rashotsky*, 782 So. 2d 542 (Fla. 3d DCA 2001).

⁴² *O'Conner v. O'Conner*, 782 So. 2d 502 (Fla. 2d DCA 2001).

⁴³ See s. 61.08(4), F.S.

⁴⁴ This is defined broadly as "any form of payment to an individual, regardless of source, including, but not limited to: wages, salary, commissions and bonuses, compensation as an independent contractor, worker's compensation, disability benefits, annuity and retirement benefits, pensions, dividends, interest, royalties, trusts, and any other payments, made by any person, private entity, federal or state government, or any unit of local government. United States Department of Veterans Affairs disability benefits and reemployment assistance or unemployment compensation, as defined in chapter 443, are excluded from this definition of income except for purposes of establishing an amount of support." S. 61.046(8), F.S.

⁴⁵ See *Keyser v. Keyser*, 204 So. 3d 159 (Fla. 1st DCA 2016); *Lostaglio v. Lostaglio*, 199 So. 3d 560 (Fla. 5th DCA 2016); *Kovar v. Kovar*, 648 So. 2d 177 (Fla. 4th DCA 2003); *Rojas v. Rojas*, 656 So. 2d 563 (Fla. 3d DCA 1995).

⁴⁶ S. 61.08(1), F.S.

⁴⁷ See *Coltea v. Coltea*, 856 So. 2d 1047 (Fla. 4th DCA 2003); *Johnson v. Johnson*, 847 So. 2d 1157 (Fla. 5th DCA 2003).

to pay alimony, unless such adultery contributed to a depletion of marital assets.⁴⁸ The spouse seeking to prove adultery has the burden of proof.⁴⁹

Effect of Proposed Changes

The bill amends s. 61.08, F.S., to remove the rebuttable presumptions relating to the length of a marriage. As such, the bill does not classify a marriage in terms of short, moderate, or long-term duration. The bill clarifies that an obligee may purchase or maintain a life insurance policy on the obligor's life, when necessary to secure or protect an alimony award. If such life insurance is obtained, the obligor must cooperate in the process of procuring the issuance and underwriting of the policy, including complying with any necessary medical evaluations and documentation.

Notwithstanding any other provision of law, the bill prohibits an alimony award from being ordered to a party who has a monthly net income that is equal to or more than the other party's net income.

The bill creates a rebuttable presumption that both parties will have a lower standard of living after the DOM than the standard of living enjoyed during the marriage. The presumption may be overcome by a preponderance of the evidence.

The bill maintains the enumerated factors the court must consider when determining an alimony award. However, if the court relies on any other factor not expressly identified by law, such factor must be specifically identified in the award with findings of fact justifying the application of such. The bill also requires the court, in deciding the amount and length of rehabilitative or durational alimony, to consider any alimony payments made to the obligee after the filing of the petition for dissolution of marriage.

The bill maintains the ability of a court to consider the adultery of either spouse as a factor in determining an alimony award. However, the bill prohibits the consideration of adultery if it is the court's sole basis for denying a request for alimony, unless the adultery contributed to a depletion of marital assets.

Termination or Modification of Alimony

Background

A former spouse may petition the court to modify or terminate the terms of an alimony award only upon a showing of a substantial change in circumstances that:⁵⁰

- Was not contemplated at the time the final judgment of DOM was issued;⁵¹ and
- Is sufficient, material, involuntary, and permanent in nature.⁵²

Retirement

The impact of retirement on alimony obligations is not specifically addressed in statute. Rather, the Supreme Court of Florida has addressed the issue in *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992). The *Pimm* Court held that if a final judgment does not address the impact of retirement on an alimony award, the court may consider whether the retirement constitutes a substantial change in circumstances which warrants a modification or termination of alimony. As such, retirement may be a factor to be considered at the court's discretion on a case-by-case basis.

Effect of Proposed Changes

⁴⁸ See *Haley v. Haley*, 649 So. 2d 332 (Fla. 5th DCA 1995); *Santoro v. Santoro*, 642 So. 2d 86 (Fla. 2d DCA 1994); *Pyle v. Pyle*, 617 So. 2d 1098 (Fla. 3d DCA 1993); *Noah v. Noah*, 491 So. 2d 1124 (Fla. 1986).

⁴⁹ *Engbretsen v. Engbretsen*, 151 Fla. 372, 11 So. 2d 322 (1942).

⁵⁰ S. 61.14(1), F.S.

⁵¹ *Chastain v. Chastain*, 73 So. 2d 66 (Fla. 1954)

⁵² *Dykes v. Dykes*, 712 So. 2d 453 (Fla. 1st DCA 1998); *Hanskat v. Hanskat*, 716 So. 2d 347 (Fla. 1st DCA 1998).

The bill amends s. 61.14, F.S., to generally provide for automatic termination of an alimony award when the obligor reaches full retirement age as determined by the United States Social Security Administration (SSA). However, if the obligor reaches such retirement age and has not paid durational alimony for a period of at least 50 percent of the length of the marriage, the court may require the obligor to continue paying such alimony, not to exceed 50 percent of the length of the duration of the marriage. The court may only require an obligor who has reached retirement age to continue paying alimony only if it determines that:

- The obligee has not reached the minimum age to qualify for social security retirement benefits; and
- As a result of the DOM or the termination of alimony payments, the obligee would, based on the income and assets available, meet the primary qualifications for the Florida Medicaid medically needy program under part III of chapter 409 and the related rules in effect on March 1, 2020.

If the obligor seeks to voluntarily retire before he or she reaches retirement age, the court must determine whether the obligor's retirement is reasonable, in which case the court may terminate an alimony award. In determining the reasonableness of the obligor's retirement, the court must consider all of the following factors:

- The obligor's age and health.
- The obligor's motivation for retirement.
- The obligor's profession or line of work.
- The obligor and the obligee's needs and necessities of life.
- The impact the termination or reduction of alimony would have on the obligee.
 - In determining the impact, the court must consider any assets accumulated or received by the obligee, including any income generated by such assets, since the final judgment.

An obligor may petition the court for termination or modification of an alimony obligation up to twelve months in advance of the anticipated retirement date, to be effective upon the actual date of retirement.

To allege that a physical disability inhibits or prevents an obligee from working and earning the income imputed by the court, the obligee must have qualified for benefits under the SSA Disability Insurance Program. If the obligee is not eligible for the program, he or she must demonstrate that his or her disability meets the disability qualification standards of the SSA Disability Insurance Program.

An alimony award may be modified or terminated upon a finding that a supportive relationship between the obligee and another person exists or existed at any time during the 180 days prior to the filing of the petition for modification of alimony. To determine whether such supportive relationship exists, the bill allows the court to consider whether the obligee and the other person are engaged to be married. If a supportive relationship does exist, the bill allows a court to order reimbursement to the obligor for an equitable amount.

An obligor's subsequent remarriage or cohabitation with another person does not constitute a basis for either party to seek a modification of an alimony award. An obligee may not petition the court to increase his or her alimony award based on the income and assets of the obligor's subsequent spouse or partner. Likewise, an obligor may not petition the court for a decrease in the alimony payment based on his or her reliance on the income and assets of the new spouse or partner.

The bill provides that any amount of social security or disability benefits or retirement payments received by an obligee after the initial alimony award constitutes a substantial change in circumstances which may warrant a modification of the alimony award.

The bill also provides that an alimony payment agreement allowing for modification or termination of alimony when a certain condition precedent is met (such as a party reaching a particular age or income) are eligible for modification or termination for purposes of the bill once the condition precedent is met.

Child Support, Parenting, and Time-Sharing

Background

Florida courts have consistently ruled that a parent's desire and right to the companionship, care, custody, and management of his or her children is an important interest that warrants deference and, absent a powerful countervailing interest, protection. Although the right to integrity of the family is among the most fundamental rights, when married parents divorce or separate, the parents' rights are subject to the overriding concern for the ultimate welfare or best interests of their children.

Time-Sharing

Section 61.13, F.S., provides guidelines to assist courts in determining matters related to parenting⁵³ and time-sharing⁵⁴ of minor children in actions under ch. 61, F.S., in accordance with the best interests of the child while balancing the rights of parents. As a threshold consideration, the Legislature has declared that:⁵⁵

It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childrearing. There is no presumption for or against the father or mother of the child or for or against any specific time-sharing schedule when creating or modifying the parenting plan of the child.

Therefore, current law does not provide a presumption in favor of a specific time-sharing schedule, and the court sets a time-sharing schedule when the parties are unable to agree. In establishing time-sharing, the court must consider the best interests of the child⁵⁶ and evaluate all factors affecting the welfare and interests of the child and the circumstances of the family, including, but not limited to the:

- Demonstrated capacity and disposition of each parent to facilitate and encourage a continuing parent-child relationship, honor the time-sharing schedule, and accommodate necessary changes.
- Anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.
- Demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child.
- Length of time the child has lived in a stable environment and the desirability of maintaining continuity.
- Geographic viability of the parenting plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the parenting plan.
- Mental health, physical health, and moral fitness of the parents.
- Home, school, and community record of the child.
- Reasonable preference of the child.
- Demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, the child's friends, teachers, and daily activities.
- Demonstrated capacity and disposition of each parent to:
 - Provide a consistent routine; and
 - Communicate with and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, or that either parent has ever knowingly provided false information about such matters.

⁵³ Parenting or parental responsibility refers to the responsibility and right to make important decisions about the child's welfare, such as education and medical care after the parents separate.

⁵⁴ Time-sharing refers to the time, including overnights and holidays, which the child spends with each parent. S. 61.046(23), F.S.

⁵⁵ S. 61.13(2)(c)1., F.S.

⁵⁶ S. 61.13(2)(c), F.S.

- Particular parenting tasks customarily performed by each parent, including the extent to which parenting responsibilities were undertaken by third parties.
- Demonstrated capacity and disposition of each parent to participate and be involved in the child's school and extracurricular activities.
- Demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- Capacity and disposition of each parent to protect the child from the ongoing litigation regarding child custody.
- Developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs.

Time-sharing and Child Support

A time-sharing order entered by a court may impact the child support obligation of the parents. In a chapter 61, F.S., proceeding, the court may order either or both parents to pay child support in accordance with the child support guidelines provided in s. 61.30, F.S. These guidelines use a mathematical formula to develop the basic child support obligation of each parent. The court may not deviate from the basic child support obligation provided under the guidelines by more than five percent when establishing the child support award except in very limited circumstances, such as when a court orders substantial time-sharing.

Section 61.30(11)(b), F.S., provides that a court must adjust the basic child support obligation if the parenting plan, a court-ordered time-sharing schedule, or a time-sharing arrangement agreed upon by the parties provides that a child spend a substantial amount of time with each parent.⁵⁷ The adjustment of a child support award based on substantial time-sharing usually results in a reduction in the child support payment.⁵⁸ Failure to regularly exercise a substantial time-sharing schedule that caused the adjustment of child support pursuant to s. 61.30(11)(b), F.S., constitutes grounds to modify the adjusted child support award, and the modification is retroactive to the date of non-compliance with the time-sharing schedule.⁵⁹

Effect of Proposed Changes

CS/HB 1559 amends s. 61.13, F.S., to create a presumption that equal time-sharing (commonly referred to as "50/50 time-sharing") is in the best interests of a minor child common to both parties. This presumption applies to all actions filed on or after July 1, 2021.

Bifurcation of Divorce

Background

Bifurcation is a split procedure in which the court grants a dissolution of marriage and reserves jurisdiction regarding property settlement, debts, alimony and child support. While bifurcation is permitted in limited circumstances, current case law discourages the use of bifurcation. Specifically, in *Cloughton v. Cloughton*, the Florida Supreme Court explained that "trial judges should avoid this split procedure . . . [S]plit procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use."⁶⁰

Under current law, a final judgment of DOM may not be entered until at least twenty days from the date the petition was filed.

Effect of Proposed Changes

⁵⁷ A substantial amount of time means exercising time-sharing at least 20 percent of overnights per year. S. 61.30(11)(b)8., F.S.

⁵⁸ The court may deviate from the child support amount calculated under the required "substantial time-sharing" adjustment based upon a number of factors, including the "likelihood that either parent will actually exercise the time-sharing schedule." S. 61.30(11)(b)7., F.S.

⁵⁹ S. 61.30(11)(c), F.S.

⁶⁰ *Cloughton v. Cloughton*, 393 So. 2d 1061, 1062 (Fla. 1981).

The bill amends s. 61.19, F.S., to permit a court to bifurcate the DOM proceedings if more than 365 days have passed from the date the petition was filed, absent a showing by either party that such bifurcation will cause irreparable harm. Upon request of either party, the court must grant a final judgment of DOM with a reservation of jurisdiction to subsequently determine all other substantive issues. The court must issue temporary orders on substantial issues such as, timesharing, alimony, child support, disposition of certain assets, or other similar issues as necessary for justice to the parties and protection of the children.

Effective Date and Application

The bill provides an effective date of July 1, 2021, and some of its provisions apply in a specific manner, as follows:

- Section 2 of the bill, which relates to alimony, applies to any petition for dissolution of marriage filed on or after the bill's effective date; to any petition for dissolution of marriage which is not adjudicated before the bill's effective date; and to any case pending on appeal as of the bill's effective date.
- Section 3 of the bill, which creates a presumption for 50/50 time-sharing, applies to any action filed on or after July 1, 2021.
- Section 4 of the bill, which relates to modification or termination of alimony, applies to any action to modify or terminate alimony filed on or after the bill's effective date, and to any action for which a final order has not been issued or an appeal has not been decided before the bill's effective date.
- Section 5 of the bill, which allows a court to bifurcate a DOM proceeding to grant a divorce, applies to any petition for dissolution of marriage filed on or after July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 61.046(8), F.S., relating to definitions.

Section 2: Amends s. 61.08, F.S., relating to alimony.

Section 3: Amends s. 61.13(2)(c), F.S., relating to support of children; parenting and time-sharing; powers of court.

Section 4: Amends s. 61.14, F.S., relating to enforcement and modification of support, maintenance, or alimony agreements or orders.

Section 5: Amends s. 61.19, F.S., relating to entry of judgment of dissolution of marriage; delay period; separate adjudication of issues.

Section 6: Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will likely have a direct economic impact on the private sector relating to the amount of alimony and duration of an alimony award that a spouse may receive.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 23, 2021, the Civil Justice and Property Rights Subcommittee adopted a proposed committee substitute (PCS) and reported the bill favorably as a committee substitute. The PCS differed from the original bill in that it:

- Removed a provision amending s. 61.075, F.S., relating to equitable distribution of marital assets.
- Added a provision allowing the parties to enter into an agreement for permanent alimony.
- Removed language authorizing a court to order an obligor to purchase life insurance.
- Revised the limitations and requirements for alimony awards.
- Maintained the factors currently in statute for which a court must consider in determining the proper type and amount of alimony.
- Permitted the court to consider either spouse's adultery in determining alimony.
- Created a presumption that equal timesharing is in the best interest of a minor child in common to both parties but removed a list of specific exceptions.
- Removed a provision requiring the court to order 50-50 parental responsibility in certain situations.
- Revised standards and requirements for the modification or termination of alimony.
- Clarified that the changes made under the bill relating to alimony apply to any DOM which has not been fully adjudicated as of July 1, 2021.

This analysis is drafted to the committee substitute as passed by the Civil Justice and Property Rights Subcommittee.