

The following is proposed wording to replace Florida statute 61.08 Alimony. It is being offered as a reform measure by Families for Alimony Reform.

### Purpose and Goals:

Unbridled discretion to the judiciary has created a system of dissolution that improperly consumes large amounts of precious, limited, family resources needed by the parties and their children to begin life anew and establishes an atmosphere of uncertainty with lack of closure that can extend until the end of life. Families are seriously harmed.

The current statutes fail their stated purpose to reduce harm caused by the legal process of dissolution of marriage. Much of that harm is attributable to the issue of post dissolution spousal support. The dissolution process addressing post-dissolution spousal support is antediluvian.

Families for Alimony Reform propose that the Florida Legislature consider providing the state's judiciary with clearer legislation without ambiguities as to the possibility, amount, and duration of post dissolution spousal support.

Present legislation potentially violates the state's constitutional assurance of separation of powers because it grants the judiciary the exclusive lawmaking function of the legislature. Current statutes permit and grant full discretion to the judiciary to determine if post dissolution spousal support will be awarded, the amount, and the duration.

Families for Alimony Reform encourage the Florida Legislature to adopt the following rewrite of Florida Statute 61.08 that is similar to Texas post dissolution spousal support statutes. Much of the harm being caused by Florida's current statutes does not exist in Texas.

#### **61.001 Purpose of chapter.**

- (1) This chapter shall be strictly construed and applied.
- (2) Its purposes are:
  - (a) To preserve the integrity of marriage and to safeguard meaningful family relationships.
  - (b) To promote the amicable settlement of disputes that arise between parties to a marriage; and
  - (c) To mitigate the harm to the spouses, their children, and families caused by the process of legal dissolution of marriage.
  - (d) To protect the minor children of marriage and promote the shared responsibility of both parents for those children.
  - (e) To ensure a cost efficient mechanism for the successful transition of individuals from married to single life; the prompt restoration of premarital rights and privileges; the establishment of a definite closure point of any rights or entitlements established between

the parties; and the achievement of full independence of the parties within three years of filing.

(f) To protect the constitutional mandate of equal protection under the law.

**History.**--s. 1, ch. 71-241; s. 111, ch. 86-220.

## **61.08 Transitional- Support.**

### **Section (1) Definitions.**

In this chapter

(a). Any reference to “alimony”, “spousal maintenance”, “maintenance”, “support”, or “spousal support” shall mean “transitional-support”.

(b). “Transitional-Support” means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.

(c). DDD shall refer to the “Florida State Division of Disability Determination”.

(d). “Notice of application for a writ of withholding” means the document delivered to an obligor and filed with the court as required by this chapter for the non-judicial determination of arrears and initiation of withholding for transitional-support.

(e). “Obligee” means a person entitled to receive payments under the terms of an order for transitional-support.

(f). “Obligor” means a person required to make periodic payments under the terms of an order for transitional support.

(g). “Writ of withholding” means the document issued by the clerk of court and delivered to an employer, directing that earnings be withheld for payment of transitional-support as provided by this chapter.

### **Section (2) Eligibility for Transitional-Support; Court Order**

In a suit for dissolution of a marriage or in a proceeding for transitional-support in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order support for either spouse only if:

(A). the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence defined under Florida **Chapter 741** and the offense occurred:

- (1). within two years before the date on which a suit for dissolution of the marriage is filed; or
- (2). while the suit is pending; or

(B). The duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by **Section (5)**, and the spouse seeking maintenance:

- (1). is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability as defined and certified by DDD;
- (2). is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a DDD certified physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or
- (3). clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section (5) Duration Of A Transitional-Support Order.

**Section (3). Factors In Determining Transitional-Support.**

A court that determines that a spouse is eligible to receive support under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

- (a). the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet the spouse's needs independently;
- (b). the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;
- (c). the duration of the marriage;
- (d). the age, employment history, earning ability, and physical condition of the spouse seeking maintenance as defined in **Section (2)**;
- (e). the ability of the spouse from whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;

(f). Acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;

(g). the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;

(h). the contribution by one spouse to the education, training, or increased earning power of the other spouse;

(i). Marital misconduct of the spouse seeking support; and

(j). the efforts of the spouse seeking support to pursue available employment counseling as provided by **Chapter 443**, Florida Labor Code.

#### **Section (4) Presumption.**

(a). Except as provided by Subsection (b), it is presumed that support under **Section (2) (B)** is not warranted unless the spouse seeking maintenance has exercised diligence in a good faith effort in:

(1). Seeking suitable employment; or

(2). developing the necessary skills to become self-supporting during a period of separation and during the time the suit for dissolution of the marriage is pending.

(b) This section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a) because the spouse:

(1). has an incapacitating physical or mental disability as certified by DDD; or

(2). is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a physical or mental disability, as certified by DDD, makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home.

#### **Section (5). Duration Of A Transitional-Support Order.**

(a). Except as provided by Subsection (b), a court:

(1). May not order support that remains in effect for more than three years after the date of the order; and

(2). Shall limit the duration of a support order to the shortest reasonable period that allows the spouse seeking support to meet their minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of that spouse to provide for

their own minimum reasonable needs through employment is substantially or totally diminished because of:

- (1). A physical or mental disability as certified by DDD;
  - (2). Duties as the custodian of an infant or preschool child of the marriage; or
  - (3). another documented compelling impediment to gainful employment.
- (b). If a spouse seeking transitional-support is unable to support himself or herself through appropriate employment because the spouse has an incapacitating, DDD certified, physical or mental disability or because the spouse is the custodian of a child of the marriage of any age who has a DDD certified physical or mental disability, the court may order support for as long as the disabilities continue to be certified by DDD. The court may order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability continues to render the spouse unable to support himself or herself through appropriate employment. The continuation of support under these circumstances is subject to a motion to modify as provided by Section (8).

**Section (6) Amount Of Transitional-Support.**

(a). A court may not order support that requires an obligor to pay monthly more than the lesser of:

- (1). \$2,500; or
- (2). 20 percent of the spouse's average monthly gross income.

(b). The court shall set the amount that an obligor is required to pay in a support order to provide for the minimum reasonable needs of the obligee, considering employment or property received in the dissolution of the marriage or otherwise owned by the obligee that contributes to the minimum reasonable needs of the obligee.

(c). Department of Veterans Affairs service-connected disability compensation, social security benefits and disability benefits, and workers' compensation benefits are excluded from support.

(d). for purposes of this chapter, "gross income" means resources as defined in Chapter **61.30 (2)**, disregarding those benefits excluded under Subsection (c) of this section.

**Section (7) Termination.**

(a). The obligation to pay future support terminates on the death of either party or on the remarriage of the obligee.

(b). After a hearing, the court shall terminate the support order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

**Section (8) Modification Of A Transitional-Support Order.**

(a). The amount of support specified in a court order or the portion of a decree that provides for the transitional support of a former spouse may be reduced by the filing of a motion in the court that originally rendered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b). Notice of a petition to modify support and the response, if any, are governed by the Florida Family Law Rules of Procedure 12.070. Notice must be given by service of citation, and a response must be in the form of an answer due on or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the petition in the manner provided by the Florida Family Law Rules Civil Procedure.

(c). After a hearing, the court may modify an original or modified order or portion of a decree providing for support on a proper showing of a material and substantial change in circumstances of either party. The court shall apply the modification only to payment accruing after the filing of the motion to modify.

(d). A loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment by reason of incapacitating physical or mental disability, as certified by DDD, that occur after the divorce or annulment are not grounds for the institution of Transitional-Support for the benefit of the former spouse.

**Section (9) Transitional-Support Arrearages.**

A Transitional Support payment not timely made constitutes an arrearage.

**Section (10) Enforcement Of A Transitional-Support Order.**

(a). The court may enforce by contempt the court's support order or an agreement for the payment of support voluntarily entered into between the parties and approved by the court.

(b). On the suit to enforce by an obligee, the court may render judgment against a defaulting party for the amount of arrearages after notice by service of citation, answer, if any, and a hearing finding that the defaulting party has failed or refused to carry out the terms of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts.

(c). It is an affirmative defense to an allegation of contempt of court or the violation of a condition of probation requiring payment of court-ordered support that the obligor:

(1). lacked the ability to provide support in the amount ordered;

(2). lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3). did not know of a source from which the money could have been legally obtained.

(d). the issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

(e). A court may enforce an order for Transitional-Support under this chapter by ordering garnishment of the obligor's wages or by any other means available under this section.

### **Section (11) Putative Spouse.**

In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded support if otherwise qualified to receive Transitional-Support under this chapter.

### **Section (12) Unmarried Cohabitants.**

An order for Transitional-Support is not authorized between unmarried cohabitants under any circumstances.

### **Section (13) Pre-Statute (Revised 2009) Orders**

(a). An obligor who is under an existing spousal maintenance order by a court of the State of Florida at the time of enactment of this statute change shall be entitled to modification by the court to conform to these statute changes as provided by the following subsections:

(1). If an obligor has been paying spousal maintenance for 1 year or less at the time of enactment of these statute changes, the court will continue the obligation for an additional 3 years and then terminate the obligation; unless the obligee can meet the requirements for continued support provided for under **Section (5)** of this chapter.

(2). If an obligor has been paying spousal maintenance for more than 1 year but less than 3 years at the time of enactment of this statute change, the court shall modify their obligation to comply with the 3 year duration limit of this statute change plus 1 year; unless the obligee can meet the requirements for continued support provided for under **Section (5)** of this chapter.

(3). If the obligor has paid spousal maintenance in excess of 3 years, his/her obligation will continue for 1 year past enactment of this statute change and shall then be terminated by the court; unless the obligee can meet the requirements for continued support provided for under **Section (5)** of this chapter.

(4). If an obligor has been paying spousal maintenance in excess of 7 years all obligation shall terminate unless the obligee can meet the requirements for continued support provided for under Section (5) of this chapter.

(5). in proceedings for arrearages that have been accrued prior to enactment of this revised statute proceedings shall be limited to enforcement of amounts in arrears and in no case to exceed a maximum of 3 years of accrued arrearages. Interest shall not be applied to amounts in arrears.