

# What Illinois' new spousal maintenance law will mean for the average divorce



A White Paper By Bradley R. Tengler

LAW OFFICE OF

**BRADLEY R. TENGLER**

# Illinois divorce is about to undergo a significant change.

For decades, judges have had almost complete authority regarding the issue of spousal maintenance, which you might know as alimony. Last spring, the Illinois legislature passed a new law that will require judges to follow a formula in determining spousal maintenance awards after the next few months. This paper is intended to help you understand this change and what it means for divorcing couples in the future.

While the law as we know it is constantly evolving at both the state and federal level, there are certain areas in which we are perhaps more attuned to this evolution than others.

For instance, the average person is far more likely to be aware of significant developments in the area of criminal law. That's likely because these kinds of cases are often sensational in nature, covered extensively by the media, and handed down by either their state Supreme Court or the Supreme Court of the United States.

The simple fact remains that outside of legal circles, most people, through little fault of their own, often remain relatively unaware of significant legal developments that could otherwise have a profound impact on their lives at some point in time.

Consider that this past summer Governor Pat Quinn signed a new law that will drastically alter the family law landscape here in Illinois as it relates to spousal maintenance, but that this action went largely unnoticed.

This certainly isn't meant as cause for alarm or even embarrassment. In fact, the ensuing pages will be used to provide an in-depth look at this new and incredibly important spousal maintenance law.

## Maintenance as we currently know it

In almost any divorce, one of the most pressing issues that will need to be resolved either between the couple or by the court is whether one spouse is entitled to spousal support or simply "maintenance" as it is referred to under state law.

It's important to understand, however, that no matter what it's called — spousal support, maintenance, alimony — the underlying purpose is always the same: to minimize the economic impact of the divorce on the spouse earning lower wages or no wages whatsoever.

In other words, maintenance is meant to function as a form of financial help, not financial enrichment, enabling a spouse to continue living the lifestyle to which he or she is otherwise accustomed.

There are two important issues to be decided regarding maintenance. The duration refers to how long the spouse should receive alimony payments, and the amount refers to how much the spouse will receive each year.

In Illinois, the courts have categorized the duration in several ways:

**Temporary maintenance:** Sometimes referred to as alimony pendente lite, this type of maintenance is generally awarded during the pendency of the divorce, such that a spouse can make ends meet until such time as the final divorce decree — perhaps outlining a fixed maintenance award — is issued.

**Rehabilitative maintenance:** Awarded for a set — and relatively short — amount of time post-divorce, the goal of rehabilitative maintenance is to provide a spouse with financial support while he or she pursues education, training or the development of skills that will enable him or her to re-enter the workforce and/or become self-supporting.

**Reviewable maintenance:** Structured in much the same way as rehabilitative maintenance in that it envisions the recipient becoming financially independent post-divorce. However, the court will review whether this has happened or whether the recipient has at least taken steps toward this goal. Depending on the findings, the reviewable maintenance award can be modified, continued or even terminated.

**Permanent maintenance:** Just like the name implies, permanent maintenance is awarded to a spouse post-divorce for what can prove to be a prolonged period. However, it's important to understand that these payments can -- and often are — reduced or even terminated under certain conditions (remarriage of recipient, retirement of the paying spouse, etc.).

The differences between these types of maintenance

MAINTENANCE TYPE	BEFORE DIVORCE IS FINAL	DETERMINED IN DIVORCE ORDER	LONG TERM	SHORT TERM
TEMPORARY	✓			✓
REHABILITATIVE		✓		✓
REVIEWABLE		✓	DEPENDS ON COUPLE	
PERMANENT		✓	✓	

When making the determination as to whether maintenance should be awarded, judges in Illinois will consider 12 distinct factors set forth under the Illinois Marriage and Dissolution of Marriage

Act, and codified in Chapter 750, Part 5, Section 504 of the Illinois Compiled Statutes.

## Factors that determine the amount of maintenance

<p><b>1</b> The property and income of each spouse, including assets secured via the property division process</p>	<p><b>7</b> Any reduction in earning capacity sustained by one spouse due to his or her postponement of education or career training owing to the marriage or caring for children born of the marriage</p>
<p><b>2</b> The age, physical health and emotional well-being of each spouse</p>	<p><b>8</b> The contributions, if any, made by the spouse seeking maintenance to the education, licensing, career of the other spouse</p>
<p><b>3</b> The needs of each spouse</p>	<p><b>9</b> The amount of time needed for a spouse seeking maintenance to secure the training, education or employment needed to become self-sufficient</p>
<p><b>4</b> The length of the marriage</p>	<p><b>10</b> Any existing agreements between the spouses</p>
<p><b>5</b> Each spouse's earning capacity both present and future</p>	<p><b>11</b> The standard of living to which the couple has become accustomed during the marriage</p>
<p><b>6</b> The tax consequences of the property division process for each spouse</p>	<p><b>12</b> Any other factors the court finds to be both just and equitable under the circumstances</p>

Based on the foregoing explanation, it's relatively easy to see how judges in Illinois are vested with nothing short of complete authority concerning maintenance awards, meaning that they not only decide if maintenance is to be awarded, but for how long and how much.

Over the years, however, this reality has served to foster some degree of consternation among members of the state's legal community, many of whom have claimed that this purely subjective approach had resulted in both contradictory and wildly varying maintenance awards from county to county, and even courthouse to courthouse.

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## Maintenance as it's going to be

This past spring, Illinois lawmakers took a monumental step to address these concerns by passing [Senate Bill 3231](#) (later known as Public Act 98-0961 after Governor Quinn signed the legislation last month).

Sponsored by Senator Ira Silverstein (D-Chicago) and Representative Ron Sandack (R- Downers Grove), the measure essentially amends the aforementioned section of the state statutes by establishing precise mathematical formulas to be used by judges to calculate both the amount and duration of maintenance awards for those divorcing couples whose gross income — income before applicable taxes and deductions — is less than \$250,000.

How exactly will SB 3231 change the process of calculating maintenance here in Illinois?

Regarding the threshold determination as to whether maintenance should be awarded, judges will still reference the 12 factors outlined above. However, in the event they decide

that maintenance is appropriate under the circumstances, they will need to use the newly established formulas concerning amount and duration.

Judges will need to follow a specific formula to determine the specific maintenance amount and duration for divorcing couples whose gross yearly income is less than \$250,000.

The text of SB 3231 indicates that judges are not required to follow these guidelines in every divorce case. However, in the event they do decide to deviate, their order must make clear the amount/duration otherwise called for by the guidelines and their reasoning for departing from them.

In 2015, judges will no longer have complete authority over maintenance awards but rather, precise mathematical formulas will be used to calculate both the amount and duration of awards for those divorcing couples who earn less than \$250,000 per year.

## Calculating the amount of the maintenance award

Judges will not need to follow the new calculations in every divorce. These three criteria must apply in order for the new calculations to be required:

- 1) A maintenance award is appropriate under the circumstances.
- 2) The couple in question earns less than \$250,000.
- 3) Neither spouse has children from a previous marriage relationship

In situations that meet this criteria, judges will need to follow the new formula to determine the amount of money to be paid in spousal maintenance each year. The system may seem complicated, but the goal is to arrive at a maintenance amount which is fair for both spouses.

### CALCULATING THE AMOUNT OF THE MAINTENANCE AWARD



**30%** of the gross income of the spouse who will **PAY** maintenance

—



**20%** of the gross income of the spouse who will **RECEIVE** maintenance

=



**Amount** of spousal maintenance to be paid each year

Once this math has been done, there is one more step to ensure a fair maintenance award. The spouse receiving maintenance cannot end up with more than 40% of the couple's combined gross income. To make sure this doesn't happen,

the new law requires the judge to add the receiving spouse's gross income plus the yearly maintenance award. If that amount is more than 40% of the couple's combined gross income, then the judge must reduce the amount.

## Calculating the duration of the maintenance award

Once a judge has calculated the amount of the annual maintenance award, the next step is to determine the amount of time for which it must be paid. The goal here is to acknowledge that the longer a couple has been married, the harder it may be for the spouse receiving support to become less reliant on maintenance.

For marriages less than 20 years, the judge will multiply the exact number of years of marriage by the appropriate percentage. However, if a marriage is 20 years or longer, the judge is given authority to order either permanent maintenance or maintenance for a period equal to the length of the marriage.

Judges will need to determine the duration of maintenance by multiplying the years of marriage by these percentages.

### CALCULATING THE DURATION OF THE MAINTENANCE AWARD

YEARS OF MARRIAGE		DURATION % AWARDED
0-5	=	20%
5-10	=	40%
10-15	=	60%
15-20	=	80%
20+	=	DETERMINED BY JUDGE

## How the formulas work

Two illustrations are provided below in order to demonstrate how the amount and duration of maintenance awards are calculated using these new formulas. While by no means exhaustive,

they are nevertheless meant to provide would-be divorcing couples with clarity as to how judges will arrive at their maintenance decisions moving forward.

**Example 1:** Jim and Susan have been married for 15 years. Jim is a physician earning \$200,000 per year, and Susan is a teacher earning \$30,000 per year.

### CALCULATING THE AMOUNT



**\$60,000**

is 30% of Jim's gross income

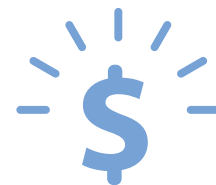
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**\$6,000**

is 20% of Susan's gross income

=



**\$54,000**

per year of maintenance

### CALCULATING THE DURATION

**15** years  
of marriage

X

**80%**  
(or .80)

=

**12 Years**  
of maintenance



**Example 2:** David and Donna have been married for 7 years. Donna is a executive earning \$130,000 per year, while David is a machinist earning \$45,000 per year.

### CALCULATING THE AMOUNT



**\$39,000**

is 30% of Donna's gross income

—



**\$9,000**

is 20% of David's gross income

=



**\$30,000**

per year of maintenance

### CALCULATING THE DURATION

**7** years  
of marriage

x

**40%**  
(or .40)

=

**2.8 Years**  
of maintenance

### 40% RULE APPLIES

**\$30K**  
per year of  
maintenance

+

**\$45K**  
David's  
salary

=

**\$75,000**  
over 40%  
of income

**Amount is more than 40% of the couple's combined gross income.** Because 40% of the couple's gross income (\$175,000) is \$70,000 and, as mentioned above, the guidelines state the amount of the annual maintenance awarded plus the payee's gross income cannot exceed this figure. As such, the **maintenance award would be reduced to \$25,000.**

**\$25,000**  
per year

# Maintenance moving forward

While this fundamental change to the maintenance law here in Illinois is technically not scheduled to take effect until the start of 2015, the reality is that judges around the state are not waiting that long. In fact, many are simply using their current widespread authority — which critics somewhat ironically argued gave them too much discretion in these matters — to start making maintenance awards based on the guidelines that will become the norm in just a few months.

It remains to be seen, however, whether the underlying goals of SB 3231 — reduced litigation, preservation of judicial resources, etc. — are realized over the coming years.

Every divorce has its own unique set of factors and hiring an attorney is wise.

It's perfectly understandable if all of these changes to the state's maintenance laws still seem slightly confusing after reading the foregoing pages. The simple truth is that every divorce presents its own set of unique factors that must be carefully addressed and legal issues — maintenance, child support, child custody, property division 3 that must be carefully considered. Fortunately, an experienced legal professional can guide you through the entire process while protecting both your rights and your best interests.

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LAW OFFICE OF

**BRADLEY R. TENGLER**