

## **A07645 Memo:**

BILL NUMBER:A7645

TITLE OF BILL: An act to amend the domestic relations law and the family court act, in relation to the duration and amount of maintenance and of spousal support

This is one in a series of measures being introduced at the request of the Chief Administrative Judge upon the recommendation of her Matrimonial Practice Advisory and Rules Committee.

This measure would enact new guidelines for both temporary and post-divorce maintenance and spousal support. In developing this measure, Justice Jeffrey Sunshine, chair of the Advisory Committee, informally brought together lawyers belonging to different interest groups in an attempt to achieve a compromise on maintenance guidelines that addresses their sometimes conflicting concerns. Over a period of several months, meetings were held by a working group with participation by the Family Law Section of the New York State Bar Association, the New York Maintenance Standards Coalition, the Women's Bar Association of the State of New York, and the New York Chapter of the American Academy of Matrimonial Lawyers.<sup>{1}</sup> This measure is the result of their collective efforts. It recognizes the need to address the concerns of lower income communities, domestic violence communities, families with middle class economics and families with exceptional wealth. It was approved by the Advisory Committee by a vote of 26-1. As of the time the compromise measure was submitted by the Advisory Committee to the Chief Administrative Judge, the organizations who sent representatives to the working group all endorsed the compromise measure as follows: Women's Bar Association of the State of New York, the Executive Committee of the Family Law Section of the New York State Bar Association, the Board of Managers of the New York Chapter of the American Academy of Matrimonial Lawyers, and the New York State Maintenance Standards Coalition.

Highlights of this measure, (revised to include technical amendments requested by the Chief Administrative Judge's Family Court Advisory and Rules Committee) include:

1. The income cap for the formula portion of temporary maintenance awards would be lowered from the current \$543,000 to \$175,000 of the payor's income. The same \$175,000 cap would apply to post-divorce maintenance awards.
2. There will be two formulas: one where child support will be paid and where the temporary or post-divorce maintenance payor is also the non-custodial parent for child support purposes; and one where child support will not be paid, or where it will be paid but the temporary or post-divorce maintenance payor is the custodial parent for child support purposes. Those formulas are as follows:
  - a. With child support where the maintenance payor is also the non-custodial parent for child support purposes: (i) subtract 25% of the maintenance payee's income from 20% of the maintenance payor's income; (ii) multiply the sum of the maintenance payor's income and the maintenance payee's income by 40% and subtract the maintenance payee's income from the result; (iii) the lower of the two amounts will be the guideline amount of maintenance;

b. Without child support, or with child support but where the maintenance payor is the custodial parent for child support purposes: (i) subtract 20% of the maintenance payee's income from 30% of the maintenance payor's income; (ii) multiply the sum of the maintenance payor's income and the maintenance payee's income by 40% and subtract the maintenance payee's income from the result; (iii) the lower of the two amounts will be the guideline amount of maintenance.

3. The court may adjust the guideline amount of maintenance up to the cap where it finds that the guideline amount of maintenance is unjust or inappropriate after consideration of one or more factors, which shall be set forth in the court's written or on the record decision. Where there is income over the cap, additional maintenance may be awarded after consideration of one or more factors, which shall be set forth in the court's decision or on the record.

4. Temporary maintenance terminates no later than the issuance of a judgment of divorce or the death of either party - i.e., clarifying that the Supreme Court has the power to limit the duration of temporary maintenance.

5. Post-divorce maintenance terminates on the death of either party or the remarriage of the payee former spouse.

6. In determining temporary maintenance, the court can allocate the responsibility for payment of specific family expenses between the parties.

7. The definition of income for post-divorce maintenance will include income from income-producing property that is being equitably distributed (also see "8" below).

8. New factors in post-divorce maintenance will include: termination of child support, income or imputed income on assets being equitably distributed, etc.

9. Durational formula for post-divorce maintenance is advisory, and the durational periods contain ranges to afford courts more discretion. The advisory durational formula in this measure contains more realistic durations for payment of post-divorce maintenance than were included in the maintenance guidelines legislation nearly enacted last spring (see Senate 7266-A/Assembly 9606-A (2013-14)). However, nothing in the instant measure would prevent the court from awarding non-durational, post-divorce maintenance in an appropriate case.

10. In determining the duration of maintenance, the court is required to consider anticipated retirement assets, benefits and retirement eligibility age.

11. Actual or partial retirement will be a ground for modification of post-divorce maintenance assuming it results in a substantial diminution of income.

12. Elimination of enhanced earning capacity as a marital asset.

13. D.R.L. section 248 made gender neutral.

14. Spousal support guidelines are established for Family Court using the same two formulas set forth for maintenance guidelines in "2"

above, as follows: one where child support will be paid and where the spousal support payor is also the non-custodial parent for child support purposes; and one where child support will not be paid, or where child support will be paid but the spousal support payor is the custodial parent for child support purposes. The same \$175,000 income cap applies. The court may adjust the guideline amount of spousal support up to the cap where it finds that the guideline amount of spousal support is unjust or inappropriate after consideration of one or more factors, which shall be set forth in the court's written or on the record decision. Where there is income over the cap, additional spousal support may be awarded after consideration of one or more factors, which shall be set forth in the court's written or on the record decision.

15. A new factor in spousal support awards as well as maintenance awards is termination of a child support award.

16. The Family Court may modify an order of spousal support upon a showing of a substantial change in circumstances. Unless so modified, spousal support orders set pursuant to the guidelines shall continue until the earliest to occur of a written or oral stipulation/agreement on the record, issuance of a judgment of divorce or other order in a matrimonial proceeding, or the death of either party. This measure does not change current law with respect to Family Court's ability to terminate spousal support. In addition, with the advent of no-fault divorce (D.R.L. S 170(7)), payors have the ability to terminate spousal support by obtaining a divorce without having to prove fault simply stating that "the relationship between the parties has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath."

As noted above, this measure is a compromise from the maintenance guidelines bill introduced in the Legislature last year. That measure, had it been enacted, would have amended the current temporary maintenance guidelines in effect pursuant to D.R.L. S 236(B) (5-a), and would have adopted final maintenance and spousal support guidelines for the first time in New York.

For the temporary maintenance guidelines currently effective pursuant to D.R.L. S 236(B) (5-a), calculations of permanent maintenance are not required. As calculations of permanent maintenance for uncontested divorces will be required for the first time under this measure, our Advisory Committee recommends development of a new calculator for use in Supreme Court. The temporary maintenance calculator currently in use in Supreme Court was developed by the Office of Court Administration in 2010 when the temporary maintenance guidelines were adopted. It requires the user to calculate income under the Child Support Standards Act separately on a worksheet, and then input the result into the calculator.{2} Our Advisory Committee recommends that the new calculator perform the calculation of Child Support Standards Act ("CSSA") income for the user.{3} After calculating CSSA income, the calculator would calculate temporary maintenance or permanent maintenance, as the case may be, and then, if applicable, would also calculate child support. We believe that introduction of this tool in Supreme Court will make the transition to maintenance guidelines for

permanent maintenance and uncontested divorces much easier for the general public and the Judiciary. Under this measure, judges are required to compute the guideline amount of maintenance in every case up to the income cap of \$175,000. This tool will be an asset to the efficiency and smooth operation of the court system.

Section 8 of this measure provides that the act takes effect 120 days after it becomes law and applies to all matrimonial and Family Court actions for spousal support commenced on or after such effective date, including the provisions regarding post-divorce maintenance and spousal support awards. However, the provisions of this measure regarding temporary maintenance would take effect 30 days after the measure becomes law. We call for a shorter effective date for temporary maintenance because the courts and the public are already familiar with procedures for temporary maintenance awards. There already is in effect a temporary maintenance worksheet and temporary maintenance calculator posted on the Office of Court Administration's Divorce Resources Website at <http://www.nycourts.gov/divorce/TemporaryMaintenance.shtm1#> with respect to implementation of the current temporary maintenance guidelines in effect pursuant to DRL 236(B)(5-a) enacted in 2010. These tools can be easily modified to comply with the new provisions of this measure. By contrast, the post-divorce maintenance and spousal support provisions of the measure are completely new, and therefore the Office of Court Administration will need additional time for training as well as for creating new forms and procedures to implement the new provisions. Similarly, the bench and the bar will need more time to adapt to the new law. In addition, there was widespread concern that the formula in existence for temporary maintenance yielded significantly unfair awards for temporary maintenance payors with child support obligations, thus justifying a shorter startup period.

This measure would have no fiscal impact upon the State.

Legislative History: None. New proposal.

{1} Sandra Rivera, Esq. and Michelle Haskins, Esq. represented the Women's Bar Association of the State of New York; Alton Abramowitz, Esq. and Eric Tepper, Esq. represented the Family Law Section of the New York State Bar Association; Elena Karabatos, Esq. represented the New York Chapter of the American Academy of Matrimonial Lawyers; and Emily Ruben, Esq. and Kate Wurmfeld, Esq. represented the NYS Maintenance Standards Coalition.

{2} In Family Court, the calculations are performed automatically in the UCMS system which is not used in Supreme Court.

{3} This measure requires one variation from calculation of income under the Child Support Standards Act for purposes of calculating maintenance, namely that alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action should not be deducted from income. This variation from the calculation of income under the Child Support Standards Act in the measure is necessary because otherwise the formula becomes circular by requiring deduction of the very amount that is being calculated.