

2001 DRAFTING REQUEST

Bill

Received: **10/30/2000**

Received By: **kahlepj**

Wanted: **As time permits**

Identical to LRB:

For: **Marlin Schneider (608) 266-0215**

By/Representing: **his office**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Alt. Drafters:

Subject: **Dom. Rel. - maintenance**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

A legislative council study on maintenance

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 11/21/2000	jdye 11/22/2000		_____			State
/1			martykr 11/28/2000	_____	lrb_docadmin 11/28/2000	lrb_docadmin 01/17/2001	

FE Sent For:

<END>

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1?	kahlepj	11/22 jld	km 11/27	P.B 11/28 km 11/28			

FE Sent For:

<END>

840

Kahler, Pam

From: Miller, Steve
Sent: Thursday, October 26, 2000 3:29 PM
To: Kahler, Pam
Subject: Request from Rep. Schneider

Marlin would like a draft calling for a Legislative Council study on payments of maintenance in divorce proceedings. Is this yours?

TO: Representative Marlin Schneider

From: Mike Van Asten, Larry Saeger, Jerry Ruesch, and Dan Pence

RE: Maintenance statute

Date: Oct. 29, 2000

Marriage has been with us since before Moses and has been a verbal contract made before GOD and witnesses to be a lifetime commitment. It is also a written contract recognized by the State of Wisconsin. Marriage should never be entered into lightly and should never be ended without due cause. At the very least, marriage should never be allowed to be ended with rewards made to those responsible for its dissolution.

If we are to continue to be a no fault divorce state, the least we can do is to put into effect a law or statute that says we will not condone divorce by rewarding one individual at the expense of the other. When that contract ceases to exist, the responsibilities of both parties cease to exist. There should be some accountability for choices made during and after the marriage.

If divorce is inevitable, then let's examine the situation and be fair, not just to one party, but to both.

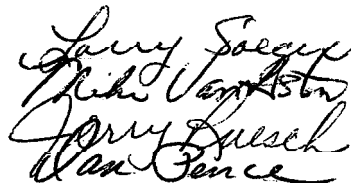
With these thoughts in mind, we have put together a draft of a new State Statute to replace the current one. This new draft is not entirely new; most of it is excerpts from other states' statutes and from our own court system's case laws. You may recognize some similarities to several different cases or publications. Particular attention was paid to length and we tried to keep the generalization rule in mind. We offer this believing it is fair to both parties in more situations than the present statute. This draft also limits the discretion of the judge. Please advise us of your thoughts and consider presenting this draft for legislation.

We are also wondering if there is any encouraging news from Dennis Moran.

Your time and consideration are greatly appreciated.

Thank you very much.

Larry Saeger
Mike Van Asten
Jerry Ruesch
Dan Pence



1. Spousal maintenance (alimony), **in most cases**, should be **rehabilitative** and is **not guaranteed** nor is it a right. Maintenance is not and should not be a privately funded welfare program.

(a) Spouses seeking maintenance should understand that there is no law that provides a payee spouse to take from a marriage without contributing to the marriage, and then continue to share in a payer spouse's income when the marriage ends.

(b) Maintenance is to be considered as a rehabilitative factor and ordered for the shortest possible length of time. Seeking spouse's life style and economic situation before the marriage and their diligence to seek employment during and after the marriage should be a consideration.

(1) Rehabilitative means that the receiving spouse should be trying to achieve the education and skills required to become self-supporting. Therefore their progress should be monitored to guarantee an honest effort with a penalty of loss of maintenance.

(c) It would be unreasonable for a spouse to voluntarily leave a marriage far better than they entered it and then expect to continue to enjoy a portion of the payer's income after the marriage unless rehabilitation is necessary.

(1) The seeking spouse should be able to prove a reasonable effort to salvage the marriage or the lack of effort on the payer's part, (i.e.) counseling etc., unless there have been convictions of family violence or drug and alcohol abuse.

(d) It would be unreasonable for a spouse to participate in extramarital activities causing the divorce and then expect to receive any kind of maintenance. By the same token, if it is the payer's extramarital activities, then maintenance should be granted.

(e) It would be unreasonable for a spouse to continue to receive maintenance while cohabitating under any circumstances.

(1) Cohabitation, whether in a hetero sexual or homosexual situation, is cause for termination.

2. The court may order rehabilitative maintenance for a spouse if the payer was convicted for family violence, drug and alcohol related convictions, has a gambling addiction, or the marriage was 15 years or longer.

(a) The spouse seeking maintenance must show that he/she lacks sufficient resources, due to the marriage, to provide for their minimal reasonable

needs.

(b) The spouse seeking maintenance must show that employment is difficult to maintain or gainful employment is not possible because of a physical or mental disability incurred during the marriage.

(c) Maintenance may be ordered if the payee spouse contributed to the education of the payer raising the income level of that spouse.

3. Factors for the court to look at when determining eligibility for a spouse to receive maintenance.

(a) All the financial resources of the spouse seeking maintenance.

(b) Education and employment skills before, during, and after the marriage.

(c) Time necessary for education or vocational rehabilitation if needed.

(d) Employment history, earning ability, as well as the emotional and physical well being of the spouse before and during the marriage.

(e) Contributions or sacrifices made by either spouse during the marriage.

(f) The efforts of the payee spouse to obtain suitable employment before, during, and after the marriage.

(1) The judge can deny maintenance if the payee spouse has not exercised due diligence in seeking employment and developing the necessary skills to become self-supporting. The payee should pursue these requirements while the suit is pending, as well as after, or risk loss of the maintenance.

4. Time limits for maintenance unless the parties agree to a different time frame.

(a) The court is to limit the maintenance to the shortest time possible for the payee to begin employment that will provide for their minimal reasonable needs.

(b) The order for maintenance is not to exceed a maximum of 3 years from the date the divorce decree was signed.

(1) The time limits may be extended to equal the payee's contribution to the education of the payer.

(2) Disability incurred during the marriage may continue the time frame longer than 3 years. Once the disability has been removed, so

is the extended time frame.

5. Maintenance shall be limited so as not to exceed the lesser of 20% of the payer's average monthly gross income previous to the divorce decree, (based on 2080 hours per year 40 hour work week), or \$2500 per month.

(a) The amount set should be only enough to provide the spouse with minimal reasonable needs.

DJP
L.S.
JR
MVA



Jld

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

D-note

gen cat

1 AN ACT [✓]; relating to: a legislative council study on maintenance. ✓

Analysis by the Legislative Reference Bureau

Under current law, a court may order one party to pay maintenance (formerly known as alimony) to the other party in a divorce action. The statutes set out factors that a court must consider in ordering maintenance, such as the length of the marriage, the educational level of the parties at the time of the marriage and at the commencement of the action, the age and physical and emotional health of each party, and the contribution that a party has made to the increased earning power of the other party. Maintenance may be ordered for a definite or indefinite length of time, but terminates, upon application to the court by the payer, if the payee remarries.

This bill requests the joint legislative council [✓] to conduct a study of maintenance in divorces. The study must examine such issues as whether maintenance should be terminated if a party receiving maintenance cohabits with another person, whether a party's actions that may have contributed to the divorce should be a basis for ordering or not ordering maintenance, and whether maintenance should be ordered in conformance with set standards that give the court less discretion. If the joint legislative council conducts the study, it must report its findings and recommendations to the appropriate standing committees of the legislature by January 1, 2002.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1. Nonstatutory provisions.**

2 (1) STUDY ON MAINTENANCE. ✓

3 (a) The joint legislative council is requested to conduct a study on maintenance
4 payments in divorce actions. The study shall include an examination of at least all
5 of the following issues:

6 1. The purposes and length of time for which maintenance is ordered.

7 2. How the factors under section 767.26 ✓ of the statutes are used in ordering
8 maintenance.

9 3. The feasibility of monitoring cases in which maintenance has been ordered
10 to determine whether the maintenance has been effective in achieving the purpose
11 for which it was ordered.

12 4. Whether maintenance is ordered or not ordered, and the feasibility of
13 ordering or not ordering maintenance, on the basis of a party's actions during the
14 marriage that may have contributed to the divorce or a party's efforts to preserve and
15 support the marriage.

16 5. The feasibility of terminating maintenance, and whether maintenance
17 should be terminated, on the basis of the payee's cohabitation with another person.

18 6. Whether maintenance should be ordered in conformance with set standards
19 that give the court less discretion and that place maximums on the monthly amount
20 of maintenance and the length of time for which maintenance may be ordered and
21 a minimum on the length of a marriage in which maintenance may be ordered.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0840/dn
PJK.....
jid

topics
↑

as study topics
↑

I tried to include some general issues from your constituents' letter. Let me know if you want any changes to the ~~issue~~ or to the date for the report.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0840/1dn
PJK:jld:km

November 27, 2000

I tried to include some general issues from your constituents' letter as study topics. Let me know if you want any changes to the topics or to the date for the report.

Pamela J. Kahler
Senior Legislative Attorney
Phone: (608) 266-2682
E-mail: pam.kahler@legis.state.wi.us



STEPHEN R. MILLER
CHIEF

State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

100 NORTH HAMILTON STREET
5TH FLOOR
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
LEGAL FAX: (608) 264-6948

November 28, 2000

MEMORANDUM

To: Representative Schneider

From: Pamela J. Kahler, Senior Legislative Attorney

Re: LRB-0840 A legislative council study on maintenance

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

JACKET FOR ASSEMBLY JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-2682 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.