

1 **AN ACT** *to renumber* 767.56 (1) to (9) and 767.56 (10); *to renumber and amend*
2 767.56 (intro.); and *to create* 767.56 (1) (j) to (m) and 767.56 (2) to (5) of the
3 statutes; **relating to:** amount and duration of maintenance awards.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft, relating to the duration of maintenance awards, was prepared for the Special Committee on Review of Spousal Maintenance Awards in Divorce Proceedings.

Background

Seeking to make the duration of maintenance awards more uniform and predictable, and to provide guidance that would be available to all parties regardless of legal representation, the committee adopted a schedule for the duration of maintenance awards that is based on the length of marriage.

However, the committee recognized that there are many variations in circumstances, and that the duration of a maintenance award arrived at using simply the length of the marriage may not always reflect the unique circumstances of the parties. Therefore, deviation factors are included to address the more common situations where an adjustment to the duration standard may be necessary.

This bill draft largely adopts the recommendations of the American Academy of Matrimonial Lawyers' Commission (AAML Commission), reported in 2007, for formulating the duration of maintenance awards. The deviation factors incorporate the current maintenance factors set forth in s. 767.56, stats.

Current Law

Under current law (s. 767.56, stats.), maintenance may be awarded to a party for a limited or indefinite length of time, for an amount not defined by statute, after considering a list of statutory factors that includes the length of the marriage, the age and physical and emotional health of the parties, the educational levels of the parties, the earning capacity of the party seeking maintenance, the feasibility that the party seeking maintenance can become self-supporting at a standard of living

reasonably comparable to that enjoyed during the marriage, and the contribution by one party to the education, training, or increased earning power of the other party.

Bill Draft

1. Duration of Award

This bill draft revises the maintenance statute. It maintains the flexibility under current law for the court to set the amount of a maintenance award as appropriate based on the parties' particular circumstances.

The bill draft provides that the duration standard specified in the revised statute must be used to determine the duration of a maintenance award, unless a party shows that use of the duration standard would be unfair to either of the parties based on a list of common circumstances for deviating from the standard. The duration standard is:

- If 0–3 years of marriage, award no maintenance.
- If 4–10 years of marriage, multiply the length of the marriage by 0.3.
- If [11–25] [11 or more] years of marriage, multiply the length of the marriage by 0.5. [Note: Choose 11 or more years, if indefinite maintenance may not be awarded under the next paragraph.]
- [If 26 or more years of marriage, award indefinite maintenance.]

[Option from Committee Member: The bill draft provides that maintenance for an indefinite term may not be awarded except if one of the following applies:

- A party has an incapacitating physical or mental disability.
- A party has substantial periods of physical placement with his or her child or disabled adult child.
- Such other impediment to a party becoming self-supporting as the court deems relevant.]

The bill draft provides that, for purposes of determining the duration of a maintenance award under the schedule, the length of the marriage is determined from the date of the marriage until the date of the filing of the divorce, annulment, or legal separation action between the parties.

2. Factors in Determining Amount of Award

The bill draft retains the factors from the current maintenance statute for determining the amount of a maintenance award, and adds four factors from the AAML commission recommendations that do not overlap with the subject matter of the factors in current law. The full list of factors is

available to the court when considering a deviation from the formula standard for the duration of a maintenance award. The new factors are:

- Whether a party has substantial periods of physical placement with his or her child or disabled adult child.
- Whether a party has pre-existing court-ordered support obligations.
- Whether a party has court-ordered payment of debts or other obligations from the action between the parties.
- Whether a party has unusual needs.

1 **SECTION 1.** 767.56 (intro.) of the statutes is renumbered 767.56 (1) and amended to read:

2 767.56 (1) **Maintenance amount.** (intro.) Upon a judgment of annulment, divorce,
3 or legal separation, or in rendering a judgment in an action under s. 767.001 (1) (g) or (j), the
4 court may grant an order requiring maintenance payments to either party for ~~a limited or~~
5 ~~indefinite length of time~~ an amount determined by the court after considering:

6 **SECTION 2.** 767.56 (1) to (9) of the statutes are renumbered 767.56 (1) (a) to (i).

7 **SECTION 3.** 767.56 (1) (j) to (m) of the statutes are created to read:

8 767.56 (1) (j) Whether a party has substantial periods of physical placement with his
9 or her child or disabled adult child.

10 (k) Whether a party has pre-existing court-ordered support obligations

11 (L) Whether a party has court-ordered payment of debts or other obligations from the
12 action between the parties.

13 (m) Whether a party has unusual needs.

NOTE: Specifies additional factors a court must consider if it decides to award maintenance to either party. These factors are drawn from the AAML commission recommendations that do not overlap with the existing factors from this subsection.

14 **SECTION 4.** 767.56 (2) to (5) of the statutes are created to read:

15 767.56 (2) **MAINTENANCE DURATION.** Except as provided in sub. (3), the court shall
16 determine the duration of a maintenance award as follows:

1 (a) If 0–3 years of marriage, award no maintenance.

2 (b) If 4–10 years of marriage, multiply the length of the marriage by 0.3.

3 (c) If [11–25] [11 or more] years of marriage, multiply the length of the marriage by 0.5.

4 (d) [If 26 or more years of marriage, award indefinite maintenance.] [If any of the
5 following apply, the court may award indefinite maintenance:

6 1. A party has an incapacitating physical or mental disability.

7 2. A party has substantial periods of physical placement with his or her child or disabled
8 adult child.

9 3. Such other impediment to a party becoming self-supporting as the court determines
10 to be relevant.]

NOTE: Creates a duration standard to be used to determine, in general,
the duration of a maintenance award.

11 **(3) FACTORS FOR DEVIATION FROM DURATION STANDARD.** Upon request by a party, the court
12 may modify the duration of a maintenance award determined under sub. (2) if, after
13 considering the factors under sub. (1), the court finds by the greater weight of the credible
14 evidence that use of the duration standard under sub. (2) is unfair to either of the parties.

NOTE: Provides that upon request by a party, a court may modify the
duration of maintenance determination under new sub. (2), if use of that
standard is unfair to either party.

15 **(4) DEVIATION FROM STANDARD; RECORD.** If the court finds under sub. (3) that use of the
16 duration standard under sub. (2) is unfair to either party, the court shall state in writing or on
17 the record the duration of a maintenance award that would be required under sub. (2), the
18 amount by which the court's order deviates from the duration standard, its reasons for finding
19 that use of the duration standard is unfair to either party, its reasons for the amount of the
20 deviation, and the basis for the deviation.

NOTE: Requires a court, if it deviates from the duration standard, to set forth in writing or on the record: (1) the amount by which the court's order deviates from the standard; (2) its reasons for finding use of the standard unfair; (3) its reasons for the amount of the deviation; and (4) the basis for the deviation.

(5) LENGTH OF MARRIAGE. For purposes of determining the duration of a maintenance award under this section, the court shall determine the length of the marriage as from the date of the marriage until the date of filing the action between the parties. This subsection does not affect the parties' legal marital status.

NOTE: Specifies that for purposes of determining the duration of a maintenance award under the revised s. 767.56, stats., a court must determine the length of the marriage as from the date of the marriage until the date of filing the divorce, annulment, or legal separation action between the parties. For all other purposes, the parties are in the legal status of marriage until the judgment of divorce, annulment, or legal separation is issued, as under current law.

SECTION 5. 767.56 (10) of the statutes is renumbered 767.56 (1) (n).

SECTION 6. Initial applicability. The treatment of section 767.56 (2) to (5) of the statutes first applies to parties filing a petition in an action for annulment, divorce, or legal separation, or in actions under s. 767.001 (g) or (j), on the effective date of this section.

(END)