

**ALIMONY:  
PROPOSED AMENDMENTS to TITLE 23 of the  
PENNSYLVANIA CONSOLIDATED STATUTES**

**REPORT of the ADVISORY COMMITTEE on  
DOMESTIC RELATIONS LAW**

**DECEMBER 2007**



**General Assembly of the Commonwealth of Pennsylvania  
JOINT STATE GOVERNMENT COMMISSION  
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Harrisburg, PA 17120**

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## ALIMONY

Title 23 of the Pennsylvania Consolidated Statutes (the Domestic Relations Code) is amended as follows:

### CHAPTER 37 ALIMONY AND SUPPORT

Sec.

[3701. Alimony.]

3701.1. Definitions.

3701.2. Alimony.

3702. Alimony pendente lite, counsel fees and expenses.

3703. Enforcement of arrearages.

3704. Payment of support, alimony and alimony pendente lite.

3705. Enforcement of foreign decrees.

[3706. Bar to alimony.

3707. Effect of death of either party.]

[§ 3701. Alimony.

(a) General rule.--Where a divorce decree has been entered, the court may allow alimony, as it deems reasonable, to either party only if it finds that alimony is necessary.

(b) Factors relevant.--In determining whether alimony is necessary and in determining the nature, amount, duration and manner of payment of alimony, the court shall consider all relevant factors, including:

- (1) The relative earnings and earning capacities of the parties.
- (2) The ages and the physical, mental and emotional conditions of the parties.
- (3) The sources of income of both parties, including, but not limited to, medical, retirement, insurance or other benefits.
- (4) The expectancies and inheritances of the parties.

- (5) The duration of the marriage.
- (6) The contribution by one party to the education, training or increased earning power of the other party.
- (7) The extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child.
- (8) The standard of living of the parties established during the marriage.
- (9) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment.
- (10) The relative assets and liabilities of the parties.
- (11) The property brought to the marriage by either party.
- (12) The contribution of a spouse as homemaker.
- (13) The relative needs of the parties.
- (14) The marital misconduct of either of the parties during the marriage. The marital misconduct of either of the parties from the date of final separation shall not be considered by the court in its determinations relative to alimony, except that the court shall consider the abuse of one party by the other party. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102 (relating to definitions).
- (15) The Federal, State and local tax ramifications of the alimony award.
- (16) Whether the party seeking alimony lacks sufficient property, including, but not limited to, property distributed under Chapter 35 (relating to property rights), to provide for the party's reasonable needs.

(17) Whether the party seeking alimony is incapable of self-support through appropriate employment.

(c) Duration.--The court in ordering alimony shall determine the duration of the order, which may be for a definite or an indefinite period of time which is reasonable under the circumstances.

(d) Statement of reasons.--In an order made under this section, the court shall set forth the reason for its denial or award of alimony and the amount thereof.

(e) Modification and termination.--An order entered pursuant to this section is subject to further order of the court upon changed circumstances of either party of a substantial and continuing nature whereupon the order may be modified, suspended, terminated or reinstituted or a new order made. Any further order shall apply only to payments accruing subsequent to the petition for the requested relief. Remarriage of the party receiving alimony shall terminate the award of alimony.

(f) Status of agreement to pay alimony.--Whenever the court approves an agreement for the payment of alimony voluntarily entered into between the parties, the agreement shall constitute the order of the court and may be enforced as provided in section 3703 (relating to enforcement of arrearages).]

#### § 3701.1. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Cohabitation." The act of two individuals residing together and mutually assuming those rights and duties usually attendant upon a marriage relationship. Cohabitation may be shown by evidence of financial, social and sexual

interdependence, by a sharing of the same residence and by other means. This definition shall apply to all alimony awards and to all alimony agreements, unless otherwise provided in the agreement.

“Compensatory alimony.” Includes payments for a spouse who contributed to the education or training, or both, of the other spouse, substantially increasing the earning capacity of the other spouse.

“Excess income.” The amount by which a party’s income or earning capacity exceeds the party’s reasonable needs.

“Reasonable needs.” The needs of a party consistent with a realistic lifestyle during the marriage in light of the parties’ economic circumstances following the divorce.

“Reimbursement alimony.” Includes payments for a spouse who contributed nonmarital assets to the marriage.

“Unfunded needs.” The amount by which a party’s reasonable needs exceed the party’s income and earning capacity.

#### Note

The definitions contained in this section are new, although “cohabitation” was defined differently in § 3706.

#### Comment

The definition of “cohabitation” in this section changes the law, as was set forth in § 3706. Section 3706 provided that a petitioner was not entitled to an award of alimony if the petitioner “has entered into cohabitation with a person of the opposite sex who is not a member of the family of the petitioner within the degrees of consanguinity.” The definition of “cohabitation” in this section treats same-sex cohabitation and opposite-sex cohabitation in the same manner.

§ 3701.2. Alimony.

(a) General rule.--The court shall consider an award of alimony:

(1) at the request of a party; and

(2) upon a determination that:

(i) the petitioner has unfunded needs; and

(ii) the respondent has excess income.

(b) Factors for unfunded needs and excess income.--In determining the amount of a party's respective unfunded needs and excess income, the court shall consider the following factors:

(1) The income and earning capacity of each party, including the income that is or could be reasonably derived from all the assets of each party.

(2) The age and physical, mental and emotional condition of each party.

(3) The benefits received by or available to each party, including, but not limited to, medical, retirement, insurance or other benefits.

(4) The extent to which a party's earning capacity, expenses or financial obligations were or will be affected because the party served or will serve as the custodian of a minor child.

(5) The standard of living of the parties established during marriage.

(6) The relative education of the parties and the reasonable anticipated expenses to acquire sufficient education or training to enable the petitioner to enhance the petitioner's earning capacity.

(7) The reasonable liabilities of each party, including debt service on those liabilities.

(8) The obligations of each party for child support.

(9) The Federal, State and local tax ramifications of the alimony award.

(10) The extent to which income and assets have already been taken into account in determining an award of equitable distribution, child support, counsel fees or otherwise.

(c) Amount of alimony.--Upon a determination that an award of alimony is appropriate, the amount of the award shall be equal to the least of:

(1) the amount of the petitioner's unfunded needs;

(2) the amount of the respondent's excess income; or

(3) an amount equal to the spousal support determined under the Pennsylvania Support Guidelines.

(d) Duration of alimony generally.--

(1) The court in awarding alimony shall determine whether the award shall have a definite term or an indefinite term.

(2) The court may consider awarding one year of alimony for every three years of marriage prior to final separation.

(e) Factors for duration of alimony.--In determining the duration of a definite or an indefinite award of alimony, the court shall consider all relevant factors, including the following:

(1) The age and physical, mental and emotional condition of each party.

(2) The benefits received by or available to each party, including, but not limited to, medical, retirement, insurance or other benefits.



(3) The contribution by one party to the education, training or increased earning capacity of the other party.

(4) The extent to which a party's earning capacity, expenses or financial obligations were or will be affected because the party served or will serve as the custodian of a minor child.

(5) The relative education of the parties and the time necessary to acquire sufficient education or training to enable the petitioner to enhance the petitioner's earning capacity.

(6) The reasonable liabilities of each party, including the duration of any debt service on those liabilities.

(7) The marital misconduct of either of the parties during the marriage and prior to the date of final separation, but the court shall consider the abuse of one party by the other party even after the date of final separation. As used in this paragraph, "abuse" shall have the meaning given to it under section 6102(a) (relating to definitions).

(8) The extent to which income and assets have already been taken into account in determining an award of equitable distribution, child support, counsel fees or otherwise.

(9) Where appropriate, the date when either of the parties might reasonably retire from employment.

(10) The amount and duration of spousal support or alimony pendente lite paid by the obligor, including payments unallocated between spouse and child, whether voluntarily or pursuant to a court order.

(f) Indefinite term of alimony.--

(1) The court shall consider an indefinite term of alimony under either of the following circumstances:

(i) The marriage was of a duration of 20 or more years prior to final separation.

(ii) The obligee:

(A) is the primary custodian or caretaker of and is providing care for an unemancipated child of the parties, if the child suffers from a serious physical or mental disability; and

(B) lacks sufficient income or earning capacity and separate and marital property to pay reasonable living expenses, including the cost of medical treatment for the child.

(2) For an award of alimony that has an indefinite term, the court may modify or terminate the award upon a material change in circumstances of either party of a substantial and continuing nature.

(g) Compensatory and reimbursement alimony.--Regardless of whether an award of alimony has been made under the provisions of subsection (a), where the marital assets are insufficient to effect economic justice, a court may award either compensatory alimony or reimbursement alimony, or both.

(h) Statement of reasons.--In an award made under this section, the court shall set forth the reasons for its denial or award of alimony and the amount and duration thereof with specific reference to the relevant factors and circumstances under subsections (b) and (e).

(i) Modification--

(1) Except as provided under paragraph (2), an award entered pursuant to this section is subject to further order of the court upon a material change in circumstances of either party of a substantial and continuing nature whereupon the award may be modified, suspended or reinstituted or a new award made. Unless the court orders otherwise, any further award shall apply to payments accruing effective on the date of filing of the petition for the requested relief. An award that has an indefinite term may be modified to set a definite term.

(2) The court may not grant a petition to modify the duration of an alimony award that has a definite term.

(j) Termination.--

(1) Except as provided under paragraph (2) and unless otherwise indicated in an agreement between the parties, an award of alimony shall terminate when any of the following has occurred:

(i) The obligee has remarried.

(ii) The obligee has entered into cohabitation.

(iii) The death of the obligee.

(iv) The death of the obligor, unless otherwise indicated in the prior order of court.

(2) An award of compensatory alimony or reimbursement alimony under subsection (g) does not terminate upon the remarriage or cohabitation of the obligee but may terminate upon the death of either party.

(3). Except as provided under paragraph (2), if an obligor has paid alimony to an obligee after an alimony termination event under paragraph (1), the court may order the obligee to reimburse the obligor the amount of the alimony paid after the alimony termination event.

(k) Status of agreement to pay alimony.--Whenever the parties enter a written agreement for the payment of alimony, the agreement shall constitute an order of the court for enforcement purposes only. Absent a specific provision to the contrary, an agreement for the payment of alimony is not subject to modification.