

**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
108 Finance Building
Harrisburg, PA 17120

The release of this report should not be interpreted as an endorsement by the members of the Executive Committee of the Joint State Government Commission of all the findings, recommendations or conclusions contained in this report.

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December 2007

TO THE MEMBERS OF THE GENERAL ASSEMBLY:

The Joint State Government Commission is pleased to present this report of the Advisory Committee on Domestic Relations Law. This report contains proposed amendments regarding alimony and official comments to the Domestic Relations Code (Title 23 of the Pennsylvania Consolidated Statutes). The recommendations contained in this report represent the consensus of the advisory committee gained after extensive analysis and deliberation.

On behalf of the General Assembly, I thank the members of the advisory committee for contributing their valuable time and expertise in the considerable effort to improve domestic relations law in Pennsylvania. I commend the advisory committee for its commitment to develop legislation and assist in the legislative process.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Roger A. Madigan".

Roger A. Madigan,
Chair

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INTRODUCTION

The Task Force and Advisory Committee Process

Senate Resolution 43 of 1993 (Printer's No. 1673) directed the Joint State Government Commission to undertake an ongoing study of domestic relations law.¹ To accomplish this purpose, the resolution created a legislative task force comprised of the Majority and Minority Chairs of the Senate Judiciary Committee, the Senate Aging and Youth Committee, the House Judiciary Committee and the House Aging and Youth Committee.² Senator Stewart J. Greenleaf serves as the Chair of the Task Force on Domestic Relations Law.

The resolution also created an advisory committee to assist the Task Force in the coordinated review of Title 23 of the Pennsylvania Consolidated Statutes (23 Pa.C.S.), known as the Domestic Relations Code. The Advisory Committee consists of attorneys, judges and a law school professor from across the Commonwealth who provide expertise and advice in formulating legislation. Judge Emanuel A. Bertin of Montgomery County serves as the Chair of the Advisory Committee on Domestic Relations Law.

After reaching consensus on proposed statutory language, the Advisory Committee presents its legislative recommendations to the Task Force, which decides whether to authorize the Joint State Government Commission to publish a report containing the recommendations. The published recommendations then serve as a basis for legislation.

On December 10, 2007, the Task Force authorized both the publication of a report containing the recommendations of the Advisory Committee and the introduction of legislation contained in this report. However, such authorization does not necessarily reflect the endorsement of the recommendations by the Task Force.

In addition to the proposed legislation recommended by the Advisory Committee, this report contains official comments regarding the alimony provisions, along with notes explaining the origin of the proposed statutory provisions.³ The official comments may be used in determining the intent of the General Assembly.⁴ This report also contains a

¹ Senate Resolution 43 of 1993, adopted February 1, 1994, excluded review of domestic relations law relating to child abuse and adoption.

² The House Aging and Youth Committee was subsequently separated into the House Aging and Older Adult Services Committee and the House Children and Youth Committee.

³ *Infra* pp. 9-23. All the provisions of 23 Pa.C.S. Chapter 37 are replicated in this report, although statutory amendments are not proposed for every section.

⁴ 1 Pa.C.S. § 1939.

summary of the recommendations⁵ and transitional language (applicability and effective date provisions).⁶

Finally, this report contains a copy of a Memorial Resolution for Frederick Cohen,⁷ a charter member of the Advisory Committee. The Memorial Resolution was adopted by the Advisory Committee at its September 26, 2007 meeting.

Previous Reports Regarding the Domestic Relations Code

The Joint State Government Commission previously published two reports of the Advisory Committee on Domestic Relations Law, which contained proposed amendments to the Domestic Relations Code: *Divorce Code: Proposed Recommendations* (April 1999) and *Custody: Recommendations* (November 1999).

The April 1999 report recommended the following amendments to the Domestic Relations Code:

- (1) The clarification of the definition of “separate and apart” under § 3103.
- (2) The addition of a new § 3106, regarding the enforceability of premarital agreements and including a provision that the agreements are void if executed within 60 days of the marriage.
- (3) The provision of a one-year separation period as a ground for divorce under § 3301(d).
- (4) The repeal of § 3323(c) in favor of a new subsection (c.1), to reject automatic bifurcation, provide for bifurcation with the consent of both parties and permit bifurcation only under limited circumstances in the absence of consent.
- (5) The repeal of § 3323(d) in favor of a new subsection (d.1), to provide that under certain circumstances a divorce action does not abate upon the death of a party and that the parties’ economic rights and obligations are determined under equitable distribution principles and not under the elective share provisions of the Probate, Estates and Fiduciaries Code (Title 20 of the Pennsylvania Consolidated Statutes).

⁵ *Infra* pp. 7-8.

⁶ *Infra* p. 25.

⁷ Appendix, *infra* p. 27.

- (6) The clarification under a new § 3501(a.1) of how and when to measure and determine the increase in value of nonmarital property.
- (7) The addition of a provision in a new § 3501(a.1) that ensures that only the net increase in value of a party's nonmarital property is considered part of the marital estate.
- (8) The addition of a new § 3501(c) to reverse case law, adopt a coverture fraction methodology and include all post-separation enhancements, except for post-separation monetary contributions by the employee spouse, in the value of a defined benefit pension.
- (9) Specific authorization under § 3502(a) for courts to consider each marital asset independently in equitable distribution and, in appropriate cases, apply a different percentage to each marital asset.
- (10) The clarification under a new § 3502(a)(10.1) that tax ramifications need not be immediate and certain to be considered in making an equitable distribution award.
- (11) The provision under a new § 3502(a)(10.2) that the expenses of sale, transfer or liquidation associated with a particular asset may be considered in making an equitable distribution award.
- (12) The authorization of interim equitable distribution awards under a new § 3502(f).
- (13) Under § 3505(d), the increase of the threshold amount for when a party may petition the court for the creation of a constructive trust for undisclosed assets.
- (14) Conforming amendments to § 3506, in light of the amendments to § 3502(a).
- (15) The repeal of Chapter 37 in favor of a new statutory framework for alimony, to provide for presumptive guidelines for the amount and duration of alimony. The recommendations also included provisions for (i) credit against an alimony award for alimony pendente lite and spousal support previously paid, (ii) the consideration of the effect of marital misconduct prior to final separation on the post-separation economic circumstances of the parties, (iii) modification and termination of an alimony award, (iv) the effect of cohabitation on an alimony award, (v) alimony

pendente lite, (vi) health and hospitalization insurance pendente lite and (vii) attorney fees and expenses pendente lite.

The November 1999 report recommended the following amendments to the Domestic Relations Code:

- (1) The repeal of 23 Pa.C.S. Subchapter A (§§ 5301-5314), to be replaced with a new statutory framework for custody (§§ 5321-5339).
- (2) The repeal of 23 Pa.C.S. Subchapter B, containing the Uniform Child Custody Jurisdiction Act (UCCJA), to be replaced with a new Chapter 54, containing the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA).

Legislation Enacted

The recommendations published in the two Joint State Government Commission reports resulted in legislation that was introduced in various forms throughout the succeeding legislative sessions.⁸ Ultimately, the following recommendations were enacted into law:

Custody. Act 39 of 2004⁹ repealed the UCCJA (23 Pa.C.S. Chapter 53 Subchapter B) and adopted the UCCJEA (23 Pa.C.S. Chapter 54).

Divorce. Act 175 of 2004¹⁰ adopted amendments to the following sections, which the Advisory Committee had previously recommended: 3103 (definition of “separate and apart”), 3106,¹¹ 3323,¹² 3501, 3502, 3505 and 3506.

⁸ The alimony recommendations contained in the April 1999 report were never introduced as legislation.

⁹ Act of June 15, 2004 (P.L.236, No.39). Act 39 of 2004 became effective on August 16, 2004.

¹⁰ Act of Nov. 29, 2004 (P.L.1357, No.175). Act 175 of 2004, which became effective on January 28, 2005, also amended 20 Pa.C.S. § 2203 (right of election; resident decedent).

¹¹ However, Act 175 of 2004 did not include the recommendation that “[a]ny premarital agreement executed within 60 days prior to the marriage shall be void. Any waiver of this subsection shall be unenforceable.” In addition, technical changes were made to the subsection regarding the definition of “premarital agreement.”

¹² However, Act 175 of 2004 did not amend § 3301(d) to shorten the period that the parties have lived separate and apart from two years to one year, as the Advisory Committee had recommended. Accordingly, the bifurcation provisions under the enacted § 3323(c.1)(1) do not provide that “at least one year has elapsed since grounds have been established”; Act 175 simply provides that “grounds have been established.” Similarly, § 3323(g) as enacted provides for a two-year period.

Corrective Amendments. Act 4 of 2005¹³ repealed a transitional provision in Act 175 of 2004 specifying that “[t]he amendment of 23 Pa.C.S. § 3501(c) shall apply to all equitable distribution proceedings commenced on or after the effective date of this paragraph.” Act 4 provided that “[t]he provisions of 23 Pa.C.S. § 3501(c) shall apply to all equitable distribution proceedings pending on or after the effective date of this section.”

Custody Legislation

The custody recommendations contained in the November 1999 report were introduced as follows, along with the legislative history:

2001-2002 Legislative Session. Senate Bill 1260 of 2002, which contained a new statutory framework for custody under 23 Pa.C.S. §§ 5321-5339 and for the UCCJEA under 23 Pa.C.S. Chapter 54, was referred to the Senate Judiciary Committee on January 10, 2002. On May 6, 2002, a public hearing was held on the bill. Subsequently, the bill was reported as amended on September 24, 2002 and received first consideration. On November 18, 2002, it was amended on second consideration. No further legislative action on the bill was taken.

2003-2004 Legislative Session. Senate Bill 275 of 2003, which contained a new statutory framework for custody under 23 Pa.C.S. §§ 5321-5339 and the UCCJEA under 23 Pa.C.S. Chapter 54, was referred to the Senate Judiciary Committee on February 10, 2003. The bill was reported as amended on March 11, 2003 and received first consideration. No further legislative action on the bill was taken.

2005-2006 Legislative Session. Senate Bill 74 of 2005, which contained a new statutory framework for custody under 23 Pa.C.S. §§ 5321-5339,¹⁴ passed the Senate on October 18, 2005. The bill was referred to the House Judiciary Committee on October 19, 2005. On June 27, 2006, it was reported as amended and received first consideration. No further legislative action on the bill was taken.

2007-2008 Legislative Session. Senate Bill 74 of 2007, which contained a new statutory framework for custody under 23 Pa.C.S. §§ 5321-5339, was referred to the Senate Judiciary Committee on February 12, 2007.

¹³ Act of June 15, 2005 (P.L.7, No.4). Act 4 of 2005 became effective immediately.

¹⁴ The UCCJEA was not contained in this legislation, as it had passed as a separate bill in the previous legislative session (House Bill 2083 of 2003 became Act 39 of 2004). *See* note 9.

Senate Bill 74 of 2007 repeals Chapter 53 of the Domestic Relations Code and adds a new Chapter 53 titled “Child Custody.” Among other things, the bill sets forth factors for determining the best interest of the child when awarding custody or visitation, presumptions for contested custody cases concerning primary physical custody, requirements for standing, and considerations regarding criminal convictions and criminal charges. It also addresses informational programs, counseling, a guardian ad litem for the child, counsel for the child, access to records and information, modification of existing orders, court-appointed child custody health care or behavioral health practitioners and the award of counsel fees, costs and expenses. Finally, Senate Bill 74 requires parenting plans in contested custody proceedings and provides a statutory framework for cases involving relocation. Senate Bill 74 is a modified version of Senate Bill 1260 of 2002, Senate Bill 275 of 2003 and Senate Bill 74 of 2005.

Further Review of the Alimony Provisions

On March 31, 2005, the Advisory Committee met and decided that the alimony provisions should be reviewed once again. Accordingly, it formed a subcommittee¹⁵ to discuss what amendments should be made to the Domestic Relations Code. Mary Cushing Doherty was named the Chair of the Subcommittee.

The Subcommittee on Alimony formally met in person or conducted teleconferences on August 19, 2005; February 3, 2006; April 7, 2006; June 23, 2006; March 15, 2007 and April 18, 2007.

To review the recommendations of the subcommittee and discuss the issues concerning alimony, the Advisory Committee met on October 20, 2006; February 2, 2007 and September 26, 2007. Following the Advisory Committee meeting of September 26, 2007, consensus was reached on proposed recommendations amending the Domestic Relations Code.

¹⁵ The subcommittee consisted of the following Advisory Committee members: Ann L. Begler; Maria P. Cagnetti; Frederick Cohen (deceased July 24, 2007); Mark B. Dischell; Mary Cushing Doherty; Leonard Dubin; Lynne Z. Gold-Bikin; David N. Hofstein; John C. Howett, Jr.; Steven S. Hurvitz; Judge Lawrence W. Kaplan; Carol M. Lauchmen; Catherine M. McFadden; Albert Momjian; Robert R. Raphael and Charles C. Shainberg.

SUMMARY OF RECOMMENDATIONS

This report contains the following amendments to Title 23 of the Pennsylvania Consolidated Statutes (the Domestic Relations Code):

- Repeal §§ 3701 (alimony), 3706 (bar to alimony) and 3707 (effect of death of either party) and replace those provisions with a new § 3701.2 (alimony).
- Define the terms “cohabitation,” “compensatory alimony,” “excess income,” “reasonable needs,” “reimbursement alimony” and “unfunded needs.” (§ 3701.1)
- Provide that the court shall consider an award of alimony at the request of a party and upon a determination that the petitioner has unfunded needs and the respondent has excess income. (§ 3701.2(a))
- Establish factors in determining the amount of a party’s respective unfunded needs and excess income. (§ 3701.2(b))
- Provide that the amount of an alimony award shall be equal to the least of the amount of the petitioner’s unfunded needs, the amount of the respondent’s excess income or an amount equal to the spousal support determined under the Pennsylvania Support Guidelines. (§ 3701.2(c))
- Allow the court to consider awarding one year of alimony for every three years of marriage prior to final separation. (§ 3701.2(d)(2))
- Establish factors in determining the duration of an alimony award. (§ 3701.2(e))
- Direct the court to consider an indefinite award of alimony if the marriage was of a duration of 20 or more years prior to final separation or if the obligee (1) is the primary custodian or caretaker of and is providing care for an unemancipated child of the parties (where the child suffers from a serious physical or mental disability) and (2) 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. (§ 3701.2(f)(1))
- Allow the court to modify or terminate an award of alimony with an indefinite term, upon a material change in circumstances of either party of a substantial and continuing nature. (§ 3701.2(f)(2))

- Allow the court to award either compensatory alimony or reimbursement alimony, or both. (§ 3701.2(g))
- Direct the court to set forth the reasons for its denial or award of alimony and the amount and duration of the award, with specific reference to the relevant factors and circumstances. (§ 3701.2(h))
- Allow the court to modify, suspend or reinstitute an award of alimony, or make a new award of alimony, based on a material change in circumstances of either party of a substantial and continuing nature. (§ 3701.2(i)(1))
- Allow the court to modify an alimony award with an indefinite term and set a definite term. (§ 3701.2(i)(1))
- Prohibit the court from granting a petition to modify the duration of an alimony award that has a definite term. (§ 3701.2(i)(2))
- Provide that unless otherwise indicated in an agreement between the parties, an award of alimony terminates when the obligee remarries, the obligee enters into cohabitation, the obligee dies or the obligor dies (unless otherwise indicated in the prior order of court). (§ 3701.2(j)(1))
- Provide that an award of compensatory alimony or reimbursement alimony does not terminate upon the remarriage or cohabitation of the obligee but may terminate upon the death of either party. (§ 3701.2(j)(2))
- In cases where an obligor has paid alimony to an obligee after an alimony termination event, allow the court to order the obligee to reimburse the obligor the amount of alimony paid after the alimony termination event. (§ 3701.2(j)(3))
- Provide that whenever the parties enter into a written agreement for the payment of alimony, the agreement shall constitute an order of the court for enforcement purposes only, and absent a specific provision to the contrary, an agreement for the payment of alimony is not subject to modification. (§ 3701.2(k))

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 reinstated 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 reinstated 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.

Note

Subsections (a), (c), (d)(2), (f) and (g) are new.

With respect to subsection (b), paragraph (1) is based on § 3701(b)(1), paragraph (2) is based on § 3701(b)(2), paragraph (3) is based on § 3701(b)(3), paragraph (4) is based on § 3701(b)(7), paragraph (5) is based on § 3701(b)(8), paragraph (6) is based on § 3701(b)(9), paragraph (7) is based on § 3701(b)(10) and paragraph (9) is based on § 3701(b)(15). Paragraphs (8) and (10) are new.

Subsection (d)(1) is based on § 3701(c).

With respect to subsection (e), paragraph (1) is based on § 3701(b)(2), paragraph (2) is based on § 3701(b)(3), paragraph (3) is based on § 3701(b)(6), paragraph (4) is based on § 3701(b)(7), paragraph (5) is based on § 3701(b)(9), paragraph (6) is based on § 3701(b)(10) and paragraph (7) is based on § 3701(b)(14). Paragraphs (8), (9) and (10) are new.

Subsection (h) is based on § 3701(d).

The first two sentences of subsection (i)(1) are based on the first two sentences of § 3701(e). The last sentence of subsection (i)(1) is new. Subsection (i)(2) is new.

Subsection (j)(1)(i) is based on the last sentence of § 3701(e). Subsection (j)(1)(ii) is based on § 3706 (bar to alimony), although “cohabitation” is defined in § 3701.1. Subsection (j)(1)(iii) and (iv) is

based on § 3707 (effect of death of either party). Subsection (j)(2) and (3) is new.

Subsection (k) is based on § 3701(f).

Comment

Under subsection (b)(1), the phrase “all the assets of each party” is intended to include marital and nonmarital assets.

With respect to subsection (b)(5), while the standard of living enjoyed during the marriage is a relevant factor in determining a party’s unfunded needs, the court must recognize that a divorce more often than not results in an inability by both parties to replicate the lifestyle enjoyed during marriage. Accordingly, in considering the “reasonable needs” of the parties, the court should be primarily concerned with balancing the needs of both parties consistent with a realistic lifestyle during the marriage in light of their economic circumstances following the divorce.

With respect to subsection (b)(8), court-ordered obligations for the payment of child support (i.e., any support obligation for any child) should ordinarily be deducted from a party’s income in determining that party’s excess income, which is defined in § 3701.1. Child support payments received by a party should not be treated as income based on the assumption that such payments are intended to cover costs of caring for the child. The court should ordinarily deduct an appropriate amount from the income of a recipient of a child support award to reflect that party’s proportionate responsibility for child support.

With respect to subsection (e)(4), the Internal Revenue Service’s alimony recapture rules apply to payments made under settlement agreements and to payments made under judicial orders. Language in an order providing for the reduction in alimony based on a contingency relating to a child (e.g., becoming employed, dying, leaving the household, leaving school, marrying or reaching a certain age or income level) could cause that portion of alimony to be treated as child support and could also cause the parties to be subject to the recapture rules. The recapture rules specify when a decrease or termination in alimony payments triggers recapture in which the payor will have to include in income part of the payments made and the payee may deduct part of the payments received.

With respect to subsection (e)(9), an earning capacity should not be imputed to an obligor or an obligee who has reached customary retirement age and has, in fact, retired.

The phrase “material change in circumstances of either party of a substantial and continuing nature” in subsections (f)(2) and (i)(1) is intended to clarify existing law.

Subsection (g), regarding compensatory alimony, could also be used by a court in a situation where one spouse maliciously or negligently dissipated marital assets.

§ 3702. Alimony pendente lite, counsel fees and expenses.

In proper cases, upon petition, the court may allow a spouse reasonable alimony pendente lite, spousal support and reasonable counsel fees and expenses. Reasonable counsel fees and expenses may be allowed pendente lite, and the court shall also have authority to direct that adequate health and hospitalization insurance coverage be maintained for the dependent spouse pendente lite.

§ 3703. Enforcement of arrearages.

If at any time a party is in arrears in the payment of alimony or alimony pendente lite as provided for in sections [3701] 3701.2 (relating to alimony) and 3702 (relating to alimony pendente lite, counsel fees and expenses), the court may, after hearing, in order to effect payment of the arrearages:

- (1) Enter judgment.
- (2) Authorize the taking and seizure of the goods and chattels and the collection of the rents and profits of the real estate of the party.
- (3) Attach no more than 50% of the wages of the party.
- (4) Award interest on unpaid installments.
- (5) Require security to insure future payments.

(6) Issue attachment proceedings, directed to the sheriff or other proper officer of the county, directing that the person named as having failed to comply with the court order be brought before the court at such time as the court may direct. If the court finds, after hearing, that the named person willfully failed to comply with the court order, it may declare the person in civil contempt of court and in its discretion make an appropriate order, including, but not limited to, commitment of the person to prison for a period not to exceed six months.

(7) Award counsel fees and costs.

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

When so ordered by the court, all payments of child and spousal support, alimony or alimony pendente lite shall be made to the domestic relations section of the court which issued the order or the domestic relations section of the court at the residence of the party entitled to receive the award. The domestic relations section shall keep an accurate record of all payments and shall notify the court immediately whenever a person subject to a payment order is 30 days in arrears of payment so that appropriate action may be taken to enforce the order of the court. The domestic relations section shall distribute the payments to the person entitled to them as soon as possible after receipt.

§ 3705. Enforcement of foreign decrees.

(a) General rule.--Whenever a person subject to a valid decree of a sister state or territory for the distribution of marital property or for the payment of alimony, temporary alimony or alimony pendente lite, or the property of that person is found within this Commonwealth, the obligee of the decree may petition the court where the obligor or the property of the obligor is found to register, adopt as its own and enforce the decree as a

properly issued and authenticated decree of a sister state or territory. Upon registration and adoption, such relief and process for enforcement as is provided or prescribed by law in similar cases originally commenced in this Commonwealth shall be available. A copy of the decree and order shall be forwarded to the court of the state or territory which issued the original decree. The obligor shall have whatever defenses and relief are available to the obligor in the state or territory which issued the original decree and may question the jurisdiction of that court if not otherwise barred. Interest may be awarded on unpaid installments and security may be required to insure future payments as in cases originally commenced in this Commonwealth. Where property of the obligor, but not the person of the obligor, is found within this Commonwealth, there shall be jurisdiction quasi in rem, and, upon registration and adoption of the decree of the sister state or territory, relief and enforcement of the decree shall be available as in other proceedings which are quasi in rem.

(b) Optional procedure.--The right of a judgment creditor to proceed under 42 Pa.C.S. § 4306 (relating to enforcement of foreign judgments) or otherwise instead of proceeding under this section remains unimpaired.

[§ 3706. Bar to alimony.

No petitioner is entitled to receive an award of alimony where the petitioner, subsequent to the divorce pursuant to which alimony is being sought, 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.

§ 3707. Effect of death of either party.

Upon the death of the payee party, the right to receive alimony pursuant to this chapter shall cease. Upon the death of the payor party, the obligation to pay alimony shall cease unless otherwise indicated in an agreement between the parties or an order of court.]

Note

For new provisions concerning the bar to alimony (§ 3706) and the effect of death of either party (§ 3707), see § 3701.2(j). A new definition for “cohabitation” is provided in § 3701.1.

TRANSITIONAL LANGUAGE

APPLICABILITY

(1) Subject to paragraphs (2) and (3), the amendment, addition or repeal of 23 Pa.C.S. §§ 3701, 3701.1, 3701.2, 3703, 3706 and 3707 shall apply to:

(i) Any petition for alimony filed on or after the effective date of this act.

(ii) Any petition for modification or termination of an alimony award filed on or after the effective date of this act.

(iii) Any case pending on the effective date of this act.

(2) The definition of “cohabitation” in 23 Pa.C.S. § 3701.1 shall apply to awards of alimony entered into on or after the effective date of this act.

(3) Former 23 Pa.C.S. § 3706 shall apply to awards of alimony entered into before the effective date of this act.

Comment

If an award of alimony has been made prior to the effective date of this act, and if the obligee has entered into cohabitation with a person of the same sex before the effective date of this act, the award of alimony is not subject to termination by reason of that cohabitation.

EFFECTIVE DATE

This act shall take effect in 60 days.

**FREDERICK COHEN
MEMORIAL RESOLUTION**

September 26, 2007

Since its last meeting, the Joint State Government Commission Advisory Committee on Domestic Relations Law suffered the loss of one of its members. Fred Cohen died on July 24, 2007.

Fred was a charter member of the advisory committee. He was appointed in 1995. This appointment recognized Fred's long and distinguished career in the area of family law. He was a past chair of the Family Law Section of the Pennsylvania Bar Association and was a fellow with the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers.

He served on the Alimony Subcommittee throughout his service on the advisory committee. Fred's practical insights were always valuable to the advisory committee process.

Fred hardly, if ever, missed a meeting and enjoyed the meetings very much. His dedication and intellectual contributions greatly aided this committee in achieving success.

We will greatly miss Fred's knowledge, insight, wit and presence.

Therefore, we record our sorrow at his passing and direct that a copy of this Memorial Resolution be sent to his family.