

FAMILY CODE

TITLE 1. THE MARRIAGE RELATIONSHIP

SUBTITLE C. DISSOLUTION OF MARRIAGE

CHAPTER 8. MAINTENANCE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 8.001. DEFINITIONS. In this chapter:

(1) "Maintenance" means an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.

(2) "Notice of application for a writ of withholding" means the document delivered to an obligor and filed with the court as required by this chapter for the nonjudicial determination of arrears and initiation of withholding for spousal maintenance.

(3) "Obligee" means a person entitled to receive payments under the terms of an order for spousal maintenance.

(4) "Obligor" means a person required to make periodic payments under the terms of an order for spousal maintenance.

(5) "Writ of withholding" means the document issued by the clerk of a court and delivered to an employer, directing that earnings be withheld for payment of spousal maintenance as provided by this chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

SUBCHAPTER B. COURT-ORDERED MAINTENANCE

Sec. 8.051. ELIGIBILITY FOR MAINTENANCE; COURT ORDER. In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked

personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if:

(1) the spouse from whom maintenance is requested was convicted of or received deferred adjudication for a criminal offense that also constitutes an act of family violence under Title 4 and the offense occurred:

(A) within two years before the date on which a suit for dissolution of the marriage is filed; or

(B) while the suit is pending; or

(2) the duration of the marriage was 10 years or longer, the spouse seeking maintenance lacks sufficient property, including property distributed to the spouse under this code, to provide for the spouse's minimum reasonable needs, as limited by Section 8.054, and the spouse seeking maintenance:

(A) is unable to support himself or herself through appropriate employment because of an incapacitating physical or mental disability;

(B) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home; or

(C) clearly lacks earning ability in the labor market adequate to provide support for the spouse's minimum reasonable needs, as limited by Section 8.054.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.

Amended by Acts 1999, 76th Leg., ch. 62, Sec. 6.05, eff. Sept. 1,

1999; Acts 1999, 76th Leg., ch. 304, Sec. 1, eff. Sept. 1, 1999.

Renumbered from Sec. 8.002 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [914](#), Sec. 1, eff. September 1, 2005.

Sec. 8.052. FACTORS IN DETERMINING MAINTENANCE. A court that

determines that a spouse is eligible to receive maintenance under this chapter shall determine the nature, amount, duration, and manner of periodic payments by considering all relevant factors, including:

- (1) the financial resources of the spouse seeking maintenance, including the community and separate property and liabilities apportioned to that spouse in the dissolution proceeding, and that spouse's ability to meet the spouse's needs independently;
 - (2) the education and employment skills of the spouses, the time necessary to acquire sufficient education or training to enable the spouse seeking maintenance to find appropriate employment, the availability of that education or training, and the feasibility of that education or training;
 - (3) the duration of the marriage;
 - (4) the age, employment history, earning ability, and physical and emotional condition of the spouse seeking maintenance;
 - (5) the ability of the spouse from whom maintenance is requested to meet that spouse's personal needs and to provide periodic child support payments, if applicable, while meeting the personal needs of the spouse seeking maintenance;
 - (6) acts by either spouse resulting in excessive or abnormal expenditures or destruction, concealment, or fraudulent disposition of community property, joint tenancy, or other property held in common;
 - (7) the comparative financial resources of the spouses, including medical, retirement, insurance, or other benefits, and the separate property of each spouse;
 - (8) the contribution by one spouse to the education, training, or increased earning power of the other spouse;
 - (9) the property brought to the marriage by either spouse;
 - (10) the contribution of a spouse as homemaker;
 - (11) marital misconduct of the spouse seeking maintenance;
- and
- (12) the efforts of the spouse seeking maintenance to pursue available employment counseling as provided by Chapter 304, Labor Code.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.003 by Acts 2001, 77th Leg., ch. 807, Sec. 1,
eff. Sept. 1, 2001.

Sec. 8.053. PRESUMPTION. (a) Except as provided by Subsection (b), it is presumed that maintenance under Section 8.051(2) is not warranted unless the spouse seeking maintenance has exercised diligence in:

- (1) seeking suitable employment; or
- (2) developing the necessary skills to become self-supporting during a period of separation and during the time the suit for dissolution of the marriage is pending.

(b) This section does not apply to a spouse who is not able to satisfy the presumption in Subsection (a) because the spouse:

- (1) has an incapacitating physical or mental disability;

or

- (2) is the custodian of a child of the marriage of any age who requires substantial care and personal supervision because a physical or mental disability makes it necessary, taking into consideration the needs of the child, that the spouse not be employed outside the home.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.004 by Acts 2001, 77th Leg., ch. 807, Sec. 1,
eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [914](#), Sec. 2, eff. September 1, 2005.

Sec. 8.054. DURATION OF MAINTENANCE ORDER. (a) Except as provided by Subsection (b), a court:

- (1) may not order maintenance that remains in effect for more than three years after the date of the order; and

- (2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking maintenance

to meet the spouse's minimum reasonable needs by obtaining appropriate employment or developing an appropriate skill, unless the ability of the spouse to provide for the spouse's minimum reasonable needs through employment is substantially or totally diminished because of:

- (A) physical or mental disability;
- (B) duties as the custodian of an infant or young child; or

(C) another compelling impediment to gainful employment.

(b) If a spouse seeking maintenance is unable to support himself or herself through appropriate employment because the spouse has an incapacitating physical or mental disability or because the spouse is the custodian of a child of the marriage of any age who has a physical or mental disability, the court may order maintenance for as long as the disability continues. The court may order periodic review of its order, on the request of either party or on its own motion, to determine whether the disability continues to render the spouse unable to support himself or herself through appropriate employment. The continuation of spousal maintenance under these circumstances is subject to a motion to modify as provided by Section 8.057.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.005 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. [914](#), Sec. 3, eff. September 1, 2005.

Sec. 8.055. AMOUNT OF MAINTENANCE. (a) A court may not order maintenance that requires an obligor to pay monthly more than the lesser of:

- (1) \$2,500; or
- (2) 20 percent of the spouse's average monthly gross

income.

(b) The court shall set the amount that an obligor is required

to pay in a maintenance order to provide for the minimum reasonable needs of the obligee, considering employment or property received in the dissolution of the marriage or otherwise owned by the obligee that contributes to the minimum reasonable needs of the obligee.

(c) Department of Veterans Affairs service-connected disability compensation, social security benefits and disability benefits, and workers' compensation benefits are excluded from maintenance.

(d) For purposes of this chapter, "gross income" means resources as defined in Sections 154.062(b) and (c), disregarding any deductions listed in Section 154.062(d) and disregarding those benefits excluded under Subsection (c) of this section.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.006 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1138, Sec. 1, eff. Sept. 1, 2003.

Sec. 8.056. TERMINATION. (a) The obligation to pay future maintenance terminates on the death of either party or on the remarriage of the obligee.

(b) After a hearing, the court shall terminate the maintenance order if the obligee cohabits with another person in a permanent place of abode on a continuing, conjugal basis.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.007 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.057. MODIFICATION OF MAINTENANCE ORDER. (a) The amount of maintenance specified in a court order or the portion of a decree that provides for the support of a former spouse may be reduced by the filing of a motion in the court that originally rendered the order. A party affected by the order or the portion of the decree to be modified may file the motion.

(b) Notice of a motion to modify maintenance and the response,

if any, are governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit. Notice must be given by service of citation, and a response must be in the form of an answer due on or before 10 a.m. of the first Monday after 20 days after the date of service. A court shall set a hearing on the motion in the manner provided by Rule 245, Texas Rules of Civil Procedure.

(c) After a hearing, the court may modify an original or modified order or portion of a decree providing for maintenance on a proper showing of a material and substantial change in circumstances of either party. The court shall apply the modification only to payment accruing after the filing of the motion to modify.

(d) A loss of employment or circumstances that render a former spouse unable to support himself or herself through appropriate employment by reason of incapacitating physical or mental disability that occur after the divorce or annulment are not grounds for the institution of spousal maintenance for the benefit of the former spouse.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.008 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.058. MAINTENANCE ARREARAGES. A spousal maintenance payment not timely made constitutes an arrearage.

Added by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.059. ENFORCEMENT OF MAINTENANCE ORDER. (a) The court may enforce by contempt the court's maintenance order or an agreement for the payment of maintenance voluntarily entered into between the parties and approved by the court.

(b) On the suit to enforce by an obligee, the court may render judgment against a defaulting party for the amount of arrearages after notice by service of citation, answer, if any, and a hearing finding that the defaulting party has failed or refused to carry out the terms

of the order. The judgment may be enforced by any means available for the enforcement of judgment for debts.

(c) It is an affirmative defense to an allegation of contempt of court or the violation of a condition of probation requiring payment of court-ordered maintenance that the obligor:

(1) lacked the ability to provide maintenance in the amount ordered;

(2) lacked property that could be sold, mortgaged, or otherwise pledged to raise the funds needed;

(3) attempted unsuccessfully to borrow the needed funds; and

(4) did not know of a source from which the money could have been borrowed or otherwise legally obtained.

(d) The issue of the existence of an affirmative defense does not arise unless evidence is admitted supporting the defense. If the issue of the existence of an affirmative defense arises, an obligor must prove the affirmative defense by a preponderance of the evidence.

(e) A court may enforce an order for spousal maintenance under this chapter by ordering garnishment of the obligor's wages or by any other means available under this section.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.009 and amended by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.060. PUTATIVE SPOUSE. In a suit to declare a marriage void, a putative spouse who did not have knowledge of an existing impediment to a valid marriage may be awarded maintenance if otherwise qualified to receive maintenance under this chapter.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997. Renumbered from Sec. 8.010 by Acts 2001, 77th Leg., ch. 807, Sec. 1, eff. Sept. 1, 2001.

Sec. 8.061. UNMARRIED COHABITANTS. An order for maintenance is

not authorized between unmarried cohabitants under any circumstances.

Added by Acts 1997, 75th Leg., ch. 7, Sec. 1, eff. April 17, 1997.
Renumbered from Sec. 8.011 by Acts 2001, 77th Leg., ch. 807, Sec. 1,
eff. Sept. 1, 2001.

SUBCHAPTER C. INCOME WITHHOLDING

Sec. 8.101. INCOME WITHHOLDING; GENERAL RULE. (a) In a proceeding in which periodic payments of spousal maintenance are ordered, modified, or enforced, the court may order that income be withheld from the disposable earnings of the obligor as provided by this chapter.

(b) This subchapter does not apply to contractual **alimony** or spousal maintenance, regardless of whether the **alimony** or maintenance is taxable, unless:

- (1) the contract specifically permits income withholding;
- or
- (2) the **alimony** or maintenance payments are not timely made under the terms of the contract.

(c) An order or writ of withholding for spousal maintenance may be combined with an order or writ of withholding for child support only if the obligee has been appointed managing conservator of the child for whom the child support is owed and is the conservator with whom the child primarily resides.

(d) An order or writ of withholding that combines withholding for spousal maintenance and child support must:

- (1) require that the withheld amounts be paid to the appropriate place of payment under Section 154.004;
- (2) be in the form prescribed by the Title IV-D agency under Section 158.106;
- (3) clearly indicate the amounts withheld that are to be applied to current spousal maintenance and to any maintenance arrearages; and
- (4) subject to the maximum withholding allowed under