

ILLINOIS MAINTENANCE GUIDELINES – A ONE SIZE SOLUTION – A National Perspective...

By: Gunnar J. Gitlin
The Gitlin Law Firm, P.C., Woodstock, Illinois
© 2016 - May 9, 2016

www.gitlinlawfirm.com

Maintenance Guidelines in Illinois – One Size Fits None.

Since January 1, 2015, Illinois has been the only state in the union to adopt strict quantitative formula in determining maintenance akin to the child support guidelines. For a 2012 article addressing the state of alimony guidelines around the nation, see:

http://www.abajournal.com/magazine/article/alimony_arithmetic_more_states_are_looking_at_formulas_to_regulate_spousal/

This article focused on Massachusetts law called the Alimony Reform Act. Keep in mind that this is a so called democratic “blue state.” According to that article:

Along with implementing a formula for calculating alimony awards, the bill terminates alimony when the payer reaches retirement age and places a 12-year limit on payments. It also ends lifetime alimony—something most states have already eliminated or are trying to modify.

Then the article stated:

While no state has yet enacted strict quantitative formulas akin to federal sentencing guidelines for post-divorce alimony, associations and legislators are nevertheless providing their own quantitative guidelines rather than relying on independent judicial discretion. Codified guidelines for temporary alimony while a divorce is pending, known as alimony pendente lite, are becoming more common; they offer judges a framework for determining permanent awards.

The Illinois guidelines were somewhat modeled after what might be called the [AAML “Guidelines”](http://www.aaml.org/sites/default/files/MAT112.pdf). See, e.g., <http://www.aaml.org/sites/default/files/MAT112.pdf> (Appendix A) *Journal of the American Academy of Matrimonial Lawyers*, Vol., 21, 2008 “Re-Thinking Alimony.” Note that what some refer to as the AAML guidelines were never called guidelines. Instead, the AAML originally used the term “Considerations” rather than guidelines because they were to be aspirational in nature – considerations for one to consider when addressing maintenance awards:

The proposed Considerations are designed to be used in conjunction with state

statutes that first determine eligibility for an award. They are not intended to replace existing state public policy regarding eligibility for an award. *In addition, the factors that are listed as deviations are intended to address the considerations for setting an amount and duration of an award found in most states' statutes. These recommendations are ones that the Commission hopes Academy members can utilize in advocating for a fair result for their clients.*

The original commission report had the language in the second paragraph:

The AAML Commission recognizes that the amount arrived at may not always reflect the unique circumstances of the parties. Therefore, deviation factors are used to address the more common situations where an adjustment would need to be made.

Those deviation factors, as discussed below, did not make it into the Illinois guidelines – with one exception: the multiple family situation. The AAML's Considerations (so called maintenance guidelines) are no longer contained in the [AAML's library](#). This is because AAML as a whole has backed away from promoting any alimony guidelines.

The above discussed *ABA Journal* article after discussing the nature of the AAML "Guidelines" stated:

And the academy emphasizes that its guidelines are meant to be "aspirational," acknowledging a resistance among family practitioners to the idea of restrictive formulas. To allow for flexibility, the AAML offers numerous deviation factors to take into account when calculating outcomes, such as the spouse's age and health, and whether the recipient is the primary caretaker of a minor. ***

Despite these safeguards, the AAML passed its recommendations by only a single vote—further evidence of the controversy provoked by the idea of imposing guidelines.

The article continued:

Some practitioners worry that guidelines will become the default order for the court, and that some lawyers would take the easy way out," says Viken (former president of AAML). "I think you have a greater chance of the result fitting the facts of the case if you simply have criteria that are considered by the court."
VALUE OF DISCRETION

Many lawyers say that allowing a judge discretion to weigh these factors offers flexibility that formulas don't.

The article quoted Karen Pinkert-Lieb of Schiller, DuCanto & Fleck. Attorney Pinkert-Lieb among other things was a former chair of the ISBA Family Law Section. She is quoted as saying:

“Courts are more hesitant to deviate from numerical guidelines, and we do lose some of the court’s discretion,” says Karen Pinkert-Lieb, a partner with Schiller DuCanto & Fleck in Chicago. “It takes the creativity out of lawyering, and not necessarily in the best interest of the parties.”

The ABA Journal article also quotes Randy Kessler (former chair of the American Bar Association Family Law Section – 2011-12):

Despite the uncertainties of computing alimony, Kessler nevertheless argues that there is enough guidance already in place for equitable dispositions in alimony cases, particularly if a lawyer is doing his or her job. He acknowledges that horror stories are out there but says they aren’t pervasive enough to warrant radical changes in the law.

I worry that bad cases are prompting bad law,” Kessler says. “Burned victims are lobbying to get rid of alimony, when they should be lobbying to get rid of a particular judge.”

Then the next quote in that article pointed exactly to the problems with the Illinois guidelines – in their current form:

Gold-Bikin supports the idea of numerical guidelines—*within limits*. She points to federal sentencing guidelines and mandatory minimums as examples of a system that fails to account for differences in individual cases.

We’ve taken away discretion in the criminal law area. It’s ridiculous,” Gold-Bikin says. “So I’m not big on mandatory standards, but I do think there should be guidelines. But guidelines should not be dispositive of the issue. You have to give discretion.”

Questioning the nature of the amount of discretion in the Illinois guidelines was addressed by Jim Covington in his “Statehouse Review for the week of August 20, 2014. He wrote that PA 98-961 “creates permissive guidelines for maintenance.” The court must first determine that maintenance is appropriate before turning to the guidelines.” This author suggests that it is quite an overstatement to indicate that the Illinois guidelines are permissive. Clearly, the AAML Considerations (discussed above) were permissive. But Illinois modeled its guidelines on the child support guidelines.

The most controversial portion of the Illinois maintenance guidelines will be the fact that the amounts are the same – whether the marriage is one year or 40 years. If there are to be guidelines, there should have been more discretion in terms of whether to apply the guidelines and the guidelines should have been more sophisticated than a simple 30/20 rule (discussed below) – applying despite the years of marriage and other factors.

The Illinois maintenance guidelines and the AAML Considerations are similar in that they both

use the length of the marriage multiplied by a factor to determine the length of marriage – but the length of marriage terms and factors utilized differ. Keep in mind that both the Illinois Guidelines and AAML Considerations ignored what was in the best of other guidelines - considering the fact that, in practice, maintenance awards are greater in monthly amount depending on the length of the marriage – as well as other factors often not quite as significant. That was the reason for the “deviation factors” per the AAML 2007 Considerations.

In any event, the *amount* of maintenance in the Illinois maintenance guidelines is determined as a simple calculus that applies to a marriage of any length. Just determine 30% of the income of payor’s gross income minus 20% of the recipient’s gross income. Then cap the result at no more than 40% of the parties’ combined gross. In Illinois (unlike the AAML Considerations which had a cap of \$1M but exceptions had broad deviation factors without mandatory findings) the guidelines no longer apply when the combined gross income is more than \$250,000. This Act, assuming it is not further delayed by the anticipated family law committee rewrites, has two critical exceptions: the combined gross income of \$250,000 and another family. Compare the AAML considerations which called for a host of deviation factors – entirely absent from the Illinois guidelines.

The Illinois guidelines provide that, “The duration of an award is shall be calculated by multiplying the length of the marriage by whichever of the following factors applies: 0-5 years (.20); 5-10 years (.40); 10-15 years (.60); or 15-20 years (.80).” (And note that this ambiguity will likely be resolved by SB 57).

Compare this to the so called AAML Considerations:

Length:

Unless one of the deviation factors listed below applies, the duration of the award is arrived at by multiplying the length of the marriage by the following factors: 0-3 years (.3); 3-10 (.5); 10-20 years (.75), over 20 years, permanent alimony.

More specifically, the critical difference between these and the so called AAML Considerations is the language from those so called AAML Suggestions that had read:

Deviation factors:

The following circumstances may require an adjustment to the recommended amount or duration:

- 1) A spouse is the primary caretaker of a dependent minor or a disabled adult child;
- 2) A spouse has pre-existing court-ordered support obligations;
- 3) A spouse is complying with court-ordered payment of debts or other obligations (including uninsured or unreimbursed medical expenses);
- 4) A spouse has unusual needs;
- 5) A spouse’s age or health;
- 6) A spouse has given up a career, a career opportunity or otherwise supported the career of the other spouse;

- 7) A spouse has received a disproportionate share of the marital estate;
- 8) There are unusual tax consequences;
- 9) Other circumstances that make application of these considerations inequitable;
- 10) The parties have agreed otherwise.

So the AAML Considerations regarding both amount and length stated, “Unless one of the deviation factors listed below applies...”

The Illinois guidelines provide that for a marriage of 20 or more years, the court, in its discretion, shall order either permanent maintenance or maintenance for a period equal to the length of the marriage. For a marriage of less than 10 years, the court may designate the termination as a “permanent termination”. The effect of this designation is that maintenance is barred after the ending date of the period during which maintenance is to be paid.

Compare the results of the Illinois guidelines to those of New Jersey. According to the Wall Street Journal, “ The law will be revisited in a year to ensure it is having the intended effect” according to state senator Nicholas Scutari, a democrat from Union and chairman of the senate judiciary committee. Compare this to Illinois where there is no specifically stated intent to review whether the law is meeting with its desired effect.

Alimony as a Deduction in Determining Net Income: A somewhat related issue is the fact that the new Illinois guidelines provide that alimony for the current marriage is a deduction in determining net income for support. The result lowers support awards where maintenance is paid. We surveyed the largest states based on the states that Family Law Software covers:

- | | |
|-------------------------------------|---|
| <input type="radio"/> California | <input type="radio"/> North Carolina |
| <input type="radio"/> Connecticut | <input type="radio"/> New Jersey |
| <input type="radio"/> Colorado | <input type="radio"/> New York |
| <input type="radio"/> Florida | <input type="radio"/> Nevada |
| <input type="radio"/> Georgia | <input type="radio"/> Ohio |
| <input type="radio"/> Illinois | <input type="radio"/> Pennsylvania |
| <input type="radio"/> Massachusetts | <input type="radio"/> Rhode Island |
| <input type="radio"/> Maryland | <input type="radio"/> Texas |
| <input type="radio"/> Minnesota | <input type="radio"/> Virginia |
| <input type="radio"/> Missouri | <input checked="" type="radio"/> Washington |
| <input type="radio"/> Mississippi | |

Of those 21 states, we had 7 that deduct maintenance of the current relationship: Colorado, Florida, Maryland, Missouri, New Jersey, Ohio, and Washington State. See: <http://www.ncsl.org/research/human-services/guideline-models-by-state.aspx>. Keep in mind that Colorado changed its child support law January 1, 2014.

None of those other states uses the percentage of the payor’s income as a model, except perhaps arguably New York with the law in New York being unsettled based on case law. See, e.g.,:

<http://www.divorceny.com/child-support-c-s-s-a/child-support-computations-when-spousal-maintenance-is-awarded/>

Survey of Other States or Other Maintenance Models: A place to start when assessing maintenance guidelines is the Divorce Spousal Support Calculator. See: <http://alimonyformula.com/> The website was developed by two attorneys from Massachusetts. It instantly provides guidelines based on the so called AAML formula and several other counties. The variability of the guidelines is substantial.

Partial Bibliography:

http://www.nytimes.com/2011/07/04/opinion/04harwin.html?_r=0&pagewanted=print
Ending the Alimony Guessing Game, By ALEXANDRA HARWIN, Published: July 3, 2011, New York Times.

Divorce Spousal Support Calculator – <http://alimonyformula.com/>

AAML Website under “Alimony Guidelines:”
<http://www.aaml.org/library/article-category/alimony-guidelines>

Article re AAML’s Suggested Maintenance Amount:
<http://www.aaml.org/sites/default/files/MAT112.pdf>

“Alimony Arithmetic: More States Are Looking at Formulas to Regulate Spousal Support”
February 1, 2012.
http://www.abajournal.com/magazine/article/alimony_arithmetic_more_states_are_looking_at_formulas_to_regulate_spousal/

Opinion: N.J. alimony reform bill is a first step, not an endpoint
http://www.nj.com/opinion/index.ssf/2014/08/opinion_nj_alimony_reform_bill_is_a_first_step_not_an_endpoint.html

“Massachusetts, largely considered as the model for legislative reform across the nation, took more than a decade to pass meaningful alimony reform. Still other states, such as Connecticut, Oregon and Colorado, have progressed more incrementally and so far have enacted only portions of the Massachusetts model alimony reform package.”

<http://www.fa-mag.com/news/alimony-would-end-sooner-in-n-j-if-christie-signs-bill-18752.html>
Alimony Would End Sooner In N.J. If Christie Signs Bill: July 30, 2014

An alimony reform bill (substitute to A845 A971 A1649).
http://www.njleg.state.nj.us/2014/Bills/A1000/845_U1.HTM

September 10, 2014: The Wall Street Journal: New Alimony Rules in New Jersey
<http://online.wsj.com/articles/measure-overhauling-alimony-rules-signed-into-law-in-new-jersey-1410402306>

<http://alimonycalculator.us/>

Alimony calculator using the following factors to provide a suggested award of alimony consistent with statutory factors similar to Illinois which include

Duration of Marriage;

5 Year Net Income of Paying Party

Age of Party

Party's Physical Health

Party's Emotion Health

Earning Capacity of Potential Recipient (net income)

Length of Absence from Job Market;

Annual Income Available Through Investment of Assets Held by that Party

Family Law Quarterly, Volume 46, Number 4, Winter 2013

http://www.americanbar.org/content/dam/aba/publications/family_law_quarterly/vol46/4win13_c_hart1_alimony.authcheckdam.pdf

Current Trends in Alimony Law: Where Are We Now?, Laura Morgan. Viol. 1, No. 9.

http://www.americanbar.org/publications/gpsolo_ereport/2012/april_2012/current_trends_alimony_law.html

G:\Docs\Maintenance Guidelines Illinois.wpd