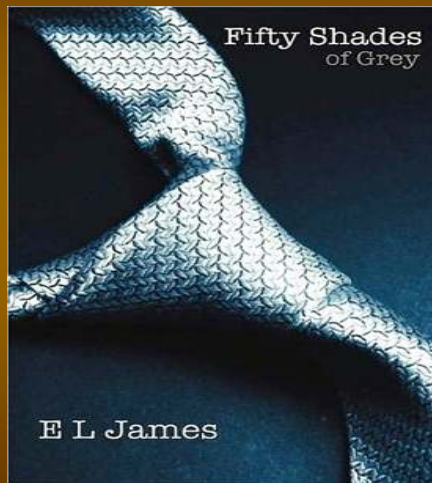


50 Shades of Alimony



Florida Statute 61.08

- **Types of Alimony Awarded:**
- 1) Bridge-the-gap
- 2) Rehabilitative
- 3) Durational
- 4) Permanent
- 5) Any combination of the above listed types



■ **Award of Alimony:**

- 1) periodic payments
- 2) payments in lump sum

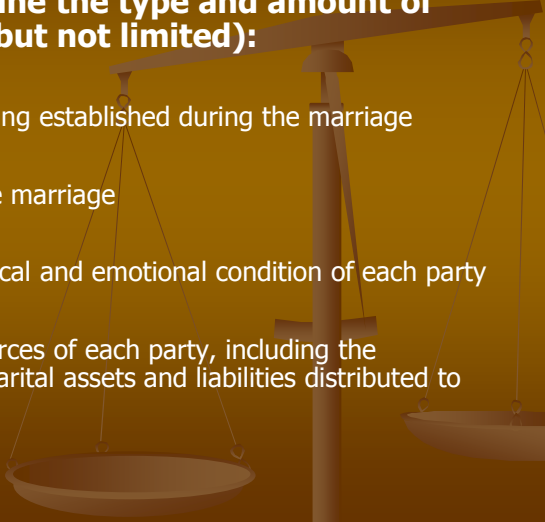
■ **Factors: to determine the amount**

- Adultery, by either spouse, may be considered to determine the amount of alimony awarded (if any)



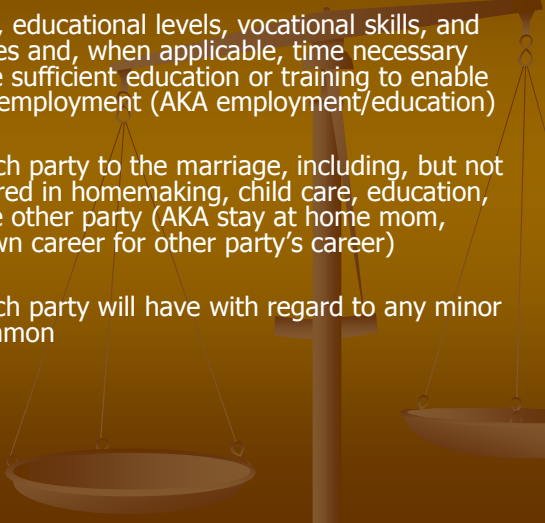
■ **Factors: to determine whether to award alimony/maintenance**

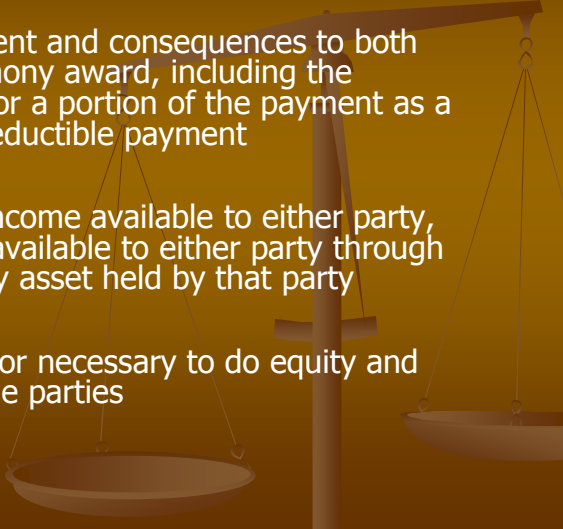
- 1) Need for alimony/maintenance, and whether either party has the ability to pay
- 2) Once it is determined that there is a need/ability for alimony/maintenance, then various factors are taken into consideration to determine the type and amount of alimony



■ **Factors: to determine the type and amount of alimony (includes but not limited):**

- 1) The standard of living established during the marriage
- 2) The duration of the marriage
- 3) The age, and physical and emotional condition of each party
- 4) The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each

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- 5) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, time necessary for either party to acquire sufficient education or training to enable party to find appropriate employment (AKA employment/education)
 - 6) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party (AKA stay at home mom, bread winner, sacrifice own career for other party's career)
 - 7) The responsibilities each party will have with regard to any minor children they have in common

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- 8) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment
 - 9) All sources of income available to either party, including income available to either party through investments of any asset held by that party
 - 10) Any other factor necessary to do equity and justice between the parties



- **To protect an alimony award:**

- The court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or otherwise secure such alimony award with any other assets which may be suitable for that purpose

■ **Lengths of marriage (rebuttable presumption): the period of time from the date of marriage until the date of filing of an action for DOM:**

- 1) Short-term: duration less than 7 years
- 2) Moderate-term: duration of greater than 7 years but less than 17
- 3) Long-term: duration of 17 years or greater

Bridge The Gap

- May be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.
- Designed to assist party with legitimate identifiable short-term needs
- Length not to exceed 2 years
- Terminates upon the death of either party or upon remarriage of the party receiving alimony.
- Not modifiable in amount or duration.

Rehabilitative

- -May be awarded to assist party in establishing the capacity for self-support through:
 - 1. Development of previous skills or
 - 2. Acquisition of education, training, or work experience necessary to develop appropriate employment skills.
- -Must be specific and defined rehabilitative plan to be included as a part of any order awarding rehabilitative alimony
- -May be modified or terminated based on substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan.

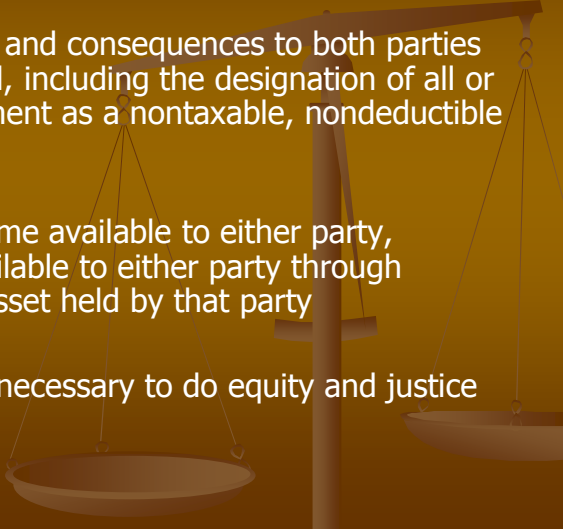
Durational

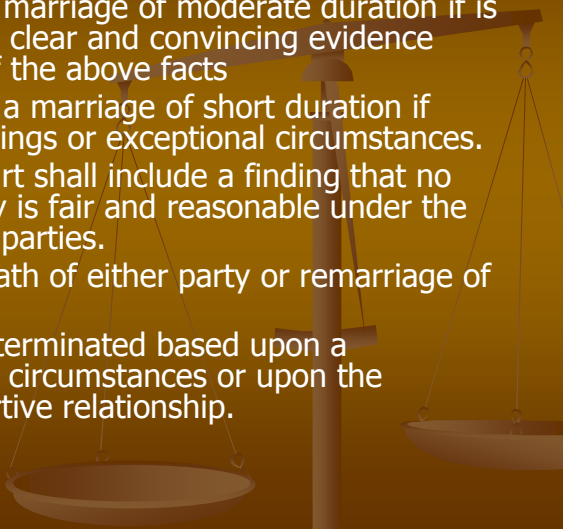
- -May be awarded when permanent periodic alimony is not appropriate
- -Purpose is to provide part with economic assistance for a set period of time following a marriage of short or moderate duration, or following a marriage of long duration if there is no ongoing need for support on a permanent basis.
- -Terminates upon death or remarriage of the party receiving
- -May be modified or terminated by showing substantial change in circumstances
- -Length may not be modified except under exceptional circumstances and may not exceed the length of the marriage

Permanent

- -May be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs.
- -May be awarded following the marriage of long duration if , upon consideration of the below factors, is appropriate:
 - 1) The standard of living established during the marriage
 - 2) The duration of the marriage
 - 3) The age, and physical and emotional condition of each party
 - 4) The financial resources of each party, including the non-marital and the marital assets and liabilities distributed to each

- 5) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, time necessary for either party to acquire sufficient education or training to enable party to find appropriate employment (AKA employment/education)
- 6) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party (AKA stay at home mom, bread winner, sacrifice own career for other party's career)
- 7) The responsibilities each party will have with regard to any minor children they have in common

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- 8) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment
 - 9) All sources of income available to either party, including income available to either party through investments of any asset held by that party
 - 10) Any other factor necessary to do equity and justice between the parties

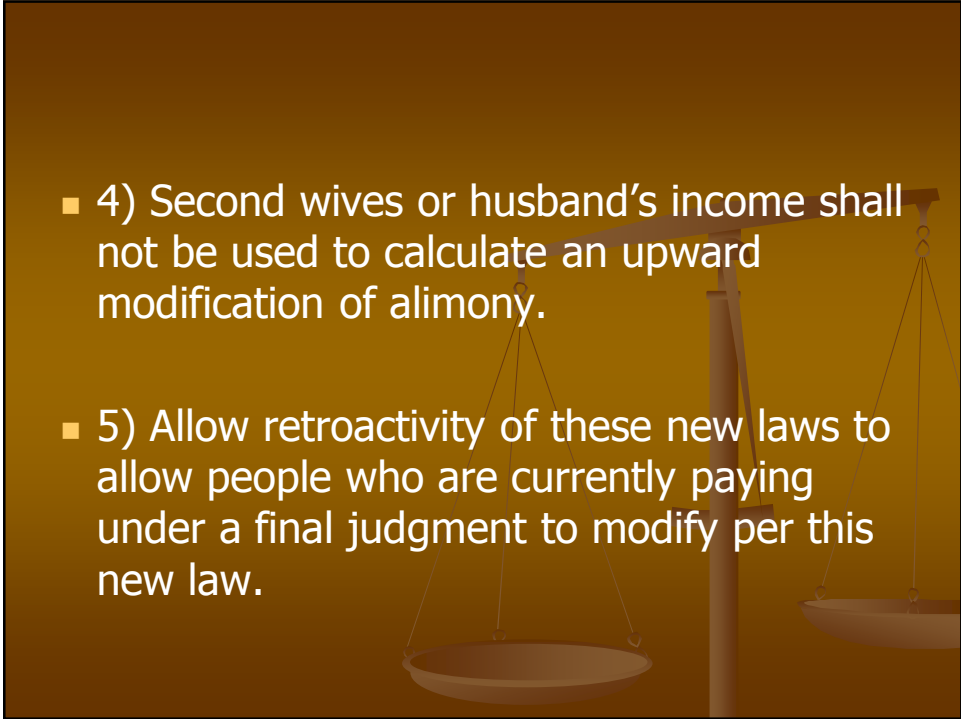
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- -May be awarded for marriage of moderate duration if is appropriate based on clear and convincing evidence after consideration of the above facts
 - -May be awarded for a marriage of short duration if there are written findings or exceptional circumstances.
 - -When awarding, court shall include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties.
 - -Terminates upon death of either party or remarriage of party receiving.
 - -May be modified or terminated based upon a substantial change in circumstances or upon the existence of a supportive relationship.

Modification

- **1. Modifiable**
 - a. Rehabilitative – upon showing substantial change in circumstances, noncompliance with rehab plan, or completion of rehab plan.
 - b. Durational - upon showing substantial change in circumstances.
 - -Length cannot be modified unless exceptional circumstances and cannot exceed the length of the marriage.
 - c. Permanent - upon showing substantial change in circumstances, or by showing a supportive relationship
- **2. Not modifiable**
 - a. Bridge the Gap

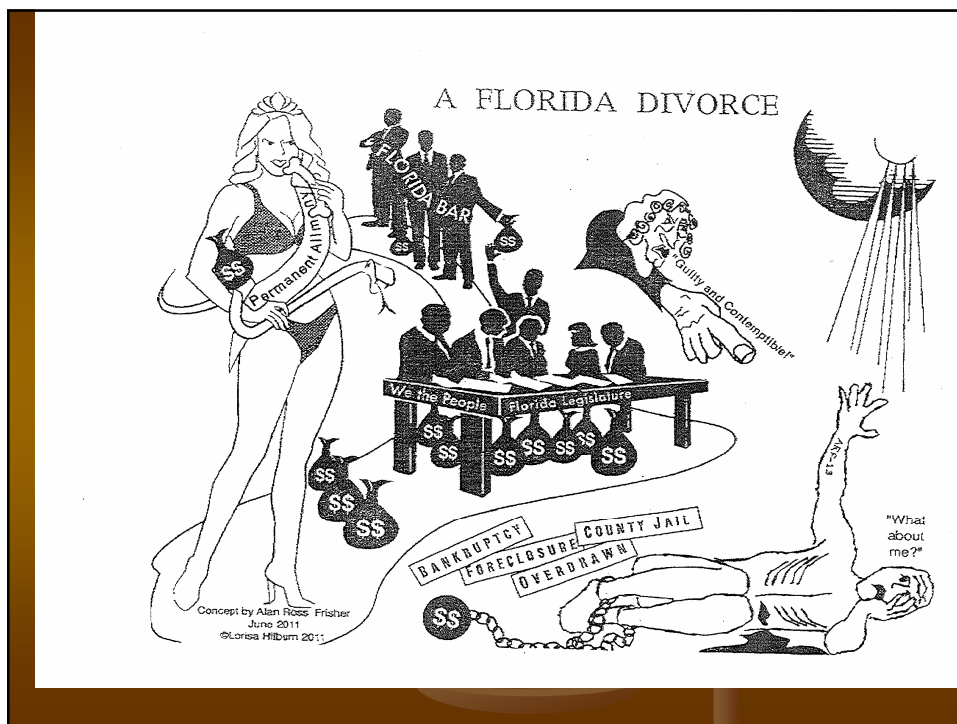
Changes proposed in the Alimony Reform Bill

- 1) Removal of permanent alimony. Sought default length to be 50% length of the marriage.
- 2) Right to retire at the Federal Retirement Age without incurring additional expenses.
- 3) A defined amount based on a formula that is fair , and that averages incomes for both spouses so that one spouse is not responsible for maintain the same standard of living for two separate households.

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- 4) Second wives or husband's income shall not be used to calculate an upward modification of alimony.
 - 5) Allow retroactivity of these new laws to allow people who are currently paying under a final judgment to modify per this new law.



The FAR Side of
Alimony



- **Length of marriage**
 - Equal to or less than 11 years-short term marriage
 - 11-19 years-mid-term marriage
 - 20 years or more-long term marriage
- **Presumptions in favor or against Alimony**
 - Short term marriage has rebuttable presumption against alimony
 - Mid-term marriage has NO rebuttable presumption for or against
 - Long term marriage has rebuttable presumption in favor of alimony

Alimony Guidelines

- Short term marriages-guideline is 25% of gross income and the payee has the burden to overcome that by clear and convincing evidence
- Mid-term marriages-guideline is 35% of gross income and the payee has the burden of overcoming that by a preponderance of evidence
- Long-term marriage-guideline is 38% of gross income and the payor has the burden by clear and convincing evidence to overcome
- These percentages do not include sources of income acquired outside of marriage and not relied upon during the marriage
- However, the total amount of alimony may not exceed 40% of the payor's gross income unless the court determines the need for additional alimony and makes written findings

Types of Alimony

- Bridge the gap
- Rehabilitative
- Durational
 - -Available regardless of length of marriage
 - -Shall not exceed 50% of length of marriage unless the party seeking longer proves by a preponderance of evidence the justification for a longer time and the findings must be in writing by the Court
 - -Court shall prioritize bridge the gap, followed by rehabilitative alimony over any other type
 - -Permanent alimony no longer exists

New Rebuttable Presumptions

- Standard of living will be lower post divorce
- -can be overcome by a preponderance of the evidence
- -Burden is on the person seeking to show the other will have a higher standard of living
- Presumption against alimony in a short term (11 years or less) marriage
- -Can be overcome by a preponderance of evidence to get bridge the gap or rehabilitative alimony
- -Can be overcome by clear and convincing evidence standard to get durational alimony
- -In both cases, the spouse seeking alimony has the burden of proof

- Rebuttable presumption in favor of awarding alimony in a long term marriage (now 20 years or more)
- Clear and convincing evidence standard to show that there is no need for alimony and the burden is on the potential payor
- Modification of alimony retroactive to date of filing petition to modify
- The proposed law did not lay out the weight of evidence necessary to overcome this presumption
- The burden of proof is on the person opposed to retroactive modification

Imputation Of Income For Oblige

- If the obligee is unemployed for less than a year, the court shall impute 90% of former net monthly income unless obligee proves by a preponderance of evidence that they have no ability to earn imputed income by reasonable means
- If unemployed for 1-2 years, 80% of former net monthly income shall be imputed unless obligee proves by preponderance of evidence that they have no ability to earn imputed income by reasonable means

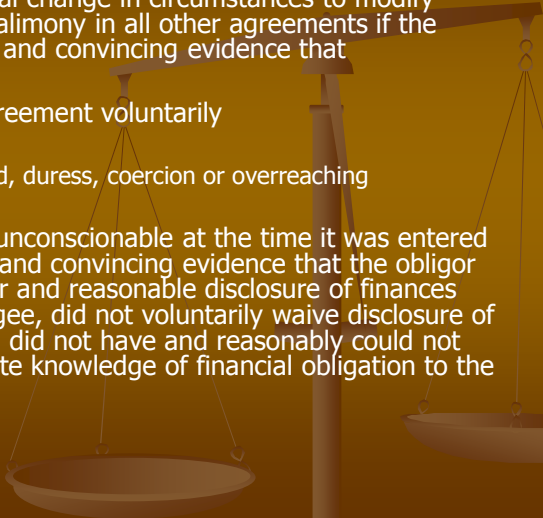
- If unemployed for 2-3 years, 70% of former net monthly income shall be imputed unless obligee proves by preponderance of evidence that they have no ability to earn imputed income by reasonable means
- If unemployed for 3-4 years, 60% of former net monthly income shall be imputed unless obligee proves by preponderance of evidence that they have no ability to earn imputed income by reasonable means
- If unemployed for 4-5 years, 50% of former net monthly income shall be imputed unless obligee proves by preponderance of evidence that they have no ability to earn imputed income by reasonable means

Equal Time Sharing

- Equal timesharing is in the best interest of the children
- Clear and convincing evidence of extenuating circumstances and written finding are needed to overcome this presumption
- The burden of proof is on the person seeking the alternative schedule
- Examples of extenuating circumstances are incarceration, distances between households make it impractical or impossible, a party does not request 50% timesharing, a permanent injunction has been entered or is warranted and domestic violence as defined in s.741.28 has occurred.

Retroactivity

- The amendments themselves constituted a substantial change in circumstances to modify amount or duration of alimony for final judgments of alimony entered before July 1, 2013
- Constituted a substantial change in circumstances to modify amount or duration of alimony in final judgments incorporating agreements if the duration of marriage was 15 years or less, the length of time for the alimony award exceeded the length of the marriage and the agreement was not explicitly non-modifiable.

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- Constituted a substantial change in circumstances to modify amount or duration of alimony in all other agreements if the obligor proves by clear and convincing evidence that
 - did not enter the agreement voluntarily
 - was a product of fraud, duress, coercion or overreaching
 - - the agreement was unconscionable at the time it was entered and proves by clear and convincing evidence that the obligor was not provided fair and reasonable disclosure of finances and property of obligee, did not voluntarily waive disclosure of that information and did not have and reasonably could not have had an adequate knowledge of financial obligation to the other party.

Votes In House And Senate



- FAR bill passed the Florida Senate by a vote of 29-11
- FAR bill passed the Florida House by a vote of 85-31

