

- SUBJECT:** Maintenance for divorced spouse with adult disabled child
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment
- VOTE:** 5 ayes — Dutton, Goodman, Nixon, Strama, Thompson
0 nays
4 absent — Castro, Y. Davis, Dunnam, J. Moreno
- WITNESSES:** For — Hannah Riddering, Texas National Organization for Women;
Thomas Stansbury, Texas Family Law Foundation

Against — Roy Getting, Texas Fathers Alliance
- BACKGROUND:** Under current law, in a suit for dissolution of marriage or in a proceeding for spousal maintenance, a court may order maintenance for either spouse only if certain requirements are met. If the marriage lasted 10 years or longer, and the spouse seeking maintenance lacks sufficient property to provide for the spouse's reasonable needs, Family Code section 8.051(2)(B) provides for maintenance if the spouse is the custodian of a physically or mentally disabled child who requires substantial care and personal supervision that makes it impossible for the spouse to work outside the home.
- Family Code section 8.053 includes a presumption that spousal maintenance is unwarranted unless the spouse seeking maintenance has exercised diligence in:
- seeking suitable employment; or
 - developing the necessary skills to become self-supporting during a period of separation and while the suit for dissolution is pending.
- The presumption does not apply to a spouse who is unable to satisfy the presumption because of an incapacitating or mental disability.
- The duration of an order for maintenance generally may remain in effect for no more than three years after the date of the order. However, under section 8.054(b), if a spouse seeking maintenance is unable to be self-

supporting through appropriate employment because of an incapacitating physical or mental disability, the court may order maintenance for an indefinite period for as long as the disability continues. The court may order periodic review to determine whether the disability is continuing.

DIGEST:

HB 201 would amend section 8.051(2)(B) of the Family Code by making spousal maintenance available to a custodial parent of a physically or mentally disabled child of the marriage, regardless of the age of the child, if that child required substantial care and personal supervision that made it impossible for the custodial parent to work outside the home.

The bill also would specify that exceptions to the presumption that spousal maintenance was unwarranted would apply if a spouse were the custodian of a disabled child of the marriage of any age whose care made it impossible for the custodial parent to work outside the home.

In addition, it would specify that a maintenance order could remain in effect beyond three years if the one seeking maintenance were unable to be self-supporting because that spouse was the custodian of a child of the marriage of any age with a disability. Under HB 201, maintenance would be ordered for as long as the disability continued, rather than for an indefinite period. Periodic review of the maintenance order could be required by the court to determine whether the disability continued to make it impossible for the spouse to support himself or herself through appropriate employment, not just to determine if the disability were continuing.

The bill would take effect September 1, 2005 and would apply only to a suit for dissolution of marriage or a proceeding for maintenance that was commenced on or after the effective date.

**SUPPORTERS
SAY:**

HB 201 would fix an unintentional loophole in the Family Code by providing needed support to custodial parents whose responsibility for their physically or mentally disabled adult children prevents them from obtaining gainful employment. Some disabled children never will be able to provide for themselves and always will need a custodial parent for the care and supervision needed to survive. It should make no difference that at the time of a suit for dissolution of marriage or a proceeding for maintenance, a disabled offspring of the marriage is past the age of majority.

The point of spousal maintenance is to allow an eligible spouse to rehabilitate himself or herself after marriage. If the spouse cares for a child with a disability, that spouse could be unable to support and rehabilitate himself or herself and it should be the obligation of the other or non-custodial spouse to help provide for the disadvantaged or custodial spouse.

**OPPONENTS
SAY:**

A spouse responsible for providing maintenance support must pay monthly up to 20 percent of that person's average monthly gross income. If a disabled child is involved, that same spouse also is indefinitely responsible for up to another 20 percent of average monthly gross income for the support of that child. HB 201 would require the spouse potentially to have to pay up to 40 percent of the spouse's average monthly gross income for a perpetual amount of time. This would be a significant and possibly infeasible burden to place on the obligated spouse.

**OTHER
OPPONENTS
SAY:**

HB 201 should further define whether the physical or mental disability suffered by the child of the marriage must exist at the time of the suit for dissolution or during the maintenance proceeding. If a child were to become disabled after the suit or proceeding, it might be necessary for the non-custodial parent to help with the custodial parent's reasonable needs if the custodial parent were unable to work because of the child's disability.