

How Does the Court Decide on Alimony in Tennessee?

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The amount and type of alimony to be awarded to a spouse is determined by the court if the parties to the divorce cannot otherwise agree. The court considers a number of factors based on the circumstances of each case, but the two most important ones are the need of the economically disadvantaged spouse and the ability of the paying spouse to pay it.

The court considers these:

(1) ***A spouse's ability to pay:*** It will look into each spouse's earning capacity, the needs for support, the obligations or debts each spouse is responsible for, and the financial resources. These resources include income and earnings from all sources, including pension and profit sharing plans, investments, retirement plans, and savings plans.

(2) ***Each spouse's education and training relative to each other:*** Is there a need of one party to gain more skills through additional education and training until that person can obtain a job that can provide support? Which spouse has more job-related skills and educational training to be a provider until the other spouse is brought up to a skills and training level to obtain a job that will pay a reasonable level for his or her support?

(3) ***The duration of the marriage;***

(4) ***The age and mental condition of each party;***

(5) ***The physical condition of each party.*** The court will consider not only any physical disabilities or incapacity from a chronic debilitating disease, but any other source that creates a physical problem for the spouse.

(6) If a party has custody of a minor child of the marriage, ***the extent to which it would be a burden for that party to leave the home to seek outside employment.***

(7) ***The separate assets of each party*** (as opposed to "marital" assets). This will include every kind of asset, such as real estate, personal property, cash in bank accounts, and investments.

(8) ***The agreed allocation between the parties as to the marital property that was acquired during the marriage.*** Marital property in its simplest form is that property (real or personal property) acquired during the marriage that was not inherited by either spouse or given to a spouse as a gift. But there are situations where “separate” property that belonged to a spouse before the marriage, but was improved or enhanced by both spouses during the marriage, becomes “marital” property, subject to being divided in the divorce. The distinction between “marital” property and “separate” property is complex, and you should consult with an experienced attorney to make the determination of what category a particular asset fits into.

(9) ***The standard of living of the parties during the marriage.***

(10) ***“The extent to which each party has made such tangible and intangible contributions to the marriage as monetary and homemaker contributions, and tangible and intangible contributions by each party to the education, training, or increased earning power of the other party.”*** If one spouse worked for years during the marriage to support their living expenses, allowing the other party to go through schooling and obtain degrees for a career, the working spouse has contributed substantially to the earning power of the other spouse; thus, the court will look at the sacrifice made by the working spouse and consider the equity of making the career-degreed spouse provide alimony to the one who helped him or her further their earning capacity with a degree. Also, if one spouse has been a homemaker for most of the marriage, that can be a strong factor as a substantial contribution because it enabled the other spouse to further his or her career and earning capacity. Some courts have considered the homemaker’s contribution as equivalent to \$100,000. a year toward the marriage.

(11) ***The relative fault of the parties.*** Although some attorneys will say that the fault of either party has nothing to do with the amount or entitlement to alimony, it is based on the particular circumstances of each case. If you are a wife whose marriage has been shattered by your husband’s misconduct, such as by abuse or adultery, a court is likely going to take that into account so as not to let the divorce caused by husband’s fault put you into a financial situation that would be inferior to what you enjoyed before the divorce.

(12) ***Any other factor that the court considers necessary to be fair and equitable between the parties.*** This includes tax consequences to either party as a result of the divorce.

The primary focus of the court, when deciding the issue of alimony, is the ***need of the disadvantaged spouse***. That "need" will translate into not only the amount of alimony but the type, whether it be permanent until the needy spouse dies or, for example, remarries, or it can be temporary to get the spouse through a transitional time until the spouse can support him or herself and any dependents he or she is responsible for maintaining, or it can be for rehabilitating the needy spouse to pay for training and education to help the spouse acquire the skills and education needed to obtain employment that can provide a reasonable standard of living. In some cases, the court may award several types of alimony to a spouse if the circumstances show the need for it. The various types of alimony and the conditions and qualifications for each are complex and you should consult with an experienced attorney to describe and determine what you may be entitled to.

The statutory factors listed in this article are derived from Tennessee Codes Annotated, T.C.A. § 36-5-121(i).