

Senate Committee on Judiciary
Spousal Support Maintenance Task Force Report
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Testimony of:
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Vermont Alimony Reform appreciates the opportunity to have a public voice on the Task Force. Although the Task Force met for only half of the allotted meetings, with one public hearing instead of two, and some of the Task Force members did not seem invested in the process, we were able to make some progress in the Recommendations.

The concept of extending the sunset of Act 60 is to determine through studies that the Act's guidelines are effective, that is: "...aimed to improve clarity, fairness, predictability, and consistency across the State in recognition of changes to the family structure in recent decades."

This is important step but can only function properly if the data is thorough and accurate and the results are analyzed objectively. Vermont Alimony Reform would like to continue to be a stakeholder in this process of reform. We also want to see the the Vermont Commission on Women continue as stakeholders as both of us share common interests for Vermont's payers and recipients, particularly those with financial hardships.

Our group has major issues with the current state of our state's spousal maintenance laws which are not adequately addressed in Act 60 or in the Task Force recommendations.

Judicial Discretion

Currently and with Act 60, broad judicial discretion remains the presumptive law which means the factors and guidelines can be used or ignored, or changed in any way. The common reason given for this is that every case is different and needs to be looked at individually. We don't agree, and neither do the majority of states. Most cases, particularly ProSe, which constitute 70% of VT divorces cases, can fit into a matrix which will determine a maintenance amount. Leaving judicial discretion as the presumptive law is an obstacle to Act 60's charge of consistency and predictability across the State. Judicial discretion does have a role in extreme or unusual cases. Let the guidelines be for the many and use judicial discretion for the few. The advantage of having a matrix that stands as the presumptive law is that most cases can be amicably settled. We already have a successful calculator for child support, and a set factor for property division. Why not do what neighboring states like Massachusetts do, and have a matrix for maintenance as the presumptive law. Then the inherent difficulties of divorce can be mitigated to an amicable settlement based on real numbers, not the fear of not knowing what may happen in court. During this trying time of divorce, families need clarity and predictability, not long drawn out expensive and contentious legal battles, which use acrimony and fear to force settlements or convince judges that there has to be a winner or loser.

Permanent Alimony and Retirement

This issue was discussed in the Task Force and the recommendation was made to add the impact of retirement of both the payer and recipient to the list of factors, again behind judicial discretion. Act 60 still provides for permanent alimony in long term marriages. We fervently believe that alimony needs to end at the national retirement age, as people need to stop

working at some time. It is imperative that both parties have finality from the divorce and spousal maintenance, and can move on with their respective lives. In extreme cases, the court can deviate from this norm.

Long-Term Instead of Permanent

The Task Force decided to recommend this change in the statute, even though there was not consensus. We support this change and encourage the Legislature to put an end to permanent alimony.

Remarriage and Cohabitation

Vermont remains the only state in the country that still does not automatically terminate alimony at remarriage. Many states also terminate at cohabitation, which has become very common. The problem with holding on to this antiquated measure is the complexity involved when a payor has to now support a second family, and when the remarriage or cohabitation changes the financial situation of the recipient, which occurs in almost all cases. The choice to not work by the recipient's new partner should not place the financial burden of meeting their expenses on the payor. Currently the scenario of the payor supporting a second household of adults is very common in Vermont. The intention of Act 60 is to again modernize the laws in recognition of changes to the family structure in recent decades, which includes remarriage and cohabitation, which is much more common today than ever before.

Only in extreme circumstances would a deviation be allowed.

Statute and Case Law

So much of divorce law is encased in common law and precedents and not clearly stated and readily available to understand for use by regular Vermonters. While 70% of divorces are ProSe, in most cases, this is due to of the lack of financial resources needed to hire an attorney, rendering these parties helpless and uninformed in understanding all the laws and rules, due to case law causing recipients not getting needed maintenance. Furthermore, the broad and complex interpretation of these laws stands in the way of clarity, predictability, and consistency. In the interest of transparency and fairness, we ask the Legislature to codify these common laws as statutes.

Previous Standard of Living

This needs to be removed from the list of factors. It is unrealistic for the same income to now provide for two households at the former standard.

Weaver vs Weaver

This case, ruled by the Vermont Supreme Court in 2017, was mentioned frequently in the Task Force and was initially looked upon as a clarification of case law. However once discussed, the case was found to present more complexity and interpretation, particularly with cohabitation and compensatory alimony (neither of which are in the statute).

Recommendation #2

Vermont Alimony Reform would like to add that the survey efforts should be designed to meet the objectives stated in Act 60, paragraph C. Additionally, the formation of these studies should include input from public stakeholders, specifically Vermont Alimony Reform and the Vermont Commission on Women

Recommendation #3

Vermont Alimony Reform would like to include the existing membership requirements of Act 60 into any future committees to review the data collected from the studies outlined in recommendation #2.

Recommendation #6

The Task Force is recommending that the changes identified in Act 60 do not alone constitute a substantial change which would not allow for a modification to an existing court order. Vermont Alimony Reform disagrees and believes that by not including the change in law as a significant change in circumstance, that it is unconstitutional if said changes do not apply to all. Laws are being brought up to date after many decades of neglect to reflect current familial structures and changing times in society. When the law changes, it should change for all. Everyone deserves equal protection under the law.

New Tax Law Changes to Alimony Payments

The new tax law eliminates the payer's deduction for alimony and eliminates alimony received by the recipient as earned income. Starting in 2019, this constitutes a substantial financial change to both the payor and the recipient, and must be reflected in the current guidelines to achieve parity. One possible solution would be to use the national average tax rate, add the Vermont tax, and then subtract this amount from both ends of the range in the guidelines. The Legislature will need to make changes this year to address this issue before December 31st, 2018.

In closing, while Vermont Alimony Reform is grateful and encouraged that the state of Vermont recognizes the problems with current spousal maintenance laws, much more work needs to be done in this area, and we encourage the continuation of the current task force structure; however, with individuals who are truly committed to making positive change for all parties. The status quo is not working, and the system is clearly broken.

With that said, certain issues should be tackled now, such as judicial discretion becoming secondary to the guidelines; ending alimony at the National Retirement Age; as well as cohabitation and remarriage ending, or reducing payments, such as is the norm in the rest of the country. Vermont is known nationally as one of the worst states in which to get a divorce for either party. We can find a better way for our deserving citizens, and we can start that now, before more Vermont's recipients and payers slide into poverty in the next few years.

As the Judiciary has stated in the past, it is the responsibility of the Legislature to enact laws to change spousal maintenance in Vermont, which is long overdue. We look forward to working with the Legislature to make this happen, and to help find solutions that work for all citizens as they move through the divorce process in Vermont.

Thank you again for your attention and consideration to this issue.