

Alimony Reform . . .

The Facts, Features, and Benefits of Recent Alimony Reform in Massachusetts.

TESTIMONY of

Stephen K. Hitner to the VERMONT SENATE JUDICIARY

Member of Mass. **Alimony Reform Task Force**

President, Mass Alimony Reform

Divorce Mediator, Consultant

508-335-0069

Steveh@usdivorcemediation.com

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The Problems before Reform

- ▶ 1. **All Alimony was for life** – *A Judge could not put a duration*
- ▶ 2. **Second wife's (spouses) income** – *used to increase alimony*
- ▶ 3. **No ability for a Payer to Retire** – *no ability to save for retirement*
- ▶ 4. **Receiving spouse co-habiting and not re-marrying to avoid loss of alimony** – *encouraged people to not marry*
- ▶ 5. **No incentive to be self-supporting** – *kept ex-spouses tied together in an acrimonial bond*
- ▶ 6. **Burdon of proof on Payer's inability to pay** – *not on Need.*
- ▶ 7. **No Finality**
- ▶ 8. **Short term marriages** – *no alimony*

The Task Force. . . .

- ▶ 1. Included ALL interested parties
 - ▶ a. The Chief Justice of Probate
 - ▶ b. Representative from – The Mass Bar, The Boston Bar, The Women’s Bar, The Association of Matrimonial Lawyers, A Lawyer representing Indigent and Abused Women.
 - ▶ c. A Senator, A State Representative
 - ▶ d. Myself representing the Victims of the current Law. (the only Non-Lawyer)

- ▶ 2. **A TASK FORCE With “TEETH”**

The TASK – Study the problems and craft Legislation to solve all issues.

- ▶ 1. A definition of Alimony – ***“The payment of support from a spouse who has the ABILITY to pay, to a Spouse in NEED of Support, for a Reasonable length of time”***
- ▶ 2. Added **Durational Limits** – based on length of the marriage
- ▶ 3. **Second Spouses** - income never a factor for modification
- ▶ 4. **Co-habitation** – suspend, terminate, or reduce
- ▶ **-Remarriage of Receiving Spouse Terminates Alimony- already Mass. Law.-**
- ▶ 5. **The need for Finality** – Alimony ends when the Payor reaches Full Retirement Age
- ▶ 6. **Deviation Factors** - for “Outlying cases – Judicial discretion
- ▶ 7. **Burdon of proof** - shifts to receiver to prove need.

The Legislative Process

- ▶ 1. Bill Submitted with 135 Co-Sponsors
- ▶ 2. Joint Committee on the Judiciary Hearing – passed 100%
- ▶ 3. House – Unanimous
- ▶ 4. Senate – Unanimous
- ▶ 5. Gov Signs into Law – Sept 26, 2011.

- ▶ 6. Effective March 1, 2012 – phase in period for existing litigants

The Results

▶ **Guidelines and Structure = Consistency and Predictability**

- ▶ 1. Existing Judgements and modifiable agreements file for modifications.
- ▶ 2. Judges use Deviation Factors for applicable situations.
- ▶ 3. **Most reach negotiated settlements!**
- ▶ 4. Couples involved in divorce have less acrimony less expense.
- ▶ 5. Mass. Family and Probate Judges appreciate the Guidelines.
- ▶ 6. Lawyers can predict outcomes of most divorces saving long protracted and expensive litigation.

▶

SJC Misinterprets Intent of ARA.

-----Be careful how you write!-----

- ▶ 1. 3 Cases went up on Appeal – SJC ignores Amicus from ARA Task Force Attorney
- ▶ 2. Rulings eliminate Retirement and Cohabitation for pre-2012 divorces.
- ▶ 3. SJC Rules that Durational Limits are available for pre-2012 divorces.
- ▶ 4. SJC Clarifies Deviation Factors and need for Judges to write findings.

AR Task Force Reconvenes and Files New Legislation -June 2016

- ▶ ----Bill Approved unanimous in House, held up in Senate. Refiled January 2017.----
- ▶ 1. **A Bill to re-legislate the Original Intent of the ARA of 2011.**
- ▶ 2. Bill gives clarity to original ARA of 2011.
- ▶ 3. None of the Legal Bars oppose the Bill.
- ▶ 4. Most Judges and Attorneys agree that the SJC got it Wrong.
- ▶ 5. Bill re-instates inclusiveness for all modifiable judgments and agreements.