

**Testimony of Cary Brown, Executive Director, Vermont Commission on Women
Senate Committee on the Judiciary
April 23, 2019**

RE: H.512, an act relating to miscellaneous court and Judiciary related amendments

Good morning. My name is Cary Brown and I am the Executive Director of the Vermont Commission on Women. The Vermont Commission on Women has been working in the interests of women's economic security since its inception, and has long recognized the need for equitable alimony practices that protect families' financial well-being. Our most recently updated policy statement regarding family law proceedings is as follows:

The Vermont Commission on Women supports legislation, policies, programs, and initiatives that facilitate equitable treatment of all parties, the protection of children, and the economic interests of single parents in family law matters.

I'm pleased to be able to share some information regarding proposed changes to spousal support and maintenance law contained in H512, including stories from women receiving and paying alimony in Vermont, and suggestions for wording change to H512.

STORIES AND INPUT FROM WOMEN RE: ALIMONY IN VERMONT

In 2017, the Vermont Commission on Women was appointed as a member of the Spousal Support and Maintenance Task Force. As part of our contribution to that group's work, we solicited stories and input from the public, and this memo shares some of what we collected.

We received input from recipient spouses, from obligor spouses, from second wives, from attorneys, paralegals, and other parties. This memo is limited to the responses we received from recipient spouses and from one obligor spouse. We heard from other obligor spouses, but all of them had already submitted their story through Vermont Alimony Reform's "pink book" testimony of women who pay alimony, so in the interest of avoiding duplication, we have not included them.

It's worth noting that many of the women we heard from expressed reluctance to share their stories, sometimes because of a sense of stigma around receiving alimony, sometimes out of a desire to put bad memories behind them, and sometimes because the situation for them was ongoing and they feared that sharing their stories would somehow make things more difficult for them.

Following are the stories and input we received. Many are in their own words; many are notes transcribed by our staff from phone calls.

RECIPIENT

Divorced after being married 14 years. Husband was in Orthodontics school, she was in law school, now attorney. She used trust fund money to support them through school. When they graduated, they bought a house with her funds, sold it for a profit several years later. Repeated this process, used funds to pay off husband's loan for school//business. He makes \$600k per year, she works part time at a university teaching, and has stayed home with kids/ remained part-time to be available. She's always the one to handle sick/snow/vacation days with kids, drop offs, pick ups, etc. He says his schedule always takes priority because he earns more. She had trouble with his lawyer not wanting to recognize the contributions she had made to his earning potential – financial by putting through school, paying debts, down payments, etc., and by allowing him to focus on work while she took care of kids.

RECIPIENT

1. Would like to see a cap on the portion that can be called alimony.
2. Would like systematic review process every 3-5 years, particularly 3 years after divorce to re-assess how everything is working for folks.
3. Would like the law to specifically consider the contributions the low wage earner has made to the higher wage earner's career and earning potential during the marriage.

RECIPIENT

Married for 33 years, divorced after being separated for a few years, has four children, was in school when married, worked for short term. Stopped working after third child was born at ex-husband's request – three kids in different day cares, husband traveled 50% of time for work. Made sense at the time, though not her first choice. Once youngest was old enough, worked 5 years for husband's office. Husband having an affair, ended in divorce. Left her job because it was at husband's work. Was concerned about litigating because of effect on children. Ex-husband didn't respond, took a long time. Feels like she settled a little because she wanted it to end. Alimony until he turns 65 in 2020, and then nothing. She regrets this. Should have negotiated reduced retirement alimony. Issues with late payments, short payments, enforceability concerns. Doesn't earn much now, in finance industry, earns less than the men in her office. He earns several hundred thousand a year.

RECIPIENT

Alimony is critical for women. Women need alimony in retirement, it would do a disservice to many spouses, particularly for stay-at-home moms who divorce later in life. Wage gap already disadvantages. Stay-at-home moms. Women bearing brunt of work raising children. It's not just "his" money – he earns that much because she supported him. Money "we earned". This was an agreement, she took time off with understanding that he would support financially. Social security – she'll get only ½ of his. He should have to make up the difference. Not sure she can retire until at least 70, because stuck maintaining large home. He has inheritance, she doesn't have anything like that. First response to idea of guidelines is – families are different. A model or factor seems ok, but a calculator doesn't factor in enough variables.

RECIPIENT

My agreement was determined via collaborative process. The creation of the agreement was pretty painless, using the guidelines, but the enforcement has been very stressful.

The end agreement was a good one, created with the brilliance of my attorney. It was developed to protect the children, with the philosophy that they should have the same lifestyle as they would have if they lived with their father. There were many clauses that were supposed to protect both me and my

ex-husband. The problem was that when my ex-husband remarried, he decided that the agreement was not fair and decided that he could adjust the court order on his own.

The process of asking the courts to enforce was costly. Both emotionally and financially. In the end, the courts upheld the agreement – said it was a contract and he had to honor the agreement as written. They did not, however, award legal fees to me. It is baffling to me why they would not. The agreement was clear and not open to interpretation. The judge agreed. So why would legal fees not be granted when that clause is specifically created to ensure compliance of the agreement?

I was married for 21 years. When I gave up my career to stay at home with my kids, I was earning approximately \$120,000. My ex-husband said that he felt strongly that I should be allowed to continue to be the primary caregiver and did not want to force me to re-enter the workforce. He valued my role as stay-at-home mom. Both attorneys also stated that I would be lucky to find a job in [my area] that would pay me more than \$25,000 given the fact that I had not worked in over 15 years and the limited options available to someone with my professional skills. Everyone agreed that any limited income that I could earn would be spent to pay for child care, our youngest was 4 years old. My ex-husband moved to another state, so although we shared custody, the reality is that he would not be able to share childcare responsibilities. The final financial agreement reflected it.

In fact, now I make \$19,200 from part time work. The solace I have is that child support and spousal maintenance is not modifiable. I can count on it until my youngest turns 18. This allows me to make sure that I can support my children and that they will continue to be able to do the things they did when their parents were married.

RECIPIENT

With the help of our mediator and budget worksheets, my husband and I agreed on a monthly amount that was fair to both of us. He sends me a check each month.

RECIPIENT

Through mediation initiated by my ex I am receiving spousal maintenance for a total of 20yrs with the amount I receive decreasing every 5yrs. He has taken me to court in both VT and [another state] trying to get this order stopped for various reasons. Neither time has worked and the order stands. In fact he told me this spring to be prepared to be taken back to court due to “Vermont Getting Rid of Alimony”.

RECIPIENT

The magistrate saw how shabbily the children and I had been treated and how much debt he had left for me to pay and gave me a reasonable amount of child and spousal support until the final hearings. My family paid most of our bills during the separation because it was not really enough money. My husband makes a good salary and left me with his debts, which I paid. My husband and his lawyer drew out the process (through refusing to provide information for many months). When the divorce finally went through, the judge simply extended the amount for ten years, until each child reached 18 and then as alimony until my husband reached 65. He did not reassess or change the amount. My now ex-husband never paid the child support for one of my sons, claiming that he had paid enough already. The state agency was a fine administrator. They take \$5 per month to collect the money from him, so I do not have to have any contact with him. I do wish it were not directly deposited into my bank account, as I always wrote on and saved the stub when it arrived and was able to keep good track of the payments that way. Now I have to wait for a bank statement or go online and try to be certain it is all paid. Also, I do not know whether the 10 years are “up” when we hit the 10-year mark for the date the judge signed

the decree or the date the divorce was final (90 days later). And the final insult, I have to pay taxes on the alimony, and he gets to deduct it from his.

RECIPIENT

Receives both alimony and child support; alimony just for car payments. Ex lets these payments get 2 or 3 months behind, she gets notices and is threatened with repossession of car; court is very lax; pattern is same with child support – checks bounce and fees are incurred; he knows she has to pay to go back to court to get him to pay; more than \$100 just for court fees each time.

RECIPIENT

My ex decided to “postpone” my second spousal support for the month of October. He works full time, and makes twice as much as I do. He stated he needed it for medical bills. I am under the assumption he cannot just decide not to pay me. These payments were established through the court system and were finalized (divorce was final) [date].

OBLIGOR

I went through a divorce in [year] in _____ County. The divorce was contentious and emotionally overwhelming for me and my son. Unable to mediate because of the demand of the highest alimony that could be awarded, I was forced to go through the tremendous expense of hiring a lawyer to protect my assets and my future ability to support myself. The unknown throughout that year of whether I would be able to support myself and my college bound son, keep the house and maintain it was one of the most difficult times of my life. If there had been fair laws regarding alimony allotment and length of distributions... Til the other party can get a job, etc. My past year would have been so much less scary to face. While maintaining some semblance of order and dealing with this situation, I also had to make secondary plans in case my ex husband was awarded more than I could afford. I will have to pay my ex husband alimony until he is 65 even though he has a job and is capable of getting a better paying job. He chose to be unemployed, unemployable, and underemployed. After 20 years of emotional abuse and his unwillingness to work continually, I finally found the courage to move forward with a divorce and the chance to be happy again. Now I am faced with a monthly penalty in addition to giving him almost half of my 401k and paying him for a portion of the house (which was mine). Please hear us and make fair equitable laws. Spouses should not have to pay their exes who can and should work. We should be able to move forward in rebuilding our lives and be able to be financially solvent ourselves.

Her input, as described through notes in a phone conversation: She is not sure if guidelines would have helped, but some kind of systematic review process every year or every few years would be helpful. It's too expensive to file for a modification. She believes paying alimony has hurt her career and damaged her ambition. She believes alimony is OK, but that in her case, it is unfair because of the particulars of the relationship. She would like a more holistic approach. Lawyers are expensive and fearmongering. Gender should be considered in these decisions, the wage gap is still a factor. She wondered if the fault grounds for divorce should be reconsidered – they are difficult to use but abusive, cheating spouses shouldn't get alimony.

SUGGESTIONS FOR H512

The 2017 Spousal Support and Maintenance Task Force's fourth recommendation was that the legislature should consider adding the impact of retirement of either the payor or the payee as a factor

in determining the duration or amount of an award.¹ This recommendation could be implemented by adding a factor #8 to the current list of factors (with #9 being the guidelines):

(8) the impact of both parties reaching the age that they are eligible to receive full retirement benefits under Title II of the federal Social Security Act or their actual retirement, including any expected discrepancies in federal Social Security Retirement benefits; and

Additionally, ensuring that the question of retirement is contemplated in the original award could bring more clarity and stability to both parties in their ability to retire. This could be addressed in H512 by removing (c)(2) and (c)(3) and changing (c)(1) to wording such as the following:

(c)(1) In each order awarding maintenance, the court shall state whether and how maintenance payments will be impacted by either party reaching the age that they are eligible to receive full retirement benefits under Title II of the federal Social Security Act or by their actual retirement

¹<https://legislature.vermont.gov/Documents/2018/WorkGroups/Spousal%20Support%20Task%20Force/Spousal%20Support%20Work%20Group/W~Judge%20Thomas%20Devine~Spousal%20Support%20and%20Maintenance%20Task%20Force%20Recommendations~11-22-2017.pdf>