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To: Senate Committee on the Judiciary
From: Cary Brown, Executive Director, Vermont Commission on Women
Date: March 11, 2020
Re: S.99, An act relating to spousal support and maintenance reform

Thank you for the opportunity to share some information regarding the latest version of S.99 (draft no. 1.1) concerning spousal support and maintenance reform. This memo contains some background and general information about the impact of divorce and its surrounding conditions on women, as well as specific comments about the draft bill.

BACKGROUND

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 represented the Vermont Commission on Women as a member of the 2017 Spousal Support and Maintenance Task Force created by the Vermont Legislature, which was charged with making legislative recommendations to Vermont's spousal support and maintenance laws.

DISPROPORTIONATE IMPACT ON WOMEN

Women are 97% of the recipients of maintenance after divorce, and experience disproportional impacts of both marriage and divorce. After divorce, they see disproportionate declines in household income (de Vaus et al. [2015](#); Smock [1994](#)) and standard of living (Bianchi et al. [1999](#); Peterson [1996](#)) as well as significant increases in the risk of poverty (Smock and Manning [1999](#)) and a higher risk of losing homeownership (Dewilde [2008](#)).¹

In contrast, men, on average, improve their standard of living after divorce. One study calculated a 27% drop in standard of living for women and a 10% increase for men, while other estimates are even larger (Bianchi et al. [1999](#)).²

Women are still much more likely to take time out of the workforce to care for children than men are, and while being a stay-at-home mom is less common than when the Commission on Women started in 1964, the numbers have actually stabilized in recent decades – currently about 27% of mothers are

¹ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5992251/>

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5992251/>

home, compared to 26% 30 years ago.³ And in fact, we're seeing a generational increase in stay-at-home mothers – 30% of Millennial mothers ages 20 to 35 are at home with their children, compared with 25% of Gen X mothers a generation earlier.⁴

STANDARD OF LIVING ESTABLISHED DURING THE CIVIL MARRIAGE

Current Vermont law requires judges to consider the “standard of living established during the civil marriage” as one factor in determining the amount and duration of a maintenance order. Including this standard as a factor is one means of protection against severe swings of financial circumstances for either party. Without consideration of this factor, “reasonable needs” might be more conservatively calculated than is appropriate – again, for either party. While divorce almost always brings about a change in financial circumstances, an equitable approach would ensure that one party does not unduly bear a disproportionate share of the negative effects. As referenced earlier, women currently experience greater negative financial impacts of divorce, even with this consideration.

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The proposal to insert the phrase “at the standard of living established during the civil marriage” within factor 6 helps to clarify that the standard of living in the marriage needs to be considered for the obligor spouse as well as the recipient spouse, but an even more explicit wording might be:

(6) the ability of the spouse from whom maintenance is sought to meet both his or her reasonable needs and those of the spouse seeking maintenance at the standard of living established during the civil marriage ~~while meeting those of the spouse seeking maintenance~~

COMPENSATORY MAINTENANCE

Compensatory maintenance recognizes that in many marriages, one spouse makes sacrifices in employment, career, or otherwise that contribute to the other spouse's lifelong earning potential while creating deficiencies in their own. Compensatory maintenance is directly tied to this contribution, and as such has been held by the courts to be unmodifiable outside of very particular circumstances.

Such circumstances are described in the VT Supreme Court Weaver decision in clear terms:

“While a real, substantial, and unexpected change in circumstances is the threshold test for modification of all aspects of maintenance, what is necessary to satisfy that test concerning the compensatory component of a permanent maintenance award is more stringent and requires showing more than just an unexpected change in financial circumstances. **The compensatory portion of a permanent maintenance award is not subject to downward modification unless the trial court makes an additional affirmative finding that an unexpected change has rendered the obligor spouse no longer able to potentially reap the benefits of the recipient spouse's contributions to the marriage** which triggered the compensatory portion of the permanent award.”⁵

³ <https://www.pewresearch.org/fact-tank/2018/09/24/stay-at-home-moms-and-dads-account-for-about-one-in-five-u-s-parents/>

⁴ https://www.pewresearch.org/fact-tank/2018/09/24/stay-at-home-moms-and-dads-account-for-about-one-in-five-u-s-parents

⁵ Vermont Supreme Court, Weaver v. Weaver, 2017

The notion of compensatory maintenance is particularly important to women because it is much more often women who make sacrifices in marriages that negatively impact their lifetime earning capacity, while positively impacting their spouses'. In order to care for children or family members, mothers are 14% more likely than fathers to reduce their work hours, 15% more likely to report taking a significant amount of time off, and 17% more likely to have quit their job.⁶ Women taking time off for parenthood suffer an 18% wage penalty,⁷ while fathers whose partners are stay-at-home mothers earn on average of 30% more than those in two-career partnerships.⁸

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Inserting the phrase “rehabilitative or long term” as modifiers of “maintenance” in this section regarding revision may have an effect on the application of the more specific standard for downward modification of compensatory maintenance awards. Any threat to the current law recognizing the fundamental difference in the nature of compensatory maintenance should be considered with extreme caution.

END OF MAINTENANCE AT REMARRIAGE OF RECIPIENT SPOUSE

Under current Vermont law, the remarriage of a recipient spouse that results in decreased expenses may constitute a real, substantial, and unanticipated change of circumstances that warrants a modification in the amount of maintenance.⁹ Similarly, when an obligor spouse remarries, the court may consider the effect that the new spouse’s income has on the needs and expenses of the obligor for the purpose of determining the obligor’s ability to meet his or her reasonable needs while meeting those of the recipient spouse, so long as the court doesn’t impute the new spouse’s salary to the obligor.¹⁰

The VT Supreme Court’s Weaver and Mayville decisions address the impact of the remarriage of either party in the consideration of a downward modification to payments:

“When an obligor spouse remarries, the court may consider that spouse’s present financial obligations to determine their ability to meet reasonable needs, but the court ‘may not impute the income of the new spouse to the obligor for the purposes of calculating the amount of the obligor’s income that is available to pay maintenance.’ Put differently, **‘the court may consider the effect that the new spouse’s income has on the needs and expenses of the obligor.’** This rule of law runs parallel to our rulings in cases where the recipient spouse’s remarriage results in decreased expenses, which we have held may be a sufficient ground to warrant a downward medication to the obligor’s maintenance payment...see also Miller, 2005 VT... holding that **remarriage of recipient spouse is grounds for modification only if remarriage substantially reduces need for maintenance**”¹¹

⁶ From Pew Research at: <http://www.pewresearch.org/fact-tank/2015/10/01/women-more-than-men-adjust-their-careers-for-family-life>

⁷ KARINE MOE & DIANNA SHANDY, GLASS CEILINGS AND 100-HOUR COUPLES: WHAT THE OPT-OUT PHENOMENON CAN TEACH US ABOUT WORK AND FAMILY 52-55 (Univ. of Ga. Press 2010)

⁸ Tamar Lewin, Men Whose Wives Work Earn Less, Studies Show, N.Y. TIMES (Oct. 12, 1994), <http://www.nytimes.com/1994/10/12/us/men-whose-wives-work-earn-less-studies-show.html?pagewanted=all&src=pm>

⁹ 15 V.S.A. § 758

¹⁰ Vermont Supreme Court, Weaver v. Weaver, 2017

<https://legislature.vermont.gov/Documents/2018/WorkGroups/Spousal%20Support%20Task%20Force/Spousal%20Support%20Work%20Group/W~Brynn%20Hare~Weaver%20v.%20Weaver~9-20-2017.pdf>

¹¹ Vermont Supreme Court, Weaver v. Weaver, 2017

Automatic termination of maintenance upon remarriage of a recipient spouse may not consider the actual impact of the remarriage on the recipient's financial situation. Not all remarriages result in improved finances or reduced living expenses, even if many do. Similarly, specifying an automatic action in response to only a recipient spouse's remarriage does not consider any impact that an obligor spouse's remarriage may have on his or her financial situation.

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Adding an automatic termination of maintenance upon the remarriage of the recipient spouse potentially builds inequity and unfairness into the law. The 2017 Spousal Support and Maintenance Task Force considered the question of including this as a recommended change to the law, and decided against it.