

Rick Fleming
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Testimony of Rick Fleming
Vermont Alimony Reform
Senate Judiciary Committee

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Good morning,

My name is Rick Fleming and I am the president of Vermont Alimony Reform, a grass roots organization working to reform Vermont's outdated spousal maintenance statutes. I want to thank chairperson Senator Sears and the other members of the Senate Judiciary Committee for inviting me to testify this morning on S.99. I also want to thank Senator White for introducing this bill.

Vermont Alimony Reform has been working with the Legislature for the past 4 years, trying to update and modernize Vermont outdated spousal maintenance laws. The existing statutes lack consistency, predictability and clarity for women, men children and families. Today, Vermonters cannot be assured of equitable outcomes when going through the already difficult process of divorce.

In 2017 the Legislature passed Act 60 which added the Spousal Maintenance Guidelines into the existing law as an additional factor that judges can use in determining spousal maintenance awards and established a Task Force to review Vermont's existing outdated laws. The Task Force met in the summer and fall of 2017 and recommended that the Legislature should wait and see the effect of the guidelines before making additional changes to the statutes. The Task Force also recommended the extension of the Guidelines to July 1, 2021. This recommendation was passed during the last Legislative session.

I want to begin by stating that Vermont Alimony Reform is not against spousal maintenance. We all recognize that financial support is needed and necessary to allow a lesser earning ex-spouse to transition into the next stage of their life. However, we believe that our statutes should be reformed so that they are clear and concise for the many with safety valves for the few outlier cases that come before our family court system. We believe that spousal maintenance should be for a defined dollar amount and for a defined period of time.

Not everyone can afford the expense of a lawyer to represent them when they are going through the divorce process. In fact, between 60-70% of all Vermont divorces do not have representation by a lawyer. The system is presently setup to create confrontation between the parties in the divorce process, establishing a winner and loser in terms of outcomes. This creates undue financial and emotional hardship for Vermont families and in the end drains the assets for the family to allow them to move forward with their respective lives. In some cases it will split families apart because one sibling will side with one parent and the other with the other parent. The system needs to be changed and designed to minimize this from occurring. Senate Bill S.99 makes our statutes clear and concise so that individuals that represent themselves have a clear understanding of what to expect when they begin the divorce process.

Under present statute and case law, judicial discretion is the presumptive factor when the courts issue a spousal maintenance award in Vermont. Other critical determining factors such as the Spousal Maintenance Guidelines are secondary and completely optional. The Vermont Supreme Court in the Jaro vs Jaro decision in May of 2018 states "the temporary nature of the guidelines further undermines any suggestion that they establish a presumption". "Nothing about the text of the statute suggests the guidelines carry presumptive weight in the spousal maintenance determination, such that the court must justify an award outside of the guidelines range". "The statutory child support guidelines provide a helpful contract, reflecting that where the Legislature wants to establish presumptively applicable ranges it know how to do so". With the continued use of broad judicial discretion there is no guarantee of a predictable outcome or protection for Vermont's low income recipients to ensure that they will even receive spousal maintenance, much less a fair settlement.

S.99 codifies clear, specific and predictable guidelines and would require our Family Court judges to follow them in determining a spousal maintenance award. The presumptive use of case law and legislating from the bench will end. Specifically S.99 addresses the following:

1. S.99 limits the use of broad judicial discretion except for those outlier cases where in the "interest of justice" the Court deems it necessary to deviate from the statutes. It also would require the Family Court to issue substantive findings

of fact to support such a deviation. This will not only create clear and predictable outcomes thereby reducing the costs for the parties but it will hopefully reduce the caseloads of our Family Courts going forward. Vermont Alimony Reform strongly supports this change.

2. S.99 clearly defines the two types of spousal maintenance that can be awarded under the statutes. General term maintenance which are periodic payments made to a spouse or former spouse after the effective date of the final divorce decree and reimbursement maintenance, which are payments to a spouse or former spouse to compensate him or her for economic or noneconomic contributions to the earning capacity of the payer.

3. S. 99 clearly specifies the amount of the maintenance award at 30% of the difference between the parties' gross income at the time the order is created and also defines the duration of the award to 50% of the length of the marriage. We support the 30% amount as it addresses the federal tax change that occurred on January 1, 2019 concerning the loss in the deductibility of spousal maintenance from the payor's taxes. The 50% of the term on the marriage is clear and concise and it also recognizes the need for transitional alimony for those individuals in short term marriages.

4. S.99 states that a spousal maintenance award should end at the remarriage or cohabitation of the payee. Under our present statutes, spousal maintenance doesn't stop when your ex-spouse has remarried or is cohabitating. Vermont is one of only a handful of states that does not terminate spousal maintenance upon remarriage. Not only are you paying for your ex-spouse but their new spouse and family too. This is an injustice that has to stop and Vermont Alimony support this provision of the bill. The law has not been updated by the Legislature in decades and does not recognize the modern day familial changes that have occurred since the existing statutes were created.

5. With S.99, spousal maintenance should end upon the payor reaching the age to receive full social security retirement benefits. Vermont Alimony Reform supports this important piece of the bill. Lifetime alimony payers in Vermont can never retire. If you presently have a lifetime alimony judgement, you are required by law to continue to pay until you are dead, even if you want or need to retire. Requests for modification are financially expensive and are often denied without

cause or reasonable chance for appeal. Lifetime alimony should end except under the most extreme circumstances.

6. Under current law there are no clear cut guidelines as to what constitutes a substantial change in circumstances. This is what triggers a modification to a spousal maintenance order. S.99 defines what constitutes grounds for a modification at a 10% or greater change in income or the change in the health of either party. Currently, appeals to the Vermont Supreme Court for modifications are being denied because the court cites that the trial judge has total judicial discretion in determining if a modification is warranted. S.99 minimizes judicial discretion and codifies the criteria into statute. Vermont Alimony Reform supports adding this to our statutes.

Under existing statutes, one of the criteria in determining a spousal maintenance award is that the receiving spouse is entitled to maintain the lifestyle of the marriage, usually to the detriment of the payor. Unfortunately when two individuals work together as one, as in a marriage, they will be able to maintain a certain level of lifestyle; however, when they have to maintain two households, as in divorce, it is usually a fact of life that that the lifestyles of both parties will change, usually downward. It is not fair when one party is financially crippled for a windfall for the other party. Spousal maintenance should be based upon the need and ability to pay, and not be used as a reward or entitlement. Fairness and equity for both parties should be the rule of law. Vermont Alimony Reform supports the removal of this from our existing statutes.

Vermont Alimony Reform applauds Senator White in bringing S.99 forward. We look forward to working together with the Senate Judiciary Committee, the Vermont Commission on Women and other interested parties as you consider this important piece of legislation. I urge the members of the Committee to support Senate Bill S.99. Vermonters and their families are suffering and we need your help in changing the law. Reforming Vermont's outdated spousal maintenance laws are long overdue. Massachusetts updated its laws in 2011 and New Hampshire updated their laws in 2018. Now is the time for Vermont to do the same.

Thank you

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