



Connecticut Chapter

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POSITION PAPER OF
THE CONNECTICUT CHAPTER OF
THE AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

IN OPPOSITION TO RAISED BILL NO. 5509
An Act Concerning the Payment of Alimony and Child Support
March 19, 2012, Testimony Before Judiciary Committee

I. PURPOSE OF ALIMONY

The traditional purpose of alimony is to meet a spouse's continuing duty to support. Connecticut law provides for both time-limited awards of alimony and open-ended awards of alimony. Time-limited alimony awards already occur, but require a valid, usually rehabilitative purpose. A primary example of such a purpose is to provide an incentive to the recipient spouse to use diligence in procuring training or skills necessary to attain self-sufficiency. Consider, however, how one spouse may for decades completely put aside his or her career in favor of the other spouse's career and/or raising their children. How likely is it for a spouse who has been raising children for 20 years to get back into the workplace in a meaningful way? Surely it is not the public policy of the State of Connecticut to inhibit the procreation of children, the raising of children or to punish the spouse who does one or both. It is unrealistic to think that such a dependent spouse's earning potential can ever be "rehabilitated" and that he or she can then essentially start completely over again with a career much later in life. Instead, it is important that the dependent spouse not just be cast aside after decades of making these nonfinancial contributions, and that those contributions and the rehabilitative potential be factored into an alimony order as they currently are under Conn. Gen. Stat. § 46b-82.

Duration of the marriage is a factor already considered in awarding alimony under Conn. Gen. Stat. § 46b-82, and it is certainly a factor that impacts duration of alimony. As I have written from the family law practitioner's perspective, "experience indicates that there has been a substantial decline in the number of cases in which lifetime alimony is ordered even after a long marriage." Rutkin et al., 8 Connecticut Practice Series: Family Law and Practice with Forms (2010 and updated through 2011-2012) § 33:5. "Lifetime" alimony, even when it is awarded is also almost always subject to termination upon retirement, loss of earning potential, or similar restrictive considerations.

II. CURRENT STATUTORY CONSIDERATIONS FOR AWARDING ALIMONY

Each marriage is unique, as are the contributions and needs of the spouses in that marriage. Our law needs to retain its current flexibility to allow judges to continue to consider that uniqueness so that alimony awards can be made in consideration of the proper statutory factors on a case-by-case basis.

In determining whether alimony shall be awarded, and the duration and amount of the award, the statutory factors currently considered by judges under Conn. Gen. Stat. § 46b-82(a):

1. Length of the marriage;
2. Causes for the annulment, dissolution of the marriage or legal separation;
3. Age of the parties;
4. Health of the parties;
5. Station of the parties;
6. Occupation of the parties;
7. Amount and sources of income of the parties;
8. The parties' vocational skills;
9. The parties' employability;
10. The estate of each party (i.e., a consideration of assets)
11. The needs of each of the parties
12. Whatever award of property the court may otherwise make in the divorce; and
13. In the case of a parent to whom the custody of minor children has been awarded, the desirability of such parent's securing employment.

It is necessary that judges have discretion to consider all these factors in order to consider each marriage and each divorce on its own merits. Divorces are not "cookie-cutter" proceedings where you just swap out one set of spouses for the next. If judges' hands are tied by Raised Bill 5509 as to how they are to determine the amount and duration of alimony awards, then it will degrade the level of justice being rendered to parties in family law proceedings.

III. SPECIFIC PROBLEMS WITH RAISED BILL NO. 5509

Raised Bill 5509 is fraught with hazards for family law in Connecticut too innumerable to exhaustively set forth herein. Its passage would severely undermine existing laws and decrease the quality of justice that parties could expect in our family courts. Included below are the most pernicious dangers which I discern in this proposed amendment to our statutes:

A. Proposed Conn. Gen. Stat. § 46b-82(b) – Duration of Alimony

The proposed change to Conn. Gen. Stat. § 46b-82(b) limits the duration of alimony to one-half the length of the marriage. The definition of "length of the marriage" is

erroneous under the proposed changes to Conn. Gen. Stat. § 46b-82. It uses the date of filing a divorce complaint as the endpoint to the marriage. Under the laws of this State, marriage does not end until it has been dissolved by the court. Even the Massachusetts alimony laws cited as support for this supposed "reform" do not eliminate indefinite alimony for marriages of over 20 years. The Massachusetts statutes also provide not only for steadily increasing percentages of time – over 50% of the length of the marriage for all marriages over 5 years – but the court may also grant a deviation beyond those time limits if it issues a written finding that doing so is "in the interests of justice." See M.G.L.A. 208 § 49(b). Even that level of flexibility for the courts is lacking in Raised Bill 5509. Moreover, Massachusetts law is an inapposite comparison point for Connecticut, as they have various specific types of alimony – rehabilitative, transitional, and reimbursement – which is not the case in our State.

B. Proposed Conn. Gen. Stat. § 46b-82(c) – Retroactive Application

Consider also that the proposed changes to Conn. Gen. Stat. § 46b-82(b) would apply retroactively to change alimony awards entered into before October 1, 2012. Under proposed Conn. Gen. Stat. § 46b-82(c), these prior awards could be modified automatically upon the filing of a motion for modification of alimony. It would require retrial of cases already long determined, no matter what the basis. It would overturn agreements, where specific amounts and terms of alimony were bargained for and agreed to, perhaps based on considerations found elsewhere in the agreement having nothing to do with alimony. It has long been a maxim of family law that "[t]he rendering of a judgment in a complicated dissolution case is a carefully crafted mosaic, each element of which may be dependent on the other." *Ehrenkranz v. Ehrenkranz*, 2 Conn.App. 416, 424 (1984). The retroactive application of this bill would rip apart the mosaic and thrust the family courts into chaos. Passage of this section would inundate the courts with motions to modify too numerous to count.

C. Proposed Conn. Gen. Stat. § 46b-82(d) – Amount of Alimony

The proposed changes set forth in Conn. Gen. Stat. § 46b-82(d) would also limit the amount of alimony to 30-35% of the difference between the gross income of the parties at the time the alimony order is issued. In the Massachusetts alimony statutes, it states that alimony should "generally not exceed the recipient's need or 30 to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued." M.G.L.A. 208 § 53(b). The proposed Conn. Gen. Stat. § 46b-82(d) quotes almost exactly from M.G.L.A. 208 § 53(b), but omits the word "generally," thereby eliminating an important flexibility found in the Massachusetts statute. Similarly, "the recipient's need" is also omitted from proposed Conn. Gen. Stat. § 46b-82(d), thereby eliminating a critical factor for courts to consider in making such awards.

The proposed changes in Conn. Gen. Stat. § 46b-82(d)(1) also exclude from consideration for alimony purposes capital gains, dividend, and interest income which derive from assets equitably divided between the parties. Consider that a court can award income-producing property to one party, and not the other, but with the order that alimony shall be paid from one party to the other based on the income from that

property. Consider also that, at least in Fairfield County, there are numerous cases where such income may form the majority or even sole income of the parties. Allowing this change would function to eliminate alimony completely in such cases. Or it might well result in an award of alimony to an idle spouse with a large trust fund, based on the other spouse's hourly wage which would be the only income available to the court for consideration of alimony. The law already requires a court not to "double-dip" – to award property twice, both as a property distribution and as an income stream for alimony. Therefore, this section of Raised Bill 5509 is a response to a concern which is already better addressed under our existing laws.

Proposed Conn. Gen. Stat. § 46b-82(d)(2) would require a court to exclude from consideration for alimony "income which the court has already considered in setting a child support order." Passage of that section would eliminate an award of alimony in any cases where a specific child support has already been awarded. Of necessity, a court applying the Child Support Guidelines must broadly consider the income of the parties. That child support award is based solely on the needs for maintenance of the minor child or children, and does not factor in the needs of a parent. How the proposed amendments in Raised Bill 5509 would function with respect to an award of unallocated support, where alimony and child support are mixed together without distinction, is unclear and would undoubtedly spawn significant litigation.

D. Proposed Conn. Gen. Stat. § 46b-82(e) – Deviation Criteria

The "grounds for deviation" from the limits on duration and amount listed proposed Conn. Gen. Stat. § 46b-82(e) are insufficient. Although the proposed act purports to leave the discretionary factors in Conn. Gen. Stat. § 46b-82(a) alone, passage of Raised Bill 5509 would completely supplant the existing factors. The deviation criteria proposed under Conn. Gen. Stat. § 46b-82(e) are completely insufficient to form a basis for determining an alimony award, especially functioning as they would as only deviation criteria from the rigid formulas imposed by Raised Bill 5509, and especially when compared to the existing, more extensive factors for determining an alimony award.

E. Proposed Conn. Gen. Stat. § 46b-86(b) – Changes to Cohabitation Statute

The proposed changes to Conn. Gen. Stat. § 46b-86(b) would eliminate the current language which requires a finding that a recipient of alimony is living with another person and that this arrangement alters the financial needs of the recipient of alimony. Ultimately, this is the primary consideration that needs to be before the court, not the myriad vague factors described in Raised Bill 5509, such as "community reputation." The proposed statute would turn cohabitation into an overreaching exploration into the personal lives and new romantic relationships of an alimony recipient (which divorced spouses already need all too little encouragement to do), while the true consideration at issue here is a financial one. That is the focus under the existing statute and it should remain so.

F. Proposed Conn. Gen. Stat. § 46b-86(e) – Retirement Age

It would be fallacious to add in a statutory presumption that “full retirement age” should terminate alimony obligations as proposed in Conn. Gen. Stat. § 46b-86(e). Retirement often already forms the basis for modification or termination of alimony. However, there are plenty of individuals who continue to work long after retirement age. Often, it was the family plan for decades as to how long each party would or would not work, and the courts should consider and hear evidence about that. Some parties get married later in life, and have an obligation to continue to support their families even after they have reached an assumed retirement age. Some parties do not even get married until after retirement age. Once again, the courts need the existing flexibility to consider each case on its own merits, which the proposed change under Conn. Gen. Stat. § 46b-86(e) would further erode.

G. Proposed Conn. Gen. Stat. § 46b-86(i) – Increase in Income After Divorce

It can often be a court order, or the terms of an agreement, that an increase in the payor’s income after the date of divorce shall not form the basis for a motion to modify alimony. But that should not be the automatic rule, as it would be under proposed Conn. Gen. Stat. § 46b-86(i). Sometimes, the increase in income is attributable only to the payor spouse’s accomplishments after the marriage. That could form a reasonable basis for excluding the income. But where the increase in income may be directly attributable to a long march up the corporate ladder during the marriage – say, a large raise in the first post-divorce year after a 25 year marriage – then it should bear consideration by the courts. Passage of this section would improperly incentivize payors of alimony to attempt to defer (i.e., hide) raises and other increases income until after the divorce decree.

H. Proposed Conn. Gen. Stat. § 46b-86(k) – Working Overtime/More Than One Job

There is simply no justifiable reason why overtime or working more than one full-time job should not be considered in an alimony order, as is proposed under Conn. Gen. Stat. § 46b-86(k). If a court determines that it is equitable to not base an alimony award on such income, it already can. But to just automatically exclude this income from consideration, without a basis in the facts of the particular case, would deprive the court of the ability to consider the family’s unique circumstances.

I. Proposed Conn. Gen. Stat. § 46b-40 – Definition of Alimony

The Raised Bill also proposes to add a definition of alimony to Conn. Gen. Stat. § 46b-40, which sets forth the grounds for dissolution of marriage, legal separation, or annulment. Such a definition does not belong there nor is it needed. The “goal” of alimony stated under the proposed definition is “allowing the spouse who is the recipient of alimony to become self-sufficient.” Such a “goal” fails to recognize that there are many spouses who will never become self-sufficient, and who have specifically given up their own self-sufficiency for the greater good of their marital partner, their children,

and for the benefit of the marriage. It would be an injustice to all those dependent spouses to cast aside the merit of their nonfinancial contributions by passing Raised Bill 5509.

J. Proposed Conn. Gen. Stat. § 46b-84(d) – Trust Accounts for Minor Children Creating “trust accounts” for minor child under proposed Conn. Gen. Stat. § 46b-84(d) would be both impossible to implement and detrimental to the best interests of children. Payors of child support have long sought to have an accounting from the payees, essentially so that the payor can second-guess and control expenditures made on behalf of the child. The proposed creation of “trust accounts” would do just that. It is virtually impossible for one to detail and categorize all the expenses which result from parenting time with a minor child. To require the recipient of child support to essentially have to ask for permission for use of these funds from the payor would undermine the purpose of child support itself. Utilization of these trust accounts would undoubtedly spawn legal controversies, whereby the expenditure of legal fees over usage of the accounts would undermine the amount of money at issue in the first place. Passage of this section might well draw unfavorable attention from federal oversight of enforcement of those laws. Our current laws already provide for remedies where child support payments are not being used for the benefit of the children. The proposed addition under Conn. Gen. Stat. § 46b-84(d) has nothing to add to benefit minor children in this state.

IV. CONCLUSION

The Raised Bill is so riddled with problems as to make it unworthy for serious discussion. In accordance with the foregoing, the Connecticut Chapter of the American Academy of Matrimonial Lawyers respectfully opposes Raised Bill 5509 and request that this Committee vote against it.

Respectfully submitted,

Arnold H. Rutkin, President

(With special thanks to Alex Cuda for his contributions to this paper)

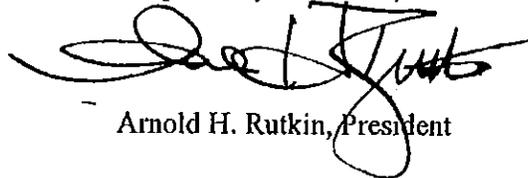
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