

Legal Assistance Resource Center

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H.B. 5509 -- Alimony and child support payments

Judiciary Committee public hearing -- March 19, 2012

Testimony of Raphael L. Podolsky

Recommended Committee action: NO ACTION ON THE BILL

There are numerous reasons why this bill is unreasonable and unfair, both in its provisions as to alimony (Secs. 1 to 3) and as to child support (Sec. 4). Underlying the entire bill, however, is an unfairness to the spouse with less income, less ability to support herself or himself, and a larger responsibility for raising a child. From this perspective, the bill attempts unreasonably to limit judicial discretion and judgment and to impose rigid rules against the weaker spouse and then -- by rebuttable presumptions, narrow exceptions, and enhanced burden of proof standards -- to make it hard procedurally for the weaker spouse to prove a basis for an exception. We believe that the far better approach is to leave with the court the discretion that is necessary on a case-by-case basis to decide issues of this sort. Our specific concerns include the following.

Child support:

Section 4 of the bill attempts to impose a burdensome and near-impossible administrative task on the primary custodial parent by authorizing child support to be placed in a separate trust account, apparently to force the spouse receiving child support to allocate every expenditure between the parent and the child and to pay them from separate accounts. This approach, apart from its administrative difficulties, fails to recognize that nearly all expenses in a household with a child are for the benefit of both the child and the parent. For example, the rent, the utility bills, and the purchase of food are all handled on a unitary basis. Indeed, a larger apartment may be necessitated by the presence of a child. What part of the rent is supposed to be paid from the "trust" account? What part of the television? What part of the sofa?

Alimony:

- The bill redefines alimony as solely support for a limited period of time and solely with the goal of allowing the spouse receiving alimony "to become self-sufficient." It makes no distinction in regard to this "goal" between a 25-year-old employable spouse in a one-year marriage and a 60-year-old spouse in a 30-year marriage.
- The bill limits alimony to half the number of months of the marriage and 35% of the difference in the gross income of the parties. The bill does not appear to give consideration to such other factors as the spouse's contribution to the marriage or the spouse's capacity for self-support. It also applies these rules retroactively to

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current alimony orders, even though those orders (e.g., property division or child support) may have been based in part on the assumption that such limits would not be applied. It permits such modification without a showing of a change in circumstances.

- The bill provides no consideration of the general wealth of one party or the general poverty of the other. It permits no consideration of the cause of low income other than "advanced" age, "chronic" illness, "unusual" health circumstances, physical or mental abuse by the other party, or "economic fault" during the last five years of the marriage. We are not sure what "economic fault" refers to, but we are very aware that low-income custodial parents often have significant weaknesses in education, language skills, employment experience, and other factors that limit their employability or earning capacity. These factors do not necessarily fit into the list provided in this bill.
- The bill is too quick and too rigid in cutting off alimony because the spouse receiving alimony is "maintaining a common household" (presumably living together) with someone. It is not clear that "common household," however, is sufficiently narrow to describe a functional remarriage. It cuts off alimony after three months and prohibits reestablishing alimony if the "common household" is disbanded. It establishes a rebuttable presumption that such persons are "economically interdependent."
- The bill terminates alimony when the person responsible for paying alimony attains "full retirement age," apparently without regard to that party's assets and income compared to the assets and income of the party receiving alimony and apparently without regard to whether the liable party is working. It requires that any exception be based on a change in circumstances occurring after the entry of the judgment, and good cause must be shown by the recipient of alimony by "clear and convincing" evidence, an enhanced standard of proof usually applied only to a major deprivation of rights, such as the permanent termination of parental rights.

These proposed changes will create far more problems and far more inequities than anything in the present system. The bill should be rejected.