

Judiciary Committee

Raised S.B. No. 1155, An Act Concerning Revisions To Statutes Relating To Dissolution Of Marriage, Legal Separation And Annulment.

Raised H.B. No. 6688, An Act Concerning Revisions To Statutes Relating To The Award Of Alimony

Raised H.B. No. 6685 An Act Concerning a Presumption of Shared Custody in Disputes Involving the Care and Custody of Minor Children

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My name is Amy Miller and I am the Program & Public Policy Director, at the Connecticut Women's Education and Legal Fund (CWEALF). CWEALF is a statewide non-profit organization dedicated to empowering women, girls and their families to achieve equal opportunities in their personal and professional lives

For almost 40 years, CWEALF has provided information, referral and support to women seeking guidance on how to proceed with a divorce or how to respond to a divorce. We have spoken to thousands of women. The people who contact our office generally have incomes above the federally defined poverty levels with an average of about \$25,000, and most with at least one child. It is with these women and these situations in mind that I will respond to three bills before this committee, SB 1155, HB 6688, and HB 6685.

I will begin with testimony in opposing Raised S.B. No. 1155, An Act Concerning Revisions to Statutes Relating to Dissolution of Marriage, Legal Separation and Annulment.

SB 1155 makes changes to the current statute without a base in research or any collaboration with relevant organizations who can add diversity to the discussion such as Legal Services, or the Connecticut Chapter of the American Academy of Matrimonial Lawyers. Most disconcerting is the addition of a formula to the current process for calculating alimony awards. This is a step in the wrong direction. The current process for determining alimony awards requires judges analyze a variety of factors that affect each individual's ability to support themselves following the disillusionment of a marriage. Through this practice judges have the discretion to account for the uniqueness of every situation and determine an alimony award that is most appropriate based on the needs and resources of the individuals involved.

The creation of formulas shift the alimony system from a process that is needs based to one that is rooted in entitlementⁱ. Undermining consideration of need cuts away at the core concept of alimonyⁱⁱ and a one size fits all formula will result in awards that are insufficient or excessive more often than not. The current procedure for determining alimony requires that judge's consideration the "length of the marriage, the causes for the annulment, dissolution of the marriage or legal separation, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate and needs of each of the parties"ⁱⁱⁱ whereas the proposed formula considers only income.

SB 1155 allows for continued use of the current needs-based process, stating use of the formula is neither mandatory nor presumptive. However new language requires judges provide justification when deciding not to use the formula. This requirement effectively makes the formula the presumptive standard and opens the door for individuals to contest both a judge's ruling and justification, a process which is often long and expensive both for the individuals involved and the system as a whole.

While some of the language modifications contained within SB 1155 are positive, we cannot support the use of a formula for determining alimony awards. The current system allows for flexibility. While we appreciate that some might feel that they have had unjust outcome, making sweeping changes based on unsubstantiated claims does not make good public policy. We ask that you put your support behind HB 6688 instead.

HB 6688 contains many of the same positive language modifications as SB 1155. A switch to gender inclusive language and the addition of education and earning capacity to the list of factors for consideration are both constructive changes to the current statute. By making these changes also highlights the fact that these statutes are gender neutral in their application – at CWEALF we have women contact us who are seeking alimony from their husbands, women who are being asked to pay alimony to their husbands, and same-sex couples in similar situations.

Unlike 1155, that looks to challenge and change laws without educated and informed data, HB 6688 provides for a study of the fairness and adequacy of state statutes relating to the award of alimony to be conducted by the Legislative Program Review and Investigations Committee. This year marks the 40th anniversary of Connecticut's no fault divorce laws. While we contend that the flexibility in the laws allow for most changes, it is reasonable to research and gather data to help inform the work. To that end CWEALF is currently doing research to learn more about the award of alimony and custody in our state. While we are starting by looking at two courts, the intention is, based on what we learn, to expand to additional courts to better assess the entire system. We admire the work of the PRI committee and have leveraged their research in our own work as appropriate.

While supporting HB 6688 there is room for improvement. In addition to education and earning capacity, tax consequences should be added to the list of factors for consideration when determining an alimony award. Furthermore the language of the statute should be modified to require judges to share their reasoning in all decisions, not just those that appear to deviate from the presumptive standard. Doing so will improve transparency within the court, making the process more understandable, and thereby benefiting the approximately 80% of family law cases where at least one party is representing themselves. A practice of disclosing rationale for all decisions also leads away from the trend of presumptive standards which interfere with appropriate judicial discretion.

We call for your support for HB 6688 and your consideration of the additions we have proposed.

Finally I will speak on CWEALF's concerns regarding HB 6685, An Act Concerning a Presumption of Shared Custody in Disputes Involving the Care and Custody of Minor Children. This bill includes changes in language namely a switch from the terms "joint custody" to "shared custody" and "continuing contact" to "substantial periods of time" the exact definition and implications of which are unclear.

While acknowledging that maintaining the quality child parent relationships and ensuring both parents ability to influence major upbringing decisions is critically important we do not feel this bill will accomplish that effectively. The current statutes already allow for an order of equal physical custody *when that is in the best interest of the child*. Making that the standard decision may detract from consideration of the child's overall welfare and/or consideration of the desires of the child in situations where they are old enough to contribute their opinion. Additionally split custody involves a number of logistical problems including issues of residency for school or extracurricular activities and eligibility for assistance programs that have the potential to result in increased litigation that will increase the load on already overfull Family Court calendars. And we haven't even mentioned our concerns as they relate to victims of domestic violence, a particularly vulnerable population when it comes to presumptive anything laws.

We believe that custody decisions should be made, as they are now, on a case-by-case basis taking into account the specific facts of the case. The family courts' Family Services Departments assist the courts

in these decisions with their assessments and subsequent recommendations of what situation would be in the best interest of the child. Given these resources, we believe this bill is unnecessary and will in fact cause more problems in family law cases than it solves.

It is for these reasons that we strongly urge you to reject Raised Bill No. 6685.

Thank you.

ⁱ Brown, T. (2011). Alimony: A survey of formulas. *The Utah Journal of Family Law*, Retrieved from <http://utahjournal.org/?p=178>

ⁱⁱ Rutkin, A. (2012, Sept 12). *White paper opposing rb 5509*.

ⁱⁱⁱ (2011). *Chapter 815j* dissolution of marriage, legal separation and annulment*. Retrieved from website: <http://www.cga.ct.gov/current/pub/chap815j.htm>