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Testimony of the Honorable Elliot N. Solomon
Judiciary Committee Public Hearing
April 5, 2013

H.B. 6688, An Act Concerning Revisions to Statutes Relating to the Award of Alimony

Good morning, Senator Coleman, Representative Fox, Senator Kissel, Representative Rebimbas, and members of the Judiciary Committee. Thank you for the opportunity to testify on **H.B. 6688,** ***An Act Concerning Revisions to Statutes Relating to the Award of Alimony***. I am here today not to represent the official position of the Judicial Branch, but to provide you with some background information on this bill.

Over the past several months I have had the honor and privilege of working with a small group of individuals engaged in an examination of the statutes relating to alimony, to assess whether change was needed. As a judge, my role in the process was to serve as a resource to the working group based upon my experience in family law as an attorney and on the bench. The goal of the group was to identify recommendations on which it could reach consensus. A variety of viewpoints were represented, ranging from the opinion that no change was needed to one that comprehensive change was in order. Our discussion occurred over a period of four months and, during that time, input was solicited from the Connecticut Bar Association Family Law Section, the Connecticut chapter of the Academy of Matrimonial Lawyers, the Connecticut Women's Educational and Legal Fund (CWEALF) and other groups, including a proponent who proposed similar reform in a bill submitted last year. Based on these discussions, the working group arrived at the consensus recommendations that make up H.B. 6688.

I'd like to take a moment to summarize these recommendations. They include the following:

- Updating and gender-neutralizing C.G.S. sec. 46b-36, concerning property and contract rights. This statute has not been substantively changed in more than fifty years. It harkens back to a time when it was necessary to establish a woman's separate property

rights. Furthermore, it does not recognize the fact that same-sex marriage exists in Connecticut. Our recommended changes would address these shortcomings.

- Amending C.G.S. sec. 46b-81, regarding the court's ability to assign property, to state that the court can do so "after considering all the evidence presented by each party" rather than "after hearing the witnesses." The proposed amendment is more inclusive, encompassing all witness testimony as well as other evidence presented.
- Adding "earning capacity" and "education" to the factors that must be considered by a court when fashioning orders regarding the assignment of property and alimony.
- Adding the "feasibility" of the custodial parent securing employment as a factor that the court must consider when making an alimony award.
- Requiring that any judge who orders indefinite, or lifetime, alimony articulate with specificity the basis for that order. Unfortunately, the language that is currently in the bill (lines 76-79) does not reflect the working group's agreement, as it limits the articulation requirement to only non-modifiable orders. The consensus recommendation of the group is that articulation should be required for all lifetime alimony orders. To accomplish this, I would respectfully request that the Committee incorporate the attached proposed amendment into the language of the bill.
- Specifying that if a judge considering a motion for modification of alimony finds that there has been a substantial change in circumstances, he or she should proceed to the next step and determine the extent to which, if any, the existing order should be modified, based on the criteria set forth in section 46b-82, as amended by the bill.
- Specifying that if a judgment incorporates the agreement of the parties, and if that agreement specifies circumstances under which alimony will be modified, suspended or terminated because of cohabitation other than as provided in the existing cohabitation statute (46b-86(b)), the court must enforce that provision and enter orders in accordance therewith.
- Significantly, the bill provides for an evaluation of the fairness of our existing statutes. Rather than take action based upon the views or experiences of a few, such an evaluation will allow the Legislature to determine whether, in fact, the existing statutes are fair and equitable or, alternatively, whether further review and revision is necessary.

I believe that these proposed changes will adequately address any areas of weakness in Connecticut's statutes, and I urge the Committee to approve them.

S.B. 1155, An Act Concerning Revisions to Statutes Relating to Dissolution of Marriage, Legal Separation and Annulment

I would like to comment briefly on ***S.B. 1155, An Act Concerning Revisions to Statutes Relating to Dissolution of Marriage, Legal Separation and Annulment.*** This bill does not represent the consensus of the working group. In fact, representatives speaking to the working group on behalf of the Connecticut Bar Association Family Law Section, the Connecticut chapter of the Academy of Matrimonial Lawyers, the Connecticut Women's Education and Legal Fund and Legal Aid did not support it. Although the bill contains many provisions with which I do not agree, I draw your attention to one in particular – the use of "guidelines" in determining appropriate alimony orders. That is problematic for a number of reasons. First, it's a misnomer to call them guidelines because, if you don't use them, you have to explain why you didn't use them. Second, there is no financial basis for the formula which is proposed. Child support guidelines were the product of an economic assessment regarding how much of a family's earned income goes to the support of the children. By way of contrast, these guidelines represent nothing more than somebody's philosophical view of how much support a spouse should receive following a dissolution of the marriage. The percentages used in the formula could be just as easily increased or decreased by ten, fifteen or twenty percent without any economic rationale at all. And this leads to the biggest problem – guidelines do not comport with our statute. The proposed guidelines are entirely income driven, however our statute requires, as it should, consideration of more than a dozen criteria which, themselves, are not exclusive. Other considerations, such as health, station in life, employability, sacrifices made by a stay at home parent in furtherance of the career of the other, are not part of the guidelines. Dissolution of marriage cases are equitable in nature and the ability of a court to act equitably when confronted with the incredibly varied circumstances which we see each day cannot be accomplished with guidelines. I urge the Committee not to approve this bill.

Thank you for your consideration. I would be happy to answer any questions you may have.

Proposed Amendment to
Raised Bill 6688, An Act Concerning Revisions to Statutes
Relating to the Award of Alimony.

1. Strike lines 76 – 79 and insert the following in lieu thereof:

   (b) If the court, following a trial or hearing on the merits, enters an order pursuant to subsection (a) of this section or section 46b-86, and such order, by its terms, will terminate only upon the death **of** either party or the remarriage of the recipient, the court shall articulate with specificity the basis for such order.