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NEWS FOR THE PROFESSION

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## NEWS

### ■ FAMILY LAW

# States challenge traditional alimony

Judges' discretion, length of payments, second wives' income on table.

By Tresa Baldas  
STAFF REPORTER

LEGISLATION AND LAWSUITS challenging the traditional notions of alimony—such as how long it should be paid and by whom—are popping up across the nation.

At issue is whether judges have too much discretion in deciding how much alimony should be paid, for how long, and whether they unfairly favor ex-wives.

In Massachusetts, a bill is pending before the Legislature that would put limits on how long alimony has to be paid and carve out a provision that would prevent a second wife's income from being used to pay alimony to the first wife.

Also, the Massachusetts and Boston bar associations recently created a Joint Alimony Task Force, which plans to recommend new standards for reasonableness of amount and duration of alimony.

In Nevada, lawmakers are considering a bill that would give judges specific rules to follow when determining alimony. Current state law does not provide any guidelines, making alimony discretionary. The legislation is a response to the recent high-profile murder case of millionaire Darren Mack, who will be sentenced this month for killing his wife and shooting a judge who ordered him to pay \$10,000 a month in alimony payments to his wife.

In Florida, a ballot initiative is under way in which anti-alimony activists are pushing for a constitutional amendment to abolish lifetime alimony awards.

In New York, family law attorneys are lobbying legislators to reform that state's alimony laws, which many say also provide no guidelines for judges to follow when deciding alimony, leading to ambiguous awards.

On the litigation front, lawsuits challenging the constitutionality of alimony laws have been filed in seven states in recent years—most of them pro se, none of them successful.

"We can't treat alimony today as we did 50, 80 years ago," said attorney Timothy A. Taylor, a solo practitioner in Lincoln, Mass., who drafted the alimony reform bill in Massachusetts.

"Today, people sadly get divorced at the drop of a hat...and if we're going to make divorce so easy, we have to change the laws concerning ongoing financial relationships," Taylor said.

Under the proposed bill, the duration of alimony would be capped at half the length of the marriage—or 12 years—whichever is less.

Susan Moss, a family law practitioner at New York's Chemtob Moss Forman & Talbert, said discretionary alimony awards are also raising concerns among New York practitioners, who are "asking state legislators to do something about it." According to Moss, New York, like many other states, has no specific formula for determining alimony, which has resulted in a wide range of alimony awards.



SUSAN MOSS: "There is such a huge range...of support awards that it's the Wild West."

"We've got some courts giving very little, others giving a lifetime. There is such a huge range now of support awards that it's the Wild West," said Moss. "It's the new battle of the sexes."

She said a new trend is men marrying wealthier women, allowing them to work fewer hours and pursue hobbies, and then petitioning a court for lower alimony payments by claiming they don't make as much money as they had during the first marriage.

Moss noted that, in those cases, the second wife's income can and should be considered when considering alimony.

Wisconsin family law attorney Patricia Ballman said she has noticed a new trend where more men are fighting for alimony from their ex-wives than in the past. "We're seeing more men go after assistance than we did 30 years ago, because there are more women who are more successful now," she said. "This is a huge area of litigation."

But not everyone is critical of current alimony laws.

Given the sensitive and often volatile nature of alimony, California attorney William M. Hulsey, a solo in Santa Ana, believes that the law does a good job at addressing some sticky situations.

He said that, under California law, the general rule of thumb is that alimony is paid for half the length of the marriage and ends when a person remarries or dies. For long-term alimony, usually more than 10 years, there are about 20 factors that are considered, such as income and maintaining an accustomed lifestyle.

Either way, he noted, someone is likely to object to the final figure.

"Nearly every payor-spouse thinks it's unfair," he said. "And the fight is usually over the amount." But, he added, "spousal support has a place in California law."

## ALIMONY BILLS

*Legislation in several states challenges established alimony law.*

**Massachusetts:** Proposed legislation would put time limits on alimony payments and bar the use of a second wife's income for alimony to a first wife.

**Nevada:** Proposed legislation would remove judges' discretionary power to award alimony and create guidelines.

**Florida:** Activists are pushing for a constitutional amendment to abolish lifetime alimony awards.

**New York:** Family law attorneys are lobbying to abolish discretionary awards and provide judges with guidelines.

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