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ARTICLES

DISPELLING ALIMONY MYTHS: THE CONTINUING NEED FOR ALIMONY AND THE ALIMONY REFORM ACT OF 2011

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INTRODUCTION

Alimony has captured the public's imagination over the past six

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She would like to extend her appreciation to the Women's Bar Association for their continued support and dedicate this article to her spouse, Tony Biscardi. She would also like to thank Maria Tartaglia, a third year law student at Boston University School of Law, who interned with the Women's Bar Foundation in the summer of 2012. She was instrumental in helping research and assist in drafting this legal memorandum.

years in Massachusetts as stories about the state's "antiquated" alimony laws proliferated in the media.¹ Grassroots organizations, primarily comprised of alimony payors, mobilized to seek legislative solutions to what they perceived as an outdated alimony system: a relic of a time when women stayed home and cared for children while men were the "breadwinners."²

The alimony reform movement gained momentum and, in 2009, State Representative Steven M. Walsh introduced an alimony reform bill, H. 1785, which had seventy-two sponsors.³ Concurrently, State Senator Cynthia Stone Creem filed S. 1616, a bill that also sought to reform alimony policy in Massachusetts which garnered much support from organizations such as the Boston Bar Association, Massachusetts Bar Association, Women's Bar Association, and the Academy of Matrimonial Attorneys.⁴ However, the two bills prompted a great deal of media attention.⁵

On October 7, 2009, in order to review the pending bills and the Commonwealth's existing alimony statute, Massachusetts General Law Chapter 208, section 34, the Chairs of the Legislature's Joint Committee on the Judiciary, Senator Creem and State Representative Eugene L. O'Flaherty, initiated an Alimony Task Force (hereinafter "Task Force").⁶ The Chairs of the Judiciary Committee appointed State Senator Gale D. Candaras and State Representative John V. Fernandes to Co-Chair the Task Force.⁷ The Co-Chairs were joined by representatives from the Commonwealth's judiciary branch, representatives from local bar associations, practicing attorneys, and a representative from the Massachusetts Alimony Reform advocacy group

1. See Renee Mahoney, *Changes to Current Alimony Law*, <http://ezinearticles.com/?Changes-to-Current-Alimony-Law&id=6133721> (last visited Feb. 14, 2014) (discussing the focus that media had on alimony reform and the need for change of antiquated alimony laws); see also Jessica Fargen, *Reform Could End Alimony For Life*, BOSTONHERALD.COM (Jan. 30, 2011), http://bostonherald.com/news/regional/view/20110130pols_crusaders_band_together_to_support_radical_bill.

2. "It is obvious that times have changed so drastically that Alimony is truly draconian law that has served out it's [sic] purpose." *Changing the System*, ALIMONY REFORM, <http://www.alimonyreform.org/about2.html> (last visited Feb. 2, 2014).

3. H. 1785, 186th Gen. Ct. (Mass. 2009). See also Lisa van der Pool, *Dueling Alimony Bills Raise Hackles in Legal Circles*, BOSTON BUS. J. (Oct. 5, 2009, 12:00 AM) <http://www.bizjournals.com/boston/stories/2009/10/05/story7.html?page=all>.

4. S. 1616, 186th Gen. Ct. (Mass. 2009). See also van der Pool, *supra* note 3.

5. See Mahoney, *supra* note 1.

6. Denise Squillante, *Filing of the Alimony Reform Act of 2011*, LAW. J. (Feb. 2011), <http://www.massbar.org/publications/lawyers-journal/2011/february/filing-of-the-alimony-reform-act-of-2011>.

7. *Id.*

responsible for drafting H. 1785.⁸

As the Women's Bar Association of Massachusetts's representative to the Task Force, I worked with the other members for fourteen months drafting proposed legislation to reform alimony. The members of the Task Force held diverse opinions on alimony based on individual experience and background, as well as their respective organizational missions.⁹ The Task Force submitted its final product, a bill entitled the Alimony Reform Act of 2011, to the Judiciary Committee for consideration, and on July 20, 2011, the Judiciary Committee advanced the bill with a favorable report.¹⁰ By July 28, 2011, the Senate and the House had unanimously approved the bill.¹¹ Governor Deval Patrick signed the bill (hereinafter "Alimony Reform Act" or "Act") on September 26, 2011 and it became law on March 1, 2012.¹²

One group particularly pleased with the Alimony Reform Act's passage was the "Second Wives Club," comprised of second wives of alimony payors.¹³ The Second Wives Club contends that the prior alimony system required second wives to utilize their income to support their spouse's former wives.¹⁴ Many of these second wives believe that

8. Members of the task force included Senator Gale D. Candaras (Co-Chair); Representative John V. Fernandes (Co-Chair); the Honorable Paula M. Carey, Chief Justice of the Probate and Family Court; Kelly Leighton, Esq., Liaison to the Boston Bar Association; Fern L. Frolin, Esq., Massachusetts Chapter of the American Academy of Matrimonial Lawyers; David Lee, Esq., Massachusetts Chapter of the American Academy of Matrimonial Lawyers; Denise Squillante, Esq., Massachusetts Bar Association; Steve Hitner, Massachusetts Alimony Reform; Rachel Biscardi, Esq., Women's Bar Association.

9. See Jeanette DeForge, *State Sen. Gale Candaras of Wilbraham to Announce Proposal to Change Massachusetts Alimony Law*, THE REPUBLICAN (May 17, 2011, 9:43 PM), http://www.masslive.com/news/index.ssf/2011/05/state_sen_gale_candaras_to_ann.html (acknowledging that members of the Task Force will come from diverse backgrounds including legislators, practicing attorneys, and representatives from local bar associations).

10. *House Unanimously Passes Alimony Reform Legislation*, WICKEDLOCAL (July 23, 2011, 11:01 PM) <http://www.wickedlocal.com/capecod/news/x920807747/House-unanimously-passes-alimony-reform-legislation#axzz255AvUDwf>.

11. Martine Powers, *Legislation Overhauls Bay State Alimony Law*, BOSTON.COM (Sept. 26, 2011), http://www.boston.com/news/local/massachusetts/articles/2011/09/26/legislation_overhauls_bay_state_alimony_law/; Nancy Van Time, *What Massachusetts Alimony Really Means*, HUFFINGTON POST: THE BLOG (July 27, 2011 1:06 PM), http://www.huffingtonpost.com/nancy-van-tine/what-massachusetts-alimony-reform-means_b_909252.html; 2011 Massachusetts Bill Tracking H.B. 3617 (Westlaw).

12. Susanna Kim, *Massachusetts Alimony Law Limits Payments to Ex-Spouses*, ABC NEWS (Sept. 27, 2011, 8:22 PM), <http://abcnews.go.com/blogs/business/2011/09/massachusetts-alimony-law-limits-payments-to-ex-spouses/>.

13. SECOND WIVES CLUB, <http://www.secondwivesclub.com> (last visited Feb. 14, 2014).

14. *Id.* Despite the Second Wives Club's allegation that second wives' incomes contribute to their current husbands' alimony payments to his first spouse, case law on alimony does not support the Second Wives Club's allegation. When a court calculates

alimony recipients, who are primarily women, should advance feminism by being self-supporting without the assistance of a male, former spouse.¹⁵

Groups, such as the Second Wives Club, are entirely correct that alimony is a feminist issue. Despite the gains made over the past fifty years, the paradigm of men paying alimony and women receiving alimony remains true even today.¹⁶ Like many other women's issues, such as reproductive rights and health care, alimony is divisive.¹⁷ However, it is misguided to argue that feminism demands the abolishment of alimony as an available remedy during a divorce, to enable women to become self-sustaining. Feminism demands equal rights for men and women.¹⁸ Feminism also recognizes that women often must choose between focusing on their families and pursuing their careers.¹⁹ Each of those choices is equally valid; a woman's choice to focus on family should not negate her feminism.²⁰ Instead, feminism

alimony, the court will only use the alimony payor's income and expenses to determine the proper amount of monthly alimony. Although the second spouse's income may contribute to the alimony payor deducting fewer expenses from his income, the court does not directly include the second spouse's income in a calculation for the first spouse's alimony award. *See Krokyn v. Krokyn*, 390 N.E.2d 733, 738 (Mass. 1979) (holding that a second wife does not have a duty to obey an alimony order granted against her spouse). *But see Cooper v. Cooper*, 680 N.E.2d 1173, 1177 (Mass. App. Ct. 1997) (holding that a probate court does have the power to consider the income or assets of a second spouse when calculating alimony payments).

15. *See* Judy Klemesrud, *Feminist-Oriented Group Attacks 'Alimony Junkies'*, Ocala STAR-BANNER, July 13, 1970, at 6A, available at news.google.com/newspapers?nid=1356&dat=19700713&id=9YJRAAAAIBAJ&sjid=SAUEAAAIBAJ&pg=6933,1954225 (acknowledging that Manhattan's The Other Women, Ltd. believes that alimony reinforces male supremacy and is degrading). Statistics show that less than four percent of alimony payors are women. Anna Jane Grossman, *Some ex-wives have to pay 'manimony'*, CNN.COM (May 22, 2008), <http://www.cnn.com/2008/LIVING/personal/05/22/lw.manimony/>. Women are the primary recipients of alimony. *See* Brief for Amicus Curiae Supporting Petitioner at 12, *Pierce v. Pierce*, 916 N.E.2d 330 (Mass. 2009) (SJC NO. SJC-10381) (citing Kathleen M. O'Connor, Note, *Marital Property Reform in Massachusetts: A Choice for the New Millennium*, 34 NEW ENG. L. REV. 261, 265 (1999)).

16. *See supra* note 15 and accompanying text.

17. *See* Robert Klotz & Anna Broome, *Discussion of Women's Issues in the 1996 Internet Campaign*, 19:4 WOMEN & POL. 67, 71-72 (1998).

18. *Feminism and Women's Rights*, The Cato Institute 173, 174. Gloria Steinem, a noted feminist, supported "broad, uncomplicated ideas of universality." Jill M. Weber, *Gloria Steinem, Testimony Before Senate Hearings on the Equal Rights Amendment*, 3 VOICES OF DEMOCRACY 162, 165 (2008).

19. Feminism does not require that women be able to "have it all," but rather only requires that women have the right to make choices. Stephanie Coontz, *Why is 'having it all' just a woman's issue?*, CNN.COM (June 25, 2012 9:10 AM), <http://www.cnn.com/2012/06/25/opinion/coontz-women-have-it-all/index.html>; Samantha Smith, *In Women's Voices, in FEMINISM AND WOMEN'S RIGHT'S WORLDWIDE, VOLUME I: HERITAGE ROLES AND ISSUES*, 64 (Michelle A. Paludi ed., 2010).

20. *See* sources cited *supra* note 19.

recognizes that in some cases alimony is necessary to ensure that one spouse does not benefit to the other's detriment, especially when family choices regarding childcare and housework have polarizing economic effects on each spouse upon divorce and there is minimal property to divide.²¹ Therefore, rather than advocating for alimony elimination, feminists should support gender parity between recipients and payors. In short, "[a]s women must be more empowered at work, men must be more empowered at home."²²

Since Massachusetts passed the Alimony Reform Act, judges, lawyers, the media, and the public have engaged in an ongoing discourse about the "winners" and "losers" under the new law.²³ People misperceive that since mostly male alimony payors benefited from reform, alimony recipients, mostly women, must commensurately suffer.²⁴ This is not the case: while the Act disadvantages some women, (most likely those women who divorced after long-term marriages with alimony agreements that the courts can modify),²⁵ alimony reform assists the vast majority of women.²⁶ In fact, many of the women who stand to benefit from the Alimony Reform Act were not eligible for alimony under the previous law.²⁷ The first half of this Article focuses on why alimony recipients continue to need alimony despite the economic gains made by women in the past fifty years. The second half of the Article dispels the myth that women were the "losers" in alimony reform²⁸ by explaining how the Alimony Reform Act benefits the

21. Ira Mark Ellman, *The Theory of Alimony*, 77 CALIF. L. REV. 1, 49-50 (1989) (citing the optimal division of marital tasks that oftentimes results in varied financial consequences for men and women post-divorce as one justification behind alimony law).

22. SHERYL SANDBERG WITH NELL SCOVELL, *LEAN IN: WOMEN, WORK, AND THE WILL TO LEAD* 108 (Alfred A. Knopf 2013).

23. See, e.g., Galen Moore, *Alimony reform becomes law in Massachusetts*, BOS. BUS. J. (Sept. 27, 2011, 7:41 AM), <http://www.bizjournals.com/boston/news/2011/09/27/alimony-reform-signed-into-law-in-mass.html> (discussing the "winners" under the new law); Wendy Murphy, *New alimony law is bad for women*, CNN.COM (Mar. 9, 2012, 12:35 PM), www.cnn.com/2012/03/09/opinion/murphy-alimony-overhaul-con/index.html.

24. Murphy, *supra* note 23.

25. See MASS. GEN. LAWS ch. 208, § 49 (2011); *The Real Losers in Alimony Reform: Stay at Home Spouses in Long Term Marriages. Is There Any Wiggle Room?*, ROSENBERG, GOLDSTEIN, EGLOFF, RAMOS & WOOD LLP (Jan. 9, 2012), www.massachusetts-divorce.com/blog/?p=44; Murphy, *supra* note 23.

26. See Part II, *infra*.

27. See generally Part II, *infra*; The Divorce Lawyers, *New Massachusetts Alimony Law Makes Divorce Less of a Gamble*, THE MASS. FAM. L. GROUP (July 24, 2012), <http://www.thebostondivorcelawyer.com/Divorce-Articles/New-Massachusetts-Alimony-Law-Makes-Divorce-Less-of-a-Gamble.shtml> (acknowledging that the formula for limits on duration of alimony following a short term marriage may benefit spouses who are leaving short term marriages).

28. Murphy, *supra* note 23.

majority of alimony recipients.²⁹ This article does not intend to be a thorough review of the new law but rather a survey of the most notable provisions affecting alimony recipients.

I. THE CONTINUING NEED FOR ALIMONY

Since 1785, courts have employed alimony as an equitable remedy in divorce cases,³⁰ recognizing that during an intact marriage, spouses jointly decide how to divide responsibility for childrearing, household maintenance, and paid work.³¹ Alimony theory posits that it would be inequitable for these joint decisions to benefit one party while simultaneously disadvantaging the other party upon divorce.³² This section identifies some, but not all, of the factors that make alimony an equitable remedy in a divorce, including: (a) the stay at home spouse's professional sacrifices; (b) the wage gap; (c) the glass ceiling; and (d) marketable skills post-divorce. This section further dispels two of the more common arguments made by alimony opponents including: (1) that equitable division of assets should suffice to mitigate the need for alimony and (2) that public benefits serve as a safety net, also mitigating the need for alimony. Finally, this section focuses on why alimony may be the only relief available to women who have sacrificed career for family.

A. *Women's Standard of Living Declines Precipitously After Divorce*

Women fare worse financially than men after a divorce.³³ In 2009, the United States Census determined that nearly twice the amount of divorced women than divorced men had incomes in the past twelve months below the poverty level.³⁴ Overall, divorced women suffer, on

29. See The Divorce Lawyers, *supra* note 27.

30. MASS. GEN. LAWS ANN. ch. 208, § 34 (2011) (noted in the annotations section that the first version of the alimony statute was passed in 1785). The Alimony Reform Act does not change the alimony order paradigm; there remain the dual requirements of a recipient's need and payor's ability to pay. See MASS. GEN. LAWS ch. 208, § 53 (2011).

31. Ellman, *supra* note 21, at 49-50.

32. *Id.*

33. U.S. CENSUS BUREAU, MARITAL EVENTS OF AMERICANS: 2009, 1, 8 tbl.2 (Aug. 2011); see Jennifer L. McCoy, *Spousal Support Disorder: An Overview of Problems in Current Alimony Law*, 33 FLA. ST. U. L. REV. 501, 516 n.126 (2005); see generally Tijdens, K.G., Van Klaveren, M., *Frozen In Time, gender pay gap unchanged for 10 years*, INT'L TRADE UNION CONFEDERATION (Mar. 2012), http://www.ituc-csi.org/IMG/pdf/pay_gap_en_final.pdf; Brief for Amicus Curiae, *supra* note 5, at 13 (citing Robert M. Gordon, Note, *The Limits of Limits on Divorce*, 107 YALE L.J. 1435, 1440 n.39 (1998)); Penelope E. Bryan, *Reasking the Woman Question at Divorce*, 75 CHI.-KENT L. REV. 713, 713-15 (2000) [hereinafter "Bryan 2000"].

34. MARITAL EVENTS OF AMERICANS, *supra* note 33.

average, a twenty-seven percent decrease in their marital standard of living in contrast to men whose standard of living increases, on average, ten percent.³⁵ The post-divorce financial situation for mothers is even more devastating; thirty-seven percent of divorced women with children live in poverty.³⁶

Like their counterparts across the country, Massachusetts women also suffer financially after a divorce, and, without alimony, their income is extremely low.³⁷

Sixty percent of Massachusetts alimony recipients report annual incomes exclusive of alimony of less than \$50,000, with three out of four of those reporting incomes of less than \$25,000 per year exclusive of alimony. For these recipients, the average amount of alimony received constitutes one-quarter to one-third or more of their total income. High-income alimony recipients represent only a minority of those who receive alimony payments. Only thirteen percent of alimony recipients have reported incomes exclusive of alimony in excess of \$100,000 per year.³⁸

These statistics demonstrate that, most often, alimony recipients are not becoming wealthy due to alimony but are, instead, maintaining a middle or lower-income lifestyle. Without alimony, these recipients may fall into poverty.

1. Women Sacrifice Their Professional Development for Their Families

Women comprise the vast majority of alimony recipients, in part, because they, more frequently than men, sacrifice professional goals in order to focus on the family.³⁹ Sometimes married women give up

35. Richard R. Peterson, *A Re-Evaluation of the Economic Consequences of Divorce*, 61 AM. SOC. REV. 528, 532 (June 1996).

36. Sarah G. Vincent, *Kurz's 'For Richer, For Poorer' Confronts Inequalities of Divorce*, THE HARVARD CRIMSON, (Nov. 9, 1995), <http://www.thecrimson.com/article/1995/11/9/kurzs-for-richer-for-poorer-confronts/>.

37. Brief for Amicus Curiae, *supra* note 15, at 7 (citing reported adjusted gross incomes and alimony payments on Massachusetts tax returns filed for calendar year 2007).

38. *Id.*

39. See *Women in the Workforce*, U.S. CENSUS BUREAU, http://www.census.gov/newsroom/pdf/women_workforce_slides.pdf (percentage of men working full-time is greater than the percentage of women working full-time); Robert L. Lerman, *Economic Perspectives on Marriage: Causes, Consequences, and Public Policy*, in RESEARCH HANDBOOK ON THE ECONOMICS OF FAMILY LAW 72, 86 (Lloyd R. Cohen & Joshua D. Wright eds., 2011) (citing Shannon Seitz, *Employment and the Marriage Market*, (2000) (unpublished Ph.D Dissertation, London, ON: University of Western Ontario) (on file with author) (married women work less than unmarried women)); UNITED NATIONS DEP'T OF SOC. & ECON. AFFAIRS, UNITED NATIONS, *THE WORLD'S WOMEN 2010*, 1, 212, tbl.4c (2010), http://unstats.un.org/unsd/demographic/products/Worldswomen/WW_full%20report_BW.pdf (women spent more time

working altogether. Although recent statistics show that workforce participation among married women is increasing, roughly 3 out of 10 married mothers remain unemployed.⁴⁰

Married women still shoulder the additional burdens of child-rearing and housework. “[W]hen a husband and wife both are employed full-time, the mother does 40 percent more child care and about 30 percent more housework than the father.”⁴¹ Due to this disproportionate responsibility for childrearing and household maintenance,⁴² employed married women may restrict their work hours, find work close to home, give up opportunities for advancement, and suffer decreased earnings.⁴³ Ironically, the more hours their husbands work, the more likely married wives are to leave the workforce.⁴⁴ When husbands work fifty or more hours per week, wives with children are 44% more likely to quit their jobs than wives with children whose husbands work less.⁴⁵ Women will spend on average 11.5 years out of the workforce and will lose more than \$659,000 in wages, Social Security, and pension contributions.⁴⁶

When women take time out of the workforce, they lose opportunities for career training, promotions, and reward-based assignments.⁴⁷ Only 40% of those women who take time out of the workplace will return to full-time jobs.⁴⁸ As a result, for each year that

on unpaid work than men); *Division of Labor*, MARRIAGE AND FAMILY ENCYCLOPEDIA, <http://family.jrank.org/pages/408/Division-Labor-Contemporary-Divisions-Labor.html> (last visited Feb. 14, 2014) (“Household work continues to be divided according to gender, with women performing the vast majority of the repetitive indoor housework tasks and men performing occasional outdoor tasks.”) (citing Scott Coltrane, *Research on Household Labor: Modeling and Measuring the Social Embeddedness of Routine Family Work*, 62 J. MARRIAGE & FAM. 1208, 1208-33 (2000)).

40. ROSE M. KREIDER & DIANA B. ELLIOT, U.S. CENSUS BUREAU *Historical Changes in Stay-at-Home Mothers: 1969-2009*, slide 10 (Aug. 2010). The percentage of employed married women is still less than the percentage of employed unmarried women. Lerman, *supra* note 39.

41. See Sandberg, *supra* note 22, at 106 (citing Melissa A. Milkie, Sara B. Raley & Suzanne M. Bianchi, *Taking on the Second Shift: Time Allocations and Time Pressures of U.S. Parents with Preschoolers*, 88 SOCIAL FORCES 487, 487-517 (2009)).

42. See *Division of Labor*, *supra* note 39. In 2010, women over the age of fifteen spent about four hours and nine minutes a week on unpaid work and men only spent two hours and forty minutes a week on unpaid work. THE WORLD’S WOMEN, *supra* note 39, at 212 tbl.4c.

43. Sandberg, *supra* note 22, at 98-99 (citation omitted).

44. Sandberg, *supra* note 22, at 99 (citing Youngjoo Cha, *Reinforcing Separate Spheres: The Effect of Spousal Overwork on Men’s and Women’s Employment in Dual-Earner Households*, 75 AMERICAN SOCIOLOGICAL REVIEW 303, 318 (2010)).

45. *Id.*

46. Brief for Amicus Curiae, *supra* note 15, at 17-18.

47. *Id.*

48. Sandberg, *supra* note 22, 102 (citing Sylvia Ann Hewlett & Carolyn Buck Luce, *Off-Ramps and On-Ramps: Keeping Talented Women on the Road to Success*, 83 HARVARD BUSINESS REVIEW 43, 46 (2005)).

women do not work, they must work an additional five years to recover the lost economic opportunities of that one year.⁴⁹ Even if women do work during a marriage, they are often forced to choose less demanding jobs with flexible hours.⁵⁰ As a result of making such professional sacrifices, “fifty-six percent of working women earned less than \$30,000 yearly and only seven percent of working women earned more than \$75,000.”⁵¹ Beyond low pay, women’s jobs may not provide them benefits, such as healthcare and managed retirement plans.⁵² Thus, employed married women rarely maintain the momentum in their careers that their husbands can.⁵³

2. The Wage Gap Prevents Many Women from Being on Equal Footing with Their Husbands

Married women’s sacrifice of professional goals is often an unfortunately logical choice: women still earn significantly less than men even in comparable jobs and they are more frequently passed over for promotions.⁵⁴ In the workforce, women on average earn less than similarly positioned men.⁵⁵ In 2009, women earned 77 cents to every dollar earned by a comparable male in a full-time year round position.⁵⁶ Employers may even be more hesitant to hire mothers rather than fathers because of societal expectations that mothers will restrict their working hours.⁵⁷ In fact, mothers returning to work after an absence have an even higher wage gap than other women, but fatherhood does not reduce earnings for men.⁵⁸ Employers are twice as likely to interview childless

49. Brief for Amicus Curiae, *supra* note 15, at 17.

50. *Id.*

51. *Id.* (citing Cindy Hounsell, *Why Women are Poor in Retirement*, 43 CLEARINGHOUSE REV. J. POVERTY L. & POL’Y 161, 162 (2009)).

52. Brief for Amicus Curiae, *supra* note 15, at 17.

53. See Hounsell, *supra* note 51.

54. See generally *Frozen In Time*, *supra* note 33 (highlighting the remaining pay gap between men and women); Jerry A. Jacobs, *Detours on the Road to Equality: Women, Work and Higher Education*, 2:1 CONTEXTS 32, 32 (2003) (women are increasingly earning college degrees, but are entering traditionally male occupations at a slower rate); Correll, Bernard, In Paik, *Getting a Job: Is There a Motherhood Penalty?*, 112:5 AM. J. SOC. 1297-1338 (March 2007) (mothers are less likely to be hired than childless women); Julie A. Winkler, *Faculty Reappointment, Tenure, and Promotion: Barriers for Women*, 52:4 THE PROFESSIONAL GEOGRAPHER 737, 737-48 (2000) (female university faculty are less likely to be promoted than male faculty); Alice H. Eagly & Linda L. Carli, *Women and the Labyrinth of Leadership*, HARV. BUS. REV. (2007), available at <http://cit.hccfl.edu/Newsletters/NewsletterID1.pdf> (showing that even when women have equal qualifications as men, women are less likely to be promoted).

55. See *Frozen In Time*, *supra* note 33.

56. See *Women in the Workforce*, *supra* note 39, at 4.

57. See *id.* (illustrating that women work, on average, less than their male counterparts).

58. See Amanda K. Baumle, *The Cost of Parenthood: Unraveling the Effects of Sexual*

women as they are to interview mothers.⁵⁹

Although alimony opponents argue that pay disparity between men and women is disappearing, the decrease in pay gap is not consistent, and in 2010, the pay disparity between men and women actually increased.⁶⁰ Even more shockingly, despite the narrowing of the gender pay gap, the Institute for Women's Policy Research's recent study found that if the gender wage gap continues to close at the current rate, the wage gap between men and women would not disappear until 2056.⁶¹ Therefore, despite women advancing in education and participation in the workforce, there still is a continuing and significant pay discrepancy between genders.⁶² Even when women are working during a marriage, they may remain financially dependent on their husbands because they cannot earn maximum income.

3. The Glass Ceiling Bars Women from High-Powered Positions

In addition to the gender pay gap, the unlikelihood of women holding high-paying positions of power, such as a corporate officer, may still leave women financially dependent on their husbands.⁶³ In 2005, there were only seven female CEOs at the nation's Fortune 500 companies.⁶⁴ A survey by Catalyst, a non-profit women's interest group, polled Fortune 500 companies to determine the number and

Orientation and Gender on Income, 90:4 SOC. SCI. Q. 983, 986 (2009).

59. *Id.*

60. *Labor Force, Employment, and Earnings*, U.S. CENSUS BUREAU, tbl.648 (2012). See also THE WORLD'S WOMEN 2010, *supra* note 39, at 96. The U.S. Census Bureau gathered statistics and reported that the disparity in median earnings of full-time workers only decreased by \$3,000 between the years 1960 and 2009. Furthermore, in 2009, the pay disparity between full-time employees based on gender was \$10,800 per year. *Women in the Workforce*, *supra* note 39.

61. INST. FOR WOMEN'S POL'Y RESEARCH, WOMEN'S MEDIAN EARNINGS AS A PERCENT OF MEN'S MEDIAN EARNINGS, 1969-2009 (FULL-TIME, YEAR-ROUND WORKERS) WITH PROJECTION FOR PAY EQUITY IN 2056 (Mar. 2011), based on DeNavas-Walt et al., U.S. CENSUS BUREAU, *Income, Poverty, and Health Insurance Coverage in the United States: 2009*, tbl.A-4 (2010).

62. Sarah Jane Glynn, *Fact Sheet: The Wage Gap for Women*, CTR. FOR AM. PROGRESS, (Aug. 16, 2012) <http://www.americanprogress.org/issues/labor/news/2012/08/16/12029/fact-sheet-the-wage-gap-for-women/> (acknowledging that about half of all workers in the U.S. are women, but that there is still a wage gap amongst men and women such that women who work full time earn only seventy-seven percent of what men earn).

63. RAYMOND F. GREGORY, WOMEN AND WORKPLACE DISCRIMINATION: OVERCOMING BARRIERS TO GENDER EQUALITY 2 (Rutgers University Press ed., 2003).

64. Bonnie Williamson, *New Trends in Employment*, STATEUNIVERSITY.COM, <http://careers.stateuniversity.com/pages/856/New-Trends-in-Employment-Women-Minorities-Immigrants-Older-Employees-Physically-Challenged.html#ixzz24zIXkc00> (last visited Feb. 14, 2014).

gender of people seated on their boards of directors.⁶⁵ While the percentage of female corporate officers at Fortune 500 companies had risen to 15.7 percent in 2002, up from 12.5 percent in 2000,⁶⁶ those numbers need to increase a great deal before there is gender parity at these companies. Catalyst's research predicts that by 2020, women will outnumber men in the workforce but men will still hold nearly 75 percent of board of directors positions in Fortune 500 companies.⁶⁷ In fact, in 2012, only 4.2 percent of the Fortune 500 CEOs were women and seventeen percent of the board seats on those companies were held by women.⁶⁸

Measuring women-owned businesses provides another way to assess the glass ceiling in smaller enterprises. Women-owned businesses comprise only 28 percent of all businesses nationally.⁶⁹ In Massachusetts, the percentage of women-owned businesses is only slightly higher as compared to the nationwide percentage, at 29 percent.⁷⁰ Business ownership statistics matter because business owners have more power to influence the operation of business, in general, in the marketplace.⁷¹ In fact, "the best way to reform an institution is to run it."⁷² These statistics also demonstrate, because the numbers of women-owned businesses are so low, that it is likely women will not influence the growth of existing smaller businesses and develop entrepreneurial skills on par with men.

For women who have not obtained a high level of education, glass-ceiling statistics are even grimmer. It is much less likely that these women ever work in positions of power or be employed at all.⁷³ "52 percent of mothers with husbands in the bottom quarter" of the earning scale dropped out of the workforce.⁷⁴ Likely, the escalating costs of

65. *Id.*

66. Williamson, *supra*, note 64.

67. *Id.*

68. Patricia Sellers, *Fortune 500 Women CEOs Hit a Milestone*, CNN/MONEY (Nov. 12, 2012), <http://postcards.blogs.fortune.cnn.com/2012/11/12/fortune-500-women-ceos-3/>.

69. U.S. CENSUS BUREAU, SURVEY OF BUSINESS OWNERS: 2007; TABLE 2. SUMMARY STATISTICS FOR WOMEN-OWNED FIRMS BY STATE (Dec. 7, 2010).

70. *Id.*

71. Rajeswararao Chaganti & Fariborz Damanpour, *Institutional Ownership, Capital Structure, and Firm Performance*, 12 STRATEGIC MGMT. J. 479, 480 (1991).

72. Jenifer B. McKim, *In Boston, Facebook's Sheryl Sandberg pitches her 'Lean In' message to an enthusiastic audience*, BOSTON.COM, <http://www.boston.com/businessupdates/2013/04/04/boston-facebook-sheryl-sandberg-pitches-her-lean-message-enthusiastic-audience/e7Ee1a5B2Y1JjnEEVodYyI/story.html> (last visited February 2, 2014).

73. See Paula England, et al., *Women's Employment, Education and the Gender Gap in 17 Countries*, MONTHLY LAB. REV. 6, Chart 1 (2012).

74. See Sandberg, *supra* note 22, at 99.

child care contributed to the family's decision that the mother should stay at home as "child care costs have risen twice as fast as the median income of families with children."⁷⁵

In fact, one recent study indicated that only 30 percent of women who have lower levels of education, defined as those who have not completed a vocational education or postsecondary education, are employed.⁷⁶ Even if employed, a large number of women with lower levels of education only work part-time or as minimum wage employees.⁷⁷

4. Post-Divorce Women May Not Have the Desirable Marketable Skills to Compete in a Challenging Marketplace

Women lose 1.5 percent of income upon reentering the workforce for each year they are out, as compared to women who have consistently worked.⁷⁸ Women who primarily worked in the home during a marriage struggle to find higher paying jobs because they have fewer marketable skills and lack employment experience.⁷⁹ It is not as easy as simply getting a job at Walmart.⁸⁰ Moreover, tuition costs for additional schooling and child care costs can be prohibitive.⁸¹ The lack of desirable, marketable skills is even more difficult for lower-income

75. *Id.*

76. England, *supra* note 73.

77. See Tula Connell, *Most Minimum Wage Earners Are Women*, AFL-CIO (June 21, 2012), <http://www.aflcio.org/Blog/Economy/Most-Minimum-Wage-Earners-Are-Women> (lamenting that 62 percent of minimum wage workers in 2011 were women); PEW RESEARCH CENTER, *WOMEN, WORK AND MOTHERHOOD: A SAMPLER OF RECENT PEW RESEARCH SURVEY FINDINGS* (Apr. 13, 2012), <http://pewresearch.org/pubs/2241/ann-romney-mommy-wars-hilary-rosen-working-women-stay-at-home-moms-ann-romney> (acknowledging that, based on a 2009 study, 26 percent of employed women only work part-time); THE WORLD'S WOMEN 2010, *supra* note 39, at 93-95.

78. Joan Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227, 2282-83 (1994).

79. See McCoy, *supra* note 33, at 517, (citing Vivian Hamilton, *Mistaking Marriage for Social Policy*, 11 VA. J. SOC. POL'Y & L. 307, 362 (2004)); Penelope E. Bryan, *Women's Freedom to Contract at Divorce: A Mask for Contextual Coercion*, 47 BUFF. L. REV. 1153, n.2 (1999) [hereinafter "Bryan 1999"]; Pamela J. Smock, *Gender and the Short-Run Economic Consequences of Marital Disruption*, 73:1 SOC. FORCES 243, 245 (1994). One such woman posted about her situation online, stating that she was a stay-at-home mom during her marriage and now, post-divorce, her only skill is typing, which has prevented her from finding work. *Divorced Mom's Finances*, THE DOLLAR STRETCHER, INC., www.stretcher.com/stories/04/04jun14a.cfm (last visited Feb. 2, 2014).

80. Some Walmart stores require a career assessment test to determine a job candidate's suitability for employment. See WALMART, <https://hiringcenter.walmartstores.com/OnlineHiringCenter/initialPage.jsp> (last visited February 2, 2014); see also Bent Jesper Christensen, et al., *On-the-Job Search and the Wage Distribution*, 23:1J. LAB. ECON. 31, 46 (2005) ("[H]igher paying jobs are more difficult to find.").

81. McCoy, *supra* note 33, at 517.

women who are even less likely to afford the education or training necessary to obtain higher paying jobs.⁸²

B. *Disputing Alimony Opponents' Arguments*

1. An Equitable Division of Assets Does Not Mitigate the Need for Alimony

Alimony opponents argue that alimony is unnecessary because an equitable division of assets should provide financial sustainability for both parties.⁸³ However, this argument presupposes that there are assets to divide upon divorce. Many low-income families do not acquire assets during the marriage.⁸⁴ Rather, low-income families frequently live paycheck to paycheck.⁸⁵ Even if spouses have some accumulated money, it is generally in the form of income streams and not divisible assets.⁸⁶ Thus, only alimony, derived from the income stream of the payor, will offset the lack of assets to divide and ameliorate the post-divorce financial instability that recipients are likely to experience.⁸⁷ Furthermore, even if a couple had some liquid assets, “no matter how pensions and savings and investments are sliced and diced . . . [they] do not provide adequate retirement income.”⁸⁸

Even if a couple had substantial marital property, women frequently lack legal representation and therefore end up receiving fewer assets than men receive in a divorce decree.⁸⁹ Legal representation in divorce cases confers drastic benefits upon a litigant because self-represented

82. Bryan 1999, *supra* note 79, at 1165-66.

83. A husband may have no obligation to pay alimony, in part because the couple may have had marital property to divide upon divorce. *Akbarieh v. Akbarieh*, No. 10-P-1411, 2012 WL 360480 (Mass. App. Ct. 2012). *See also* UNIF. MARRIAGE & DIVORCE ACT §308, 9A U.L.A. 446 (1973) (“Only if the available property is insufficient for the purpose and if the spouse who seeks maintenance is unable to secure employment appropriate to his skills and interests or is occupied with childcare may an award of maintenance be ordered.”).

84. *See* LAWRENCE GANONG ET AL., UNIV. OF MO. DEP’T OF HUMAN DEV. AND FAMILY STUDIES, FINANCIAL CONCERNS OF LOW-INCOME FAMILIES 2, *citing* CATHERINE P. MONTALTO, CONSUMER FED’N OF AM., NAT’L CREDIT UNION FOUND., WEALTH-POOR HOUSEHOLDS IN THE UNITED STATES(2002); Williams, *supra* note 43, at 2232; McCoy, *supra* note 33, at 502 (citing Marsha Garrison, *The Economic Consequences of Divorce: Would Adoption of the ALI Principles Improve Current Outcomes?*, 8 DUKE J. GENDER L. & POL’Y 119, 126, 128 (2001)).

85. *See generally* *A Woman’s Nation Pushes Back From the Brink*, SHRIVER REPORT, <http://shrivereport.org/special-report/a-womans-nation-pushes-back-from-the-brink/> (last visited Feb. 16, 2014).

86. Williams, *supra* note 78, at 2251 (citing John H. Langbein, *The Twentieth Century Revolution on Family Wealth Transmission*, 86 MICH. L. REV. 722, 725 (1988)).

87. Williams, *supra* note 78, at 2251-52.

88. Hounsell, *supra* note 51, at 168.

89. Bryan 2000, *supra* note 33, at 714-18.

litigants do not have training or preparation to confront the complex requirements, processes, and events involved in the court system.⁹⁰ Despite this, the legal system must hold self-represented litigants to the same standards as lawyers.⁹¹ The legal system's complexity disadvantages self-represented litigants who often do not know to provide the proper information that judges need to make a final determination.⁹²

2. Public Benefits Do Not Provide a Sufficient Safety Net to Mitigate the Need for Alimony

Alimony opponents also argue that public benefits can provide the safety net for women who might otherwise fall into poverty without alimony.⁹³ Public benefits do not suffice as a substitution for alimony.⁹⁴ Over the last decade, the number of low-income parents eligible for Temporary Assistance for Needy Families (TANF) and for the Food Stamps Programs (FSP) (now known as the Supplemental Nutrition Assistance Program (SNAP)) has decreased.⁹⁵ For every 100 families that fall under the poverty guidelines, only 27 families are receiving cash assistance from TANF.⁹⁶ This may be for many reasons including that many low-income women lack the knowledge and resources to apply for public benefits.⁹⁷

Even if they meet the poverty guidelines and do apply, the number of unemployed women denied welfare has grown substantially in the past ten years.⁹⁸ Approximately 20 to 25 percent of all unemployed low-

90. Brenda Star Adams, "Unbundled Legal Services": A Solution to the Problems Caused by Pro Se Litigation in Massachusetts Civil Courts, 40 NEW ENG. L. REV. 303, 309 n.45 (2005).

91. Carolyn D. Schwartz, Note, *Pro Se Divorce Litigants: Frustrating the Original Role of the Trial Court Judge and Court Personnel*, 42 FAM. CT. REV. 655, 655 (2004). See Leslie Feitz, Comment, *Pro Se Litigants in Domestic Relations Cases*, 14:22J. AM. ACAD. MATRIMONIAL L. 193, 195-96 (2008) ("Without some knowledge and assistance along the way, the unrepresented party has no chance of 'living up to the standard set for attorneys.'").

92. Feitz, *supra* note 9191.

93. See Kathryn J. Edin, *The Myths of Dependency and Self Sufficiency: Work, Welfare, and Low Wage Work*, 17:2 WIS. U. INST. FOR RES. ON POVERTY, 1-9 (1995).

94. *Id.* (public benefits alone do not provide a sufficient living for low-income women).

95. The National Association of Child Care Resource and Referral Agencies, *Temporary Assistance for Needy Families and Children in Poverty*, http://www.naccrra.org/sites/default/files/default_site_pages/2012/tanfandpoverty2012.pdf (last visited Feb. 2, 2014).

96. Danilo Trisi & LaDonna Pavetti, *TANF Weakening as a Safety Net for Poor Families*, CTR. ON BUDGET & POL'Y PRIORITIES, (Mar. 13, 2012) <http://www.cbpp.org/cms/?fa=view&id=3700>.

97. See Ganong, *supra* note 84, at 3.

98. Rebecca M. Blank, *Improving the Safety Net for Single Mothers Who Face Serious Barriers to Work*, 17 THE FUTURE OF CHILDREN 183, 183 (2007).

income single mothers cannot meet the welfare work requirement, due to an impaired ability to work, and thus are ineligible for welfare.⁹⁹ Unfortunately, the impairment that causes them to be unable to work may not meet Supplemental Security Income (SSI) standards for eligibility, which requires that applicants have a medical disability that will last at least twelve months preventing the recipient from engaging in “substantial gainful activity.”¹⁰⁰ Finally, low-income women deemed ineligible for TANF and SSI are further disadvantaged economically because they are less likely to receive food stamps and Medicaid.¹⁰¹ When women cannot receive food stamps or Medicaid, their post-divorce financial situation becomes more unstable, given the vast assistance that public benefits provide to a low-income family.¹⁰²

C. *Alimony Benefits Women*

The benefits of receiving alimony are substantial and provide a way for women to improve their precarious post-divorce financial positions.¹⁰³ For low-income women in Massachusetts, alimony payments constitute, on average, one-quarter to one-third or more of their total income.¹⁰⁴ For example, with alimony, low-income women may be able to provide necessities such as food and shelter.¹⁰⁵ In contrast, without alimony, if these women are ineligible for public housing, for example, or forced to rely on family support, they could end up in homeless shelters with their children if they could even qualify for the Emergency Assistance Program.¹⁰⁶ For many low-income women, alimony allows them to remain self-sustaining.

When low-income women receive alimony, their quality of life

99. ANU RANGARAJAN, LAURA CASTNER, & MELISSA A. CLARK, U.S. DEP'T OF HEALTH & HUMAN SERVS., PUBLIC ASSISTANCE USE AMONG TWO-PARENT FAMILIES: AN ANALYSIS OF TANF AND FOOD STAMP PROGRAM ELIGIBILITY AND PARTICIPATION XVI, fig.1 *Families* (Jan. 2005), available at <http://aspe.hhs.gov/hsp/05/2parent-part/report.pdf>.

100. See 42 U.S.C. § 1382c(a)(3)(A) (2006).

101. Blank, *supra* note 9898, at 190, (citing SHEILA ZEDLEWSKI, ET AL., IS THERE A SYSTEM SUPPORTING LOW-INCOME WORKING FAMILIES?, URBAN INST. (2006)).

102. *Id.*

103. Peteke Fejten & Clara H. Mulder, *Gender, Divorce, and Housing—A Life Course Perspective*, in WOHNEN UND GENDER: THEORETISCHE, POLITISCHE, SOZIALE UND RÄUMLICHE ASPEKTE 175, 179 (Darja Reuschke ed., 2010 (Ger.)) (“Welfare state arrangements and alimony partly take away the differences in economic well-being after divorce.”).

104. Brief for Amicus Curiae, *supra* note 15, at 7.

105. See Murphy, *supra* note 23.

106. *Id.*; see also David Abel, *Voucher Shortage Hits Renters*, BOSTON GLOBE, June 10, 2003, at B1, available at <http://www.highbeam.com/doc/1P2-777839.html> (noting the shortage of public housing).

improves in numerous ways beyond financial benefits.¹⁰⁷ Alimony payments remove the financial pressure faced by low-income women, which inevitably improves their emotional health and parenting capacity.¹⁰⁸ In the absence of an alimony award, women will struggle to find adequate employment and could fall into poverty because of the high likelihood that public benefits, if available, will not suffice.¹⁰⁹

Women who do not have children with their ex-spouse also benefit from alimony. Although childless women may suffer less from the problems that mothers face upon divorce, they still face barriers to becoming self-sufficient in the absence of an alimony award.¹¹⁰ For example, alimony helps childless women transition out of a marriage by providing necessary resources, such as money to move. Moving may be necessary as women without children are less likely to receive the marital home upon divorce than are women with children.¹¹¹ Additionally, alimony benefits women without children by providing income to offset their lack of eligibility for most public welfare programs, notably TANF, which is available only to poor adults with dependents.¹¹² Even if poor women without children qualify for welfare, the amount that they receive is often so low that welfare recipients may have to supplement their income with covert contributions from family, friends, or work.¹¹³

Courts award alimony to compensate a recipient spouse, usually a woman, for choices made during a marriage that primarily benefited the payor spouse.¹¹⁴ Despite advances made by women in education and the workforce, women still suffer significantly more, post-divorce, than their former spouses.¹¹⁵ Those who are lower-income fare even worse as

107. McCoy, *supra* note 33, at 517-18.

108. *See id.* Financial difficulties tend to impact physical and mental health, which contribute to poor parenting skills. *Id.*

109. *See Poverty Among Women and Families, 2000-2010: Extreme Poverty Reaches Record Levels as Congress Faces Critical Choices*, NAT'L WOMEN'S L. CTR. (Sept. 2011), <http://www.nwlc.org/sites/default/files/povertyamongwomenandfamilies2010final.pdf>; McCoy, *supra* note 33, at 517.

110. *See* Martha Albertson Fineman, *Societal Factors Affecting the Creation of Legal Rules for Distribution of Property at Divorce*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* 265, 277 (Martha A. Fineman & Nancy S. Thomadsen eds., 1991) ("Women who are not mothers but choose to be unemployed during the marriage may be considered overcompensated by the imposition of the partnership model.").

111. Heather Ruth Wishik, *Economics of Divorce: An Exploratory Study*, 20:1 *FAM. L.Q.* 79, 90 (1986).

112. *See* 42 U.S.C. § 601-19 (2006).

113. Edin, *supra* note 933.

114. *See* Ellman, *supra* note 21, at 50.

115. Brief for Amicus Curiae, *supra* note 15, at 13 (citing Gordon, *supra* note 33, at 1440).

there is less money and marital property to divide in a divorce through asset division.¹¹⁶ Courts, therefore, award alimony as a way of ensuring that the parties' financial situations post-divorce do not differ so dramatically that it is inequitable.¹¹⁷ Courts also award alimony to provide an essential tool for women to work towards self-sufficiency.¹¹⁸ Therefore, any attempts to reform the alimony system must recognize the economic realities of both parties post-divorce, namely, that alimony remains necessary—even in 2014.

II. THE ALIMONY REFORM ACT OF 2011

The Alimony Reform Act of 2011¹¹⁹ introduced a new era of domestic relations practice in Massachusetts with regard to spousal support. The media hailed it as the biggest domestic relations policy change in twenty-five years.¹²⁰ Notably, the Act has generated a discussion about who the “winners” and “losers” are under this new law.¹²¹ As the Act's most dramatic reform centers on the court's new ability to issue alimony orders with durational limits, most of the discourse focuses on who benefits from these durational limits.¹²² Prior to the Act, judges did not have a formula or guidelines which assisted them in determining the amount and duration of alimony orders.¹²³ Now, the Act provides guidelines enabling judges to order durational (or term-limited) alimony.¹²⁴ Based primarily on the length of the marriage, the duration of the alimony order could be, for example, one year, ten years, until the payor repays the recipient, or until the payor retires.¹²⁵

The second half of this Article focuses on who gains from alimony reform. The first section of this half discusses the obvious beneficiaries

116. See Ganong, *supra* note 844; Williams, *supra* note 78, at 2232; McCoy, *supra* note 33, at 502, (citing Garrison, *supra* note 844).

117. See Ellman, *supra* note 21, at 49-50.

118. Linda D. Elrod, *The Widening Door of Alimony—As Spouses' Roles Change, the Opportunities for Divorced Women Increase*, 8 FAM. ADVOC. 4, 5 (1986).

119. MASS. GEN. LAWS ch. 208, §§ 48-55 (2011).

120. See Paul Tuthill, *Alimony Reform Advances in Massachusetts*, WAMC.ORG (July 25, 2011 12:16 PM), <http://wamc.org/post/alimony-reform-advances-massachusetts> (Alimony Reform is “the first major change” to Massachusetts family law in the past 40 years).

121. See *supra* note 23.

122. See, e.g., George Donnelly, *Massachusetts' Pending Alimony Revolution*, BOSTON BUS. J. (June 3, 2011 1:19 PM), http://www.bizjournals.com/boston/blog/bottom_line/2011/06/massachusetts-pending-alimony.html.

123. See *Rosenblatt v. Kazlow-Rosenblatt*, 655 N.E.2d 640, 642 (Mass. App. Ct. 1995).

124. MASS. GEN. LAWS ch. 208, §§ 49-51 (2011).

125. *Id.*; see also Jennifer Levitz, *Massachusetts Sets Limits on Alimony*, WALL ST. J. (Sept. 27, 2011), <http://online.wsj.com/article/SB10001424052970204010604576595150755100270.html>.

of alimony reform. Alimony payors clearly benefit from finality in orders, which allows them to have a set date that they will no longer have to pay alimony.¹²⁶ The reform also assists the court by providing guidelines yet retaining judicial discretion to deviate from those guidelines.¹²⁷ Everyone benefits because of the probability that cases will now settle more quickly.¹²⁸ The legal system profits by increasing systemic efficiency: new settlement options reduce the number of trials and hearings.¹²⁹ However, in what might be surprising to some, the Alimony Reform Act of 2011 also benefits women by providing them with an improved ability to obtain alimony.¹³⁰ The second section of this Article dispels the myth that alimony reform only benefits payors, primarily men, by highlighting key provisions that benefit women.¹³¹ The third section will discuss some of the Act's less favorable provisions for alimony recipients, as well as the safety valves within those provisions that protect recipients.¹³²

A. *Durational Limits Benefit Alimony Payors, Lawyers, and the Court*

Alimony payors clearly benefit by the elimination of most "forever" alimony orders.¹³³ Durational limits further advantage payors

126. Steve Hitner, *The Shame of Massachusetts: Alimony Horror Stories*, MASS. ALIMONY REFORM, http://www.massalimonyreform.org/PDFs/Horror_Stories_MassAlimonyReform.pdf (last visited Feb. 2, 2014) [hereinafter "*The Shame of Massachusetts*"].

127. See Jessica Fargen, *Reform Could End Alimony For Life*, BOSTONHERALD.COM (Jan. 30, 2011), http://bostonherald.com/news/regional/view/20110130pols_crusaders_band_together_to_support_radical_bill ("The bill sets clear guidelines for judges in determining how long an ex pays another, yet retains judicial discretion.").

128. Jack Flynn, *Overhaul of Alimony Law Wins Praise*, MASSLIVE.COM (Mar. 26, 2012 9:14 AM), http://www.masslive.com/news/index.ssf/2012/03/overhaul_of_alimony_la_w_wins_p.html (quoting Marc Fitzgerald, Chairman of the Massachusetts Bar Association's Family Law Section: "[j]udges, lawyers and divorcing couples will all benefit from the clarity and specificity provided by the new law, which is considered one of the most important changes in family law in recent decades").

129. See Keith N. Hylton, *Fee Shifting and Predictability of Law*, 71 CHI.-KENT L. REV. 427, 438 (1996) (increased predictability will increase settlements); see also Ward Farnsworth, *The Economics of Enmity*, 69 U. CHI. L. REV. 211, 219 (2002).

130. Under the prior alimony law, many Massachusetts judges used seven years as the "magic number" to determine whether a marriage was a short-term, mid-term, or long-term marriage. See generally Cheryl L. Garrity & Abbe L. Hershberg, *Alimony, Pensions and Other Relief*, in FAM. L. ADVOC. FOR LOW & MODERATE INCOME LITIGANTS 2008, at ch. 6-1 (F.L.A. M.C.L.E. Ser. no. 183, 2008). Cf. MASS. GEN. LAWS ch. 208, §§ 48-55 (2011).

131. See Murphy, *supra* note 23.

132. See *id.*; *Reforming Massachusetts Alimony Laws*, WGBH RADIO (Feb. 9, 2011), <http://wgbhradio.org/programs/Greater-Boston-11/episodes/Feb-9-2011Reforming-Massachusetts-alimony-laws-24850>.

133. Stephen Hitner, *New Law Stops Injustice of Paying Alimony Forever*, CNN.COM (Mar. 11, 2012, 9:39 AM), <http://www.cnn.com/2012/03/09/opinion/hitner-alimony-overhaul-pro/index.html>.

by allowing alimony to terminate presumptively rather than requiring payors to prove a change in circumstances in order to modify an alimony order.¹³⁴ Furthermore, an alimony payor will now be able to calculate the financial consequences of divorce, where alimony may be an issue, through predictable and consistent guidelines.¹³⁵

Concomitantly, durational limits benefit the legal community by providing guidelines.¹³⁶ Prior to the Act, the Massachusetts Appeals Court had issued disparate opinions on durational alimony.¹³⁷ The *Ross* Court found that short-term orders may be appropriate if they are intended to rehabilitate a supported spouse into the workforce.¹³⁸ In contrast, the *Sampson* Court found a three-year rehabilitative order to be improper because the probate court had premised the order on unpredictable future events.¹³⁹ While the *Sampson* holding seems to imply that the court could order durational alimony based on definitive future events, the courts have rarely found an event to be so certain that it justified such an order.¹⁴⁰ Additionally, the Massachusetts Appeals Court has ruled that alimony awards of limited duration are viewed with suspicion.¹⁴¹ The *Chiancola* Court held, in a summary disposition, that the proper way to terminate or reduce alimony orders is through a complaint for modification, not through an initial order limiting the duration of alimony payments.¹⁴² Although a summary disposition

134. See *Schuler v. Schuler*, 416 N.E.2d 197, 200 (Mass. 1981) (“To be successful in an action to modify a judgment for alimony . . . the petitioner must demonstrate a material change of circumstances since the entry of the earlier judgment.”).

135. See *NY Senate Passes Alimony Guidelines as Part of No-Fault Divorce*, MASS. ALIMONY REFORM, <http://www.massalimonyreform.org/news.html> (last visited Feb. 14, 2014) (“By establishing guidelines for the amount and duration of the award, post-marital income guidelines provide the consistency and predictability for spousal support that the Child Support Standards Act has provided for child support.”).

136. See *Fargen*, *supra* note 127.

137. Compare *Sampson v. Sampson*, 816 N.E.2d 999, 1002, 1004 (Mass. App. Ct. 2004), and *Goldman v. Goldman*, 554 N.E.2d 860, 866 (Mass. App. Ct. 1990) (finding that judges have great discretion in ordering alimony awards but cannot set durational limits when such limit is based on uncertain future events), with *Ross v. Ross*, 734 N.E.2d 1192, 1195-96 (Mass. App. Ct. 2000) (finding that durational limits on alimony can be rehabilitative). See also *Gottsegen v. Gottsegen*, 492 N.E.2d 1138, 1138 (Mass. 1986) (finding that a court can only limit the duration of an alimony award based on a specific event which obviates the recipient’s need for alimony).

138. *Ross*, 734 N.E.2d at 1195-96.

139. *Sampson*, 816 N.E.2d at 1004.

140. *Goldman*, 554 N.E.2d at 866 (value of a business). See also *Gottsegen*, 492 N.E.2d at 1138 (cohabitation); *Martin v. Martin*, 29 577 N.E.2d 754, 755 (Mass. App. Ct. 1990) (retirement); *D.L. v. G.L.*, 811 N.E.2d 1013, 1026 (Mass. App. Ct. 2004) (husband’s inheritance).

141. See *Bak v. Bak*, 511 N.E.2d 625, 633, n.14 (Mass. App. Ct. 1987).

142. *Chiancola v. Kurgun*, 2009 Mass. App. Unpub. LEXIS 1163 at *2 (Mass. App. Ct. Nov. 9, 2009) (affirming trial court’s order of lifetime alimony or until payor remarried).

pursuant to Appellate Practice Rule 1:28 is not binding precedent, summary decisions do provide persuasive precedent.¹⁴³ The flaw in the *Chiancola* court's argument is that, without a change in circumstances, the standard for modifying an order, the court could not adjust the alimony order.¹⁴⁴

Due to the lack of clarity surrounding durational limits under the prior alimony law, judges had differing practices when issuing alimony orders.¹⁴⁵ Some judges did not order alimony, especially if the marriage was short-term¹⁴⁶ or if the parties were relatively young and employable.¹⁴⁷ Other judges focused on the present needs of the parties and ordered alimony if there was need and ability to pay.¹⁴⁸ Family lawyers expressed that alimony orders were often too discretionary and varied widely depending on the judge assigned to the case.¹⁴⁹ As a result of these disparate practices, cases were more difficult to settle.¹⁵⁰ With fewer settlements, more cases went to trial, which had clogged the court system and prolonged acrimony between the parties as well as added to their litigation costs.¹⁵¹

B. *Durational Alimony Provides New Opportunities for Recipients to Obtain Alimony, Especially Those Women Divorcing After Short-*

143. *Id.* See also MASS. APP. CT. REG. APP. PRAC.1:28.

144. See *Schuler v. Schuler*, 416 N.E.2d 197, 200 (1981) (“To be successful in an action to modify a judgment for alimony . . . the petitioner must demonstrate a material change of circumstances since the entry of the earlier judgment.”).

145. Compare *Casey v. Casey*, 948 N.E.2d 892, 898-99 (Mass. App. Ct. 2011) (finding that wife would not be awarded alimony because although she might have been eligible for alimony based on present income from her part-time job, the judge considered her earning potential, finding that she was able to work full-time), with *Greenberg v. Greenberg*, 861 N.E.2d 801, 804 (Mass. App. Ct. 2007) (reduction in alimony payments based on recent retirement was reversed because wife still needed the money and the husband still had the ability to satisfy the original higher monthly alimony payments).

146. *Richman v. Richman*, 555 N.E.2d 243, 247-48 (Mass. App. Ct. 1990) (overturning an alimony award giving primary significance to the couples to the fact that the marriage “short-term”).

147. See, e.g., *Casey*, 948 N.E.2d at 899-900 (trial court failed to award alimony to the wife because the trial judge was able to impute income to the wife based on her young age, which supported the judge's opinion that she was capable of working 40 hours per week).

148. See, e.g., *Greenberg*, 861 N.E.2d at 806-07.

149. See Jill Boynton, *Massachusetts Proposes Changes To Alimony Laws*, BOSTON.COM (Dec. 18, 2009, 10:48 AM), http://www.boston.com/business/personalfinance/managingyourmoney/archives/2009/12/massachusetts_p.html.

150. See Charles F. Vuotto, Jr., *Alimony Trends*, 33:1 N.J. FAM. LAW. 6, 8 (June 2012) (acknowledging that a number of states, including Massachusetts, have struggled with disparate practices regarding alimony awards and have consequently impeded parties ability to settle); see also Marti E. Thurman, *Maintenance: A Recognition of the Need for Guidelines*, 33 U. LOUISVILLE J. FAM. L. 971, 972 (1995).

151. See Lina A. Olup, *Controlling Divorce Costs*, 27 FAM. ADVOC. 16, 16 (2005).

term Marriages

Durational limits benefit women by providing new opportunities for recipients to obtain alimony. Alimony assists the increasing number of women who are divorcing after short-term marriages, which is where marriages last generally seven years or less.¹⁵² Prior to the Act, judges throughout Massachusetts rarely ordered alimony in short-term marriages.¹⁵³ Without the ability to order durational alimony, judges felt that they could only order alimony “forever” which would have been inequitable in most short-term marriages.¹⁵⁴

In 1987, the Massachusetts Department of Public Health began calculating the mode¹⁵⁵ of the most common length of marriage and the data goes until 2006. In 2006, of Massachusetts’ marriages that ended in divorce, the most common length of marriage was five years. The highest mode was seven years in 2004 and the lowest was three years in 1987, 1988, 1990, and 1999. From 2000-2006, the mode ranged from 4 years to 7 years with 4 years being the most common.¹⁵⁶ In order for alimony reform to be practical, it needed to reflect the prevalence of short-term marriages.

1. General Term Alimony Guideline’s Inclusion of Short-Term

152. See CHARLES P. KINDREGAN, JR. ET AL., 8 MASSACHUSETTS PRACTICE SERIES: FAMILY LAW AND PRACTICE, § 53:1, :6 (4th ed.).

153. When a marriage lasted less than seven years, the judge was very unlikely to order an alimony award. See *Austin v. Austin*, 819 N.E.2d 623, 630 n.15 (Mass. App. Ct. 2004); *Casey v. Casey*, 948 N.E.2d 892, 899-900 (Mass. App. Ct. 2011); see also ROLAND F. CHASE, 14A MASSACHUSETTS PRACTICE SERIES § 8.65 (4th ed.).

154. See Levitz, *supra* note 125 (discussing how courts ordered “lifetime” alimony, which tied spouses together).

155. The Massachusetts Department of Public Health (MDPH) is the only organization which calculates the data from Massachusetts and sorts it according to mode. National organizations, such as the American Community Survey (ACS) began collecting national marital data in 2008 but only calculates data from first marriages distinct from subsequent marriages. *Marriage and Divorce*, U.S. CENSUS BUREAU, <http://www.census.gov/hhes/socdemo/marriage/data/acs/index.html> (last visited Feb. 16, 2014). In 2009, according to the national median, the duration of first marriages ending in divorce was eight years according to ACS. U.S. CENSUS BUREAU, NUMBER, TIMING, AND DURATION OF MARRIAGES AND DIVORCES: 2009, 18 tbl.8 (Aug. 2011). Massachusetts marriage duration statistics for 2005-2006 are not published and were obtained at the Massachusetts Registry of Vital Statistics. Figures from 2007-present are also unpublished, but available in raw form at the Massachusetts Registry of Vital Statistics.

156. According to the MDPH, 2004 was the only year that reflects 7 years as the mode length of marriage that ends in divorce. All years other than 2004 reflect fewer than 7 years as the mode length of marriage that ends in divorce. From 2007-present, the most common duration of marriages was 5 years, however this information is unpublished and available only in raw form. For the figures dated 1980-2004, see table A-1 of the yearly report: MASS. DEP’T OF PUB. HEALTH: REGISTRY OF VITAL STATISTICS, ANNUAL REPORT OF VITAL STATISTICS OF MASSACHUSETTS PUBLIC DOCUMENT #1.

Marriages Will Increase the Number of Alimony Orders

Under the Alimony Reform Act, general term alimony guidelines now include short-term marriages.¹⁵⁷ General term alimony serves as the “catch all” term to encompass all existing alimony orders and all new alimony orders issued under the new alimony law that are not otherwise designated.¹⁵⁸ General term alimony provides “periodic payment of support to a recipient spouse who is economically dependent.”¹⁵⁹

In common parlance, the general public most frequently thinks of general term alimony when referencing alimony.¹⁶⁰ Judges may now issue orders, and parties may negotiate for general term alimony regardless of the length of the marriage.¹⁶¹ The duration designations for general term alimony largely mirror the American Law Institute’s (ALI) recommendations on alimony.¹⁶² Based on the number of months of marriage, general term alimony cannot exceed a certain length, as detailed in Table 1. Making general term alimony available after short-term marriages is a groundbreaking change to Massachusetts’ matrimonial law.¹⁶³

157. MASS. GEN. LAWS ch. 208, § 49(b) (2011).

158. All existing alimony awards are deemed general term alimony orders under the new alimony law. § 48, n.4(b).

159. § 48.

160. See *The Shame of Massachusetts*, *supra* note 1266; Jeffrey Sánchez, *House Passes Alimony Reform Legislation*, JAMAICA PLAIN PATCH BLOG (July 21, 2011, 1:44 PM) http://jamaicaplain.patch.com/blog_posts/house-passes-alimony-reform-legislation (acknowledging that “general-term” alimony is the default form of alimony).

161. See § 48 (defining general term alimony as “the periodic payment of support to a recipient spouse who is economically dependent”); BOS. B. ASS’N, REPORT OF THE JOINT MBA/BBA ALIMONY TASK FORCE: ALIMONY OR SPOUSAL SUPPORT GUIDELINES WHERE THERE ARE NO DEPENDENT CHILDREN 3, *available at* http://www.bostonbar.org/prs/nr_0910/BBA_MBA_Alimony_Task_Force_Alimony_Report.pdf (stating that general term alimony can be awarded for a specified period of time, even if the marriage was only five years or less).

162. See PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 5.06 (2002).

163. See Lisa van der Pool, *Support builds for wholesale alimony reform*, BOS. BUS. J. (June 3, 2011, 6:00 AM), www.bizjournals.com/boston/print-edition/2011/06/03/support-builds-for-wholesale-alimony.html?page=all.

Length of Marriage	Maximum Duration of General Term Alimony
0 – 5 years	50% the number of months of the marriage
5 – 10 years	60% of the number of months of the marriage
10 – 15 years	70% of the number of months of the marriage
15 – 20 years	80% of the number of months of the marriage
More than 20 years	Indefinite length

Source: MASS. GEN. LAWS ch. 208, § 49 (2011).

2. The Alimony Reform Act Introduces New Categories of Alimony Available to Recipients

Prior to the Alimony Reform Act, Massachusetts had statutorily recognized only one type of alimony.¹⁶⁴ In addition to general term alimony, discussed above, the Alimony Reform Act provides for three other categories of alimony: rehabilitative, reimbursement, and transitional.¹⁶⁵ One reason for these additional alimony categories is to allow judges the opportunity to order time-limited alimony in specific situations.¹⁶⁶ Additionally, these new categories give judges more discretion to fashion an alimony order appropriate to each individual case.¹⁶⁷ This benefits recipients in cases where the duration of the award under general term alimony would be insufficient.¹⁶⁸ Under general term alimony, in marriages lasting less than five years, barring deviation, the judge may only order alimony for fifty percent of the number of months of the marriage.¹⁶⁹ For a 59 month marriage, which is just shy of five years, the judge may only order 29.5 months of general-term alimony, which is slightly less than two and a half years.¹⁷⁰ However, following the same 59 month marriage, the judge may order up to three

164. § 34 (amended 2011). *See also* CHARLES P. KINDREGAN, JR. ET AL., 8 MASSACHUSETTS PRACTICE SERIES: FAMILY LAW AND PRACTICE, § 28:7 (4th ed.); Yamiche Alcindor, *Should Alimony Laws Be Changed?*, USATODAY.COM (Jan. 18, 2012, 7:24 PM), <http://www.usatoday.com/money/perfi/basics/story/2012-01-05/alimony-law-reform/52642100/1>.

165. §§ 49-52.

166. *See* PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION, *supra* note 1622, at § 5.06 cmt. a. (“A fixed-term award communicates the law’s expectation that after its expiration the former spouses will no longer have financial obligations to or claims upon one another.”).

167. *See* McCoy, *supra* note 33; Flynn, *supra* note 128 (quoting Marc Fitzgerald, Chairman of the Massachusetts Bar Association’s Family Law Section: “Judges, lawyers and divorcing couples will all benefit from the clarity and specificity provided by the new law, which is considered one of the most important changes in family law in recent decades.”).

168. *See* McCoy, *supra* note 33; Flynn, *supra* note 1288 and accompanying text.

169. § 49(b)(1).

170. *Id.*

years of transitional alimony and up to five years of rehabilitative alimony.¹⁷¹ Rehabilitative, reimbursement, and transitional alimony provide vehicles for judges who wish to order longer terms than under general term alimony.¹⁷²

Moreover, lawyers may argue that the Act's income guidelines provision does not apply in exceptional cases.¹⁷³ The Act clearly states that "[e]xcept for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 to 35 percent of the difference between the parties' gross incomes established at the time of the order being issued."¹⁷⁴ Income guidelines, specifically, do not apply to reimbursement alimony because of the nature of that category of alimony (discussed below).¹⁷⁵ It is also clear that in most cases where courts award general term alimony, the guidelines should apply, as most of those cases do not present rare circumstances meriting deviation. However, unlike general term alimony, rehabilitative and transitional alimony, by their very nature, will present unusual issues. Lawyers may argue that the guidelines act as a floor not a ceiling and that a party's particular rehabilitative or transitional alimony circumstance is so unique that it should warrant a deviation from the income guidelines. This may benefit alimony recipients through higher-than-guidelines alimony awards, but it may also provide lower-than-guidelines alimony awards for the same reasons.¹⁷⁶

3. Rehabilitative Alimony

The modern trend in spousal support law has shifted toward awarding rehabilitative alimony.¹⁷⁷ Massachusetts defines rehabilitative alimony as "the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse under a judgment."¹⁷⁸ Rehabilitative alimony differs from other categories of alimony because

171. §§ 50(b)-52(a).

172. Transitional alimony can be ordered for up to three years, which is longer than only some of the shortest durational limits under general term alimony. Transitional alimony may not be extended or modified. § 52.

173. §53(b).

174. *Id.*

175. §51(c).

176. *See* The Divorce Lawyers, *supra* note 27 (discussing the ability of judges to use discretion to stray from the guidelines).

177. *See* McCoy, *supra* note 33 *citing* Garrison, *supra* note 8484.

178. § 48.

courts do not award it to reimburse or compensate a spouse.¹⁷⁹ The theory behind rehabilitative alimony is that with some financial support, the recipient spouse will be able to obtain the skills, training, or education needed to subsist without alimony.¹⁸⁰ More than any other theory of alimony, rehabilitative alimony respects the oft times unequal spousal roles within a marriage and seeks to reduce the disadvantages to the recipient spouse upon divorce.¹⁸¹

Several examples of when rehabilitative alimony may apply include:

- the spouse that has almost completed his or her schooling and needs alimony in order to finish the remaining classes;¹⁸²
- the spouse that needs job training in order to integrate into the workforce;¹⁸³
- the spouse that has experienced domestic violence and needs time to recover from the abuse;¹⁸⁴ and
- the spouse that needs to finish six months of physical therapy sessions before continuing to work in construction.¹⁸⁵

The Act does not state how long a marriage must last to qualify for rehabilitative alimony.¹⁸⁶ Presumptively, courts may order rehabilitative alimony for any length of marriage.¹⁸⁷ However, courts may only order rehabilitative alimony for up to five years.¹⁸⁸ In terms of duration, rehabilitative alimony provides the greatest contrast to general term alimony, as the difference in the maximum durational caps between the two types of alimony, given a five-year marriage, (where rehabilitative

179. *Id.*; see also Daniel Jones, *Rehabilitative Alimony—The Goal of Self Support*, 20 J. CONTEMP. LEGAL ISSUES 25, 26 (2012).

180. See *Adlakha v. Adlakha*, 844 N.E.2d 700, 709 (Mass. App. Ct. 2006) (“before awarding rehabilitative alimony, the recipient spouse’s realistic prospects for self-sufficiency must be considered with care.”) (internal quotation marks omitted). Cf. *McCoy*, *supra* note 33, at 522 (stating rehabilitative alimony generally requires proof that the payor would have obtained the education or training sought but for the marriage, such as proof that the payor was previously accepted to an educational program and did not attend).

181. See *McCoy*, *supra* note 33.

182. 24A AM. JUR. 2D *Divorce and Separation* § 763 (2008).

183. *Id.*; § 48.

184. Jones, *supra* note 179, at 27 (“When deciding whether to award rehabilitative support, the California divorce court must consider . . . any history of domestic violence . . .”).

185. See Linda Baillif Marshall, *Rehabilitative Alimony: An Old Wolf in New Clothes*, 13 N.Y.U. REV. L. & SOC. CHANGE 667, 680-81 (1985).

186. See § 50.

187. *Id.*

188. *Id.*

would result in a five year cap, and general term would result in a two-and-a-half year cap) is nearly two-and-a-half years.¹⁸⁹

Rehabilitative alimony is modifiable in limited circumstances. If a recipient had a one-year, or even a five-year rehabilitative alimony order, she could seek an extension of that order.¹⁹⁰ The standards for an extension of the original order are very specific:

[t]he alimony term for rehabilitative alimony shall be not more than five years. Unless the recipient has remarried, the rehabilitative alimony may be extended on a complaint for modification upon a showing of compelling circumstances in the event that: (1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage; (2) the court finds that the recipient tried to become self-supporting; and (3) the payor is able to pay without undue burden.¹⁹¹

While it is a challenge to meet the standard, rehabilitative alimony modifications help alimony recipients who experience an unforeseen event which may prohibit their ability to be self-supporting without the assistance of alimony. For example, consider a recipient who suffered four years of physical abuse by her ex-spouse. The court may have initially ordered one year of alimony with the belief, held by all parties, that the recipient would physically be able to find work after the divorce. However, during the year, the recipient suffers new back pains and later learns that the payor had permanently damaged her spine, requiring six months of physical therapy before she could even sit comfortably. In contrast, the former spouse is earning even more money due to a promotion at work. The court might extend the recipient's alimony order until a set time, determined by the court, to allow her to fully recover and conduct a job search.¹⁹²

4. Reimbursement Alimony

Reimbursement alimony is based on a spousal contribution theory mirroring the American Law Institute's recommendations.¹⁹³ The Alimony Reform Act defines reimbursement alimony:

189. *Id.* Compare § 49, with § 50. The statistics are based on a non-deviation general term alimony case.

190. *See* § 50(b).

191. *Id.*

192. *Id.*

193. PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION § 5.05(1) (2002) ("A spouse should be entitled at dissolution to compensation for the earning-capacity loss arising from his or her disproportionate share during marriage of the care of the marital children, or of the children of either spouse.") [hereinafter PRINCIPLES OF THE LAW].

as the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to compensate the recipient for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.¹⁹⁴

Reimbursement alimony does not seek to equalize income.¹⁹⁵ Rather, reimbursement alimony compensates a spouse who made financially quantifiable sacrifices during a short-term marriage to enhance the future earning capacity of the other spouse.¹⁹⁶

Examples of reimbursement alimony may include, but are not limited to, the following:

- the spouse who paid \$100,000 for the other spouse to attend business school with the assumption that they would share in her increased salary after she graduated;¹⁹⁷
- the spouse that gave up his teaching job for two years to care for the home and other spouse's children while she advanced in her career;¹⁹⁸ and
- the spouses who pooled their money so that they could attend college one spouse at a time but divorced before the second spouse could attend school.¹⁹⁹

Reimbursement alimony is not subject to income guidelines because the amount of compensation differs in each case.²⁰⁰ Additionally, judges can order either periodic alimony payments, mimicking general term alimony, or one lump-sum payment.²⁰¹ The Act's introduction of lump sum payments assists an alimony recipient who can prove to the court that the payor has the ability to pay, and that she needs money quickly to pay for tuition, job training, or some other large expense that she could not afford with periodic payments.²⁰²

194. § 48.

195. PRINCIPLES OF THE LAW, *supra* note 193, at § 5.02cmt. a.

196. *Id.* at §5.02(3)(c).

197. See Brenda Ruel Sharton, *Spousal Interest in Professional Degrees: Solving the Compensation Dilemma*, 31 B.C. L. REV. 749, 752 (1990).

198. See PRINCIPLES OF THE LAW, *supra* note 193, at § 5.02(3)(a).

199. See Sharton, *supra* note 197, at 757.

200. Fern L. Frolin, *Tips for Handling Cases Under the New Alimony Law*, 56:2 BOS. BUS. J. (May 8, 2012), <http://bostonbarjournal.com/2012/05/08/tips-for-handling-cases-under-the-new-alimony-law-by-fern-l-frolin/>.

201. See MASS. GEN. LAWS ch. 208, § 49 (2011).

202. See also Shawn Golesorkhi, *Lump Sum Spousal Support*, GOLESORKHI.NET <http://www.golesorkhi.net/newsletters/divorce/lump-sum-spousal-support/> (last visited Feb. 14, 2014).

5. Transitional Alimony

Transitional alimony is another category of alimony where the number of potential qualified recipients increases under the new law.²⁰³ Also called “bridge-the-gap” or “reorientation” alimony,²⁰⁴ Massachusetts defines transitional alimony as “the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to transition the recipient spouse to an adjusted lifestyle or location as a result of the divorce.”²⁰⁵ Courts generally award transitional alimony when property division does not equitably suffice to meet the needs of the supported spouse.²⁰⁶

For example, if Britney Spears and Kevin Federline were residents of Massachusetts and filing for divorce in 2013, Kevin might seek transitional alimony. Britney Spears is a famous singer whose estimated net worth is \$200 million.²⁰⁷ Kevin was engaged to another woman who was expecting his child when he landed a job as one of Britney’s backup dancers.²⁰⁸ Five months later, Kevin and Britney were married.²⁰⁹ Two years later, they separated.²¹⁰ Imagine the following scenario: at the time of divorce, Kevin has no income and no savings. Kevin seeks to transition to a quieter lifestyle in a more rural environment outside the Commonwealth of Massachusetts. Under the Alimony Reform Act, based on these facts alone, Kevin might ask the court for transitional alimony to allow him to purchase a plane ticket and pay first and last months’ rent as well as a security deposit for an apartment.

The facts of a case which merit transitional alimony may also be sufficient to deviate from the income guidelines. In fact, the alimony recipient who seeks a significant amount of money in one lump sum, maybe to cover moving expenses, is advantaged most by transitional alimony.²¹¹ However, neither party can modify transitional alimony,

203. See § 48.

204. See McCoy, *supra* note 33, at 512.

205. § 48.

206. See McCoy, *supra* note 33, at 512.

207. *Britney Spears Net Worth*, CELEBRITY NET WORTH <http://www.celebritynetworth.com/richest-celebrities/singers/britney-spears-net-worth/> (last visited Feb. 2, 2014).

208. See Daily Mail Reporter, *Britney Spears admits she married Kevin Federline ‘for the wrong reasons’*, MAIL ONLINE (Nov. 20, 2008, 6:31 PM) <http://www.dailymail.co.uk/tv/showbiz/article-1087677/Britney-Spears-admits-married-Kevin-Federline-wrong-reasons.html>.

209. *Id.*

210. *After Two Years, Britney Has Had Enough*, CNN.COM (Nov. 7, 2006), http://articles.cnn.com/2006-11-07/entertainment/spears.divorce.reut_1_kevin-federline-jayden-james-sean-preston?_s=PM:SHOWBIZ.

211. Stevenson & Lynch, P.C. & Justin L. Kelsey, Esq., *The Divorce Spousal Support Calculator*, <http://www.kelseytrask.com/Docs/SpousalSupport.pdf> (last revised Feb. 14,

even if there is a change in circumstances, and the maximum duration of any such award is three years.²¹²

Durational alimony, such as rehabilitative, transitional, and reimbursement alimony, benefits women. Divorces, which occur more frequently than in the past, have shortened the average length of a marriage.²¹³ Durational alimony provides judges the discretion to order alimony in short-term marriages without the threat of the order lasting forever. The addition of guidelines for short-term marriages in general term alimony as well as new categories of short-term alimony encourage judges to award durational alimony where appropriate. On balance, recipients' new opportunity to obtain alimony are so beneficial as to negate any detriment from the new duration limit.

C. *The Alimony Reform Act Contains Provisions Less Favorable for Alimony Recipients; However Those Provisions Do Provide Safety Valves to Protect Recipients*

1. Presumptive Alimony Termination at Payor's Retirement Age

The retirement provision of the Alimony Reform Act has generated the most attention other than the durational alimony provisions.²¹⁴ General term alimony, under both the Alimony Reform Act and Massachusetts' former alimony statute, terminates upon the death of the payor, death of the recipient, remarriage of the recipient, or following a court order terminating alimony.²¹⁵ However, under the new alimony law, general term alimony also presumptively terminates upon the payor's retirement.²¹⁶

2014).

212. MASS. GEN. LAWS ch. 208, § 52(a) (2011).

213. ROSE M. KRIEDER & RENEE ELLIS, U.S. CENSUS BUREAU, CURRENT POPULATION REPORTS, "NUMBER, TIMING, AND DURATION OF MARRIAGES AND DIVORCES: 2009, TBL.4 (2011).

214. See Hitner, *supra* note 133 (wherein the article mentions retirement alimony only after durational alimony in discussing the features of the Alimony Reform Act), Charles P. Kindregan, Jr., *Reforming Alimony: Massachusetts Reconsiders Postdivorce Spousal Support*, 46 SUFFOLK U. L. REV. 13, 13 ("The refusal of the Massachusetts Supreme Judicial Court in 2010 to create a presumption in favor of an obligor's request to be relieved of his alimony obligation to his long-divorced wife when he reached the age of full retirement, as defined by the Social Security Act, helped to set off a discussion in the bar and among the public about whether alimony needed rethinking.").

215. See MASS. GEN. LAWS ch. 208, §34 (repealed 2011); MASS. GEN. LAWS ch. 208, § 49 (2011); *see also*, Cohan v. Feuer, 810 N.E.2d 1222, 1228 (Mass. 2004) (holding that alimony terminates upon the death of either payer or remarriage of recipient); Keller v. O'Brien, 682 N.E.2d 589, 593 (holding that recipient's remarriage made prima face case for alimony termination unless extraordinary circumstances were shown).

216. MASS. GEN. LAWS ch.208, § 49 (2011).

This dramatic change to alimony law will negatively affect divorced women after long-term marriages with alimony orders that they thought were “forever.”²¹⁷ However, since the law applies only to merged agreements, (when the parties agree that the court may modify alimony upon a change of circumstances), it may be argued that those recipients knew or should have known that a court could modify their agreement at any time in the future.²¹⁸ The Legislature clearly intended the law apply retroactively only to merged agreements because the legislation provides a phase-in structure to modify agreements based on the new law which is determined by the length of the parties’ marriages.²¹⁹ This phasing in of the new law will enable alimony recipients with merged agreements to have time to plan for their financial futures before potential alimony termination.²²⁰ The law does not apply, of course, to surviving alimony agreements (where the parties have agreed that alimony may never be modified).²²¹ Many agreements are considered surviving when the alimony agreement is ambiguous.²²²

When the Massachusetts Legislature debated alimony reform, the most frequent criticism of the prior law was that a payor could not afford to retire.²²³ Because of the political impetus around this issue, it was

217. See *Real Losers in Alimony Reform*, *supra* note 23.

218. MASS. GEN. LAWS ANN. ch. 208, § 48 n.4(c) (West 2011). Determining whether an existing alimony provision of an agreement survived or merged into the divorce judgment is the first step in reviewing existing separation agreements to ascertain if the new law applies. See *Cournoyer v. Cournoyer*, 663 N.E.2d 863, 865-66 (Mass. App. Ct. 1996). If alimony merges, then the court may modify the agreement. *Id.* at 866. However, if alimony survives the judgment, alimony will not be modifiable absent very unusual circumstances. See *id.* at 867. The new alimony law, § 48-55, does not alter this paradigm. In fact, the session notes specifically state that the new law shall not be interpreted to allow parties to existing surviving agreements to seek or receive a modification to their alimony agreement. MASS. GEN. LAWS ANN. ch. 208, §48 n.4(c) (West 2011). As session notes have the same force and effect as the statute, it is clear that the law’s intent is not to modify any surviving agreements. See NORMAN J. SINGER, SUTHERLAND STATUTES AND STATUTORY CONSTRUCTION § 28.10 (6th ed. 2002); see also *McDonald v. Faulkner*, 27 N.E. 883, 884 (1891) (“But, if that was its construction [in the session laws], that is still its construction, notwithstanding its codification in the General and Public Statutes.”). Thus, this law applies to all cases prospectively but only retroactively to those cases that involved merged alimony clauses in separation agreements.

219. See MASS. GEN. LAWS ANN. ch. 208, § 48 n.5 (West 2011).

220. Frolin, *supra* note 200.

221. See MASS. GEN. LAWS ANN. ch. 208, § 48 n.4(e) (West 2011); *Cournoyer*, 663 N.E.2d at 865 (stating that a survived agreement cannot be modified unless there is “something more than material change of circumstances . . . or . . . countervailing equities”) (citations omitted).

222. See, e.g., *Cooper v. Cooper*, 680 N.E.2d 1173, 1177-78 (Mass. App. Ct. 1997).

223. See, e.g., Nancy Van Tine, *What Massachusetts Alimony Reform Really Means*, HUFFINGTON POST (July 27, 2011, 1:06 PM), http://www.huffingtonpost.com/nancy-van-tine/what-massachusetts-alimony-reform-means_b_909252.html.

clear that a retirement provision would be included in the new legislation.²²⁴ The question emerged as to whether alimony should terminate at a payor's actual retirement age, as defined by the Social Security Administration, or at his or her actual retirement.²²⁵ Retirement age is the more definitive of the two options and its inclusion in the Act prevents recipients from speculating as to when the payor may retire.²²⁶ This places the recipient in a knowledgeable position. Instead of a termination date upon a payor's actual retirement, which the recipient may not know until the payor files for a modification, alimony ends at a date certain.²²⁷ Alimony recipients can now financially plan with more certainty.

Despite the financial planning benefits, alimony termination at retirement is one of the Act's less favorable provisions for recipients.²²⁸ However, the retirement provision contains a safety valve.²²⁹ Even if a payor retires, judges can still exercise discretion to order alimony post-retirement where appropriate.²³⁰ "When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown. In granting deviation, the court shall enter written findings of the reasons for deviation."²³¹ While the courts will ultimately determine what "good cause shown" means pursuant to the Act, judges may still extend alimony orders if appropriate.²³² For

224. See Kris Frieswick, *Till Death Do Us Pay*, BOS. MAG. (July 2009), <http://www.bostonmagazine.com/articles/2009/06/till-death-do-us-pay/5/>; *Alimony Reform Bill (H1785) Delayed Until the Next Legislative Session*, (July 26, 2010), MASS. ELECTION 2010, <http://massachusetts-election-2010.com/3090/alimony-reform-bill-h1785-delayed-until-the-next-legislative-session/> (reporting, at an early stage, before any draft from the Task Force was made available, that it was likely, based on several conversations, that a provision emphasizing a payor's right to retire would be present).

225. See, e.g., RA Jaworski, *Is Reform Coming Soon for Massachusetts Alimony Laws?*, BOS. DIVORCE L. (Oct. 1, 2010), <http://knowledgebase.findlaw.com/kb/2010/Sep/156056.html> (suggesting that alimony payments would terminate upon actual retirement of the payor, as opposed to retirement age); Ashley Studley, *Milford State Rep. hopes to get alimony changes passed*, MILFORD DAILY NEWS (May 25, 2011, 12:33 AM), <http://www.milforddailynews.com/news/x1078554660/Milford-State-Rep-hopes-to-get-alimony-changes-passed> ("This makes it clear alimony should terminate at age of retirement at the federal law, 66 . . .") (citations omitted).

226. Matt Allen, *Long Awaited Massachusetts Alimony Reform*, MENSRIGHTS.COM (Feb. 4, 2011, 6:19 PM), <http://www.mensrights.com/index.php/Articles/Long-Awaited-Massachusetts-Alimony-Reform.html>.

227. MASS. GEN. LAWS ch. 208, § 49(f) (2011).

228. Murphy, *supra* note 23.

229. See § 49(f).

230. *Id.*

231. *Id.*

232. See Frolin, *supra* note 200 ("Mastery of the new law will require . . . development of a lucid body of interpretive appellate law.").

example, a judge may order alimony in a divorce case until after the payor retires, where the parties are divorcing close to retirement age with few assets to divide and one party continues to earn a high salary.²³³ This provides judicial discretion to ensure fairness to both parties and softens the hard line of the retirement provision in the Act.²³⁴

2. The Alimony Reform Act's Cohabitation Provision Affects Alimony Recipients Both Negatively and Positively

The Alimony Reform Act introduces another significant change to the law by providing that a court may “suspend, reduce, or terminate an alimony order if the recipient spouse cohabitates with another for at least three months.”²³⁵ This provision of the Act, along with the retirement provision, is considered by some to be the most inflexible and harmful to recipients.²³⁶

While the ability of the spouse to modify alimony if the other spouse cohabitates after three months disadvantages alimony recipients, payors must first meet a significant burden. Cohabitation requires persons to maintain a common household together for three months.²³⁷ It is insufficient to just allege that the recipient spouse is living with another or that the recipient spouse may be romantically involved with another. Payors must prove that recipient spouses are actually forming a common household by providing evidence such as oral or written statements or representations made to third parties regarding the relationship of the persons, proof of economic interdependence, or the

233. The judge must also make written findings in order to extend alimony beyond retirement age. MASS. GEN. LAWS ch. 208, § 53(e) (2011); Jacquelynne Bowman, et al, FAMILY LAW ADVOCACY FOR LOW AND MODERATE INCOME LITIGANTS 184 (2008), available at <http://www.masslegalservices.org/FamilyLawAdvocacyForLowAndModerateIncomeLitigants> (“The older the parties, the more likely the court will award alimony . . .”).

234. Fargen, *supra* note 1277 (“The bill sets clear guidelines for judges in determining how long an ex pays another, yet retains judicial discretion.”).

235. § 49(d). *Cf.* Gottsegen v. Gottsegen, 492 N.E.2d 1133, 1138 (Mass. 1986) (holding that an ex-spouse has no right to control whether the recipient of alimony lives with another).

236. *See, e.g.,* Howard I. Goldstein, *Cohabitation and Alimony Reform*, MASSACHUSETTS-DIVORCE.COM (Feb. 20, 2012), <http://www.massachusetts-divorce.com/blog/?p=161> (cohabitation provision is likely to increase litigation).

237. Maintaining a common household is defined as involving:
 (i) oral or written statements or representations made to third parties regarding the relationship of the persons; (ii) the economic interdependence of the couple or economic dependence of 1 person on the other; (iii) the persons engaging in conduct and collaborative roles in furtherance of their life together; (iv) the benefit in the life of either or both of the persons from their relationship; (v) the community reputation of the persons as a couple; or (vi) other relevant and material factors.

§ 49(d)(1)(i)-(vi).

community reputation of the persons as a couple.²³⁸ Payors will likely need more time than three months amass the evidence to meet that burden.²³⁹

Additionally, it is likely that in the time it takes for the payor to file, serve, and then schedule a hearing, far more than three months of cohabitation will elapse which will allow a recipient more time to prepare for the loss of alimony.²⁴⁰ Finally, like the retirement provision, recipients know or should know about the Act's cohabitation provision before they choose to cohabit.²⁴¹ Therefore, if they choose to cohabit, it is with full awareness that they must financially plan for alimony termination.²⁴²

Like the retirement provision, the cohabitation clause also provides a safety valve for those alimony recipients who may enter into a cohabitating relationship that later terminates.²⁴³ Former alimony recipients may seek reinstatement upon termination of the cohabitation as long as the reinstatement does not last longer than the termination date of the original order.²⁴⁴ Reinstatement may be appropriate in certain circumstances when a recipient entered into a cohabitation that shortly ends.²⁴⁵ For example, John Doe is paying general term alimony to Jane Doe for fifteen years because they had a nineteen-year marriage. One year after the divorce, Jane begins cohabitating with Bob and John's alimony obligation terminates. Jane and Bob break up after six months.

238. § 49(d) (2011).

239. Maureen McBrien, *Impact of cohabitation under Alimony Reform Act*, MASS. L. WKLY., Apr. 30, 2012, at 39 ("While not explicitly so stating, the enumerated factors are reflective of a romantic relationship akin to a marriage, as opposed to simply sharing a primary residence with, for example, a sibling, roommate, nanny or temporary boarders."); Howard I. Goldstein, *Article On New Alimony Law*, MASSACHUSETTS-DIVORCE.COM (Mar. 1, 2012), <http://www.massachusetts-divorce.com/blog/?p=189> ("The first is that three months may be an insufficient time to know whether a co-habiting relationship will last.").

240. § 49(d)(1)(i)-(vi) (payor cannot even file for a modification of payment until the recipient has already been living with another for at least three months).

241. See Frolin, *supra* note 200.

242. See *id.*

243. § 49(d)(2) (if recipient ceases to cohabit, alimony payments can be reinstated); see also John Hayward & Guy Brandon, *Cohabiting in the 21st Century*, JUBILEE CENTRE, 1 (2010), http://www.jubilee-centre.org/uploaded/files/resource_344.pdf ("This suggests that marriage is still the preferred outcome for most couples. Cohabitation, on its own terms, is generally a short-lived relationship.").

244. § 49(d)(2).

245. See Rebecca L. Palmer & Timothy C. Haughee, *Proposed Laws Could Have a Drastic Impact on Alimony Recipients in Florida*, LOWNDES, DROSDICK, DOSTER, KANTOR & REED, P.A. (Feb. 9, 2012), <http://www.lowndes-law.com/publications-presentations/1163-proposed-laws-could-drastic-impact-alimony-recipients-florida> (acknowledging the harm that would come to alimony recipients if they could not reinstate after a cohabitating relationship ended).

Jane can seek reinstatement of her alimony from the original alimony order (fifteen years) subtracting the time that Jane already received alimony (one year) and further subtracting the time that Jane and Bob cohabitated (six months) equaling a reinstatement of thirteen and a half years of alimony. Moreover, the cohabitation provisions of the Act only apply in general term alimony and do not apply in rehabilitative, reimbursement, or transitional alimony.²⁴⁶ This enables recipients with unique circumstances meriting rehabilitative, reimbursement, or transitional alimony to avoid one of the less recipient-favorable²⁴⁷ provisions of the Alimony Reform Act.

Judges may reinstate alimony after a cohabitation relationship but not after a re-marriage.²⁴⁸ This is because cohabitation is far less stable than marriage.²⁴⁹ Reinstatement, therefore, protects an alimony recipient in the event of a poor relationship choice after divorce. It is important to note that the Act does not guarantee alimony reinstatement after cohabitation.²⁵⁰ The recipients bear the burden of proving why they continue to need alimony and why the payors should reinstate payments.²⁵¹ The reinstatement safety valve ensures that alimony recipients, especially those with lower incomes, receive the support merited by the original marriage and necessary for self-sustainability.²⁵² While the three-month cohabitation provision is harsh, it is balanced by the recipients' ability to ask the court to reinstate alimony if the cohabitation fails.²⁵³

3. Deviation Factors Allow Judges to Exercise Discretion for the Betterment of Alimony Recipients

The Alimony Reform Act benefits parties in a divorce by providing predictability, finality, and new opportunities to obtain alimony.

246. Compare §§ 50-52, with §49(d) (section 49(d) specifically indicates that cohabitation will terminate alimony only for general term alimony, and sections 50-52 detailing rehabilitative, reimbursement, and transitional alimony specifically list the circumstances that will cause alimony to terminate, and cohabitation is not listed).

247. Howard I. Goldstein, *Cohabitation and Alimony Reform*, MASSACHUSETTS-DIVORCE.COM, <http://www.massachusetts-divorce.com/blog/?p=161> (Feb. 20, 2012) (cohabitation provision is likely to increase litigation).

248. See *Gerrig v. Sneirson*, 183 N.E.2d 131, 133 (1962) (acknowledging that after a remarriage, a spouse should not be eligible for reinstatement of alimony).

249. See Lerman, *supra* note 39, at 73.

250. § 49(d)(2) (stating that alimony “may” be reinstated, not that the alimony “must” be reinstated).

251. See *id.*

252. See *McBrien*, *supra* note 239 (acknowledging that payor’s relief from payment may only be temporary, as those who still need alimony can have it reinstated).

253. See *Palmer*, *supra* note 2455; see also § 49(d)(2).

However, there is a minority of cases for which the court should not apply the alimony guidelines, and the Act provides safeguards for those cases.²⁵⁴ The Act allows judges to deviate from the guidelines upon certain factors.²⁵⁵ Grounds for deviation include:

(1) advanced age; chronic illness; or unusual health circumstances of either party; (2) tax considerations applicable to the parties; (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse; (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance; (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties [sic.] divorce; (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage; (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor; (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and (9) upon written findings, any other factor that the court deems relevant and material.²⁵⁶

Deviation factors effectively balance the need for predictability in the law while maintaining the judicial discretion necessary to safeguard against strict guidelines.²⁵⁷ By employing deviation factors, courts will have the discretion to stray from the recommended formula in cases with unique circumstances.²⁵⁸ Such discretion allows judges flexibility, providing a safety valve for alimony recipients in extreme circumstances necessitating an adjustment from the guidelines.²⁵⁹ For example, if a recipient spouse develops muscular dystrophy after a short term marriage, the court can find that alimony should extend beyond the durational limits if the payor has the ability to pay. Or, if a wealthy alimony payor, in good health, continues to work beyond his retirement

254. See §§ 48-55; H. 3617, 187th Gen. Ct. (Mass. 2011); see also L.J. Jackson, *Alimony Arithmetic: More States Are Looking at Formulas to Regulate Spousal Support*, ABA J. (Feb. 1, 2012, 3:30 AM), http://www.abajournal.com/magazine/article/alimony_arithmetic_more_states_are_looking_at_formulas_to_regulate_spousal/.

255. § 53.

256. § 53(e).

257. See L.J. Jackson, *Alimony Arithmetic*, A.B.A. J. (Feb. 1, 2012, 3:30 AM), http://www.abajournal.com/magazine/article/alimony_arithmetic_more_states_are_looking_at_formulas_to_regulate_spousal/.

258. Gregory N. Gunn, Note, *Spousal Support Awards in Utah: An Alternative Approach*, 13 J.L. & FAM. STUD. 379, 384 (2011).

259. See *id.* at 385 (“Deviation factors work as a safety valve for the judge to use when the circumstances make an adjustment absolutely necessary.”).

age and, without alimony the recipient spouse would be homeless or starving, the court may extend alimony beyond the retirement age. Thus, deviation factors are a vital tool to ensure that divorced low-income recipients do not suffer from formulas resulting in unjust alimony orders.

4. The Increased Settlements Due to the Alimony Reform Act Benefit Women

In addition to the safeguards mentioned above, the greatest safeguard in a case is usually settlement.²⁶⁰ Most family law cases settle before trial, but alimony cases have always been the exception.²⁶¹ By providing clear directions as to the amount and duration of alimony awards, the Act will provide certainty and predictable outcomes.²⁶² Outcome unpredictability, as a result of vague alimony laws, made negotiations more difficult.²⁶³ Increased predictability will lead to increased settlements.²⁶⁴ Moreover, with clear guidelines, the case law surrounding alimony decisions will be more consistent, and will encourage complex divorce cases to settle before going to trial.²⁶⁵ Settlements frequently benefit the lower-income spouse in a divorce because trials can be time-consuming and expensive.²⁶⁶ Additionally, trials increase acrimony which takes an emotional toll on the parties, especially if one party is unrepresented.²⁶⁷

Even for cases that were never going to go to trial, the new law will be beneficial because low-income recipients can rarely afford any litigation costs.²⁶⁸ Litigation costs include both the extensive time and energy required to get through the court process as well as the monetary costs of attorneys and filing fees.²⁶⁹ Many *pro se* women must also bear the costs of transportation and lost wages for the many court

260. See Olup, *supra* note 1511; see also Ward Farnsworth, *The Economics of Enmity*, 69 U. CHI. L. REV. 211, 219 (2002).

261. See Vuotto, Jr., *supra* note 150, at 8 (acknowledging that a number of states, including Massachusetts, have struggled with disparate practices regarding alimony awards and have consequently impeded parties ability to settle); Thurman, *supra* note 150, at 972.

262. Michael F. Leary, *Massachusetts Alimony Reform: A Long Awaited and Welcomed Change*, AS THE LAW TURNS (Sept. 22, 2011), <http://www.asthelawturns.com/2011/09/massachusetts-alimony-reform/>.

263. See generally Hylton, *supra* note 1299; see also Ward Farnsworth, *The Economics of Enmity*, 69 U. CHI. L. REV. 211, 219 (2002).

264. *Id.*

265. See Leary, *supra* note 262.

266. See Olup, *supra* note 1511.

267. See *id.*

268. See *id.*

269. *Id.* at 13.

appearances required by the litigation.²⁷⁰ When litigating a case, the parties need to conduct discovery of the opposing party's finances as well as collect data on their own finances, which they could avoid if the parties were able to settle on the issue of alimony.²⁷¹ These additional discovery costs would be borne by the litigant.²⁷² The time required for court appearances also poses substantial child care problems for low-income custodial parents who likely cannot afford to pay someone to supervise the children while they are in court.²⁷³ Any circumvention of the costs and burdens associated with litigation is sure to benefit low-income women financially.²⁷⁴

CONCLUSION

The Alimony Reform Act of 2011 changed the landscape of domestic relations practice in Massachusetts.²⁷⁵ While alimony payors were the most vocal advocates for reform, the Act strikes a balance between their needs and those of the recipient spouses.²⁷⁶ It cannot be denied that current alimony recipients, who were in long-term marriages with merged agreements, will suffer initially. Ultimately, however, the Act will benefit prospective alimony recipients by providing clear guidelines tempered by judicial discretion, and a new ability to obtain alimony in short-term marriages. The Act's introduction of short-term alimony categories reflects the large number of couples divorcing after short-term marriages in Massachusetts.²⁷⁷ The Act also provides opportunities for those lower-income spouses to seek alimony while maintaining safeguards that protect them from some of the Act's harsher provisions.

By enacting the Alimony Reform Act, the Legislature reaffirmed the importance of alimony and repudiated the argument that alimony is archaic and unnecessary.²⁷⁸ Instead, the Act demonstrates that alimony

270. *See id.* at 11.

271. *See* Penelope Eileen Bryan, *The Coercion of Women in Divorce Settlement Negotiations*, 74 DENV. U.L. REV. 931, 932 (1997).

272. *Id.*

273. *See* Smock, *supra* note 799, at 248 (explaining that women are generally the primary child caretakers after marriage and that children will more commonly reside with mothers after a divorce than with their fathers).

274. *See* Olup, *supra* note 1511.

275. *See* Tuthill, *supra* note 120.

276. *See* Murphy *supra* note 23 at notes 25-26 and accompanying text.

277. *See* NUMBER, TIMING, AND DURATION OF MARRIAGES AND DIVORCES, *supra* note 213.

278. "It is obvious that times have changed so drastically that Alimony is truly draconian law that has served out it's [sic] purpose." *Changing the System*, ALIMONY REFORM, <http://www.alimonyreform.org/about2.html> (last visited Feb. 2, 2014).

continues to be a viable and equitable remedy in Massachusetts divorce proceedings to ensure that the choices made by intact families do not financially benefit one party to the other's detriment in a subsequent divorce.²⁷⁹ Women can become self-sustaining through—not in spite of—alimony. Therefore, on balance, the Alimony Reform Act of 2011 continues to make alimony an available remedy in a divorce and also enlarges the pool of potential recipients, which benefit women as a whole.

279. Ellman, *supra* note 21.