

‘With just laws, less for couples to fight over’

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To the editor:

Because of the legalization of gay marriage in Massachusetts, the image of the commonwealth as a land of enlightenment shines brighter than ever. But the state’s archaic alimony laws tell a story of such harsh, pervasive injustice that it’s hard to believe we’re talking about the same place.

Lifetime alimony is doled out in the state’s divorce courts like candy on Halloween, even to women who clearly do not need it — heiresses, full-time workers making handsome salaries and those who receive millions in marital assets.

The truth is that judges do what they want, and their instincts, supported by decades of case law, are to award lifetime alimony reflexively. The ex-husband is usually forced to pay 30 to 50 percent of gross income to his ex-wife, in addition to providing health insurance, at least half the marital assets, and being forced to return to court whenever the woman’s “needs” increase and the man’s means increase, even if the increase comes only from having remarried a woman of very modest means.

To put this Draconian system in some perspective, note that there is no alimony in Rhode Island, and in New York, alimony is awarded to the dependent spouse for a few years until he or she becomes independent, as is the case in most states throughout the country.

In this culture of alimony, if a man’s income goes down because he loses his job, his business declines, his health fails or he retires, he must return to divorce court and file a “post-divorce modification,” at a cost of many thousands of dollars, unless he can afford only to go pro se. The cost of a modification is sometimes tens of thousands of dollars, and it is not at all unusual that men are denied reductions, as were many men whose businesses collapsed after 9/11.

Men who cannot pay their alimony are sometimes sent to jail for months at a time. On Sept. 8, a once wealthy man, who could not pay \$250,000 toward his \$900,000 bill because his business failed, was sent to jail for 90 days. He remains there today.

In another shocking case from 2008, a 67-year-old retired man living on a fixed income was forced to pay alimony to a woman he was married to 27 years ago. At the time of their divorce, they both waived alimony. When the woman, who had squandered her resources, filed for bankruptcy, her lawyer pursued her ex-husband. Not only was he forced to pay her lifetime alimony but also her attorneys’ fees. Today he is near bankruptcy and in poor health.

If my use of pronouns sounds sexist, it’s because although the laws are gender neutral, the facts are not. Ninety-six percent of those who pay alimony are men, even though

women initiate 70 percent of divorces.

In fact, only three-tenths of a percent of all taxpayers receive alimony. The IRS doesn't break down figures by state, but I suspect that a very high percentage of that tiny percent is here in Massachusetts.

Two advocacy organizations, Mass Alimony Reform and the 2nd Wives Club, support legislation that takes second wives' resources off the table and awards alimony, if necessary, for half the length of the marriage, with a cap at 12 years and providing for exceptions such as recipients with disabilities and children under 16.

By contrast, the Massachusetts and Boston bar associations' Joint Task Force on Alimony is circulating a preliminary white paper draft that has a modernized gloss but still guarantees costly, contentious divorces, lifetime alimony and a culture of dependent women, impoverished men and second wives still on the hook.

Hingham lawyer Scott R. Stevenson recently posted on his website his summary of the preliminary draft. Like trial lawyers confronting the last days of lucrative accident litigation before no-fault car insurance, divorce lawyers are scrambling to project an image of reform while preserving their billable hours.

According to the summary, the draft includes: a chart of lengthy alimony awards based on the duration of a marriage, including lifetime alimony for many; various loopholes for alimony recipients; the reversal of an alimony stoppage should the recipient return back to court and ask that it resume; and the potential for many post-divorce modifications.

Alimony may be capped at 33 percent of the difference between spouses' gross incomes — an improvement over current awards — but it is nearly guaranteed that in most cases, the cap will be reached. Because of the proposed deviations, it's not clear whether a judge can continue to include a second wife's income or assets in this 33 percent cap. If so, this is a major failing of this draft.

Instead of relieving second wives, the draft appears to add companions to the pool of money available to ex-spouses, though the phrasing sounds benign. The court may consider "resources available to one spouse that are not available to the other."

According to the proposals, there would be no alimony for short-term marriages, but the chart automatically grants two years of alimony in a four-year marriage. Considering that it typically takes about a year or more to divorce, why should there be two years of alimony in a marriage that might have lasted for three years? Why should someone who marries at 22 and divorces at 42 be assured lifetime alimony?

With just laws, there would be less for couples to fight over. It is the lawyers, after all, who are truly "dependent" on this system of manufactured controversy, ongoing entanglement and repeat visits to divorce court.

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