

Massachusetts Alimony Laws: Why Reform Is Urgently Needed

This article is part two of a three part series on the need for alimony reform in Massachusetts. Part one contains 41 testimonials – horror stories – of men and women who have lost their civil rights in Massachusetts. This article summarizes the civil rights violations described in the horror stories. Part three of the series provides scholarly studies, government statistics, and job search resources to help the lower-earning spouse, who collects alimony (welfare), to become self-sufficient and independent. To learn more about alimony reform, go to <http://www.massalimonyreform.org/>.

1. "Draconian" Divorce Laws Discourage Living and Marrying in Massachusetts

Emily Rooney, the host of WGBH's Greater Boston TV show, referred to Massachusetts' alimony laws as draconian in an interview with Elizabeth Benedict, author of "The Chilling Effect of States Divorce Laws". Why draconian? The problem is that the penalties for the higher-earning ("h-e") spouse are severe, such as:

- Lifetime alimony (welfare) payments;
- Alimony payments 1/2 or more of the h-e spouse's after-tax paycheck; and
- Never-ending threat that the lower-earning ("l-e") spouse will go back to court for more money at any time and from time-to-time.

A h-e spouse is condemned to economic ruin when, for instance, his l-e wife walks out of the marriage or her l-e husband has an affair. These divorce-causing actions are beyond the control of the h-e spouse and represent unilateral choices by the l-e spouse. No wonder a h-e spouse would exit Massachusetts if married, or if not married, then refuse to marry and live in Massachusetts.

The situation is so bad, even the divorce attorneys recognize that the Commonwealth has a problem. In the Massachusetts Bar Association's December 2007 Lawyer's Journal, writer Kelsey Sadoff wrote:

Many members of the [Mass Bar/Boston Bar Associations'] task force now worry that current Appellate Court case decisions are actually discouraging marriage unions. 'I was involved with 25 prenups this year – more than ever,' said [Attorney David H.] Lee.

Imagine the thinking of a graduate of one of our universities, one who sees a hard-working father or mother struggle financially to pay alimony, and concluding, "This could happen to me." No wonder the Boston Globe reports that young people are not staying in Massachusetts to start their careers. While economic ruin from divorce was not listed in the article, as news of the state's deplorable laws becomes less secretive through our efforts, it will be a factor for young people to consider. And as the news spreads, Massachusetts will become a less desirable place for the serious professionals it attracts from across the country. The risk of being subject to oppressive divorce laws is too high to build one's career in Massachusetts.

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2. Financial Ruin Comes Suddenly And Without Due Process

Consider the following two cases:

- **Higher earning (h-e) wife in a 12-year marriage.** One day your husband does not return from a business trip. Soon you learn that he's found someone else. He, as plaintiff, files a no-fault divorce. You are a successful executive in a Cambridge bio-tech company, making \$100,000 more per year than your freelance-consultant husband. Guess what? You must pay alimony for life to a man who abandoned you for another women – and provide health insurance too. Is this justice? Yes, in Massachusetts.
- **Higher earning (h-e) husband in a 22-year marriage.** Your college-educated wife has been depressed for years. As she approaches 50, her sadness is compounded by the departure of your youngest child, who's left "the nest" for college. One day you come home from work and your wife is extremely agitated, and suddenly tells you – seemingly out of nowhere – that the marriage is over. She wants her freedom and a new life. She will go back to work, as she did before the children were born. Within a week she walks out of the house. Within a month, you receive a complaint for divorce, seeking full support. You desperately want to save your marriage and offer to go to a marriage counselor. Your wife says, "Forget it, the marriage is over." You find a lawyer and ask him to file a court document to delay the divorce, hoping for reconciliation. Your lawyer says that's not possible under unilateral or no-fault divorce. And by the way, your wife's lawyer has told her that she does not need to work - ever. She can collect lifetime alimony, in addition to her equitable share of the marital assets, which might be much higher than 50 percent. How much alimony will she get? It's up to the judge; probably between 30 and 45 percent of your gross income. What? You must pay half of your take-home pay forever to the woman who abandoned you? Yes. Is this justice? Yes, in Massachusetts.

3. Alimony Welfare Payments Last A Lifetime, Even To Lazy, but Competent Ex-Spouses

In Massachusetts, the higher-earning spouse who is married for ten years or more can expect to pay alimony for the rest of his/her life to the lower-earning ex-spouse, even if that l-e spouse is under-employed, has a college education, and/or is in his/her thirty's. Imagine paying alimony welfare for fifty or more years to someone who is capable and competent, but unmotivated to work hard. Or imagine paying lifetime alimony to an active alcoholic, drug abuser, gambler, debtor, or compulsive spender. Is this fair? Yes, in Massachusetts.

...Yet, Massachusetts Limits State-Funded Welfare To Two Years

Surprisingly, Massachusetts was the first state to reform its welfare system, when in 1995, it passed legislation calling for a) 24-month limit to welfare assistance in any five year period, and b) stringent work requirements (see the Urban Institute's Analysis of Massachusetts' "work-first" welfare reform). This work-first policy has not been applied to alimony welfare. Is this justice? Yes, in Massachusetts.

4. Alimony Payers Are Forced into Never-Ending Court Battles As Life Events Change

Divorce in Massachusetts is not a one-time event. Because circumstances changes throughout life, people paying alimony are forced to return to divorce court again and again – a procedure known as a “post-divorce modification”. Every time the alimony payer loses his/her job, for instance, he must hire and pay an attorney and go back to court. The usual retainer to hire a lawyer is \$3,000 to \$5,000. A modification may cost twice that, or far more. There is no guarantee that a judge will reduce the award, or may only reduce it a small amount, even if the petitioner is unemployed and has no savings. If the petitioner is married, the judge is likely to include the new spouse’s income in a calculation or a decision to reduce – or not reduce - alimony payments. The judge may order the higher-earning spouse to pay the other’s attorney’s fees. Is this justice? Yes, in Massachusetts.

5. At Anytime After The Divorce, Your Ex-Spouse Can Start Or Increase Alimony

Even after being remarried for 20 years, and having children from your second marriage, your ex-wife can always go back to court with her lawyer and file to increase or re-start alimony. Among our members, we have a case in which both spouses waived alimony, but 27 years later, the ex-wife sued her now retired ex-husband for alimony because she was declaring bankruptcy. He is now forced to pay her lifetime alimony – and her attorney’s fees - from his modest pension, leaving him in a ruinous state of debt and poor health. How can this happen? Because alimony never ends in Massachusetts. If your ex-wife of 20 years loses her job, she can get another job - or she can go back to court to force you to start paying alimony again (see the horror stories). Is this justice? Yes, in Massachusetts.

6. Second Wives Ordered to Work For First Wives

What happens when a man remarries after a divorce? If he loses his job or his business fails and he must return to court for a modification, the court examines his total assets and income, which Massachusetts' judges have decided also includes his second wife's income and income potential (see second wives). How can judges order second wives to support first wives? Is this justice? Yes, in Massachusetts.

7. Imprisonment After Losing Jobs, Savings, and/or Business

Some members of Mass Alimony Reform have been handcuffed and ankle-shackled in the courtroom and marched to jail for months (see horror stories). Their crime? Their businesses failed and they spent all of their remaining savings on lawyers -- seeking a modification to alimony -- and, of course, paying alimony. But, when the money ran out, they were sent to jail – for months. Is this a way to treat someone who has fallen on hard times? How much is the state paying to keep these people in jail for months on end? What becomes of their families, their prospects, their health? Debtors prison is illegal in the United States (read The Return of Debtor's Prison by Wendy McElroy, April 2008, The Independent), but it might as well not be in the Commonwealth. Is this justice? Of course, in Massachusetts.

8. Vague Laws and Judicial Discretion Keep Divorce Lawyers In Business

Massachusetts' judges have wide discretion to order alimony, and they do so in a manner that fits their own attitudes and prejudices about men, women, and marriage. How can personal prejudices enter the divorce justice system? It happens because the law provides almost no firm guidance, but rather a "Chinese menu" of many general considerations. To make matters worse, the Massachusetts appeals court, also with wide discretion, has effectively written law from the bench through its case-by-case interpretations, building upon prior, outmoded legal decisions. If our society based all our laws on case law precedence, good men would still be tied and lynched from trees only because of the color of their skin.

This system of vague laws and individual case law decisions is ideal for enriching divorce lawyers, enabling them to earn high, billable-hour fees by waging warfare over legal interpretations in every case. Lawyers justify these costly battles as "advocacy on behalf of clients in appropriate circumstances," insisting that "every family is unique" and all the particulars must be thoroughly examined to reach the right answer. Sounds good in theory, but in practice, it's a brutal, inefficient, and far more expensive and stressful than it needs to be.

To divorcing couples, this legal system feels like the Wild West. But of course it isn't. It's Massachusetts.

As Alec Baldwin said in his book, "A Promise To Ourselves" [St. Martin's Press, 2008, page 3]:

To be pulled into the American family law system in most states is like being tied to the back of a pickup truck and dragged down a gravel road late at night. No one can hear your cries and complaints, and it is not over until they say it is over.

For our members, the lawyers "say it is over" when the money to pay them runs out.

9. Paying Lifetime Alimony To A Cohabiting Ex-Spouse

In the case example above (2.a), a woman executive is required under Massachusetts's law to pay alimony for life to her ex-husband who is under-employed and left the marriage for another woman. What happens when the ex-husband, now receiving alimony, moves into his girlfriend's apartment? Nothing. The weekly payment continues. Cohabitation is not a condition for consideration under our law. Is this justice? Yes, in Massachusetts.

10. Summary: Forced, Life-long Marital Welfare Payments Violate Civil Rights

In Massachusetts, the application of alimony law leads to serious abridgement of civil and human rights (see table below). For example:

- a. **Imprisonment for debt.** On the word of a single judge, hard-working, higher-earning spouses, including members of Mass Alimony Reform, have been imprisoned for months at a time if they did not have the money to pay their alimony because of job loss, business decline, or failing health.
- b. **Forced to Change Jobs to Earn Imputed Income.** If a higher-earning (h-e) spouse loses a job or a business fails, a judge may order the h-e spouse to pay alimony at the amount

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appropriate to the former income, even if this leads the payer into massive debt or bankruptcy, and ultimately imprisonment.

- c. **No Ability To Retire.** Higher-earning spouses are not permitted to retire because alimony does not end except on the death of their ex-spouse or if she/he remarries.
- d. **Restrictions in Voluntarily Changing Jobs.** Higher-earning spouses cannot voluntarily change jobs or careers if the change will cause their incomes to decline. If they do, they still must pay alimony at original amounts.
- e. **Second Wives Forced To Work For First Wives.** If a divorced man remarries, his second wife may be forced to contribute her own income and assets to the upkeep of her husband's ex-wife, even if the second wife has small children and her resources are modest.
- f. **No Due Process in No-Fault Divorces.** Under no-fault divorce (also known as unilateral divorce), a "walk-away wife" or walk-away husband can abandon their higher-earning spouse and children -- automatically forcing the higher-earning (h-e) spouse to pay alimony for life, and the h-e spouse can do nothing to stop the divorce or significantly change the alimony award.
- g. **No Equal Protection Under The Law.** Because Massachusetts divorce law is vague with a "Chinese menu" of general guidelines for judges to weigh and consider, no two judges will order the same alimony award when presented with the same facts.
- h. **Restrictions on Women's Marital Choices.** Women have told Mass Alimony Reform that they now refuse to marry men who have alimony obligations, so they will not be forced to help support their husband's ex-wife. The same situation applies to men considering marrying women who pay alimony.

The moral? Higher-earning spouses, who are working hard to earn a living, are subject to losing their civil rights when they get divorced. The popular media focuses on celebrity divorces. In the real world, the world of our members, the higher-earning spouse may make \$50,000 per year, \$100,000, or \$200,000, not the millions as seen on TV (see alimony statistics). Divorce is an economic disaster. Worse, the intrusion of the courts into the private lives of higher-earning spouses guarantees that the pain and suffering of divorce last a lifetime (see above). Welcome to Massachusetts.

What Do Legal Scholars and Researchers Say About Alimony?

Alimony: Peonage or Involuntary Servitude? by Alfred J. Sciarrino and Susan K. Duke

Abstract: "...Most spouses contemplating divorce must be prepared for economic suicide. The income that marginally maintained one middle-class household will most surely not be able to maintain two. ...For such a determination may result in one spouse actually supporting the other for a period of time, and even for a lifetime, and sometimes resulting in the supporting spouse's inability to sustain such support and be held in contempt, or coupled with child support result in the inability to provide properly for the child or children when in his or her care. No wonder, for many, an award of maintenance, and especially of lifetime maintenance, may smack of peonage or involuntary servitude."

Problems With Division Of Marital Property and Alimony in the USA By Robert B. Standler October 4, 2008

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This 116-page legal analysis provides an in depth discussion of the history of alimony, the legal basis and problems of alimony, and the constitutional issues, all extensively referenced with footnotes. In addition, the paper includes a state-by-state analysis of alimony law. The author provides detailed analysis of the constitutional and practical problems with the current state laws and offers recommendations to correct such problems.

**For more information, visit our website: www.massalimonyreform.org
Call or write Steve Hitner to find out how to help change these laws.**

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