



CONNECTICUT LAW REVISION COMMISSION  
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## 2014 ALIMONY STUDY COMMITTEE - RECOMMENDATIONS

### A. Background

Section 5 of Public Act 13-213 ("act") mandated that the Connecticut Law Revision Commission ("commission") conduct a study into the fairness and adequacy of state statutes relating to the award of alimony in actions for dissolution of marriage, legal separation or annulment. The act also required the commission to collect empirical data relating to the award of alimony by courts in the state and make recommendations for revisions to state statutes as the commission deems just and equitable.

At a meeting on September 24, 2013, the commission voted to authorize the Chairman of the commission, Representative Arthur O'Neill, to appoint and convene a study committee to conduct the study required under the act and make its recommendations to the full commission.

Chairman O'Neill appointed the following members to serve on the study committee:

Chairman: Justice Ian McLachlan (Ret)  
Attorney Barbara Aaron  
Attorney Livia Barndollar  
Attorney Campbell Barrett  
The Honorable Judge Thomas D. Colin  
Attorney Gaetano Ferro  
Attorney Benjamin Gettinger  
Attorney Kate Haakonsen  
Attorney Bruce Loudon  
The Honorable Judge Lisa K. Morgan  
Attorney Shirley Pripstein  
Senator Beth Bye

Attorneys from the Legislative Commissioners' Office served as staff for the study committee.

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The study committee met on December 9, 2013, January 8, 2014, January 15, 2014, January 22, 2014 and February 4, 2014. Chairman O'Neill joined the meeting on December 9, 2013, and indicated to the study committee that it could recommend that it be continued to allow it to complete a more comprehensive review and adopt more comprehensive recommendations. The committee also determined that it would not be able to collect and study the empirical data referenced in the act within the allotted timeframes, although the study committee did receive some preliminary data from the Connecticut Women's Education and Legal Fund.

The study committee held a public hearing on January 29, 2014, and accepted written and spoken testimony regarding the fairness and adequacy of state statutes relating to the award of alimony in actions for dissolution of marriage, legal separation or annulment. The study committee heard testimony from fifteen members of the public and received written testimony from additional members of the public and from private organizations.

## B. General areas of discussion

### 1. Additional factors when allocating property or awarding alimony

The study committee discussed whether additional factors should be considered by the court when allocating property under Section 46b-81 of the general statutes or awarding alimony under Section 46b-82 of the general statutes. The study committee recommends that both sections be amended to provide that the court consider additional factors consisting of "net income", "gross income" and "the tax consequences of the court's award".

### 2. The effect of cohabitation under Section 46b-86(b) of the general statutes

The study committee discussed the perceived ambiguity, and workability or lack thereof, of Section 46b-86(b) of the general statutes in situations where cohabitation is a factor. Some members of the study committee indicated a preference for repealing subsection (b) and transferring necessary portions thereof to the existing provisions in subsection (a). Other members of the study committee questioned whether transferring the provisions of subsection (b) to subsection (a) would alter the burden of proof for relief under the section.

The study committee considered a two-step process where the issue of cohabitation would be considered first, and, if found, a hearing would be held to determine whether, or if, alimony should be modified or terminated. The committee decided to amend Section 46b-86(b) to provide that if the party

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paying alimony proves that the payee has been living with another person in a marriage-like relationship over a period of six months or more, the burden would then be on the payee to prove that the alimony should not be modified, and that the court would make its determination after considering the evidence presented by both parties and the criteria set forth in Section 46b-82.

### 3. Modification of alimony upon retirement

The study committee recommends that Section 46b-86 be amended to add a new subsection (c) or (d) to provide that in any motion for reduction or termination of alimony, where the payor retires from employment on or after reaching age 65, the burden of proof shall be on the payee to show why the alimony should not be modified, suspended, reduced or terminated. However, the study committee was unable to finalize recommended statutory language that was acceptable to the majority of committee members within the time allotted.

### 4. Advisability of adopting guidelines for awarding alimony

The majority of study committee members voted to recommend that no guidelines for awarding alimony be adopted.

### 5. Modification of property or alimony awards upon conversion of a legal separation to a dissolution of marriage

The study committee discussed the issues presented regarding modification of a decree of legal separation when the legal separation is converted to a decree of dissolution of marriage. The study committee recommends that the financial terms of the decree of legal separation be incorporated into the decree of dissolution of marriage without change unless it would be unconscionable to do so. The study committee also recommends that Section 46b-65 of the general statutes be amended to require that the written declaration of resumption of marital relationship be signed by both parties and indicate that "the marital relationship has resumed" and that the parties request that the decree of legal separation be vacated.

### 6. Continuation of the study committee's work

The study committee did not agree on whether to recommend that it be continued in order to further its study and adopt more comprehensive recommendations.

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APPENDIX A

**AN ACT CONCERNING THE RECOMMENDATIONS OF THE LAW  
REVISION COMMISSION ALIMONY STUDY COMMITTEE.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1       Section 1. Section 46b-81 of the 2014 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective October 1, 2014*):

4       (a) At the time of entering a decree annulling or dissolving a  
5 marriage or for legal separation pursuant to a complaint under section  
6 46b-45, the Superior Court may assign to either spouse all or any part  
7 of the estate of the other spouse. The court may pass title to real  
8 property to either party or to a third person or may order the sale of  
9 such real property, without any act by either spouse, when in the  
10 judgment of the court it is the proper mode to carry the decree into  
11 effect.

12       (b) A conveyance made pursuant to the decree shall vest title in the  
13 purchaser, and shall bind all persons entitled to life estates and  
14 remainder interests in the same manner as a sale ordered by the court  
15 pursuant to the provisions of section 52-500. When the decree is  
16 recorded on the land records in the town where the real property is  
17 situated, it shall effect the transfer of the title of such real property as if  
18 it were a deed of the party or parties.

19       (c) In fixing the nature and value of the property, if any, to be  
20 assigned, the court, after considering all the evidence presented by  
21 each party, shall consider the length of the marriage, the causes for the  
22 annulment, dissolution of the marriage or legal separation, the age,  
23 health, station, occupation, amount and sources of gross and net  
24 income, earning capacity, vocational skills, education, employability,  
25 estate, liabilities and needs of each of the parties, [and] the opportunity

26 of each party for future acquisition of capital assets and income and  
27 the tax consequences of the court's orders. The court shall also consider  
28 the contribution of each of the parties in the acquisition, preservation  
29 or appreciation in value of their respective estates.

30 Sec. 2. Section 46b-82 of the 2014 supplement to the general statutes  
31 is repealed and the following is substituted in lieu thereof (*Effective*  
32 *October 1, 2014*):

33 (a) At the time of entering the decree, the Superior Court may order  
34 either of the parties to pay alimony to the other, in addition to or in  
35 lieu of an award pursuant to section 46b-81, as amended by this act.  
36 The order may direct that security be given therefor on such terms as  
37 the court may deem desirable, including an order pursuant to  
38 subsection (b) of this section or an order to either party to contract with  
39 a third party for periodic payments or payments contingent on a life to  
40 the other party. The court may order that a party obtain life insurance  
41 as such security unless such party proves, by a preponderance of the  
42 evidence, that such insurance is not available to such party, such party  
43 is unable to pay the cost of such insurance or such party is  
44 uninsurable. In determining whether alimony shall be awarded, and  
45 the duration and amount of the award, the court shall consider the  
46 evidence presented by each party and shall consider the length of the  
47 marriage, the causes for the annulment, dissolution of the marriage or  
48 legal separation, the age, health, station, occupation, amount and  
49 sources of gross and net income, earning capacity, vocational skills,  
50 education, employability, estate and needs of each of the parties, [and]  
51 the award, if any, which the court may make pursuant to section 46b-  
52 81, as amended by this act, the tax consequences of the court's orders  
53 and, in the case of a parent to whom the custody of minor children has  
54 been awarded, the desirability and feasibility of such parent's securing  
55 employment.

56 (b) If the court, following a trial or hearing on the merits, enters an  
57 order pursuant to subsection (a) of this section, or section 46b-86, and

58 such order by its terms will terminate only upon the death of either  
59 party or the remarriage of the alimony recipient, the court shall  
60 articulate with specificity the basis for such order.

61 (c) Any postjudgment procedure afforded by chapter 906 shall be  
62 available to secure the present and future financial interests of a party  
63 in connection with a final order for the periodic payment of alimony.

64 Sec. 3. Section 46b-65 of the general statutes is repealed and the  
65 following is substituted in lieu thereof (*Effective October 1, 2014*):

66 (a) If the parties to a decree of legal separation at any time resume  
67 marital relations and file their written [declaration of resumption]  
68 certificate that the marital relationship has resumed, signed,  
69 acknowledged and witnessed by both parties, with the clerk of the  
70 superior court for the judicial district in which the separation was  
71 decreed, the [declaration] certificate shall be entered upon the docket,  
72 under the entries relating to the complaint, and the decree shall be  
73 vacated and the complaint shall be deemed dismissed.

74 (b) If no [declaration] certificate has been filed under subsection (a)  
75 of this section, then at any time after the entry of a decree of legal  
76 separation, either party may petition the superior court for the judicial  
77 district in which the decree of legal separation was entered for a decree  
78 dissolving the marriage and the court shall enter the decree dissolving  
79 the marriage in the presence of the party seeking the dissolution of  
80 marriage and shall incorporate the financial terms of the decree of legal  
81 separation into the decree dissolving the marriage unless it would be  
82 unconscionable to do so.

83 Sec. 4. Section 46b-86 of the 2014 supplement to the general statutes  
84 is repealed and the following is substituted in lieu thereof (*Effective*  
85 *October 1, 2014*):

86 (a) Unless and to the extent that the decree precludes modification,  
87 any final order for the periodic payment of permanent alimony or

88 support, an order for alimony or support pendente lite or an order  
89 requiring either party to maintain life insurance for the other party or a  
90 minor child of the parties may, at any time thereafter, be continued, set  
91 aside, altered or modified by the court upon a showing of a substantial  
92 change in the circumstances of either party or upon a showing that the  
93 final order for child support substantially deviates from the child  
94 support guidelines established pursuant to section 46b-215a, unless  
95 there was a specific finding on the record that the application of the  
96 guidelines would be inequitable or inappropriate. There shall be a  
97 rebuttable presumption that any deviation of less than fifteen per cent  
98 from the child support guidelines is not substantial and any deviation  
99 of fifteen per cent or more from the guidelines is substantial.  
100 Modification may be made of such support order without regard to  
101 whether the order was issued before, on or after May 9, 1991. In  
102 determining whether to modify a child support order based on a  
103 substantial deviation from such child support guidelines the court  
104 shall consider the division of real and personal property between the  
105 parties set forth in the final decree and the benefits accruing to the  
106 child as the result of such division. After the date of judgment,  
107 modification of any child support order issued before, on or after July  
108 1, 1990, may be made upon a showing of such substantial change of  
109 circumstances, whether or not such change of circumstances was  
110 contemplated at the time of dissolution. By written agreement,  
111 stipulation or decision of the court, those items or circumstances that  
112 were contemplated and are not to be changed may be specified in the  
113 written agreement, stipulation or decision of the court. This section  
114 shall not apply to assignments under section 46b-81 or to any  
115 assignment of the estate or a portion thereof of one party to the other  
116 party under prior law. No order for periodic payment of permanent  
117 alimony or support may be subject to retroactive modification, except  
118 that the court may order modification with respect to any period  
119 during which there is a pending motion for modification of an alimony  
120 or support order from the date of service of notice of such pending  
121 motion upon the opposing party pursuant to section 52-50. If a court,

122 after hearing, finds that a substantial change in circumstances of either  
123 party has occurred, the court shall determine what modification of  
124 alimony, if any, is appropriate, considering the criteria set forth in  
125 section 46b-82, as amended by this act.

126 (b) (1) In an action for divorce, dissolution of marriage, legal  
127 separation or annulment brought by a spouse, in which a final  
128 judgment has been entered providing for the payment of periodic  
129 alimony by one party to the other spouse, [the Superior Court may, in  
130 its discretion and] upon notice and hearing, [modify such judgment  
131 and suspend, reduce or terminate the payment of periodic alimony  
132 upon a showing] if the party paying the periodic alimony proves that  
133 the party receiving the periodic alimony [is] has been living with  
134 another person [under circumstances which the court finds should  
135 result in the modification, suspension, reduction or termination of  
136 alimony because the living arrangements cause such a change of  
137 circumstances as to alter the financial needs of that party. In the event  
138 that] in a marriage-like relationship over a period of six months or  
139 more, the burden shall be on the party receiving the periodic alimony  
140 to prove that the payment of periodic alimony should not be modified,  
141 suspended, reduced or terminated. The Superior Court, after  
142 considering the evidence presented by both parties and the relevant  
143 criteria set forth in section 46b-82 may, in its discretion, modify such  
144 judgment and suspend, reduce or terminate the payment of periodic  
145 alimony.

146 (2) If a final judgment incorporates a provision of an agreement in  
147 which the parties agree to circumstances, other than as provided in this  
148 subsection, under which alimony will be modified, including  
149 suspension, reduction, or termination of alimony, the court shall  
150 enforce the provision of such agreement and enter orders in  
151 accordance therewith.

152 (c) When one of the parties, or a child of the parties, is receiving or  
153 has received aid or care from the state under its aid to families with



154 dependent children or temporary family assistance program, HUSKY  
155 Plan, Part A, or foster care program as provided in Title IV-E of the  
156 Social Security Act, or when one of the parties has applied for child  
157 support enforcement services under Title IV-D of the Social Security  
158 Act as provided in section 17b-179, such motion to modify shall be  
159 filed with the Family Support Magistrate Division for determination in  
160 accordance with subsection (m) of section 46b-231.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	46b-81
Sec. 2	<i>October 1, 2014</i>	46b-82
Sec. 3	<i>October 1, 2014</i>	46b-65
Sec. 4	<i>October 1, 2014</i>	46b-86

**Statement of Purpose:**

To adopt the recommendations of the Law Revision Commission Alimony Study Committee.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*