Bill as Introduced

SB 309- AS INTRODUCED

2000 SESSION

00-2697
04/10

SENATE BILL ***309***

AN ACT relative to the criteria for awarding or modifying alimony.

SPONSORS: Sen. Disnard, Dist 8

COMMITTEE: Judiciary

ANALYSIS

This bill allows the court, in awarding or modifying alimony, to consider information describing the award or modification of alimony involving similarly situated persons.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 309- AS INTRODUCED

00-2697
04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to the criteria for awarding or modifying alimony.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Domestic Relations; Alimony; Criteria for Award or Modification Amended. Amend RSA 458:19, IV by inserting after subparagraph (e) the following new subparagraph:

(f) In awarding or modifying alimony, the court may consider information presented by either party describing the award or modification of alimony involving similarly situated persons.

2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

Date: **FEBRUARY 9, 2000**
Time: **10:25 AM**
Room: **103 STATE HOUSE**

The Senate Committee **on Judiciary** held a hearing on the following:

SB 309 ***relative to the criteria for awarding or modifying alimony.***

Members of Committee present: *Senator Pignatelli*
Senator Brown
Senator Squires
Senator Wheeler

The Chair, Senator Debora B. Pignatelli, opened the hearing by introducing Senator George Disnard, prime sponsor of the bill.

Senator Debora B. Pignatelli, D. 13: I'm opening the hearing on Senate Bill 309, the prime sponsor is George ... Senator George Disnard.

Senator George F. Disnard, D. 8: Thank you madam chairman, for the record, my name is Senator Disnard, District 8 ... fourteen communities in Sullivan County, 12 communities ... and 8 communities in Cheshire County.

Madam chairman, you're well aware that a non-legislator does not have the opportunity to address the legislature in terms of submitting a bill. I was contacted by one of my constituents, and an attorney, if I would submit bill 309, relative to the criteria for awarding and modifying alimony. I'm doing this because I always believe you should help constituents whenever you can. I'm not fully acquainted with the bill, so with your permission, I would like to allow my constituent and his attorney to present their side of the situation.

Senator Debora B. Pignatelli, D. 13: Thank you, Senator Disnard. And, that would be Tom Hillebrand? Welcome to the Committee, would you like to have a seat ... and tell us about the bill?

Eugene Sullivan, Esquire: Senator ... is it alright if I went first, I'm Mr. Hillebrand's attorney?

Senator Debora B. Pignatelli, D. 13: Oh, certainly ... what is your name? Okay ... why don't you testify first.

Eugene Sullivan, Esquire: I may have signed the log ... Senator, I've prepared just a little ... a letter ... and some proposed modifications to the statute if that's acceptable to hand out. Should I bring them up to you, or ...

Senator Debora B. Pignatelli, D. 13: Why don't you give them to Laurel.

Eugene Sullivan, Esquire: Good morning, Senators ... ah, thank you for this opportunity to let me speak to you. I'm here on behalf of Tom Hillebrand.

Tom Hillebrand has been paying alimony for the last eighteen years. As I set forth in my letter, he currently pays $3100 per month. What we asked is that the Senate modify the SB309 with the language that is contained in the attachment thereto, that I prepared. And, basically, the amendment is there because currently, the statute allows alimony to go on indefinitely. There is no ... in fact, the language says, ah ... that it may be for an indefinite period of time. In this case, my client has been paying alimony longer than he was married, and will continue to do so, unless he can persuade the court to end it. Four years ago, he attempted to do that, and the court refused to end the alimony. That would have been after 14 years of alimony payments.

Just a little background ... when I first got out of law school, I went to work for the Superior Court here in NH, and the alimony law was totally different at that time. Ah ... at that time you had to come in every three years and make your case to the court as to why alimony should be continued. In 1986, the legislature changed the statute and ... into it's current form, which allows it to go on indefinitely and contains no guidelines for when it ... in my opinion ... for when it should be ended.

So, this summer, Dr. Hillebrand's youngest child will reach the age of majority, and we will go back into court and try to modify the alimony payments again, but there's nothing in the statute that says ... well, it's time for the alimony payments to end ... it's time for the former Mrs. Hillebrand to go out and take care of herself, or to rehabilitate herself and support herself. And, I guess from a public policy issue, we were hoping that the legislature could give some guidance to the court as to when to end alimony. It gives guidance to the court on how to set alimony, and what criteria to use in setting alimony, but not when to end the alimony payments. And, that's what we are asking for, whether it's the language I proposed, or some other language. And, with that, I'll respond to any questions.

Senator Debora B. Pignatelli, D. 13: What would some of the reasons be why a judge may want to continue alimony beyond the age of majority of the children?

Eugene Sullivan, Esquire: Ah, there may be circumstances where the age of majority corresponds with the date of the divorce, and I realize that's a weakness in the way that I've written this. In that case, there hasn't been a chance for rehabilitation, and perhaps that should be written into the statute. That alimony should be *rehabilitive* [sic] in nature, and perhaps that should be written into the statute ... that alimony should be rehabilitive in nature, and

should end when the receiving spouse has had an opportunity to rehabilitate themselves. Not necessarily having done so, but had the opportunity to obtain ... complete their education, get job training ... or something like that so that they can support themselves. Right now, the way the language reads ... it says that the receiving spouse is entitled to live in the style in which they've become accustomed to, and that could continue in this venue, or under this current statute, indefinitely. And, it doesn't appear that there is any criteria, when I go back to court, to say ... you know, what about the changes in circumstances? Well, the change in circumstance would be ... the youngest child has reached the age of majority, but the statute doesn't mention that in any way. I mean, I'm going to argue that it should, but again, we're put in a difficult spot of telling them when alimony should be put in place, and what criteria to use in setting it, but not in any ...

Senator Debora B. Pignatelli, D. 13: Is this a big problem in NH?

Eugene Sullivan, Esquire: I don't know, I don't know. My client will speak to it ... the fact of the matter is, it's a problem from a policy perspective where, if it happens to one resident of NH, it can happen to a number of them who don't come forward and don't say anything. From the perspective of policy, should the legislature be giving guidance to the court that ... gee, this thing, this alimony should not be for ... in perpetuity ... there should be some end to it, at some point in time. If there is need for a property settlement, then a property settlement should be made. If there is a need of a CS payment, then the CS payments are taken care of. What is alimony? If not *rehabilitive*, is ... in today's society, should a former spouse be responsible to be an indentured servant in an effect, to their former spouse indefinitely?

Senator Debora B. Pignatelli, D. 13: Do you see any circumstances whereby it ... it would be harmful to a spouse, let's say, a male who might become disabled during a marriage, where it might be very harmful to that spouse if the woman were to stop paying alimony, or were to be able to go to court after a certain number of years and say ... the years have passed, and I now no longer have to pay alimony to my disabled husband.

Eugene Sullivan, Esquire: Exactly, and again, that's another way I've written it, I recognize that short fall. I think the language can be drawn up though, that gives discretion to the court to continue it, under those circumstances. But, nonetheless gives some guidelines as to when it should be terminated. And, right now, the language is indefinite, and ... again, I understand and I agree with you that there may be circumstances where alimony such as disability that occur during marriage, should continue. I know that the House is dealing with a bill right now that ... where alimony was re-instituted three years after it had been ended because a former spouse had become disabled. And, this statute allows for that. And, I don't know what the House is going to do with it, it's in sub-committee right now, but it seems to me that my client has the one bad case that is coming before you, and ... but the fact of the matter is, there may be more people out there with a similar circumstance. And, the fact of the matter is, my client should have the protection of the laws in the State of NH.

I'd love to be able to sit back and see who's getting alimony in the State of NH, and in what amount, and the demographic make up of those things, but the court doesn't have a database to let me access that information. And, I could make arguments along that line ... but, again, I don't have access to that information.

Senator Debora B. Pignatelli, D. 13: Do judges now have the discretion to discontinue alimony?

Eugene Sullivan, Esquire: Yes, they do. And, they normally do, I would imagine ...

Senator Debora B. Pignatelli, D. 13: But, not for your client.

Eugene Sullivan, Esquire: They have not, and they chose ... and the particular master in this case chose not to four years ago. Ah ... my client's paid over a million dollars to his former spouse over the course of the last eighteen years. And, all we're looking for is maybe some guidance ... in the legislation, to the courts, saying that gee, this wasn't intended to be a ... to be forever. I mean, even child support ends at some point, where the child reaches the age of eighteen. And, if the child is disabled, then we put in under other mechanisms in place, where the court can continue CS. Maybe the same mechanism should be put in place for this.

Senator Debora B. Pignatelli, D. 13: Senator Brown?

Senator Mary E. Brown, D. 17: Thank you, madam chairman. Are there ever any cases, and I'm not familiar with divorce situations, but are there ever any cases where the alimony is almost like a property settlement? In other words, the agreement between them is, I'll pay you so much each year ... in perhaps, some negotiations go on?

Eugene Sullivan, Esquire: Absolutely. And, in fact, alimony has a long history in ... at least in American law and English law, common law ... it was initially for punitive purposes, where there had been fault. Then it became almost a form of property settlement. And, today it's property settlement, support, child support and spousal support. And, there's nothing in our statute that says that it's rehabilitive or that it's for spousal support, or that it's for property settlement. In this case, there was a property settlement ... a substantial property settlement, and the fact of the matter is, there's still a substantial alimony payment.

Again, my client's a doctor ... he's a professional ... his former spouse got half the business. Now, the business, is in fact, himself. But, he did pay a property settlement, over three figures in 1986, I believe.

Senator Debora B. Pignatelli, D. 13: Any further questions, Senator Brown? Thank you very much for your testimony. Mr. Hillebrand, would you like to testify?

Eugene Sullivan, Esquire: Thank you.

Dr. Tom Hillebrand: My name is Doctor Tom Hillebrand, and thank you for letting me speak this morning. Ah, many may not feel very sympathetic toward my situation ... since I am a doctor, I do have the ability to pay the alimony that's been ordered. However, I'd just like to address the issue of fairness. I've been paying alimony and child support for over eighteen years, and ah ... as Mr. Sullivan said, this has amounted to over a million dollars that I've paid out already over the eighteen years.

No one I know in my sphere of influence ... or friends, or colleagues, or contemporaries that have gone through divorce have had to pay anything ... or should I say, have had to pay for the length of time that I've had to pay. I'm not able to give you a list of similarly situated people from NH, because I really can't access those records. I don't have access to court records that would give me the ability to say, hey ... here are some other people in my situation, who are also in my income level, have the same number of children, and so on ... and who haven't been issued an order for indefinite alimony, like I have.

All I can give you are examples of people I know. For instance, ah ...an orthodontist, who is an acquaintance of mine in NH, who was divorced about seven years ago, his alimony order was for seven years, and it's ending this year. He had two teenage children, and was also ordered to pay CS. It is also an example of the limitation to the number of years of alimony. A general dentist, a friend of mine from Burlington, VT, was divorced in about the same time that I was divorced, in '86 ... with two young children ... received eight years of alimony and CS. I'm an oral surgeon ... and an oral surgeon friend of mine in New Jersey, who divorced the same year I did in 1986, also had two young children, actually graduated from the same oral surgery program that I did, and was in practice at least a year longer than I was ... received ten years of alimony and CS payments. Another person I know is an airline pilot with teenage children who received three years of alimony and CS payments. And, another OS that I know with three children ... and I'm not sure what the length of time his alimony payment was, he didn't tell me, but ... he definitely told me it was for a limited amount of time.

So, in all these instances, a set time has been given, and in no case was it made indefinite. And, so again, in addressing the issue of fairness ... you know, what I've received is not fair, and I ... as my attorney mentioned ... I intend to go to court this summer, hopefully when my youngest child with my former spouse reaches the age of majority, and appeal to the court to modify, hopefully eliminate my alimony payments. As he mentioned, I tried to have this modified four or five years ago, after a lengthy and expensive proceeding, basically nothing happened. The Master who heard it just handed out a one paragraph motion [order...] stating that circumstances hadn't changed, and therefore nothing was going to change as far as the alimony.

This could happen again ... I could go back this summer and the same thing could happen with the present guidelines, there's no real clear guidelines to terminate alimony, and there's wide discretion by the judge or master who

hears it ... to address this. So, I ask that you consider this legislation, in the light in which ... in the light of the things I've mentioned as well. And, thank you for your time.

Senator Debora B. Pignatelli, D. 13: Thank you for your testimony. Caroline Douglas?

Caroline Douglas: Thank you, madam chairman and Senator Brown for being here today. It's kind of a light turnout ... and I'm hoping that I can give some perspective to this bill. For twelve years, I've written *The Family Law Book* for NH attorneys, and the annual supplement. And, about a year and a half ago, I began studying a new area that I call "alimony guidelines". The Federal Government jumped in about six years ago and passed national level guidelines. Initially, they made every state come up with their own guidelines, we still have state guidelines, but all fifty states were mandated to come up with guidelines, so that similarly situated ... children ... could receive roughly the same amount

Spousal support guidelines are a brand new idea, five states are considering them. Only one county that I was able to track down in California actually practices guidelines, where they try to limit the discretion of judges. Because, what we're finding, just as CS guidelines could vary widely, depending on which court, which state you were in, alimony guidelines seem to be doing the same thing.

If you would think back in your mind to a movie, that came out probably ten years ago, it was called *"The Big Chill."* And, it was people who'd gone to school together, and they got together 25 years later ... I think it was actually fifteen ... but they got together 25 years later ... or so, and they compared their experiences in a cabin in the woods for the weekend. What I've heard from Dr. Hillebrand is like, he's been through a similar type of experience.

I am aware of a number of cases involving dentistry specialists ... and I have some figures that I can give you that relate to the fact ... that it sounds like this particular man, this *wasp* [sic] doctor has been given an outcome that is just patently unfair. It exists in other parts of the state, but most of the data that I've been able to accumulate, comes from dental school classmates. The lowest form of alimony for a similarly situated person ... now, what we're looking at is men who were in dental school ... the variance is, either the wives supported them, or their families supported them. When they divorced, twelve to fourteen years later, they were all making between 200 and 350 thousand dollars, and they each had two or three children.

Now, there are a total of four cases that I know of. The lightest alimony was 600 dollars a month that was granted for two years. A total of $14,000 in alimony was paid. None of these had ... these were all male payors, husband payors, and wives who received money. None of the wives were disabled. The children ranged in age from six to early teens, so that I think, affected the length of time the alimony was paid. But, even on this lightest case, where only a total of $14,000 in alimony was paid, that state determined that it was

only going to be rehabilitative alimony, it was $600 a month for two years. It was rehabilitative only.

What it appears is happening in NH is that we don't have a limitation of rehabilitative alimony. So, we end up with a wife who's able bodied, who's receiving a windfall. Now, in each of the cases that I analyzed, there were four, total ... there was supposedly an offset of alimony with property. And, I went back and I quantified each one of them. It was less than a $100,000 worth of property offset. So, in other words ... in answer to your question, Senator Brown ... the wife was given 60 to 100 thousand dollars in property, and therefore ... less, less in property because of the value of the business.

I happen to know Dr. Hillebrand's case, because I reviewed it. Dr. Hillebrand was awarded property which was his own business, it was his own livelihood. I mean, it's not something that he can go and cash in and spend. It wasn't a windfall to him. The windfall comes when an able bodied woman is not only given rehabilitation, such as being sent to college, and Dr. Hillebrand has to pick up the bill, which he did. Ah ... but the windfall comes when an able bodied woman can be 50 years old, and for the rest of her life, she knows she's going to receive 3 to 5 thousand dollars a month every single month. There's a real disincentive for a woman to go out and rehabilitate.

We used to have rehabilitative alimony that was turned over every three years, and that was before I came into this state, and that was in 1986, we've done away with it. I think what I'm hearing from the two people who testified for this bill is they are suggesting that there needs to be some element, either of rehabilitation, or a rationale, for example ... a disabled wife, or a disabled husband who needs that. Now, I'll tell you, that's already in our statute. We have 13 elements in our statute for modifying alimony, and I think our statute is good.

My analysis of what's happening between the $14,000 and over a million dollars, and it will probably be another million dollars before the doctor is through paying his alimony, because this case has fallen into a chasm [*Ms. Douglas has pronounced the word as chism ... sic*]. It's not something that can be corrected on appeal. This statute is well written. There are thirteen elements the judge is supposed to review. Had they reviewed and applied them properly, ah ... I think his alimony would have had a limited period of time.

Unfortunately, my assessment of what the problem is in NH, in this case and in other cases, is that judges and marital masters are appointed to the case early on, and stay with the case for a long time. And, if they end up having a problem with one of the parties, they can be punitive. And, I think that's what's happening in this case ... is this is a punitive order. That's he's not able to change, no matter what.

When he went back four years ago for modification, one of the changes in circumstance was that he was going to pay all of the children's college tuition. Three children, college tuition ... all three of them. Wife was relieved of $75,000 worth of responsibility of paying for tuition. To me, that's a material change of circumstance. She's benefited by 75 thousand dollars. He, on the

other hand, committed, in addition to his alimony, probably another $400,000 dollars in college tuition.

Now, even though he's a *wasp* dentist with a good income, I'll tell you ... that's got to be stifling to anybody who wants to have another marriage, and other children. But, limits on discretionary spending of paying out $60,000 a year in alimony and then another 30 or $40,000 in college tuition, has got to be a material change of circumstance.

The marital master that was assigned to the case would not recuse from the case, wouldn't step down from the case, and simply continued to issue punitive orders that couldn't be corrected on appeal. I see that happening all over NH. Is that we've created personal *fiefdoms* in our court rooms by allowing marital masters and judges unlimited discretion, whether they want to apply the good statute that we have. If they chose not to apply the statute, there's nothing you can do about it but pay.

I've had a series of clients over the last two years that have contacted me because they know I'm a protestor about the legal system. And, I will tell you that I have counseled each of them, that when they talk about "knocking off" their spouse, that definitely is a joke, you cannot run out of the country. It ruins their marriages, and I'm telling you, people's lives are ruined because judges are not applying the laws, and they're not applying it fairly.

The example that you're seeing this morning, when you have a similarly situated person who receives $14,000 of alimony, and you have another person ...same advanced degree ... one's a pediatric dentist, one's an oral surgeon, and has paid a million dollars and is looking at another million because his ex-wife is very healthy, she works at a ski resort at minimum wage, despite being given college tuition and going back to school to be re-educated and rehabilitated.

I think, what we need, is a curb on judicial discretion. That keeps judges from making punitive orders that are legal. So, what I would ask is that the legislature do something to make judges apply those thirteen standards ... those thirteen elements in the modification of support. One of the ways of doing it is ... there are very few orders out there in my experience, it's ten years now ... I rarely find an order that says, we award indefinite alimony. And, rarely do you find ... we award permanent alimony. Usually, it's alimony for a limited reason, and for rehabilitative purposes, even though our statute doesn't say that.

We had a case that came down, I think in ... in maybe '87, called *Tiskovich*. And, for a while, the reports seemed to say that all alimony would be rehabilitative ... but then, it backed off of it. And, I think the courts actually need some direction from you. From the legislature ... because we have a good statute regarding the elements, but it's voluntary. The judges don't have to apply those thirteen elements. They can just totally disregard it, and for any reason they take a dislike to one party, there's no way you can get rid of that judge. Because this is one of the very few states in the country we don't have recusal laws. If you have a judge that dislikes you, we have a policy of keeping that judge on the case in family court ***f-o-r-e-v-e-r.*** Forever.

So, even though Dr. Hillebrand and several of my other clients have children that are going to turn 18, and they'll be up for their CS payment, they're still going to be stuck with this really oppressive alimony payment, that *HAS* to grate on them. When you see an able bodied woman with an education that was paid for ... post divorce ... by the supporting spouse, under-employed as a "ski bunny" ... as a seasonal ski bunny, while you end up paying 3-5 thousand dollars a month in alimony. So, that's the kind of injustice ... I'll tell you, it's not an isolated case, but I think the problem is a bigger picture. And, that's what I wanted to point out. Was that we've given judges and marital masters a lot of discretionary authority, which I believe is being abused in the court room.. And, I'd ask that the legislature, not only in this case, but in some of the other areas of court review, that we look at limiting their discretion.

One of the ways we can change this statute is to go into the modification statute, and where it says the judge has the discretion whether or not to award alimony, make sure that it's absolutely mandatory that they apply all those thirteen standards. Because, right now, they can look at one or two ...or none. And, in this case, I think they looked at none. And, they've decided to punish Dr. Hillebrand, and they've decided to give a windfall...or a reward...to the wife.

TAPE CHANGED ... 10:53 A.M.

Senator Debora B. Pignatelli, D. 13: ... judge reviewed the thirteen standards and came up with the different conclusion than Mr. Hillebrand and Mr. Hillebrand's attorney?

Caroline Douglas: I don't believe so ... reading the orders I didn't see them. I'd like to have that judge actually quantify each one of them. You can name them, they're simple ... it's number of children, length of marriage, whether somebody's able bodied or not, whether they have some kind of a disability, you can compare their education ... what the judge did, is an offset, and he gave roughly, about ... $80,000 less in property settlement to the wife, and he said because you're getting 80 thousand less ... but, he didn't quantify it.

Now, I will tell you this is one of the very first cases of that judge's career. It was the first month he was assigned as a marital master. I don't know if this was his first case ever. But, it certainly was the first month of it ... because I went back and looked at his appointment date.

So, I think it's a judicial error that gets covered up again and again, every time he goes back ... nobody wants to say, okay, we're going to make a change. This particular judge ... for him to come up with a ruling that says, an agreement to pay college tuition for three children, and buy them all cars, is not in the material change of circumstance. That's ludicrous ... in anybody's book, that's got to be between a three and four hundred thousand dollar change. And, you're going to say to me $400,000 isn't material? It is material.

So, what we're finding is that they use their discretion to make findings that aren't valid.

Senator Debora B. Pignatelli, D. 13: Thank you for your testimony. Stephanie Nute?

Stephanie Nute: Good afternoon, Chair. And, Senators Wheeler and Brown.

Senator Debora B. Pignatelli, D. 13: Not yet ... it will be soon.

Stephanie Nute: I guess I'm in the hot chair! Ah ... as a point of clarification, I came to address the original legislation of alimony, involving similarly situated persons. If it's of any assistance to you, with respect to this apparent amendment, you may recall of course, that we did have part of the statute some years ago, where there was a three year limitation on alimony which could be reviewed. For whatever reason, that was eliminated from the statute, so it's fairly open ended, right now.

I can tell you, however, from my own personal experience, that there are fairly few awards of alimony, and they tend to be given a limitation. I have almost never ... recently ... seen one that is completely open ended. So, there's just that ... that one situation.

With respect to the issue of introducing evidence apparently, according to other people's awards or non-awards of alimony, I ... I think that's a dangerous proposition. One of the hallmarks of our American system is that each of us is judged on the merits of our own case. We see ourselves, certainly, as unique individuals.

We do have very broad guidelines already developed in the law for many things. Including things like property distribution, CS. But, the reason that I have contested hearings is that somebody in a particular case doesn't feel that an equal distribution of property is fair, under the facts of their particular case ... or that a CS guideline amount, according to the calculation, is fair, according to the facts of their case. And, each case is unique. And, we try to apply the law that we can understand to the unique facts of each individual case.

I think that it's a dangerous ground to begin introducing information concerning anybody else's case, or their result, without knowing exactly what the facts of that case were, or how they might apply to somebody else's. And, ah ... that's my submission, thank you.

Senator Debora B. Pignatelli, D. 13: Thank you.

Stephanie Nute: Can I help you with anything at all on this particular issue? I didn't preside over the Hillebrand case.

Senator Debora B. Pignatelli, D. 13: There is a ... written letter, and a possible amendment from Mr. Hillebrand's attorney ... do I have the only copy? Senator Squires?

Senator James W. Squires, D. 12: You'll forgive me ... what is the perspective from which you speaking ... I gather you're a judge, or marital master?

Stephanie Nute: I'm a marital master, yes. And, we are charged, by the way, the statute, as Caroline Douglas indicated ... does itemize certain considerations which we must take into account if somebody is requesting an award of alimony. And, in general cases, if I do grant alimony, I am required by law to indicate which considerations I have taken into account in that award.

And, very often, attorneys ask for what ... what are called findings of fact and rulings of law, and you make further findings with respect to each particular case. And, they can appeal it, or not appeal it ... but, we don't just say, well, here's the amount and let it go at that. We are required to give some background.

Senator Debora B. Pignatelli, D. 13: When people come in and request a modification to their alimony payments or their CS payments, how difficult is it to get a hearing and ... do you think modifications are made based on new information that comes in, or do you feel that as someone else had testified, that once a marital master or judge makes up his or her mind, that's it. And, it may become punitive?

Stephanie Nute: Well, if that were the case, I think that would be the basis for a motion for recusal of that particular master or judge if you felt that they were no longer unbiased in the case. But, the standard for a modification for alimony as it is for CS, is that you have to demonstrate that since the last order, there has been a substantial change of circumstances. Unless there was a time built into the order ... say, a two year alimony order ... and, it's the end of two years, and the person is asking that it be removed or extinguished, or whatever it might be.

But, when you file a motion for modification, you're entitled to a hearing, and we try to get them in as quickly as possible. And, at that hearing, then you introduce the evidence on both sides, for and against the requested relief.

Senator Debora B. Pignatelli, D. 13: And, if there's a request for recusal, does the particular judge or marital master hear that, or does it go before a different ...

Stephanie Nute: It goes before the presiding master or judge. There is a policy now, in Superior Court, as well as in the Family Division that a case, generally speaking, is heard by the same person, start to finish. Now, obviously there is a risk in a highly contested case, that you might lose some level of objectivity in a case. But, generally speaking, I believe that policy is based upon a perceived benefit to having one person familiar with this family and with the case, from start to finish. So, you don't have to reinvent the wheel every time it comes in. And, that you may get orders that are all over the place.

Senator Debora B. Pignatelli, D. 13: Yes, Senator Brown?

Senator Mary E. Brown, D. 17: Yes, just quickly. Do you know why the three year review was discontinued, and do you think it should be reinstated?

Stephanie Nute: I have no idea why it was discontinued, and I really don't have any position on that. I personally don't have a problem with that, as long as if the facts warranted it, a person could come back in and ask that it be reviewed ... that would be fine. But, that's up to you. But, I don't know why it was taken out in the first place.

Senator Katherine W. Wheeler, D. 21: Thank you madam chair ... Stephanie, I apologize for not fully understanding everything that's going on ... but, are you testifying in favor of the original bill?

Stephanie Nute: I am testifying against the original bill. I strongly feel that it is not appropriate for people to come to court on their case, and try to introduce evidence of what someone else received or didn't receive in their case, which is completely different in fact. I think it's not fair to anybody involved in that situation.

Senator Debora B. Pignatelli, D. 13: I don't see any other questions. Thank you. Bill Cushman?

Stephanie Nute: Thank you very much.

Bill Cushman: Good morning. I'm Bill Cushman from Newcastle. Ah ... I'd like to mix a few words about the whole principal of the alimony situation. First of all, I want to assure the assemblage, that I am in no way looking for changes to the current situation that I have. Now, I make that statement in view of the fact that the Honorable Stephanie Woods ... Nute is sitting behind me, and she was my marital master.

Okay, ah ... I'd like to have a look at the broad view ... a little broader view of the problem we've got. Now, if anybody is able to save up some money, the financial people advise you to retire rich, but die broke. In other words, by the time you retire, you've got to dispose of everything you own before you die. Otherwise, all kinds of money go to all kinds of people. But, the only problem ... the only way you can do that, is commit suicide. Unfortunately, suicide is against the law.

Okay, point two. Alimony is a property right, and in my case, I pay alimony until I die. Whereupon, the ex-spouse can sue my estate for continued payment. Now, that will automatically create a situation between my ex-wife, and my children and her children, because they will be the estate at that time.

Okay, thanks. Now, you ... ah ... compare the fact that I have been paying alimony for what ... eleven years, and if I live to 85, that will be a hell of a lot longer, and I'm 75 now. Now, compare that with the treatment that Thayer and Douglas got. Thayer got CS and alimony for only three years. Now, the general perception out on the street is that they got a damned good deal. How could that be? Well, it's pretty obvious, they're members of the court.

Okay, one of the final ... okay ... Thayer and Douglas were not the common man. The common man has a completely different perception of how the courts work than the courts do of the way the common man thinks of them.

Okay, finally ... one thing that's been a thorn in everybody's side, has been the live in boyfriend. Most ... a lot of ex-wives will not remarry, because that will make them surrender their alimony, so they take in a live-in boyfriend. And, this goes on ... and, there's not a darn thing that the man can do about. Now, I repeat ... I'm not looking for a change in my situation. I figured out a way to die broke ... it's an accomplishment, really. So, anyhow ... I think that's something that ought to be addressed.

Ah ... I was talking to somebody in Portsmouth the other day ... and, we just moved here from California, and she said ... California ... has a cohabitation law. After a certain amount of time, everything's changed. Now, I realize that would create one royal rat's nest ... but, we ought to be aware of it, rather than to turn a blind eye to it.

Now, one of the reasons I've been active here in Concord, is that I went through a divorce, and I could not believe the way the legal system handled divorces. My first lawyers offer to the wife was absolutely ridiculous ... and I told him so. And, he said ... don't worry, I know what I'm doing ... trust me. Well, not knowing any better, I trusted him. He said my divorce went all the way to the Supreme Court ... but, what he failed to tell me was that it was thrown out. He was disciplined for bringing a trivial suit.

Now, she in no way could have lived on the money that he was demanding that I give her. And these two guys ... one day I'd got mad at both of them, ah ... her lawyer and my lawyer, and said look ... Endorf [*not sure of spelling of proper name [sic]*] wants me to give you nothing, Brock wants every damn thing including my blood. There's got to be a situation where we are both alive and well, and the children alive and well, when it's all over. I think I made my point

Senator Debora B. Pignatelli, D. 13: Thank you very much. I don't see any questions. Is there anyone else that would like to testify on SB309? Yes ...

Sheila Evans, NH Women's Lobby: I apologize for not signing in ...

Senator Debora B. Pignatelli, D. 13: I'll sign you in, Sheila.

Sheila Evans, NH Women's Lobby: Thank you. For the record, my name is Sheila Evans, representing NH Women's Lobby. The NH Women's Lobby would be opposed to this bill, specifically based on the idea of asking the legislature to start making laws based on personal cases of people's dissatisfaction with either the judicial branch, or perhaps their lawyers. We have had quite a few bills over in the House relative to this same issue, and there is one currently in subcommittee that has a statute of limitations proposal for alimony, and again, the same situation occurs. One or two individuals come in who do have significant problems, either with the lawyers they've hired, as we just heard, or with their level of acceptance of the ruling that they are required to pay.

And, we have found that in all the family law work that we have done on behalf of the Women's Lobby, the judges discretion has proven to be reliable and acceptable and we would like to see that continue without the legislature trying to make decisions based on a few individual cases.

Senator Debora B. Pignatelli, D. 13: Thank you for your testimony. Is there anyone else ... who would like to testify?

Eugene Sullivan, Esquire: Senator, could I just quickly respond to the people that have gone after me?

Senator Debora B. Pignatelli, D. 13: If you can do it quickly, sure.

Eugene Sullivan, Esquire: Just quickly, I know this sounds like an individual case, and responding to what was just said ... but for you, my client has no recourse. He's already tried the court system, and if there is no guidance in the statutes on when to end alimony, and it states that it can be indefinite, there's nothing to say that it won't continue indefinitely.

And, the fact of the matter is, even though there may be thirteen factors set forth there, there's no guidance as to how much weight you put on any of those factors. So, in the case of my client, even if the judge had rendered a decision, he could have said ... well, I based it on this particular factor, and I don't care about the other factors. And, that's why we're asking that some guidance, some limitations be put on alimony. Thank you.

Senator Debora B. Pignatelli: Thank you. Is there anyone else that would care to testify? I don't see anyone, I'm going to close the hearing on SB309. And, in a minute, we'll get started on SB343.

THE HEARING ON SB309 WAS CLOSED AT 11:12 A.M.

Respectfully submitted,
Laurel J. Gallant-Hanlon, Senate Secretary

Attachment A

EUGENE F. SULLIVAN, III
ATTORNEY AT LAW
A PROFESSIONAL CORPORATION
TWO EAGLE SQUARE, SUITE 400
CONCORD, NEW HAMPSHIRE 03301

FACSIMILE
603.227.0606

TELEPHONE
603.227.0600

February 16, 2000

Senate Judiciary Committee
State House, Room 103
Concord, New Hampshire 03301

RE: SB 309 - Relative to Modification of Alimony

Senator Pignatelli and Members of the Judiciary Committee:

On behalf of myself and my client, I would like to thank you for the opportunity to speak to you this morning.

I was recently retained by to represent a client that has been paying **$3,100** per month in alimony for the past eighteen years, in addition to child support payments made in conformance with the uniform support guidelines and a substantial property settlement at the time of the divorce in 1986. Four years ago, after making these alimony payments for thirteen years, this client went back to court and attempted to eliminate or modify the obligation to make these monthly alimony payments to the former spouse. The attempt failed and the client continues to pay the former spouse over $37,000 per year, just in alimony. The former spouse is perfectly healthy and is currently employed, although underemployed.

I will soon file a motion to bring forward and modify this alimony award upon the parties youngest child reaching the age of majority. There is nothing, however, under current law that creates any presumption that my client should be released from this obligation. Moreover, if history prevails the will continue to make these payments in perpetuity as there is nothing under current law that prevents the court from continuing these payments indefinitely.

While this is only one case, I believe this one case points out a weakness in the current spousal support statute, RSA 458:19. As basic public policy, RSA 458:19 should contain some language to provide guidance to the Courts from the Legislature concerning the termination of alimony and the rehabilitative nature of alimony orders. As it stands today, my client, may or will remain responsible for the support of his former spouse for a period of time longer than their marriage.

I believe the attached amendments would reasonably accomplish the goal of providing some guidelines to the Court, and would limit, the current unlimited discretion of a Judge or Master to order such payments. I would hope that you would consider this language and enact it or some other language concerning the modification of alimony.

Thank you,



Eugene F. Sullivan III

cc: Senator Disnard

PROPOSED MODIFICATIONS OF SB 309-RELATIVE TO MODIFICATION OF ALIMONY

Explanation: Matter added to current law appears in ***bold italics.***

Matter removed from current law appears [~~in brackets and struckthrough.~~]

Matter in plain type remains unchanged

Amend RSA 458:19 to read as follows:

TITLE 43
Domestic Relations

CHAPTER 458
Annulment, Divorce And Separation

Alimony, Allowances, Custody, etc.

SECTION 458:19

§ **458:19 Alimony.** — I. Upon motion of either party for alimony payments, the court, ***keeping in mind that the overriding goal for the establishment of alimony payments is rehabilitative and ultimately designed to make the party in current in need of support self sufficient,*** ~~shall~~ ***may*** make orders for the payment of alimony to the party in need of alimony, either temporary or permanent, for a definite ~~or indefinite~~ period of time, if it finds that:

(a) The party in need lacks sufficient income, property, or both, including property apportioned in accordance with RSA 458:16-a, to provide for such party's reasonable needs, taking into account the style of living to which the parties have become accustomed during the marriage; and

(b) The party from whom alimony is sought is able to meet reasonable needs while meeting those of the party seeking alimony, taking into account the style of living to which the parties have become accustomed during the marriage; and

(c) The party in need is unable to be self-supporting through appropriate employment at a standard of living that meets reasonable needs or is the custodian of a child of the parties whose condition or circumstances make it appropriate that the custodian not seek employment outside the home.

(d) In no event, however, shall alimony payments continue beyond the age of majority of the children of the parties.

II. Upon motion of either party, the court may make orders for the payment of an alimony allowance when such orders would be just and equitable.

III. Upon a decree of nullity or divorce, or upon the renewal, modification, or extension of a prior order for alimony, the court may order alimony to be paid for such length of time as the

parties may agree or the court orders.

IV. (a) The court may make orders for alimony in a lump sum, periodic payments, or both.

(b) In determining the amount of alimony, the court shall consider the length of the marriage; the age, health, social or economic status, occupation, amount and sources of income, the property awarded under RSA 458:16-a, vocational skills, employability, estate, liabilities, and needs of each of the parties; the opportunity of each for future acquisition of capital assets and income; the fault of either party as defined in RSA 458:16-a, II(l); and the federal tax consequences of the order.

(c) In determining amount and sources of income, the court shall not consider a minor child's social security benefit payments or a second or subsequent spouse's income.

(d) The court may also consider the contribution of each of the parties in the acquisition, preservation, or appreciation in value of their respective estates and the noneconomic contribution of each of the parties to the family unit.

(e) In any proceeding for modification of an existing alimony order, the earned or unearned income and social security disability payments of a spouse of the obligor party shall not be considered a source of income to that obligor party for the purpose of modification, unless the obligor party resigns from or refuses employment or is voluntarily unemployed or underemployed, in which case the income of a subsequent spouse may be imputed to the obligor party only to the extent that such obligor party could have earned income in his or her usual employment.

(f) In any proceeding for the modification of an existing alimony order, the court shall review that order to determine whether or not the spouse receiving the benefit of such an order has the ability or the opportunity to support himself or herself in an acceptable lifestyle.

V. The unanticipated consequences of changes in federal tax legislation or regulations may be grounds to modify any alimony order or agreement.

VI. The court shall specify written reasons for the granting or denial of any motion for an alimony allowance.

Source. RS 148:13. CS 157:13. GS 163:12. GL 182:12. PS 175:14. PL 287:16. 1937, 154:1. RL 339:16. RSA 458:19. 1981, 275:1. 1985, 175:1. 1987, 278:2. 1991, 123:1, eff. Jan. 1, 1992. 1996, 32:4, 5, eff. Jan. 1, 1997.

2 Effective Date. This act shall take effect 60 days after its passage and shall apply to all requests to modify existing alimony orders and pending or new requests for alimony.

JS 309 2/9/2000 10:25

Jean Brinard, DS: prime & welfare

Suzanne Sullivan; Atty for Dr. Hillebrand

see attach. (A)

Jean Pignatelli: continuation of alimony after majority of children-?

Sullivan: → responding - "self-supporting" could be indefinitely - in view of change of circumstances.

policy problem

Jean Pignatelli → problem in NH?

(response)

Sullivan: detailing - "rehabilitative"

Jean Pignatelli → disabilities allowed -?!!?

Sullivan: → discretionary...

no access for NH statistics - EXCHANGE ...

Ken Brown: → alimony as "prop settlement" agreement negotiations — ?!?!?

Sullivan: — formerly viewed as "punitive" when fault has been recognized / disclosed.

Dr Tom Hillibrand (Ocean Surgeon): does have ability to pay — however, fairness is an issue (18 years!?!)

Divorced contemporaries — no such length of payment of alimony!

duration "... indefinite alimony" order!?!?

* give professional (peer) accounts — of similar situations ...

Carolyn Douglas: "Alimony guidelines" — Feds mandated to a state by state basis. CS Guidelines noted - most data seems to be dental (school) professionals.

cont'd

statistical accounts →
"rehabilitative alimony" (1986 —
repealed the RA...) exception
lies in cases of disabled spouse.
13 permissible elements for
modification →
"punitive" order of alimony award.
(WASP dentist.) →

Orders could not be corrected
on appeal — (no reversal of
judge or married master)
CURBING judicial discretion.
force judges to apply the
13 elements →

Voluntary applying of 13 elements
on part of judges!!
limiting discretion in modification
orders. —

See Pizzarelli: 13 elements ?

Carolyn: → Guidelines!
case accident of material
circumstances changes —

Stephanie Nute: → addressing
"similarly situated" persons —
believes Courts do order 'closed
end" alimony awards!?!
"... Broad Guidelines ..."
(non-equitable distribution
of properties →)

Ann Agnes: — ??

Ms Nute: (marital master)
required to indicate what
considerations taken into account
resulting in that award.

Ms Dignelli: →
↓ ↓
EXCHANGE

Sen. Brown. Why 3yr. review discontinued?

Stephanie.

Sen Wheeler. In favor or against orig. Bill? -

Bill Cushman. -

I'm from New Castle -

Principal -

Financial people tell you to retire rich - die Broke.

I will pay till I die & then my estate will be sued. -

Compare w/ Thayer & Douglas.

Can't believe the way the divorce cts work in this State.

I think I made my point.

Sheila Evans - NH Women's Lobby - based idea of legislature making law on cases

Sullivan (?) - responding to what has been said - (testified earlier).

11:12 - closed 309.

Judiciary Committee

SB 309 Hearing Report

TO: Members of the Senate

FROM: Susan Duncan
Legislative Assistant

RE: Hearing report on **SB 309** – *An Act relative to the criteria for awarding or modifying alimony.*

HEARING DATE: February 16, 2000

Sponsor: Senator Disnard, District 8

What the bill does: This bill allows the Court, in awarding or modifying alimony, to consider information describing the award or modification of alimony involving similarly situated persons.

Who supports the bill:
Senator Disnard
Attorney Eugene F. Sullivan, III
Dr. Tom Hillibrand
Attorney Caroline Douglas
William Cushman

Who opposes the bill:
Stephanie Nute, Marital Master
Sheila Evans, representing the NH Women's Lobby

Summary of testimony received:

- This legislation, in its original language, proposes that other similarly situated persons be considered in the awarding of alimony. Other suggested language would offer that alimony not be awarded when the children are past the age of majority, clarifies that alimony is to be considered rehabilitative in nature and not

permanent support, and that the court consider whether the spouse has the ability to support him or herself.

- The constituent for whom the legislation was filed has now been paying alimony for longer than he was married – and has now paid in excess of one million dollars to the former spouse (in addition to her being given half of his business).
- New Hampshire statute used to require that parties come back to the court every three years.
- In 1986, this requirement was changed to indefinitely with no clarity as to when alimony should or could end.
- This legislation asks the Legislature to give guidance to the court as to when alimony should or could end.
- In all other cases of divorce among the constituent's friends, the court awarded a set number of years for alimony to be paid. At 18 years now, he has been paying far longer than anyone else he knows.
- The constituent went to court four or five years ago, after agreeing to pay the college expenses for all children as well as to buy each an automobile – but the Master issued a one paragraph ruling saying that nothing in the financial circumstances had changed and denied his request.
- The constituent intends to go to court again this coming summer when the youngest child reaches the age of majority.
- There are currently 13 steps which should be considered in ruling – there needs to be something to make the judges apply these steps.
- There should be a modification statute which would make it mandatory to apply all 13 standards.
- Alimony is very rarely awarded for an unlimited time period—and rarely is it permanent.
- There needs to be a recusal law when a judge or master has a bias.
- The court has a policy of having the same person (judge or master) follow a case throughout.
- No one present at the hearing seemed to know why the three year review was removed from statute. ***(This question has been posed to Senate Research and data will be forthcoming.)***

Funding: Not applicable.

Future Action: No action was taken.

sfd
[file: SB 309]

Speakers

SB 309 Senate Judiciary Hearing Sign In

APPEARING: IN FAVOR	APPEARING: TO OPPOSE	DATE: FEBRUARY 9, 2000 TIME: 10:25 AM NAME / REPRESENTING	WISH TO SPEAK?
✓		EUGENE SULLIVAN ~~ELF.~~ TOM HILLEBRAND	✓
✓		TOM HILLEBRAND	✓
✓		Caroline Douglas ESQ CONCORD, NH	✓
✓		[redacted]	
	✓	Stephanie Nute	✓
		Bill Cushman	✓
	✓	Sheila Evans – NH ? Lobby	✓

Hearing Minutes

SB 309- AS INTRODUCED

2000 SESSION

00-2697
04/10

SENATE BILL ***309***

AN ACT relative to the criteria for awarding or modifying alimony.

SPONSORS: Sen. Disnard, Dist 8

COMMITTEE: Judiciary

ANALYSIS

This bill allows the court, in awarding or modifying alimony, to consider information describing the award or modification of alimony involving similarly situated persons.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears ~~[in brackets and struckthrough.]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 309- AS INTRODUCED

00-2697
04/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT relative to the criteria for awarding or modifying alimony.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subparagraph; Domestic Relations; Alimony; Criteria for Award or Modification Amended. Amend RSA 458:19, IV by inserting after subparagraph (e) the following new subparagraph:

(f) In awarding or modifying alimony, the court may consider information presented by either party describing the award or modification of alimony involving similarly situated persons.

2 Effective Date. This act shall take effect 60 days after its passage.

needs tweaking language too broad!

Voting Sheets

SENATE JUDICIARY COMMITTEE

EXECUTIVE SESSION

SB 309

Date: 2/23/2000 Room:

Motion of: FTL

Made by Senator:			Seconded by Senator:		
	Pignatelli	☒		Pignatelli	☐
	Gordon	☐		Gordon	☒
	K. Wheeler	☐		K. Wheeler	☐
	Squires	☐		Squires	☐
	Trombly	☐		Trombly	☐
	Brown	☐		Brown	☐
	Cohen	☐		Cohen	☐
	Fernald	☐		Fernald	☐

FTL 6/0

Committee Member	Present	Vote	Reported out by
Senator Debora Pignatelli, Chairman	☐	✓	✓
Senator Edward Gordon, Vice-Chair	☐	✓	
Senator Katherine Wells-Wheeler	☐		
Senator James Squires	☐	✓	
Senator Rick Trombly	☐		
Senator Mary Brown	☐	✓	
Senator Burton Cohen	☐	✓	
Senator Mark Fernald	☐	✓	

*Amendments:

NOTES: "rehabilitative alimony" "Change of circumstance..." "Well..."

Committee Report

Date: February 9, 2000 Time: 10:25 PM

The Senate Committee on Judiciary held its hearing in Room 103, SH, Concord, New Hampshire.

BILL NO.: SB 309 TITLE: relative to the criteria for awarding or modifying alimony.

Members of the Committee present: Senator Pignatelli
Senator Brown
Senator Cohen
Senator Fernald
Senator Squires
Senator Gordon

Those appearing in favor:

Name and Address	Representing
See Attached.	

Those appearing in opposition:

Name and Address	Representing
See Attached.	

REPORT OF THE COMMITTEE:

- ☐ Ought to Pass
- ☐ Ought to Pass w/ Amendment
- ☒ Inexpedient to Legislate - **6/0**
- ☐ Rereferred
- ☐ Interim Study
- ☐ Continued Hearing
- ☐ Postponed Hearing

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE

Date: **MARCH 9, 2000**

THE COMMITTEE ON **Judiciary**

to which was referred **Senate Bill 309**

AN ACT ***relative to the criteria for awarding or modifying alimony.***

VOTE: **6 / 0**

Having considered the same, report the same with the following resolution:
Resolved, that it is: **INEXPEDIENT TO LEGISLATE.**

Senator Debora B. Pignatelli
For the Committee