

REGULAR CALENDAR

March 1, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Majority of the Committee on Children and Family
Law to which was referred HB 1305,**

**AN ACT relative to temporary alimony. Having
considered the same, report the same with the
recommendation that the bill OUGHT TO PASS.**

Rep. Josh Yokela

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Children and Family Law
Bill Number:	HB 1305
Title:	relative to temporary alimony.
Date:	March 1, 2022
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS

STATEMENT OF INTENT

The majority of the committee finds that temporary alimony should be calculated the same as normal alimony and shall be counted towards the time limit unless irreparable, economic hardship would result.

Vote 8-7.

Rep. Josh Yokela
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Children and Family Law

HB 1305, relative to temporary alimony. **MAJORITY: OUGHT TO PASS. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Josh Yokela for the **Majority** of Children and Family Law. The majority of the committee finds that temporary alimony should be calculated the same as normal alimony and shall be counted towards the time limit unless irreparable, economic hardship would result. **Vote 8-7.**

Original: House Clerk

Cc: Committee Bill File

REGULAR CALENDAR

March 1, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

**The Minority of the Committee on Children and Family
Law to which was referred HB 1305,**

**AN ACT relative to temporary alimony. Having
considered the same, and being unable to agree with
the Majority, report with the following resolution:
RESOLVED, that it is INEXPEDIENT TO LEGISLATE.**

Rep. Cassandra Levesque

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Children and Family Law
Bill Number:	HB 1305
Title:	relative to temporary alimony.
Date:	March 1, 2022
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

This bill does not account for parties who are living with their new partners and does not account for all the assets both parties have. Alimony is determined after both parties have calculated their shared assets and it is divided up. This bill will complicate how alimony is calculated moving forward.

Rep. Cassandra Levesque
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Children and Family Law

HB 1305, relative to temporary alimony. **INEXPEDIENT TO LEGISLATE.**

Rep. Cassandra Levesque for the **Minority** of Children and Family Law. This bill does not account for parties who are living with their new partners and does not account for all the assets both parties have. Alimony is determined after both parties have calculated their shared assets and it is divided up. This bill will complicate how alimony is calculated moving forward.

Original: House Clerk

Cc: Committee Bill File

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

EXECUTIVE SESSION on HB 1305

BILL TITLE: relative to temporary alimony.

DATE: March 1, 2022

LOB ROOM: 206-208

MOTIONS: **OUGHT TO PASS**

Moved by Rep. Yokela

Seconded by Rep. J. Nelson

Vote: 8-7

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Peter Petrigno, Clerk



2022 SESSION

Children and Family Law

Bill #: HB1305 Motion: OTP AM #: _____ Exec Session Date: 3/1/22

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Rice, Kimberly A. Chairman <i>Renzullo</i>	✓		
DeSimone, Debra L. Vice Chairman	✓		
Yokela, Josh S.	✓		
Nelson, Jodi	✓		
Belanger, Cody M.	✓		
Cross, Kenna E. <i>Healey</i>	✓		
Litchfield, Melissa A. <i>Greene</i>	✓		
Smith, Denise M.	✓		
Long, Patrick T.		✓	
Alicea, Caroletta C. Clerk		✓	
Grossman, Gaby M. <i>Smith</i>		✓	
Levesque, Cassandra N.		✓	
Wazir, Safiya <i>Chase</i>		✓	
Petrigno, Peter <i>clerk</i>		✓	
Altschiller, Debra		✓	
TOTAL VOTE:	8	7	0

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 1305

BILL TITLE: relative to temporary alimony.

DATE: January 25, 2022

LOB ROOM: 206-208 **Time Public Hearing Called to Order:** 1:15 p.m.

Time Adjourned: 1:33 p.m.

Committee Members: Reps. DeSimone, Petrigno, Yokela, J. Nelson, Belanger, D. Smith, Long, Grossman, Levesque, Wazir and Altschiller

Bill Sponsors:

Rep. DeSimone

Rep. Potucek

Rep. Moffett

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Debra **DeSimone** introduced her bill relative to temporary alimony. The bill modifies the definition of temporary alimony.

*Written testimony submitted by Honey **Hastings** attached.

Respectfully submitted,

Rep. Peter Petrigno, Clerk

House Remote Testify

Children and Family Law Committee Testify List for Bill HB1305 on 2022-01-25

Support: 0 Oppose: 1 Neutral: 0 Total to Testify: 0

Export to Excel

<u>Name</u>	<u>City, State</u> <u>Email Address</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>	<u>Non-Germane</u>	<u>Signed Up</u>
Jasina, Erin	Portsmouth, NH ejasina@nhla.org	A Lobbyist	New Hampshire Legal Assistance	Oppose	No	No	1/25/2022 10:30 AM

Archived: Tuesday, March 8, 2022 10:11:59 AM
From: Honey Hastings, Mediator
Sent: Monday, February 28, 2022 6:22:14 PM
To: ~House Children and Family Law Committee
Subject: 3 alimony bills should be ITL
Importance: High

C & FL Committee

HB 1278, 1279, & 1305 should all be voted ITL.

This committee spend several years, beginning in 2915, studying the then existing problems with the alimony statute. There were hours of hearings and many subcommittee meetings. In the end, in 2018 this committee adopted a comprehensive revision of the statute. It took effect in 2019, with the formula amended in 2021 because of federal tax law changes.

There is no evidence that the careful, well-thought out decisions of this committee in 2018 were wrong and should be overturned. The committee's decisions included treating temporary alimony differently that permanent alimony and having alimony end at remarriage or cohabitation. These prudent decisions have worked for NH. Proposals to change them because to the experience of one family (or a handful of families) would be wrong.

ITL is the proper vote on all three bills.

Honey Hastings, JD, CFM #75
PO Box 33
Temple NH 03084
603.654.5000
Online Services – FamilyMediationNH.com

25 January 2022

TO: Children & Family Law
FROM: Honey Hastings, JD, CFM #75
RE: HB 1305 & HB 1278

Background—I was a family lawyer from 1982-2016, have been a mediator for since 1995, and drafted the 2018 alimony legislation for the Alimony Working Group (effective in 2019).

HB 1305—temporary alimony

I oppose this bill. The reason for the current text in the statute is that the temporary alimony is ordered early in the case. The goal is to maintain stability for the separating family during this transition period. Assets need to be sorted out and valued and the final financial arrangements agreed to or ordered. A common scenario is that the higher earner moves out of the house and the lower earner remains on a temporary basis. For these reasons, I specifically oppose these components of the bill:

- a. Use of the formula for temporary alimony. What the lower earner needs on a temporary basis may be more or less than the formula. Often, the court orders the higher earner to pay expenses directly and zero alimony.
- b. Eliminating the option to include the period of temporary alimony in measuring the “duration limits.” Sometimes the period of “temporary alimony” extends beyond the usual period, even for up to 18 or 24 months. The court needs discretion to consider this period in applying the duration limits. Especially in a short marriage, this period may be half or even all of the “duration” limit.
- c. The very tough test of “*immediate, irreparable economic harm*” will deter orders (see #1) that have been traditional and fair.
- d. The requirement that the person seeking temporary alimony “plead” (file a court paper citing) the specific test listed in (c) is a trap for self-represented parties.

Text of HB 1305:

1. Annulment, Divorce and Separation; Alimony; Definitions; Temporary Alimony. Amend RSA 458:19, XIV to read as follows:

XIV. "Temporary alimony" means periodic support payments to or on behalf of a spouse while a case is pending and ending on the effective date of the divorce, legal separation, or annulment. Such alimony shall not be ~~[counted toward or]~~ subject to ~~[either the formula or]~~ the duration limits in RSA 458:19-a, ~~[III, unless the court finds that the temporary alimony was of unusually long duration]~~ ***but shall be subject to the formula limits in RSA 458:19-a II, unless a party seeking temporary alimony pleads, and a court finds that immediate, irreparable economic harm would result if the percentage formula were applied. The court shall make written findings supporting its order.***

2. Effective Date. This act shall take effect January 1, 2023.

1:45 pm---HB 1278—termination of alimony

I oppose this bill. The current objective test of ending alimony based on "cohabitation," based on case law and with a 6-point list of factors, is clearer than the proposed new dual test:

- a. Romantic relationship; **and**
- b. Financial support

"Romantic relationship" is a subjective term with no history in NH family law. A quick Google search produced this definition: "[M]utual, ongoing and voluntary interactions between two partners that is characterized by specific expressions of affection and intimacy." How would this be proved? Much of this sort of activity occurs in private. This bill would make proof of "support" by another insufficient without proof of a romantic relationship. This would make it difficult to end alimony.

Current law is that remarriage of the payee ends alimony, unless the parties agree otherwise. This common-sense test is easy to prove and consistent with public idea of fairness. This bill would apply a 2-part test for remarriage to end alimony, it must be remarriage **and** support.

Text of HB 1278:

1. Annulment, Divorce, and Separation; Alimony Modification or Termination; Circumstances for Modification or Termination. Amend RSA 458:99-aa, VII to read as follows:

VII. At the request of either party by petition or motion, the court may make orders for the modification or termination of term alimony upon a finding ~~[of the payee's cohabitation as described in paragraph VIII]~~ **that the payee has remarried or is involved in a new romantic relationship and is receiving financial or other support by virtue of their involvement in this relationship in such an amount or manner that further alimony is not necessary to enable the payee to maintain the lifestyle contemplated by the court in the original alimony order. This may include cohabitation in a residence owned by or substantially paid for by the other party in the new relationship, assistance in paying household utilities beyond the amount necessary to cover the cost of additional persons if cohabitating, providing a vehicle owned by or substantially paid for by the other party, or any other circumstance the court finds contributes to increasing the standard of living for the payee to such a level as was meant to be achieved through alimony. The fact that the payee has remarried, is involved in a romantic relationship, or is cohabitating are not in and of themselves grounds to adjust or terminate alimony without a finding that the factors mentioned above are occurring.** The requirements of paragraph I shall not apply.

2. Repeal. RSA 458:19-aa, VIII, relative to the court's finding of cohabitation, is repealed.

3. Annulment, Divorce and Separation; Alimony Modification or Termination; Reinstatement of Alimony. Amend RSA 458:19-aa, IX to read as follows:

IX. If an alimony order is terminated because of ~~[cohabitation or marriage]~~ **a finding made by the court pursuant to paragraph VII**, the court may reinstate the original alimony award upon finding that the payee's cohabitation has ceased or that the marriage has ended in divorce, provided that the request is made within 5 years of the effective date of the termination order. If the alimony order being reinstated had a specific termination date, reinstatement shall not extend the termination date, however, if the order specified a number of payments, the reinstatement may be for up to the number of payments remaining in the order. If the order has both a specific termination date and a number of payments, the termination date shall control. The requirements of paragraph I shall not apply.

4. Effective Date. This act shall take effect January 1, 2023.

HB 1305 - AS INTRODUCED

2022 SESSION

22-2648

07/10

HOUSE BILL **1305**

AN ACT relative to temporary alimony.

SPONSORS: Rep. DeSimone, Rock. 14; Rep. Potucek, Rock. 6; Rep. Moffett, Merr. 9

COMMITTEE: Children and Family Law

ANALYSIS

This bill modifies the definition of temporary alimony that a court may award in a pending divorce case.

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.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT relative to temporary alimony.

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

1 1 Annulment, Divorce and Separation; Alimony; Definitions; Temporary Alimony. Amend RSA
2 458:19, XIV to read as follows:

3 XIV. "Temporary alimony" means periodic support payments to or on behalf of a spouse
4 while a case is pending and ending on the effective date of the divorce, legal separation, or
5 annulment. Such alimony shall not be ~~[counted toward or]~~ subject to ~~[either the formula or]~~ the
6 duration limits in RSA 458:19-a, ~~[III, unless the court finds that the temporary alimony was of~~
7 ~~unusually long duration]~~ **but shall be subject to the formula limits in RSA 458:19-a II, unless**
8 **a party seeking temporary alimony pleads, and a court finds that immediate, irreparable**
9 **economic harm would result if the percentage formula were applied. The court shall make**
10 **written findings supporting its order.**

11 2 Effective Date. This act shall take effect January 1, 2023.