

**REGULAR CALENDAR**

**February 7, 2023**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Children and Family Law to which  
was referred HB 124,**

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

**Rep. Debra DeSimone**

**FOR THE COMMITTEE**

## **COMMITTEE REPORT**

Committee:	<b>Children and Family Law</b>
Bill Number:	<b>HB 124</b>
Title:	<b>relative to temporary alimony.</b>
Date:	<b>February 7, 2023</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS</b>

### **STATEMENT OF INTENT**

The majority of the committee felt that this bill would assist judges in making decisions regarding temporary alimony until a final order could be handed down.

Vote 8-7.

Rep. Debra DeSimone  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## **REGULAR CALENDAR**

Children and Family Law

**HB 124**, relative to temporary alimony. **OUGHT TO PASS.**

Rep. Debra DeSimone for Children and Family Law. The majority of the committee felt that this bill would assist judges in making decisions regarding temporary alimony until a final order could be handed down. **Vote 8-7.**

Original: House Clerk

Cc: Committee Bill File

**HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW**

**EXECUTIVE SESSION on HB 124**

**BILL TITLE:** relative to temporary alimony.

**DATE:** February 7, 2023

**LOB ROOM:** 206-208

**MOTIONS: OUGHT TO PASS**

Moved by Rep. DeSimone

Seconded by Rep. J. Nelson

Vote: 8-7

**CONSENT CALENDAR: NO**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Peter Petrigno, Clerk



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/10/2023 7:58:02 AM  
Roll Call Committee Registers  
Report

2023 SESSION

Children and Family Law

Bill #: 124 Motion: OTP AM #: \_\_\_\_\_ Exec Session Date: 2/7/23

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Pearson, Mark A. Chairman	✓		
Long, Patrick T. Vice Chairman		✓	
DeSimone, Debra L.	✓		
Bickford, David A.	✓		
Nelson, Jodi L	✓		
McMahon, Charles E.	✓		
Ball, Lorie	✓		
Panek, Sandra L			1
Seidel, Sheila C	✓		
Grossman, Gaby M.		✓	
Levesque, Cassandra N.		✓	
Petrigno, Peter Clerk		✓	
Perez, Maria		✓	
Gregg, Alicia C		✓	
Moulton, Candace	✓		
Raymond, Heather		✓	
<b>TOTAL VOTE:</b>	<b>8</b>	<b>7</b>	<b>1</b>

HOUSE COMMITTEE ON CHILDREN AND FAMILY LAW

PUBLIC HEARING ON HB 124

**BILL TITLE:** relative to temporary alimony.

**DATE:** January 10, 2023

**LOB ROOM:** 206 **Time Public Hearing Called to Order:** 1:06pm

**Time Adjourned:** 1:39pm

**Committee Members:** Reps. M. Pearson, Long, Petrigno, DeSimone, Bickford, J. Nelson, McMahon, Ball, Panek, Seidel, Grossman, Levesque, M. Perez, Gregg, Moulton and Raymond

**Bill Sponsors:**

Rep. DeSimone

Rep. A. Lekas

Rep. Potucek

Rep. Stapleton

Rep. Spillane

Rep. Harley

TESTIMONY

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

• HB 124 Introduced by Rep. Long

\* **Jay Markall**, Family Law Attorney

- "The law needs housekeeping details" worked with Rep. DeSimone on crafting the legislation.

**Rep. DeSimone**

- Spoke to her bill. "The alimony process is not what it should be; this helps it along."

\***Mary Kruger** from NHLA

- In Opposition
- "The only changes temporary alimony, before formal discovery. Difficult to have a formula at that time. Does not believe that the bill meets the actual intent. If passed it would be confusing to the court."

\***Vivian Girard**

- In support
- Was impacted by alimony decision
- Many factors need to be considered when decisions are made regarding alimony, Note the Silva vs. Silva case

Respectfully submitted,

Rep. Peter Petrigno  
Clerk



## House Remote Testify

Children and Family Law Committee Testify List for Bill HB124 on 2023-01-1

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

[Export to Excel](#)



**§ 458:19. Alimony; Definitions**

In RSA 458:19-a and RSA 458:19-aa:

I. "Alimony" means one or more payments made to, or for the benefit of, a spouse or former spouse.

II. "Effective date" means the date when an order takes effect under court rule.

III. "Exclusions from gross income" mean Social Security benefits received on behalf of a minor child; capital gains from property received in the parties' divorce; income of a subsequent spouse, except as provided in RSA 458:19-aa, II; and income from overtime or a second job if the party has a full time job and such overtime or second income began:

(a) After the parties separated or a petition for divorce or legal separation was filed, whichever occurred first; or

(b) In an action for modification, if such income began after the existing alimony award.

IV. "Full retirement age" means the age when the payor is eligible to receive full retirement benefits under the federal Old Age, Survivors, and Disability Insurance Social Security program.

V. "Gross income" means all income from any source, whether earned or unearned, including, but not limited to, wages, salary, commissions, tips, annuities, social security benefits, trust income, lottery or gambling winnings, interest, dividends, investment income, net rental income, self-employment income, business profits, pensions, bonuses, and payments from other government programs (except public assistance programs, including aid to families with dependent children, aid to the permanently and totally disabled, supplemental security income, food stamps, and general assistance received from a county or town), including, but not limited to, workers' compensation, veterans' benefits, unemployment benefits, and disability benefits, but not exclusions from gross income as defined in paragraph III.

VI. "Income assignment" means an alimony order assigning a portion of the payor's income directly to the payee under the provisions of RSA 458-B.

VII. "Length of marriage" means the number of months from the date of marriage to the date of service of the petition for divorce, legal separation, or annulment.

NH Stat. 458:19 Alimony; Definitions (New Hampshire Statutes  
(2022 Edition))

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VIII. "Modification" means any increase or decrease in the amount or duration in alimony, other than because of the cohabitation, remarriage, or death of the payee, or the retirement of the payor.

IX. "Payee" means a person who is receiving or is to receive alimony.

X. "Payor" means a person who is paying or is to pay alimony.

XI. "Reimbursement alimony" means one or more payments to a spouse or former spouse to compensate him or her for economic or non-economic contribution to the financial resources of the payor.

XII. "Step-down order" means an order that decreases payments in specified steps.

XIII. "Step-up order" means an order that increases payments in specified steps.

✓ 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.

XV. "Term alimony" means periodic payments made to a spouse or former spouse after the effective date of the final decree.

**History:**

Amended by 2018, 310:1, eff. 1/1/2019.

**Note:**

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. 1996, 32:4, 5. 2000, 178:2, 3. 2001, 246:2, 3. 2005, 273:3, eff. Oct. 1, 2005. 2018, 310:1, eff. Jan. 1, 2019.

**§ 458:19-a. Term and Reimbursement Alimony**

I. The court may order term alimony upon agreement of the parties or in the absence of an agreement, at the request of either party by petition or motion in a case for divorce, legal separation, or annulment. Any request for alimony shall be made either before the final decree is effective or not later than 5 years from the effective date. The purpose of term alimony is to allow both parties to maintain a reasonable standard of living. If the issue of term alimony is contested, the court may order term alimony only 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 his or her own reasonable needs, taking into account the marital lifestyle and the extent to which the parties must both fairly adjust their standards of living based on the creation and maintenance of separate households; or

(b) The party in need is unable to be self-supporting at a standard of living that meets reasonable needs through appropriate employment, or is allocated parental rights and responsibilities under RSA 461-A for a child of the parties whose condition or circumstances make it appropriate that the parent not seek employment outside the home or limit the hours of such employment; and

(c) The party from whom alimony is sought is able to meet his or her own reasonable needs, taking into account the marital lifestyle and the extent to which the parties must both fairly adjust their standards of living based on the creation and maintenance of separate households, while meeting the reasonable needs of the party seeking alimony.

II.

✓ (a) The amount of a term alimony order shall be the lesser of the payee's reasonable need, or a formula based on 23 percent of the difference between the parties' gross incomes at the time the order is created, unless the court finds that justice requires an adjustment. In making this calculation, gross income as defined in RSA 458:19, V shall be:

(1) Reduced by subtracting amounts that are ordered and actually paid for:

(A) Child support or alimony, including child support for the parties' joint children; and

(B) Costs for health insurance coverage or other specified expenses for the benefit of the other party; and

NH Stat. 458:19-a Term and Reimbursement Alimony (New  
Hampshire Statutes (2022 Edition))

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(2) As to the payee's income, adding the amount of child support ordered for the parties' joint children.

(b) The court may vary this formula when an equal or approximately equal parenting schedule has resulted in an adjustment to the child support guidelines under RSA 458-C:5. The court may make a step-down or step-up order that begins with the current reasonable need or the formula and decreases or increases over time. If child support is a factor in determining the amount of alimony, alimony may be recalculated when child support is modified or ended, without meeting the tests for modification in RSA 458:19-aa, I.

(c) The formula percentage in subparagraph (a) of 23 percent is based on alimony not being deductible to the payor and taxable to the payee under federal income tax law. If alimony becomes deductible to the payor and taxable to the payee under federal income tax law, the formula shall be based on 30 percent of the difference between the parties' gross incomes.

III. The maximum duration of term alimony shall be 50 percent of the length of the marriage, unless the parties agree otherwise or the court finds that justice requires an adjustment under paragraph IV. If justice requires, the court may use a different beginning or ending date in measuring the length of the marriage. Term alimony shall end on the remarriage of the payee, unless the order is based on an agreement of the parties that provides otherwise.

V N 60224 T47-20

IV. In any term alimony order, the court may adjust the formula amounts, duration limitations, or both, if the parties agree or if the court finds that justice requires an adjustment. The party seeking an adjustment shall have the burden of proof. Special circumstances that may justify an adjustment include, but are not limited to, the following:

- (a) Health, including disability, chronic or severe mental or physical illness, or other unusual health circumstances of either party.
- (b) The degree and duration of any financial dependency of one party on the other.
- (c) Vocational skills, occupation, benefits available from employment, and the present and future employability of both parties.
- (d) Voluntary unemployment or underemployment of either party.
- (e) The special needs of a minor or adult child of the parties.
- (f) Property awarded under RSA 458:16-a.

**NH Stat. 458:19-a Term and Reimbursement Alimony (New  
Hampshire Statutes (2022 Edition))**

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- (g) The conduct of either party during the marriage, including abuse as defined in RSA 173-B:1, I or fault as described in RSA 458:16-a, II(I).
- (h) Differences in the parties' benefits under the federal Old Age, Survivors, and Disability Insurance Social Security program.
- (i) Diminution of significant assets by a party, coupled with a lack of sufficient assets from which property can be equitably divided or recouped under RSA 458:16-a.
- (j) The impact of federal tax law on the parties including the allocation of applicable tax-related benefits.
- (k) Any other reason the court deems material and relevant.

V. The court may order reimbursement alimony upon agreement of the parties or in the absence of an agreement, at the request of either party by petition or motion in a case for divorce, legal separation, or annulment. The request for reimbursement alimony shall be made before the final decree is effective. The purpose of reimbursement alimony is to compensate the payee for economic or non-economic contribution to the financial resources of the payor, where the property subject to division under RSA 458:16-a is either inappropriate or inadequate to provide such compensation. The contribution to the payor's financial resources may include support of education or job training, or an investment of time or money. The following shall apply to reimbursement alimony orders:

- (a) The court shall make a finding that the order is equitable;
- (b) The maximum time period shall be 5 years from the final decree effective date, unless the parties agree otherwise; and
- (c) It shall not be modified, except by agreement.

VI. Each order granting, denying, renewing, modifying, or refusing to renew or modify term or reimbursement alimony shall state:

- (a) If alimony is awarded:
  - (1) The type or types of alimony;
  - (2) The duration or number of payments, the method or methods of payment, and any limitations imposed;
  - (3) Whether full retirement age or actual retirement will impact payments;
  - (4) Whether security under RSA 458:19-aa, VI is required; and

**NH Stat. 458:19-a Term and Reimbursement Alimony (New  
Hampshire Statutes (2022 Edition))**

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(5) Whether the order is based on an agreement of the parties.

(b) If the proceeding was contested, the order shall include:

(1) Findings supporting the court's decision to order or deny the requested alimony;

(2) Findings as to any special circumstances justifying an adjustment to either the formula amounts or durational limitations; and

(3) Findings supporting any award of reimbursement alimony.

**History:**

Amended by 2021, 113: §§1, 2, 3 eff. 7/9/2021. Amended by 2018, 310:2, eff. 1/1/2019.

**Note:**

1955, 262:4. 1979, 342:1. 2001, 222:3, eff. Sept. 9, 2001. 2018, 310:2, eff. Jan. 1, 2019. 2021, 113:1 -3, eff. July 9, 2021.

HB 124 - AS INTRODUCED

2023 SESSION

23-0164

06/04

HOUSE BILL **124**

AN ACT relative to temporary alimony.

SPONSORS: Rep. DeSimone, Rock. 18; Rep. A. Lekas, Hills. 38; Rep. Potucek, Rock. 13; Rep. Stapleton, Sull. 6; Rep. Spillane, Rock. 1; Rep. Harley, Rock. 30

COMMITTEE: Children and Family Law

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ANALYSIS

This bill modifies the definition of temporary alimony.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears [~~in brackets and struck through.~~]  
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 Three*

AN ACT                   relative to temporary alimony.

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

1           1 Alimony; Temporary Alimony. Amend RSA 458:19, XIV to read as follows:

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

10          2 Effective Date. This act shall take effect January 1, 2024.