

LEGISLATIVE COMMITTEE MINUTES

HB124

Bill as
Introduced

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

ANALYSIS

This bill modifies the definition of temporary alimony.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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.

Committee Minutes

SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Daryl Abbas, Member
Sen Rebecca Whitley, Member
Sen Shannon Chandley, Member

Date: March 15, 2023

HEARINGS

Tuesday		03/21/2023
(Day)		(Date)
Judiciary	State House 100	1:00 p.m.
(Name of Committee)	(Place)	(Time)
1:00 p.m.	CACR 6	relating to the retirement age for judges. Providing that the mandatory judicial retirement age shall be increased from 70 to 75.
1:15 p.m.	HB 85	relative to antenuptial agreements.
1:30 p.m.	HB 124	relative to temporary alimony.
1:45 p.m.	HB 151	establishing a committee to study the issue of unmarried cohabitants, domestic partnerships, and common law marriage.
2:00 p.m.	HB 162	relative to supported decision making.
2:15 p.m.	HB 240	relative to equal access to marriage.

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

CACR 6

Rep. Lynn

HB 85

Rep. DeSimone

Rep. Berry

HB 124

Rep. DeSimone

Rep. Spillane

HB 151

Rep. Maggiore

Sen. Watters

HB 162

Rep. Mooney

Sen. Avard

HB 240

Rep. Ming

Rep. Bay

Rep. Hynes

Rep. Layon

Rep. B. Boyd

Rep. A. Lekas

Rep. Harley

Rep. K. Murray

Rep. Cordelli

Rep. Wilhelm

Sen. Soucy

Rep. Potucek

Rep. Potucek

Rep. Balboni

Rep. B. Boyd

Rep. A. Nutting-Wong

Rep. Roy

Rep. Stapleton

Sen. Rosenwald

Rep. Notter

Rep. Ammon

Matthew Schelzi 271-3266

Sharon M. Carson
Chairman

Senate Judiciary Committee

Matthew Schelzi 271-3266

HB 124, relative to temporary alimony.

Hearing Date: March 21, 2023

Time Opened: 1:30 p.m.

Time Closed: 1:48 p.m.

Members of the Committee Present: Senators Carson, Abbas, Whitley and Chandley

Members of the Committee Absent: Senator Gannon

Bill Analysis: This bill modifies the definition of temporary alimony.

Sponsors:

Rep. DeSimone

Rep. A. Lekas

Rep. Potucek

Rep. Stapleton

Rep. Spillane

Rep. Harley

Who supports the bill: Rep. Debra DeSimone (Rock. 18), and Jay Markell.

Who opposes the bill: Mary Krueger.

Who is neutral on the bill: None.

Summary of testimony presented in support:

Representative DeSimone introduced House Bill 124. Rep. DeSimone said that this bill would modify the definition of temporary alimony. She emphasized the importance of this bill, considering the fact that the judicial system is down by at least four or five judges, which has led to family court cases being behind. The original intent of the revised alimony statute was to provide predictability to the alimony calculation process so that the courts would have guidance from the Legislature as to how alimony should be handled. The parties could, with reasonable accuracy, predict how much an alimony award should be. Rep. DeSimone stated that after legislative revisions, the Legislature created a formula for term alimony. In essence, it became the lesser of the payee's reasonable need or 23% of the differences between the two incomes. This formula can be adjusted under unusual circumstances. Usually, the maximum duration is up to 50% of the length of the marriage, which allows for parties to retire once they hit the retirement age. Alimony can also be adjusted as justice requires. Rep. DeSimone stated that this bill is not taking away a judge's decision making process, but it attempted to change the current temporary alimony statute. Under current law, RSA 458:19-a, alimony means one or more payment made to or for the benefit of a

spouse or former spouse. HB 124 attempts to allow the courts time to hear the case and give the person that needs the alimony the opportunity to be somewhat financially secure.

Jay Markell, practicing attorney in New Hampshire, stated the legislative intent of the current alimony statute is to provide predictability in alimony orders. The difference with temporary alimony, while not subject to the durational limits, is it's not subject to the regular formula for determining alimony. Mr. Markell said the problem is that by placing no restrictions on temporary alimony, you undermine one of the essential purposes of the alimony statute which is to create predictability. Mr. Markell stated a lack of guidance as to how the courts are to handle temporary alimony creates orders that are inconsistent. This can be attributed to either a party concealing income or inflating expenses, inadvertently or intentionally. Since there are no limits on temporary alimony, this problem is susceptible to abuse. Mr. Markel described an instance in where he witnessed a judge express that they do not apply the alimony statute as it exists. Mr. Markell said that this completely undermined the notion of predictability. This bill is designed to assist those who need a variation from the alimony statute. An individual must plead their case with specificity. Mr. Markell noted that if an individual has significant disparity, in addition to alimony, courts may order someone to pay bills associated with the marriage. Debts, mortgage, rental, automobile, or repair payments could be made in addition to temporary alimony. This bill would cut down on either advertent or inadvertent mistakes on financial affidavits. It would also enhance predictability in alimony orders. He noted HB 124 would also cut down on needless discovery.

Summary of testimony presented in opposition:

Mary Krueger, attorney with New Hampshire Legal Assistance, noted she was also a part of an ad hoc alimony group. Ms. Krueger stated that often financial abuse is a component of domestic abuse. She noted temporary alimony does not align with the current formula for term alimony. Term alimony is what is put in place when a divorce becomes final between the parties. At this temporary phase of a divorce case, there are a lot of unknowns and an individual's finances can be entangled between the family unit. She noted various ways couples can be making payments together as a family unit, which could financially entwine both parties. Ms. Krueger emphasized the importance of having time for discovery to establish a clear method to disentangle the resources. She noted that applying a formula at that time would not make any sense because it could bind the court to a number that is not accurate. Ms. Krueger stated the language of HB 124 is very confusing, and she does not believe the language reflects the intent of the sponsor. She urged the Committee to vote Inexpedient to Legislate on HB 124.

Senator Whitley asked if Ms. Krueger spoke on behalf of the Ad Hoc alimony group.

Ms. Krueger responded that since the loss of their leader, she is not speaking on behalf of the group.

Senator Abbas referred to the language regarding immediate and irreparable harm. He asked if Ms. Krueger's support for HB 124 would change if that language were changed.

Ms. Krueger noted since the language was confusing, she was not sure what the intent was. However, right now we have a situation where both parties come in and explain what the situation is financially, and if they can't agree, the court will make the decision. Ms. Krueger does not believe that one must show irreparable harm now, so that language would create a higher bar than what exists right now.

Neutral Information Presented: None.

mjs
Date Hearing Report completed: March 24, 2023

Speakers

Testimony

§ 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
(2023 Edition))

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



(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.

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 (2023 Edition))**

(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 (2023 Edition))**

- (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.



Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2023-2024 Session

Bill # HB 124

Hearing date: 3/21/23

Executive Session date: 3/21/23

Motion of: ITL Vote: 3-1

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Abbas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Whitley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Chandley	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Abbas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Chandley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Gannon, V-Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Abbas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Whitley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Chandley	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Whitley

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Tuesday, March 21, 2023

THE COMMITTEE ON Judiciary

to which was referred **HB 124**

AN ACT relative to temporary alimony.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 3-1

Senator Rebecca Whitley
For the Committee

Matthew Schelzi 271-3266

JUDICIARY

HB 124, relative to temporary alimony.

Inexpedient to Legislate, Vote 3-1.

Senator Rebecca Whitley for the committee.

Docket of HB124

Bill Title: relative to temporary alimony.

Official Docket of HB124.:

Date	Body	Description
12/23/2022	H	Introduced 01/04/2023 and referred to Children and Family Law
1/5/2023	H	Public Hearing: 01/10/2023 01:00 pm LOB 206-208
2/1/2023	H	Executive Session: 02/07/2023 09:30 am LOB 206-208
2/15/2023	H	Committee Report: Ought to Pass 02/07/2023 (Vote 8-7; RC) HC 12 P. 17
2/22/2023	H	Ought to Pass: MA DV 179-178 02/22/2023 HJ 6 P. 64
3/7/2023	S	Introduced 02/22/2023 and Referred to Judiciary; SJ 9
3/15/2023	S	Hearing: 03/21/2023, Room 100, SH, 01:30 pm; SC 14
3/21/2023	S	Committee Report: Inexpedient to Legislate, 03/30/2023; SC 15
3/30/2023	S	Inexpedient to Legislate, MA, VV === BILL KILLED ===; 03/30/2023; SJ 12

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 124

Senate Committee: JGD

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

Prepared testimony, presentations, & other submissions handed in at the public hearing

Hearing Report

Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____

___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Matthew Jech
Committee Aide

8-31-23
Date

Senate Clerk's Office AK