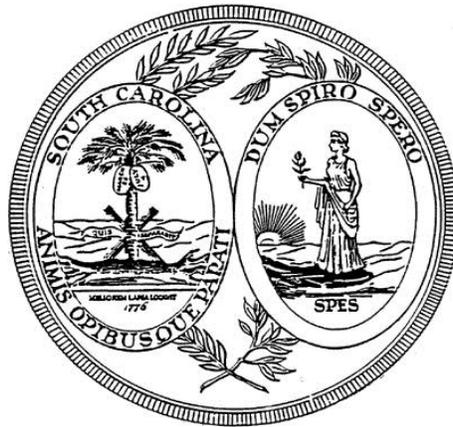


# THE STUDY COMMITTEE ON ALIMONY REFORM

## REPORT TO THE GENERAL ASSEMBLY



December 29, 2015

### Committee Members:

Senator Brad Hutto, Chairman  
Representative Norman D. "Doug" Brannon, Vice Chairman  
Senator Sean Bennett  
Senator Chauncey K. Gregory  
Representative Ralph Shealy Kennedy, Jr.  
Representative Anne J. Thayer

### Staff:

Emma Dean  
Leslie Simpson

## **BACKGROUND**

Act 128 of the 2015-2016 Legislative Session established the Study Committee on Alimony Reform. The Committee is directed to study the alimony laws of this State including, but not limited to, the length of the time alimony is awarded, the amount of alimony awarded, the consistency of alimony awarded, and the factors and circumstances surrounding the awards, and to make findings and recommendations to the General Assembly regarding proposed changes to current law.

The study committee is composed of three Senate members appointed by the Senate Judiciary Committee Chairman and three House of Representative (House) members appointed by the House Judiciary Committee Chairman. The Senate appointees are Senator Brad Hutto (Chairman), Senator Sean Bennett, and Senator Chauncey K. Gregory. The House appointees are Representative Norman D. "Doug" Brannon (Vice Chairman), Representative Ralph Shealy Kennedy, Jr., and Representative Anne J. Thayer.

The Committee is required to report recommendations to the General Assembly by December 31, 2015, at which time the Committee is dissolved.

The Committee met on October 19, 2015, for the purpose of receiving general testimony regarding the current alimony law, issues and suggestions. The Committee received testimony and suggestions from the South Carolina Bar, family law attorneys, South Carolina Alimony Reform, constituents, and others.

## **ISSUES AND SUGGESTIONS FROM TESTIMONY**

This report outlines the alimony reform issues identified through testimony and the suggestions proposed by those who testified. The Committee discussed the issues and suggestions but did not vote to approve or disapprove the suggestions.

### **Types of Alimony**

Section 20-3-130 provides for four types of alimony awards - periodic, lump-sum, rehabilitative, and reimbursement - to be awarded in such amounts and for such terms as the court considers appropriate. Judges have broad discretion in weighing thirteen enumerated factors including duration of marriage; current and reasonably anticipated earnings of both spouses; needs of both spouses; and marital fault.

### **Suggestions from Testimony:**

The statutes' language could be clarified to provide direction and further indicate the Legislature's intent. Additionally, more options could be created regarding the types of alimony available with consideration of the duration of the marriage. Other potential types of alimony include "transitional" alimony for short-term marriage situations (less than ten years) and "general term" alimony where the length of marriage determines a fixed amount of alimony and for a fixed amount of time.

### **Modification/Termination of Alimony Awards**

Depending upon the type of alimony awarded, Section 20-3-130 provides that alimony awards are terminable upon remarriage or death of the supported spouse, continued cohabitation of 90 days, death of the supporting spouse, the occurrence of specific events, or a change in circumstances, as determined by the court.

### **Suggestions from Testimony:**

Section 20-3-170 provides for modification and termination of awards but testimony suggested that it may be difficult to modify or terminate periodic payments of alimony and nonpayment results in penalties. Therefore, additional factors could be created for the court to consider in the modification/termination of an alimony award.

### **Continued Cohabitation**

Section 20-3-130 provides that alimony is terminable upon a finding of continued cohabitation of the supported spouse. Continued cohabitation means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety-day requirement.

### **Suggestions from Testimony:**

Additional factors could be created to aid the court in determining whether cohabitation is occurring. Another possibility is removing the ninety-day provision in its entirety and creating a new cohabitation definition involving a finding by the court regarding the degree of the relationship as evidenced by the sharing of the same household, expenses, or vacations, as a romantic couple.

### **Adultery**

Section 20-3-130 provides that no alimony may be awarded to a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

### **Suggestions from Testimony:**

A modified bar may benefit the process and allow the parties to reach resolution earlier.