

HOUSE No. 1785

The Commonwealth of Massachusetts

PRESENTED BY:
Steven M. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act relative to the determination of alimony payments.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-------------------------|-------------------------|
| Jennifer L. Flanagan | Worcester and Middlesex |
| James B. Eldridge | Middlesex and Worcester |
| Patricia D. Jehlen | Second Middlesex |
| James E. Timilty | Bristol and Norfolk |
| Robert A. O'Leary | Cape and Islands |
| Steven M. Walsh | 11th Essex |
| Demetrius J. Atsalis | Second Barnstable |
| F. Jay Barrows | 1st Bristol |
| Carlo P. Basile | 1st Suffolk |
| William N. Brownsberger | 24th Middlesex |
| Viriato Manuel deMacedo | 1st Plymouth |
| Stephen L. DiNatale | 3rd Worcester |
| Mark V. Falzone | 9th Essex |
| John V. Fernandes | 10th Worcester |
| John P. Fresolo | 16th Worcester |
| Paul K. Frost | 7th Worcester |
| Danielle W. Gregoire | 4th Middlesex |
| Bradford R. Hill | 4th Essex |
| Donald F. Humason, Jr. | 4th Hampden |
| Jay R. Kaufman | 15th Middlesex |
| David P. Linsky | 5th Middlesex |
| Jeffrey Davis Perry | 5th Barnstable |
| George N. Peterson, Jr. | 9th Worcester |
| Michael J. Rodrigues | 8th Bristol |
| Frank I. Smizik | 15th Norfolk |
| Joyce A. Spiliotis | 12th Essex |
| Todd M. Smola | 1st Hampden |
| Timothy J. Toomey, Jr. | 26th Middlesex |
| Matthew C. Patrick | 3rd Barnstable |
| Angelo J. Puppolo, Jr. | 12th Hampden |

| | |
|---------------------------|--------------------------------|
| Christopher J. Donelan | 2nd Franklin |
| Stephen R. Canessa | 12th Bristol |
| Denise Provost | 27th Middlesex |
| Scott P. Brown | Norfolk, Bristol and Middlesex |
| Stephen Kulik | 1st Franklin |
| John W. Scibak | 2nd Hampshire |
| Steven A. Tolman | Second Suffolk and Middlesex |
| Alice K. Wolf | 25th Middlesex |
| Garrett J. Bradley | 3rd Plymouth |
| Harriette L. Chandler | First Worcester |
| Anne M. Gobi | 5th Worcester |
| Benjamin Swan | 11th Hampden |
| Robert F. Fennell | 10th Essex |
| Elizabeth Poirier | 14th Bristol |
| Cleon H. Turner | 1st Barnstable |
| Paul J. Donato | 35th Middlesex |
| Paul McMurtry | 11th Norfolk |
| Mary E. Grant | 6th Essex |
| William Lantigua | 16th Essex |
| William Smitty Pignatelli | 4th Berkshire |
| Karyn E. Polito | 11th Worcester |
| Bradley H. Jones, Jr. | 20th Middlesex |
| Anthony D. Galluccio | Middlesex, Suffolk and Essex |
| Anthony W. Petrucci | First Suffolk and Middlesex |
| Karen E. Spilka | Second Middlesex and Norfolk |
| Christine E. Canavan | 10th Plymouth |
| Thomas J. Calter | 12th Plymouth |
| John J. Binienda | 17th Worcester |
| Denis E. Guyer | 2nd Berkshire |
| Linda Dorcena Forry | 12th Suffolk |
| Allen J. McCarthy | 7th Plymouth |
| Patricia A. Haddad | 5th Bristol |
| Lewis G. Evangelidis | 1st Worcester |
| Sean Garballey | 23rd Middlesex |
| Anthony D. Galluccio | Middlesex, Suffolk and Essex |
| Thomas P. Conroy | 13th Middlesex |
| David L. Flynn | 8th Plymouth |
| Ellen Story | 3rd Hampshire |
| James J. O'Day | 14th Worcester District |
| David B. Sullivan | 6th Bristol |
| Geraldo Alicea | 6th Worcester |
| Steven J. D'Amico | 4th Bristol |

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1567 OF 2007-2008.]

The Commonwealth of Massachusetts

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In the Year Two Thousand and Nine
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AN ACT RELATIVE TO THE DETERMINATION OF ALIMONY PAYMENTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 34 of Chapter 208 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended in the third sentence by striking the words:

“or in fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each party, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties and the opportunity of each for future acquisition of capital assets and income.”;

And by inserting in place thereof the following words:

“the court shall consider all of the following circumstances:

- (a) The extent to which the earning capacity of each party is sufficient, together with the unearned income described in (h) below, to maintain the preponderance of the standard of living established during the marriage and upon the date of separation, taking into account the marketable skills of whichever party may not then exhibit such sufficient earning capacity and the time and expense of employment counseling and training required to further develop such skills or to acquire other, more marketable skills or employment.
- (b) The willingness and diligence of the party not then exhibiting such earning capacity to seek the employment counseling and training described in (a) above.
- (c) The goal that any party needing alimony shall be self-supporting within a reasonable period of time. Such reasonable period of time shall be one-half of the length of the marriage. The length of the marriage is the period commencing upon the date of the marriage and ending upon the date of separation, deducting therefrom any period(s) of physical separation during the marriage. Such reasonable period of time, or duration of alimony, shall not exceed twelve years except only when the supported party shall have custody (sole physical or joint (or “shared”) physical) of one or more children of the marriage not then having attained the age of sixteen years as of such twelfth year, in which case alimony shall continue until such one or more children have attained such age.
- (d) All alimony due for more than five years shall, beginning with the commencement of the second half of such period of time of alimony and continuing each twelve month period thereafter during such second half, decline by ten percent after the application of (e) below and except only when either: 1) the supported party shall then have custody (sole physical or

joint (or “shared”) physical) of one or more children of the marriage then not having attained the age of sixteen years; or 2) the court finds the supported party to be incapable, both physically and mentally, of any gainful employment.

- (e) The sole and exclusive reason or cause warranting an increase in the amount of alimony shall be the percentage rise, if any, during the prior calendar year in the Consumer Product Index, as published by the United States Department of Labor, such increase shall commence at the beginning of the calendar year and shall equal such rise provided that the earned income of the supporting party has increased during such prior calendar year by more than three times such percentage increase in such Index.
- (f) The obligation of the supporting party to pay alimony shall, without exception, cease upon such party attaining retirement age, as defined in Title II, section 216, of the Social Security Act (42 USC 416).
- (g) The ability of the supporting party to pay alimony, taking into account such party’s actual earned income during the prior calendar year, the average of the actual earned income during the three prior calendar years, the cost to maintain the preponderance of the standard of living defined in (a) above, the obligation to pay child support, and the impact on such earned income should the supporting party have custody (sole physical or joint (or “shared”) physical) of one or more children of the marriage.
- (h) The unearned income generated by the marital assets owned by the supported party following the divorce.
 - (i) The duration of the marriage.
 - (j) The age and health of the parties
- (k) The extent, if any, to which the supported party contributed to the attainment by the supporting party of an education, training or license.
- (l) There shall be a rebuttable presumption of substantially decreased need for alimony if the supported party is cohabiting with another adult.
- (m) The income and assets of any adult cohabiting with the supporting party, whether or not the supporting party is married to such adult, shall not be considered when determining or modifying alimony.
- (n) All alimony orders and agreements in effect as of the date hereof shall be amended by the court, within eighteen months of such date, to be in substantial compliance herewith excepting only that the maximum duration of alimony following such date shall be the greater of: 1) three years; or 2) three years, plus the reasonable period of time, as defined in (c) above, less the number of years alimony has been paid prior to such date.