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Ending the Alimony Guessing Game

By ALEXANDRA HARWIN

New Haven

FAMILY law reform is gaining momentum in New York State: last month lawmakers legalized same-sex marriage, while last year they adopted no-fault divorce, allowing couples to end a marriage without a demonstration of wrongdoing. In separate legislation adopted at the same time, New York also became one of the few states to adopt a formula for setting certain alimony awards, making them fairer and predictable. The rest of the country should do the same.

According to the Internal Revenue Service, former spouses pay around \$9 billion in alimony each year. The amounts and payment schedules are usually decided by family court judges using a list of factors, including the length of the marriage, the ages and health of the spouses, their financial situations, their earning potential and their contributions to the marriage, financial and otherwise.

These criteria are sensible enough. But judges are on their own in deciding how to prioritize the various factors and how to translate them into dollar amounts, resulting in wildly inconsistent alimony awards. When asked how much alimony a lifelong homemaker married to a doctor deserved, judges in an Ohio survey estimated as little as \$5,000 a year and as much as \$175,000.

The unpredictability of alimony rules imposes several costs. Negotiating a settlement deal is much harder when spouses have no idea what they'll end up with if they take their chances in court. Litigation drags on and the bills pile up when lawyers and experts have to prove their clients deserve any alimony at all.

All the while, the emotional costs mount as people awaiting divorce continue in unhappy marriages; some stay married indefinitely because they don't know if divorce will leave them with enough money to make it on their own. That's particularly troubling in cases of domestic violence: some wives endure years of abuse because they can't be sure husbands who control the family finances will be required to give them the money they need to live if they leave.

New York's law minimizes these costs by establishing a mathematical formula to calculate temporary alimony, which one spouse pays the other while the divorce is pending; it also allows judges to adjust those awards up or down under special circumstances.

Under the formula, alimony is set at 30 percent of the higher-earning spouse's income, minus 20 percent of the lower-earning spouse's, as long as the recipient doesn't end up with more than 40 percent of the couple's combined income. For example, a banker making \$500,000 a year married to a writer earning \$50,000 could expect to pay around \$140,000 a year.

Along with New York, Pennsylvania and Colorado have also switched to numerical guidelines. But these apply only to temporary alimony, which ends once a divorce is finalized; no state has applied a formula to ordinary alimony, which is paid for months or years following a divorce.

There is no reason they, and the rest of the country, shouldn't go all the way: the group that created the formula adopted by the Legislature, the American Academy of Matrimonial Lawyers, intended it to be used for all alimony awards.

Moreover, several local bar associations and family law organizations have come up with their own, slightly different, formulas for permanent alimony, giving state legislatures plenty of models to choose from. And lawmakers, recognizing that no formula will get it right every time, can also allow judicial discretion to modify alimony awards in unusual circumstances.

In fact, judges already have the discretion to rely on formulas if they want. But many are reluctant because state laws tell them to rely on their own judgment; consulting a mathematical formula can thus seem like dereliction of duty.

Maryland has taken the lead in putting this concern to rest. Last year its top court ruled that, even though the state alimony law mandates that judges exercise discretion, it allows them to consult a formula to inform their decisions. That's a big victory: it's a lot harder for judges to

make outlandishly large or small alimony awards when parties can point them to an objective standard.

Legislatures should go further and require judges to start with alimony formulas, and then apply discretion. Changing alimony from a gamble to something more predictable would make the judges' jobs a lot easier — and the divorce process a lot fairer.

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