

SPOUSAL SUPPORT DISORDER: AN OVERVIEW OF
PROBLEMS IN CURRENT ALIMONY LAW

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II. THE HISTORY OF DIVORCE AND SPOUSAL SUPPORT LAW

The modern American system of spousal support is based on the early English model of alimony.¹⁶ In England, alimony stemmed from the laws of coverture.¹⁷ Under the doctrine of coverture, marriage merged a wife's legal identity with that of her husband, creating a united legal identity.¹⁸ When a couple married, the husband gained control of his wife's assets, including all property she owned prior to the marriage.¹⁹ The wife also "transferred to her husband her ability to hold real property, sign contracts, and keep any earnings."²⁰ In return, the husband incurred a legal duty and a moral obligation to protect and financially support his wife.²¹

This legal duty, known as the duty of support, arose from the marital relationship itself and was imposed regardless of the wife's

16. Collins, *supra* note 11, at 30.

17. *Id.* at 29.

18. *Id.* at 40; Lara Lenzotti Kapalla, Comment, *Some Assembly Required: Why States Should Not Adopt the ALI's System of Presumptive Alimony Awards in Its Current Form*, 2004 MICH. ST. L. REV. 207, 211.

19. Kapalla, *supra* note 18, at 211.

20. *Id.* Because the doctrine of unity prevented married women from holding property, signing contracts, partaking in professions, or keeping their own earnings, a spousal support system was necessary for the survival of women who were separated from their husbands. Collins, *supra* note 11, at 29.

21. Collins, *supra* note 11, at 29; Kapalla, *supra* note 18, at 211; Twila L. Perry, *The "Essentials of Marriage": Reconsidering the Duty of Support and Services*, 15 YALE J.L. & FEMINISM 1, 10 (2003).

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premarital wealth.²² It required the husband to provide his wife with material support and the "necessaries" of life, such as food, clothing, and shelter.²³ In return, it required the wife to provide her husband with a duty of service, such as housework, childcare, and companionship.²⁴ The legal duty of support helps explain the origins of alimony, discussed in the next subsection.

A. *English Divorce Law and the Origins of Spousal Support*

Prior to 1857, England applied two types of marital dissolution.²⁵ The first type of divorce was known as "absolute" divorce.²⁶ An absolute divorce "actually severed the marital bond."²⁷ Ecclesiastical courts could not grant this type of divorce. Only Parliament could grant an absolute divorce, and it was typically granted only to wealthy couples.²⁸

The second, more common type of divorce was known as a divorce from bed and board.²⁹ This type of divorce was similar to today's notion of legal separation—the court granted the spouses the right to live apart, but the marital relationship was left intact.³⁰ Since the couple technically remained married, their physical separation did not end the husband's control of his wife's assets, and the wife was not permitted to regain control of her own assets.³¹ Without any form of financial support, the wife had difficulty surviving.³² To solve this problem, courts conditioned divorces from bed and board on the husband's promise to continue paying for his wife's expenses pursuant to the duty of support.³³ Thus, this created an early system of "alimony."³⁴

22. Kapalla, *supra* note 18, 211-12.

23. Perry, *supra* note 21, at 11.

24. *Id.* at 3.

25. Collins, *supra* note 11, at 28.

26. *Id.*

27. *Id.*

28. Mavis Maclean, *From Advocacy to Management in Divorce: A Women's Issue?*, 2 CARDOZO WOMEN'S L.J. 53, 54 (1995).

29. Collins, *supra* note 11, at 28. Divorce from bed and board could only be granted by English "ecclesiastical courts from the mid-twelfth until the mid-nineteenth centuries." *Id.*

30. *Id.*

31. Kapalla, *supra* note 18, at 211-12.

32. *Id.* at 212.

33. Collins, *supra* note 11, at 29; see Brett R. Turner, *Spousal Support in Chaos*, FAM. ADVOC., Spring 2003, at 14, 15 ("Marriages were expected to last forever and could be ended only on grounds of fault. Since women usually did not and often could not find employment, the wife had a much higher standard of living while married than she could ever have on her own. When the marriage had to end because of the husband's misconduct, the wife was entitled to the benefit of her bargain—the standard of living she enjoyed during the marriage.").

34. The term "alimony" has been replaced by more modern terms, such as "maintenance" and "spousal support." Larry R. Spain, *The Elimination of Marital Fault in*

By the mid-nineteenth century, England had enacted universally accessible civil divorce statutes,³⁵ so divorce from bed and board became obsolete. However, the concept of alimony was so firmly entrenched in the law that courts continued awarding it even in cases where marriages were officially terminated.³⁶

B. Spousal Support Law in the United States

The American system of alimony was closely modeled on the English system.³⁷ Courts first began awarding alimony during colonial times.³⁸ Pennsylvania, for example, required husbands to agree to continue supporting their wives as a condition of receiving a divorce because wives had no other methods to support themselves.³⁹ In 1852, states began enacting the Married Women's Property Acts, which permitted divorced women to regain control of property they owned prior to marriage.⁴⁰ After the enactment of such laws, the idea of alimony and the notion that a husband's duty of support should continue after divorce no longer seemed necessary.⁴¹ Nevertheless, the concept of alimony was as deeply rooted in American law as it was in English law, so courts continued to require husbands to support their wives after divorce.⁴² Now, with the large number of women participating in the workforce and the increased employment opportunities available to women, alimony seems even less necessary.

Awarding Spousal Support: The Minnesota Experience, 28 WM. MITCHELL L. REV. 861, 866 (2001).

35. Collins, *supra* note 11, at 30.

36. *Id.*

37. Perry, *supra* note 21, at 23.

38. Collins, *supra* note 11, at 30. Although the colonies granted divorces, they remained rare. In fact, Massachusetts and Connecticut were the only colonies to grant more than a handful of divorces throughout the eighteenth century. *Id.* at 30-31.

39. *Id.* at 31. Underlying this rationale was the belief that if husbands did not continue supporting their ex-wives, the burden of their support would fall upon society.

40. Kapalla, *supra* note 18, at 212. For example, the New Jersey Married Women's Property Act stated:

Be it enacted by the Senate and General Assembly of the State of New Jersey, That the real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents, issues, and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female.

Chapter CLXXI: An Act for the Better Securing the Property of Married Women, in ACTS OF THE SEVENTY-SIXTH LEGISLATURE OF THE STATE OF NEW JERSEY 407 (1852), http://www.scc.rutgers.edu/njwomenshistory/Period_3/womenspropact.htm.

41. Kapalla, *supra* note 18, at 212.

42. *Id.* As a fundamental matter of constitutional law, spousal support is no longer reserved for just wives—courts can now order support for husbands as well. See *Orr v. Orr*, 440 U.S. 268 (1979).

Perhaps the concept of spousal support has always been controversial because no reason has ever been provided to adequately explain why one spouse should be forced to continue supporting the other after the termination of the marital relationship.⁴³ Several theories have been advanced, but none are convincing. For example, one theory posits that courts awarded alimony in the past based on the belief that women could not support themselves outside the home.⁴⁴ Another theory suggests that courts did not want "innocent" wives to suffer financial difficulty if their husbands breached the marital contract.⁴⁵ Now, spousal support is based on the notion that a couple should not be able to completely sever their economic ties if doing so would leave one spouse financially devastated.⁴⁶ However, none of these theories have articulated a clear reason why the economic burden of supporting a needy spouse should "fall on a former spouse, rather than on family members or on society as a whole."⁴⁷

Now that the history of spousal support has been addressed, it is necessary to discuss the different types of support currently awarded in America.

III. SYSTEMS OF SPOUSAL SUPPORT

Currently, American courts award different types of spousal support. These include permanent alimony, reimbursive support, compensatory support, rehabilitative support, reorientation support, and bridge-the gap support. The type of support awarded depends on the laws of the state where the recipient lives, and many states offer multiple support options. As the following subsections will demonstrate, support awards have progressed from permanent payments to compensation-based payments and finally to the currently favored temporary rehabilitative payments.

A. *Permanent Alimony: The Earliest System*

The earliest type of spousal support was known as permanent alimony.⁴⁸ Courts typically awarded this type of support to full-time homemakers after the dissolution of long-term marriages.⁴⁹ The amount of the award was based on "the needs of the receiving spouse

43. Collins, *supra* note 11, at 31.

44. Kapalla, *supra* note 18, at 212.

45. *Id.*

46. *Id.* at 212-13.

47. *Id.* at 213.

48. See Larkin, *supra* note 15, at 34-35.

49. Tonya L. Brito, *Spousal Support Takes on the Mommy Track: Why the ALI Proposal Is Good for Working Mothers*, 8 DUKE J. GENDER L. & POL'Y 151, 153 (2001).

and the ability of the paying spouse to pay.”⁵⁰ Courts generally awarded permanent alimony on a periodic or lump-sum basis⁵¹ until the supported spouse either remarried or died.⁵² Permanent alimony was a lifeline for many women who found themselves divorced with children to care for, no job, and no marketable skills. On the other hand, permanent alimony posed problems for divorced men who were forced to continue supporting their former spouses indefinitely, especially those men who chose to remarry and assume financial support for their new spouse. However, after the advent of no-fault divorce, permanent alimony fell out of favor because it interfered with the “free exit” from marriage allowed by the new no-fault divorce laws.⁵³

The trend in spousal support law now is to award support payments for a limited period in order to force ex-spouses to become financially self-sufficient.⁵⁴ Limited-duration awards arose in response to changing assumptions regarding the economic, cultural, and familial roles of men and women.⁵⁵ Dividing marital property equally and awarding temporary support fosters a “clean break” between the spouses.⁵⁶ Such a break could never be achieved if one spouse remained legally obligated to support the other indefinitely.

50. Kelly L. DeGance, Note, “Savings Alimony”: The Struggle for Fairness in Permanent Alimony Awards, 2 FLA. COASTAL L.J. 317, 318 (2001); see also Canakaris v. Canakaris, 382 So. 2d 1197, 1201 (Fla. 1980). The Florida Supreme Court held:

Permanent periodic alimony is used to provide the needs and the necessities of life to a former spouse as they have been established by the marriage of the parties. The two primary elements to be considered when determining permanent periodic alimony are the needs of one spouse for the funds and the ability of the other spouse to provide the necessary funds.

Id.

51. Ho & Johnson, *supra* note 13, at 71-72.

52. Larkin, *supra* note 15, at 34-35.

53. Frantz & Dagan, *supra* note 12, at 119-20. Before no-fault divorce laws, parties to a marriage could only divorce upon a showing of fault. However, no-fault divorce allows either party to file for divorce for any or no reason. Legal economists have analogized marriage under new no-fault laws as a type of “employment-at-will” contract. Parties to such contracts may “exit without penalty, thereby vitiating any claim to damages for breach.” Martha M. Ertman, *Commercializing Marriage: A Proposal for Valuing Women’s Work Through Premarital Security Agreements*, 77 TEX. L. REV. 17, 67-68 (1998).

54. Brito, *supra* note 49, at 154-55.

55. Larkin, *supra* note 15, at 35. Beginning in the 1970s, society’s assumptions regarding a woman’s inability to work and support herself began to change. As a result, society began to perceive women as able to obtain employment, able to earn enough money to be self-sufficient, and able to balance working with childcare responsibilities. *Id.*

56. Kapalla, *supra* note 18, at 214.

B. Reimbursive and Compensatory Support: The Middle Systems

Reimbursive support was one of the first types of support to emerge after permanent alimony fell out of favor.⁵⁷ This type of support was based on the theory that one spouse often chooses to invest his or her time and energy into the marriage believing it will help the other spouse's career and eventually improve the quality of the marriage.⁵⁸ However, if divorce occurs, this spouse is denied the future benefits his or her acts have ensured.⁵⁹ In the past, courts awarded this type of alimony to reimburse these spouses for their "faithful service during marriage"⁶⁰ while modern courts awarded this type of alimony to atone for the fact that they would never have the opportunity to enjoy the future benefits of their services.⁶¹

Compensatory support emerged more recently as part of the growing body of critical literature urging support awards based on compensation rather than the needs of the economically disadvantaged spouse.⁶² This model of support provides compensatory payments for certain losses experienced at the time a marriage is dissolved.⁶³ It is based on the theory that traditional marriage operates on a "gendered division of labor," in which one spouse works outside the home and one spouse works inside the home.⁶⁴ Compensatory support recognizes that the market prospects of the spouse who works outside the home significantly improve while the market prospects of the spouse who works inside the home become substantially impaired.⁶⁵ Instead of looking at the individual contributions of each spouse to the marriage, courts instead examine the couple's married standard of living and use it as a baseline for determining the amount of the support payments, suggesting a right of each spouse to continue living as if the marriage had not ended.⁶⁶

57. See LENORE J. WEITZMAN, *THE DIVORCE REVOLUTION: THE UNEXPECTED SOCIAL AND ECONOMIC CONSEQUENCES FOR WOMEN AND CHILDREN IN AMERICA* 146-49 (1985).

58. Murray, *supra* note 8, at 316.

59. *Id.*

60. *Id.* (quoting HOMER H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 642 (2d ed. 1988)).

61. *Id.*

62. See Christopher D. Nelson, Note, *Toward a Compensatory Model of Alimony in Alaska*, 12 ALASKA L. REV. 101, 120-21 (1995).

63. Collins, *supra* note 11, at 45.

64. Nelson, *supra* note 62, at 120-21.

65. *Id.*

66. Frantz & Dagan, *supra* note 12, at 120.

1. *Principles of the American Law Institute*

The American Law Institute (ALI) endorses the compensatory alimony model.⁶⁷ In its 1997 draft, the ALI's objective in awarding alimony was to allocate financial losses upon divorce in the most predictable and equitable manner possible.⁶⁸ Support should only be ordered in one of five narrow situations: (1) where one spouse in a long-term marriage experiences a decreased standard of living; (2) where one spouse experiences decreased earning capacity due to childcare responsibilities; (3) where one spouse experiences decreased earning capacity arising from the care of third parties; (4) where one spouse would experience an unfair lack of return for his or her investment in the other spouse's earning capacity; and (5) where, after a brief marriage, one spouse needs to adjust to his or her inability to recover the premarital standard of living.⁶⁹ If the court finds that a spouse satisfies any of these criteria and deserves compensation, the principles require the court to consider two factors in determining the amount of compensation that spouse should receive: the duration of the marriage and the economic disparity between the spouses at the time of divorce.⁷⁰ The ALI principles are touted as very flexible, and they should not be used if a "substantial injustice" would result.⁷¹

2. *The Likely Impact on Spousal Support if ALI's Principles Are Adopted*

If adopted, these principles could completely replace current spousal support laws,⁷² so it is important to understand their strengths and weaknesses. Proponents of the principles offer three advantages to their adoption. First, the principles would establish clear, percentage-based presumptions regarding the proper amount and duration of support awards.⁷³ Second, they would produce results that are more equitable and would lead to greater uniformity among

67. See PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS ch. 5 (Proposed Final Draft Part I, 1997) [hereinafter ALI PRINCIPLES]; see also Virginia R. Dugan & Jon A. Feder, *Alimony Guidelines: Do They Work?*, FAM. ADVOC., Spring 2003, at 20, 23.

68. Drefchinski, *supra* note 14, at 602; see also Brito, *supra* note 49, at 152 ("The drafters of the *Principles of the Law of Family Dissolution* have sought to bring certainty and fairness to this area of the law by transforming alimony from a need-based into an entitlement-based regime and dramatically reducing judicial discretion through imposition of guidelines for determining spousal support payments.").

69. ALI PRINCIPLES, *supra* note 67, §§ 5.05, .06, .12, .15, .16.

70. Kapalla, *supra* note 18, at 209. Consideration of such factors may trigger a presumption that a support award is warranted. *Id.*

71. *Id.* at 209.

72. *Id.* at 208.

73. Garrison, *supra* note 7, at 129.

divorce cases and settlements.⁷⁴ Finally, proponents argue that the principles would greatly improve the postdivorce situation of working parents by providing a mechanism for them to receive support if they have acted as the primary caretakers of their children during the marriage.⁷⁵ This last advantage is based on the theory that although working parents do not completely forsake their careers to raise children, they inevitably suffer some loss in earning capacity or career advancement because of caretaking responsibilities, and such loss deserves compensation.⁷⁶

Conversely, opponents of the ALI principles offer two disadvantages. First, the guidelines are too broad to permit consistent application.⁷⁷ Ultimately, the presumptions created by the guidelines could have a stronger influence in some jurisdictions than in others.⁷⁸ Second, the guidelines use the spouses' standard of living experienced during marriage as a baseline for determining a reasonable support award.⁷⁹ This baseline "presuppos[es] a right to live financially as though one continued to be married"⁸⁰ which is problematic because it does not reflect the principle that spouses should have the right to make their life as a married couple come to an end.⁸¹ Other ALI proposals suggest differently and assume that the marriage had never occurred and effectively "erases" all decisions the couple made while married.⁸² This other ALI approach is problematic because spouses should share equally in the liabilities as well as the benefits of living together.⁸³

Currently, the ALI principles remain mere principles—they have not yet been adopted by any of the states. Though the ideas

74. *Id.*

75. Brito, *supra* note 49, at 151-52 ("According to the reporters, [the ALI] proposal is premised on two principles: first, that caretaking is the responsibility of both parents and, second, that the spouse who assumes a greater portion of caretaking during marriage should not bear the full cost of any resultant career damage.").

76. *Id.* at 151-53. Section 5.06 of the ALI principles permits compensation for working parents whose postdivorce earning potentials are lower than they would have been if they had not assumed primary care of children during the marriage. However, this compensation is conditioned on two factors: (1) the children must have lived in the working parent's household for a specific period of time, and (2) the working parent's postdivorce earning capacity must be substantially lower than the earning capacity of the other spouse. *Id.* at 152-53.

77. Kapalla, *supra* note 18, at 210. See generally David Westfall, *Unprincipled Family Dissolution: The American Law Institute's Recommendations for Spousal Support and Division of Property*, 27 HARV. J.L. & PUB. POL'Y 917 (2004) (arguing that the ALI recommendations fail to promote interstate uniformity).

78. Kapalla, *supra* note 18, at 210.

79. Frantz & Dagan, *supra* note 12, at 120.

80. *Id.*

81. *Id.*

82. *Id.* at 121.

83. *Id.*

contained in these principles are quite innovative in theory, it remains to be seen how well they would actually work in practice.

C. Rehabilitative Support: The Current Trend

As previously stated, the modern trend in spousal support law has shifted toward awarding rehabilitative support.⁸⁴ The rationale behind rehabilitative support is very different from the rationale underlying reimbursive and compensatory support. It is not awarded to "reimburse" or to "compensate" a spouse for anything, and courts do not even consider the spouses' premarital standards of living or contributions to the marriage when setting the amount of the award.⁸⁵ Instead, rehabilitative support is awarded to help the financially impacted spouse obtain the skills, training, or education needed to become self-sufficient.⁸⁶ It is based on the long-held judicial belief that support awards should reduce the economic disadvantages of divorce on the supported spouse.⁸⁷ The presumption behind rehabilitation is that such training will eventually help the supported spouse obtain steady employment and learn to survive.⁸⁸

Courts typically award rehabilitative support to spouses who have been denied the opportunity to pursue an education or a career due to family, childcare, and household responsibilities.⁸⁹ In order to receive this type of award, the requesting spouse must demonstrate to the court that he or she has created definite rehabilitative goals, determined how to achieve such goals, and calculated the amount of rehabilitation necessary to become self-sufficient.⁹⁰ Rehabilitative support is not awarded if the requesting spouse cannot convince the court of its necessity.⁹¹ Such proof is necessary to ensure that people will not misuse their support payments. Like other types of support, courts should exercise discretion in determining the amount of rehabilitation awarded.⁹² To determine the amount and duration of

84. *Id.* at 119.

85. *Id.* at 122-23.

86. *Id.* at 122; Murray, *supra* note 8, at 317.

87. Murray, *supra* note 8, at 317.

88. Schanck v. Schanck, 717 P.2d 1, 5 (Alaska 1986) (stating that "rehabilitative alimony is properly limited to job training or other means directly related to the end of securing for one party a source of earned income").

89. Lyle & Levy, *supra* note 10, at 12.

90. Ho & Johnson, *supra* note 13, at 72-73. For example, the Alaska Supreme Court strongly encouraged a divorcee seeking rehabilitative support to submit "a cost estimate of the rehabilitative plan, as well as an approximation of the economic benefit that is expected. It is necessary that the person receiving rehabilitative alimony will improve employability as a result of the plan." Ulsher v. Ulsher, 867 P.2d 819, 822 n.5 (Alaska 1994).

91. See Nelson, *supra* note 62, at 107-08. Rehabilitative support should also be denied to spouses who intend to use the money for purposes other than education or training. *Id.*

92. Frantz & Dagan, *supra* note 12, at 123.

rehabilitative support, courts should balance the needs of the disadvantaged spouse against the desire to minimize the burden on the spouse forced to pay for those needs.⁹³ Luckily for the supporting spouse, rehabilitative support is usually temporary—it ends when the supported spouse has had time to become self-sufficient and self-supporting.⁹⁴ Upon reaching these goals, there is no further legal duty for the supporting spouse to continue paying.⁹⁵

D. Reorientation and Bridge-the-Gap Support

Another type of support, known as reorientation, may be awarded in combination with rehabilitation support.⁹⁶ This type of support is designed to “allow the requesting spouse an opportunity to adjust to the changed financial circumstances accompanying a divorce.”⁹⁷ It is typically awarded only in cases where the division of the couple’s property does not adequately satisfy the immediate needs of one spouse.⁹⁸ Reorientation is inherently transitional, typically lasting for a maximum of one year,⁹⁹ or until recipients have had an opportunity to “reorient” themselves to single life. This type of support helps the recipient pay the bills while undergoing rehabilitation training or education.

A few states, including Florida, recognize a newly emerging form of support known as bridge-the-gap.¹⁰⁰ Bridge-the-gap support consists of periodic payments intended to assist a needy spouse with short-term basic living needs.¹⁰¹ Such support is most helpful when

93. *Id.*

94. Murray, *supra* note 8, at 317.

95. Rehabilitative support awards typically are paid for the duration of the recipient’s estimated rehabilitation plan or for a reasonable amount of time determined by the court. Otherwise, recipients could take advantage of the system by creating rehabilitation plans that endure indefinitely. See Nelson, *supra* note 62, at 107-08.

96. *Id.* at 110-11.

97. *Id.* at 110 (quoting Richmond v. Richmond, 779 P.2d 1211, 1215 n.6 (Alaska 1989)).

98. *Id.*

99. *Id.*

100. See Borchard v. Borchard, 730 So. 2d 748 (Fla. 2d DCA 1999); Green v. Green, 672 So. 2d 49 (Fla. 4th DCA 1996); see also Jesse J. Bennett, Jr., *Bridge-the-Gap Alimony: An Emerging Vehicle for Satisfying Short-Term Need*, FLA. B.J., Nov. 1999, at 65, 65.

101. Ho & Johnson, *supra* note 13, at 72. For example, in one case, the Florida Fourth District Court of Appeal ordered a wealthy older husband to pay his younger, less wealthy wife \$1,000 per month in rehabilitative support for six months. Murray v. Murray, 374 So. 2d 622 (Fla. 4th DCA 1979). The court held that this “short period of rehabilitative alimony [was] sufficient to allow the wife to ‘bridge’ the gap between the high standard of living enjoyed during the brief marriage and the more modest standard that the wife can provide for herself.” *Id.* at 624. In another case, the Florida Third District Court of Appeal held that a wife was not entitled to more than \$1,000 per month for eighteen months from her husband after the demise of their ten-year marriage because she was employed, possessed adequate job skills, and did not need rehabilitation “other than to ease her transition from a married to a single status.” Iribar v. Iribar, 510 So. 2d 1023, 1024 (Fla. 3d DCA 1987).

the divorcing couple does not possess sufficient assets that can be sold for support money or when one spouse requires help transitioning from a married to a single status.¹⁰² It is not designed to help rehabilitate the spouse—just to take care of his or her immediate needs. Bridge-the-gap awards must be reasonable and are based on the supporting spouse's ability to pay,¹⁰³ so these awards may appear more fair than other types of awards because they are neither rehabilitative nor compensatory in nature.

E. Property Division in Lieu of Spousal Support?

The Uniform Marriage and Divorce Act, created in 1970 and amended in 1971 and 1973, actively opposes spousal support.¹⁰⁴ According to the drafters, the goal of the Act is to:

[E]ncourage the court to provide for the financial needs of the spouses by property disposition rather than by an award of maintenance. Only if the available property is insufficient for the purpose and if the spouse who seeks maintenance is unable to secure employment appropriate to his skills and interests or is occupied with childcare may an award of maintenance be ordered.¹⁰⁵

The Act provides several factors to help courts determine reasonable support awards, such as the requesting party's financial resources and apportionment of the marital property.¹⁰⁶ Clearly, the rationale behind the Uniform Marriage and Divorce Act's model of support is that it should not be awarded in most cases. So far, this model has only been adopted by eight states.¹⁰⁷ Thus, it remains a minority perspective.

102. Ho & Johnson, *supra* note 13, at 72.

103. *Id.*

104. UNIF. MARRIAGE & DIVORCE ACT § 308 (amended 1971, 1973), 9A U.L.A. 446 (1998).

105. *Id.* § 308, 9A U.L.A. cmt. at 447.

106. *Id.* § 308(b), 9A U.L.A. at 446. Other factors include the requesting party's ability to meet his or her needs independently, childcare responsibilities of the requesting party, amount of time needed for the requesting party to receive education and training needed to obtain employment, standard of living enjoyed during the marriage, duration of the marriage, age and physical and emotional condition of the requesting party, and the ability of the supporting spouse to pay support and still satisfy his or her own needs. *Id.*

107. Drefchinski, *supra* note 14, at 585. The eight states that have adopted the Uniform Marriage and Divorce Act are Arizona, Colorado, Illinois, Kentucky, Minnesota, Missouri, Montana, and Washington. *Id.*

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