NOTE
SPOUSAL SUPPORT AWARDS IN UTAH:
AN ALTERNATIVE APPROACH

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INTRODUCTION

Based on the most recently published statistics from the National Center for Health Statistics, the rates of marriage and divorce per 1,000 people in the United States is 3.4 and 6.8 respectively.¹ While making predictions about future rates is inherently difficult, assuming the current rates continue over time it is estimated that about 50 percent of all marriages will end in divorce.² By any measure, divorce impacts hundreds of thousands of people each year.

Alimony is a point of issue in many divorces and generally, courts have broad judicial discretion to determine the amount and duration of spousal support awards. This Note advocates moving away from broad judicial discretion and moving toward a statutorily-based formulaic approach that still allows a reasonable amount of judicial discretion in extraordinarily unique cases. Part I explains how broad judicial discretion can cause judicial inefficiencies. Part II discusses the American Academy of Matrimonial Lawyers’ (AAML) recommended formulaic approach to spousal support. Part III discusses the common arguments for and against broad judicial discretion with respect to spousal support. Part IV advocates the AAML’s formulaic approach to spousal support as an effective way to balance the interests of all parties. Finally, Part V advocates the Utah Legislature merging the AAML’s formulaic approach into Utah’s current spousal support statute.

I. THE ISSUE OF SPOUSAL SUPPORT CAUSES UNNECESSARY INEFFICIENCIES IN DIVORCE CASES

The impact of a divorce rate of 3.4 per 1000 people might appear small, but at that rate, over one million divorces occur each year in the United States.³ The impact is even greater because each divorce impacts the lives of at least two

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² Cynthia Grant Bowman, Social Science and Legal Policy: The Case of Heterosexual Cohabitation, 9 J.L. & FAM. STUD. 1, 17 & n.95 (2007).

³ This estimate is calculated by dividing the U.S. Census Bureau’s 2010 Population of 308,745,538 by 1,000, then multiplying that quotient by the divorce rate of 3.4: (308,745,538/1,000) x 3.4 = 1,049,735. Census Bureau statistics are available at http://www.census.gov.
people—the husband and the wife—and potentially many more, including children.

In addition to emotional strains, a divorce can cause significant and long-term financial strains. Generally, families led by married couples are far better off financially than are those led by single divorcees. The National Bureau of Economic Research (NBER) estimates that family income in households with children whose parents divorce and remain divorced for at least six years falls by 40 to 45 percent. To put that estimate into raw numbers, imagine fictional Couple A has a family income of $100,000 prior to divorcing. The NBER data suggests that if Couple A divorces and each spouse remains single for six years, their separate household incomes will fall, on average, to about $55,000 to $60,000. Such a dramatic change in income can significantly affect the divorcees’ economic lifestyles and the lifestyles of any affected children.

It is difficult to imagine a civil cause of action other than divorce that directly affects so many people in such a significant way. Given the number of people affected and the related onerous financial strains, it is important that the legal framework for divorce cases provides an efficient and fair outcome for both parties.

Awarding spousal support is one of the ways that courts can remedy some of the negative financial impact of a divorce. Despite criticism by some legal scholars that spousal support has no basis in sound legal theory, courts are generally empowered by statute to award spousal support based on principles of equity.

Under current state laws, the decision to award spousal support, and the amount to award, is left largely to the broad discretion of the courts. Broad judicial discretion contributes to the unpredictability of spousal support outcomes, and unpredictability presents significant difficulties for nearly everyone involved in a divorce case, including the divorcing spouses, lawyers, judges, and state legislatures.

With respect to the matter of spousal support, one author noted that it “has been a source of much inconsistency among trial courts, unhappiness among

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5 Id.
8 See, e.g., UTAH CODE ANN. § 30-3-5(8)(c) (West 2011) (when determining alimony “[t]he court shall consider all relevant facts and equitable principles” (emphasis added)).
10 See, e.g., Mary K. Kisthardt, Re-Thinking Alimony: The AAML’s Considerations for Calculating Alimony, Spousal Support or Maintenance, 21 J. AM. ACAD. MATRIM. LAW 61, 64 (2008) [hereinafter Kisthardt, Re-Thinking Alimony].
litigants, and conflict among critics.”11 By another account, the law governing spousal support has been criticized as “vague, complex and highly discretionary,”12 and “neither predictable, accurate, satisfactory, nor fair.”13

II. THE AAML’S RECOMMENDED FORMULIC APPROACH TO SPOUSAL SUPPORT WOULD LIKELY ELIMINATE MANY OF THE PROBLEMS OF A DISCRETION-BASED APPROACH

A formulaic approach to spousal support would lower the legal costs of a divorce by allowing the parties to accurately estimate the court’s determination of spousal support prior to ever entering a courtroom. The parties could thereby avoid the attorney fees associated with that issue. A formulaic approach would help attorneys provide clients with clear legal advice about what a court is likely to award in spousal support. The courts would also benefit by avoiding the nearly impossible task of accurately weighing the facts of each case and fairly arriving at a spousal support award. Overall, spousal support would finally be based on a more definite standard (the formulaic statute) that would facilitate a perception of fairness across cases.

A formulaic approach to spousal support has been recommended by the AAML.14 The AAML is made up of family law practitioners from across the country and its recommendation for a formulaic approach to spousal support has been discussed seriously in Utah.15 The AAML’s recommended approach would arguably better serve the primary stakeholders (i.e. the divorcing spouses, attorneys, and courts/judges) in divorce proceedings.

III. THE DEBATE BETWEEN BROAD JUDICIAL DISCRETION AND LIMITED JUDICIAL DISCRETION UNDER A FORMULIC APPROACH IS DIFFICULT TO RESOLVE

Trial courts generally have broad discretion when making spousal support determinations.16 Such broad discretion has led to the view among some divorce litigants that spousal support awards are arbitrary.17 As one might expect, broad discretion naturally leads to variability and unpredictability in the size of spousal support awards as judges struggle to make equitable determinations.

Referring to the problem of unpredictability in spousal support awards, a Florida judge has expressed his belief that spousal support determinations should be standardized to ensure that outcomes are more predictable, which would encourage settlement and decrease litigation.18 The judge wrote: “A statute setting [spousal support] guidelines would add a world of predictability to dissolution of marriage litigation, thereby operating to promote settlements and reduce attorney’s fees and thus avoid costly and time-consuming appeals like this one.”19 Variability can be particularly problematic, even for the divorce litigants who settle their case, because it encourages settlements made blindly, without any reliable basis to gauge its fairness.20 One commentator noted that “[s]tatutory criteria, with no rules for their application, then result in a pathological effect on the settlement process by which most divorces are handled.”21 In other words, the unpredictability of awards is so high that few divorce litigants dare go to court to secure a more appropriate award.

While broad discretion can be criticized, it does have benefits. Most obvious is that it allows judges to tailor each spousal support award to the unique facts of each case. No two divorce cases are exactly the same and so it is natural to argue that broad judicial discretion is necessary to ensure equitable outcomes. To some extent, a certain level of judicial discretion seems necessary.22

The debate can be reduced to simple terms. On one hand, a formulic approach would avoid unnecessary legal costs, facilitate predictability of award amounts, and allow the divorcing couple to make better informed decisions. On the other hand, broad judicial discretion might result in more equitable spousal support

16 See, e.g., UTAH CODE ANN. § 30-3-5(8) (West 2011); see also Drefchinski, supra note 11, at 598–99 (discussing the broad discretion of trial courts in Illinois).
19 Bacon, 819 So. 2d at 956.
20 Thurman, supra note 18, at 972.
21 Kisthardt, Re-Thinking Alimony, supra note 10, at 64 (internal quotations omitted).
22 See, e.g., Twila B. Larkin, Guidelines for Alimony: The New Mexico Experiment, 38 FAM. L.Q. 29, 53 (2004) (“These alimony guidelines were not intended to, and in no way can, replace judicial discretion in awarding alimony.”).
awards. Of course, what is equitable in any given case is a matter of opinion. While the debate persists, the argument for a predictable, formulaic approach seems to be gaining momentum in Utah.\(^{23}\)

There are seemingly countless variables that a judge could (and arguably should) consider when determining spousal support.\(^{24}\) In fact, one commentator found over sixty factors mentioned in the fifty states’ spousal support statutes.\(^{25}\) Many state statutes also include a general “catch-all” provision that allows the judge to consider “any other factors” he or she thinks are relevant.\(^{26}\) A statute that includes a “catchall provision” effectively grants judges unlimited discretion.

Utah’s spousal support statute lists only vague guidelines that a court “shall” consider when determining spousal support, and other variables that a court “may” consider.\(^{27}\) Utah’s statute is a classic example of a legislature pushing the onus onto the judiciary to determine spousal support awards. Unfortunately, that approach only encourages the problems of disparate and unpredictable spousal support awards and forced settlements.

It has been pointed out that:

[L]ack of consistency and predictability [in cases dealing with spousal support] undermines confidence in the judicial system and further acts as an impediment to the settlement of cases, because without a reliable method of prediction clients are in a quandary and lawyers can only offer forecasts based on experiential, rather than empirical, backing.\(^{28}\)

Perhaps legislatures have been reluctant to adopt a more formulaic approach for judges to follow when calculating spousal support because the theory on which spousal support has traditionally been based is the “need” of the recipient spouse and the “ability” of the other spouse to pay.\(^{29}\) Need and ability are abstract ideas that a formula may not be able to adequately calculate. Therefore, a strictly formulaic approach might be ill-equipped to sufficiently consider the needs of the receiving spouse and the ability of the other spouse to pay.

In the end, the overarching aim of spousal support awards is to achieve “a fair, just, and equitable result between the parties.”\(^{30}\) A move away from vague

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\(^{23}\) See, e.g., Florence, supra note 15.
\(^{24}\) Some considerations that arguably should be considered in every divorce proceeding are 1) duration of the marriage; 2) income of each spouse at the time of marriage; 3) income of each spouse during the marriage; 4) sacrifices made by one spouse during the marriage that benefitted the other spouse’s money-making abilities; 5) financial status of each spouse prior to the marriage; and 6) future earning capacity of each spouse post divorce.
\(^{25}\) Collins, supra note 13, at 33–35.
\(^{26}\) Thurman, supra note 18, at 974 (internal quotations omitted).
\(^{27}\) See, e.g., UTAH CODE ANN. § 30-3-5(8)(a)–(c) (West 2010).
\(^{28}\) Kisthardt, Re-Thinking Alimony, supra note 10, at 62.
\(^{29}\) See, e.g., id. at 75.
guidelines toward a more formulaic approach that includes some limited degree of discretion may strike the appropriate balance to better achieve that goal.

IV. THE AAML’S RECOMMENDED FORMULIC APPROACH TO SPOUSAL SUPPORT STRIKES A REASONABLE BALANCE BETWEEN CASE-SPECIFIC AWARDS AND PREDICTABILITY

In 2002, the American Law Institute (ALI) published its *Principles of the Law of Family Dissolution: Analysis and Recommendations* (*Principles*). Among other things, the *Principles* discussed the problem of disparate judgments and perceived unfairness in the area of spousal support awards and, to achieve greater fairness and efficiencies, recommended a new approach. Rather than awarding spousal support based on the traditional concepts of “need” and “rehabilitation,” the *Principles* instead recommended that “absent extraordinary circumstances, spousal support should be based exclusively on compensation for losses that occurred as a result of the marriage.”31 In other words, spousal support should be awarded where the marriage is shown to have caused an economic loss to the recipient spouse in some way (e.g., by forgoing an education, or by delaying the start of a career). However, the ALI’s approach was rejected by the AAML after considering extensive feedback from its members through a national survey.32

The AAML studied the approaches to spousal support from many jurisdictions and came out with its own recommendations in 2007.33 In its recommendation it noted that there are two factors that virtually all jurisdictions considered when determining spousal support: income of the parties and the length of the marriage.34 With those two commonly accepted factors in mind, the AAML Commission recommended a formula for computing a fair spousal support award.35 In addition, the AAML recognized that there would be situations in which its recommended formula would not reflect the unique circumstances of each case, so its formula includes “deviation factors” that can address those cases that are so extraordinary that an adjustment from the base formula amount seems appropriate.36

The formula that the AAML recommended is quite simple and is based on several variables. First, the AAML considers the payor’s gross income, the payee’s gross income and the length of the marriage.37 Under the AAML’s recommended

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32 Id.
33 Id. at 78–79.
34 Id.
35 Id.
36 Id. at 78.
37 Id. at 80. “Gross Income” is defined in the AAML recommendation as the “state’s definition of gross income under the child support guidelines, including actual and imputed income.” Id. See also UTAH CODE ANN. § 78B-12-204 (2008) (“‘adjusted gross income’ is the amount calculated by subtracting from gross income alimony previously ordered and paid and child support previously ordered. . . . The guidelines do not reduce the total child
formula, the amount of spousal support that should be awarded is equal to 30 percent of the payor’s gross income minus 20 percent of the payee’s gross income; as a threshold matter, the payee’s gross income prior to any alimony award is not to exceed 40 percent of the combined gross income of the parties. For example, if a couple has been married for five years and the husband earns gross income of $50,000 per year and the wife is a stay-at-home mom who has no income, then the award amount would be 20 percent of the husband’s gross income per year, which is $10,000 per year or roughly $833 per month.

The duration of the award is calculated by multiplying the length of the marriage by one of the following factors: for marriages of 0–3 years the factor is 0.3; for marriages 3–15 years the factor is 0.5; for marriages 10–20 years the factor is 0.75; and for marriages over twenty years, the alimony is permanent. For example, using the prior scenario of a marriage of 5 years, the payment of $833 per month would continue for 2.5 years (calculated by multiplying five years by the factor of 0.5).

At first thought, such a strict and simple formula may seem overly broad to fairly award spousal support that is equitable in each unique case. But the primary purpose of adopting a formulaic approach is to ensure predictability to avoid unnecessary legal costs and wasted court time, as noted above. If that goal can be achieved while simultaneously maintaining fair awards, then it makes sense to move in that direction.

Under the AAML’s recommendation, after a baseline alimony award is calculated under the formula, the judge may adjust the award to a higher or lower amount based on any existing “deviation factors.” The concept of deviation factors might seem to some as an open invitation for judges to award any amount they want, justifying the amount by some found deviation factor. However, deviation factors are limited to only extraordinary facts that make the baseline award extremely unfair for one of the parties. Deviation factors work as a safety valve for the judge to use when the circumstances make an adjustment absolutely necessary.

The AAML’s recommendation includes ten specific deviation factors that a judge may deem sufficient to adjust a baseline spousal support award under the formula. Note that the existence of these factors does not require the judge to alter the spousal award calculated under the formula. The ten deviation factors listed in the AAML’s recommendation are: 1) a spouse is the primary caretaker of a dependant minor or a disabled adult child; 2) a spouse has pre-existing court-supported award by adjusting the gross incomes of the parents for alimony ordered in the pending proceeding. In establishing alimony, the court shall consider that in determining the child support, the guidelines do not provide a deduction from gross income for alimony.”).

38 Kisthardt, Re-thinking Alimony, supra note 10, at 80.
39 Id.
40 Id. at 80–81.
ordered support obligations; a spouse is complying with court-ordered payment of debts or other obligations (including uninsured or unreimbursed medical expenses); 4) a spouse has unusual needs; 5) a spouse’s age or health; 6) a spouse has given up a career, a career opportunity, or otherwise supported the career of the other spouse; 7) a spouse has received a disproportionate share of the marital estate; 8) there are unusual tax consequences; 9) other circumstances that make application of these considerations inequitable; or 10) the parties have agreed otherwise.

The ninth deviation factor listed in the AAML’s report is a “catch-all” provision that allows the judge to use his discretion to adjust the baseline award in extraordinary cases that do not fall under one of the other listed deviation factors. While that may seem to defeat the purpose of a formulaic approach, adjustments to the baseline award are only to be used in rare circumstances. Another key benefit of the formulaic approach is that, even if a baseline award is eventually adjusted based on one of the ten deviation factors, knowing the baseline award amount at the very beginning of a divorce would allow the divorcing parties to plan a legal course of action based on statutorily supported estimates of likely spousal support awards rather than mere speculation.

Many state legislatures have considered adopting more concrete guidelines for judges to follow when awarding spousal support, but few have adopted any specific formulas to determine the actual amounts of spousal support awards. Initially, spousal support awards were completely discretionary, but the movement in favor of state legislatures adopting guidelines has grown rapidly. The judge in the Bacon concurrence, expressed his view that “broad discretion in the award of alimony is no longer justifiable and should be discarded in favor of guidelines, if not an outright rule.”

In the area of child support—an analogous area of the law—“[u]npredictable and inconsistent holdings do not occur . . . in states where the legislature has adopted the Uniform Child Custody and Support Act,” which includes a formulaic approach to determining child support payments. The Uniform Child Custody and Support Act aims to ensure that inculpable children do not become the financial victims of their parents’ divorce. But the formulaic approach also minimizes the time spent arguing in court about how much child support should be paid. The judicial efficiencies gained in the area of child support could likely also be gained in the area of spousal support if a formulaic approach was similarly adopted.

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41 Id. at 81 (recommendation specifically states: “The spousal support payment is calculated before child support is determined.”).
42 Id.
44 Id.
46 Thurman, supra note 18, at 984.
The formula recommended by the Commission is simple and easy to follow. If adopted by the Utah legislature, it would allow practitioners to better inform their clients on what spousal support is likely to be awarded. In turn, it would likely encourage timely and fair settlements while simultaneously reducing legal fees. In the sections below, the current Utah approach is discussed and a recommendation is made as to how the Commission’s recommended calculation might be merged with Utah’s current statute.

V. Utah’s Legislature Should Adopt the Recommendations of the Commission of AAML by Merging the Recommendations with Utah’s Current Statute

The Utah statute that governs spousal support awards is Utah Code section 30-3-5. Like most states’ spousal support statutes, the Utah statute grants judges broad judicial discretion in determining spousal support.

The Utah code requires judges to consider the following seven factors when determining spousal support:47 1) the financial condition and needs of the recipient spouse; 2) the recipient’s earning capacity or ability to produce income; 3) the ability of the payor spouse to provide support; 4) the length of the marriage; 5) whether the recipient spouse has custody of minor children requiring support; 6) whether the recipient spouse worked in a business owned or operated by the payor spouse; and 7) whether the recipient spouse directly contributed to any increase in the payor spouse’s skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

In addition to the seven factors listed above that judges are required to consider, the statute includes an array of considerations that judges “may” consider; for example, Utah courts may consider the fault of the parties, and standard of living that existed at the time of marriage or at trial.48

Utah’s statute allows essentially no limit to judicial discretion when determining spousal support. Ironically, this broad judicial discretion also allows a Utah judge to voluntarily adopt the AAML’s recommended spousal support formula at any time. In Maryland, where the statute is similar to Utah’s, a judge did just that in Boemio v. Boemio.49

In Boemio, a Maryland judge applied the AAML’s recommended formula, in conjunction with considerations required under the Maryland statute, to arrive at a spousal support determination. The husband was ordered to pay child support. He appealed, arguing that the Maryland statute did not allow the judge to consider the AAML’s recommended formula in coming to a determination of the amount and duration of the spousal support award. The Maryland Court of Appeals ruled against the husband, finding that the lower court did not err in consulting the

47 UTAH CODE ANN. § 30-3-5(8)(a) (West 2010).
48 Id. § 30-3-5(b)–(f).
49 Boemio v. Boemio, 994 A.2d 911, 925 (Md. 2010).
AAML’s formula to determine the spousal support award after conducting the statutory analysis.\(^{50}\)

The Maryland Court of Appeals believes “that the AAML recommendations are the product of a careful study by a professional organization of knowledgeable practitioners, which are reasonable in approach...”\(^{51}\) The court further noted that the AAML recommendations do not supplant the family law section of the Maryland code or frustrate its purpose—and therefore the court considers the recommendations to be “legitimate and neutral guidelines” that are “helpful to judges making [spousal support] awards.”\(^{52}\)

While the Maryland court in the Boemio case did refer to the AAML’s recommendations in coming to a spousal support award, it is still to be revealed whether judges in Maryland will continue to refer to the AAML’s recommendations. Therefore, the Boemio instance of a court relying on the AAML’s formula may be a one-time event.

If the Boemio case is any indication, the Utah statute does not preclude using the AAML’s formula as a consideration when determining an award. Therefore, like the Maryland court in Boemio, a Utah court could also use the AAML’s recommended calculation when making a spousal support determination. However, the best way to ensure predictability and uniform outcomes of spousal support awards in Utah is for the Utah legislature to adopt a statute formulaic approach similar to the AAML’s recommended formula.

As mentioned above, the Utah spousal support statute requires judges to consider seven factors in determining alimony.\(^{53}\) In effect, the factors that the Utah statute requires judges to consider include the factors that are used to calculate spousal support under the AAML’s recommendation. The Utah statute requires consideration of, among other factors, the recipient’s earning capacity, the ability of the payor to provide support, and the length of the marriage. Note that these factors are substantially the same as the factors used to calculate spousal support under the AAML’s recommendation—income of the recipient, income of the payor, and length of the marriage.\(^{54}\)

The Utah Supreme Court recently stated that when determining spousal support awards, trial courts must be mindful of the primary purposes of alimony: “(1) to get the parties as close as possible to the same standard of living that existed during the marriage; (2) to equalize the standards of living of each party; and (3) to prevent the recipient spouse from becoming a public charge.”\(^{55}\) If the Utah state legislature adopted the AAML’s formula, it would ensure that the purposes stated by the Utah Supreme Court were met, while also encouraging consistency and predictability of future awards.

\(^{50}\) Id. at 921–22.

\(^{51}\) Id. at 921.

\(^{52}\) Id.

\(^{53}\) UTAH CODE ANN. § 30-3-5(8)(a)(i)-(vi) (West 2010).

\(^{54}\) See supra text accompanying note 37.

\(^{55}\) Richardson v. Richardson, 2008 UT 57, ¶ 7, 201 P.3d 942.
One way that the Utah legislature could adopt the AAML’s recommendation without completely abandoning the Utah statute as it currently stands is to adopt the formula portion of the AAML’s recommendation and then use the current Utah factors as “deviation factors” to be applied only in extenuating circumstances. The result would be to limit judicial discretion to the maximum extent possible, but allow a judge to adjust the award when the circumstances are extraordinarily unique.

CONCLUSION

With nearly half of all marriages estimated to end in divorce, the number of people affected by the outcomes of divorce proceedings is high. Spousal support is one of the outcomes that can have lasting and impactful consequences on the financial conditions of both spouses, and their children, after the divorce. Because spousal support awards will affect so many people, it is important that the way courts apply spousal support statutes is clear, predictable, and consistent. Unfortunately, as the Utah spousal support statute stands now, judges have virtually unlimited discretion when deciding the amount of spousal support to award. That discretion can lead to disparate and unpredictable awards.

Recognizing the difficulties that disparate and unpredictable spousal support awards causes, the AAML recommended a formulaic approach to determining spousal support awards. The AAML’s recommendation uses basic variables (e.g., income of each spouse and length of the marriage) to calculate spousal support awards. In extraordinarily unique circumstances, the AAML’s recommended approach allows judges to make adjustments to the calculation based on deviation factors. While the AAML’s formula may not allow judges the discretion they enjoy under current statutes, it does provide a simple, easy-to-apply calculation that would be very useful to practitioners and their clients in making decisions about whether to settle and avoid costly litigation.

The Utah legislature should amend the Utah spousal support statute to adopt a formulaic approach similar to that recommended by the AAML. If a formulaic approach is adopted, judicial determinations of spousal support amounts would be far more predictable and parties to a divorce could then make better informed decisions about how to handle their unique case. Predictability in judicial spousal supporter determinations would likely reduce litigation costs for both parties and lead to more efficient divorce proceedings.

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56 See Appendix A for an example of a bill that amends Utah’s current statute to adopt the AAML’s recommended formula while keeping some of the current Utah statute’s consideration factors.
APPENDIX A

Alimony Formulaic Guidelines
2011 GENERAL SESSION
STATE OF UTAH
Chief Sponsors: Representative John Doe

LONG TITLE
General Description:
This bill modifies the alimony provisions of the Utah Code to ensure consistent and predictable alimony awards by adopting a formulaic approach similar to the American Academy of Matrimonial Lawyers Commission’s (“AAML Commission”) recommended approach for determining alimony.

Highlighted Provisions:
This bill:
- Ensures consistent and predictable alimony awards.
- Establishes a formula for calculating a default alimony award.
- Creates a list of deviation factors that allow for deviation from the default award.

Monies Appropriated in this Bill:
None

Other Special Clauses:
None

Utah Code Sections Affected
AMENDS:
30-3-5, as last amended by Chapter 285, Laws of Utah 2010

Be it enacted by the Legislature of the state of Utah:
Section 1. Section 30-3-5 is amended to read:
30-3-5 Disposition of property – Maintenance and health care of parties and children – Division of debts – Court to have continuing jurisdiction – Custody and parent-time – Determination of alimony – Nonmeritorious petition for modification.

1) As used in this section:
(a) “Alimony” means an award in a divorce proceeding that is meant to prevent a spouse from becoming a public charge and to maintain, to the extent possible, the standard of living enjoyed during the marriage.
(b) “Default award” means the amount and duration of alimony that shall be awarded in the absence of deviation factors.
(c) “Deviation factors” means those exceptional factors that are sufficiently unique to justify deviation from the default award.
(d) “Gross income” is as defined in Section 61, Internal Revenue Code, and for purposes of this Section shall be based on the trailing 12 months from the date the divorce is filed.
(2) When a decree of divorce is rendered, the court may include in it equitable orders relating to the children, property, debts or obligations, and parties. The court shall include the following in every decree of divorce:

(a) an order assigning responsibility for the payment of reasonable and necessary medical and dental expenses of the dependent children including responsibility for health insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

(b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the purchase and maintenance of appropriate health, hospital, and dental care insurance for the dependent children; and

(ii) a designation of which health, hospital, or dental insurance plan is primary and which health, hospital, or dental insurance plan is secondary in accordance with the provisions of Section 30-3-5.4 which will take effect if at any time a dependent child is covered by both parents’ health, hospital, or dental insurance plans;

(c) pursuant to Section 15-4-6.5:

(i) an order specifying which party is responsible for the payment of joint debts, obligations, or liabilities of the parties contracted or incurred during marriage;

(ii) an order requiring the parties to notify respective creditors or obligees, regarding the court’s division of debts, obligations, or liabilities and regarding the parties’ separate, current addresses; and

(iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(3) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(4) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(5) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(6) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or
visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys’ fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party’s failure to provide or exercise court-ordered visitation or parent-time.

(8) (a) The court shall consider at least the following factors in determining alimony:

(i) the financial condition and needs of the recipient spouse;
(ii) the recipient’s earning capacity or ability to produce income;
(iii) the ability of the payor spouse to provide support;
(iv) the length of the marriage;
(v) whether the recipient spouse has custody of minor children requiring support;
(vi) whether the recipient spouse worked in a business owned or operated by the payor spouse; and
(vii) whether the recipient spouse directly contributed to any increase in the payor spouse’s skill by paying for education received by the payor spouse or allowing the payor spouse to attend school during the marriage.

(b) The court may consider the fault of the parties in determining alimony.

(c) As a general rule, the court should look to the standard of living, existing at the time of separation, in determining alimony in accordance with Subsection (8)(a). However, the court shall consider all relevant facts and equitable principles and may, in its discretion, base alimony on the standard of living that existed at the time of trial. In marriages of short duration, when no children have been conceived or born during the marriage, the court may consider the standard of living that existed at the time of the marriage.

(d) The court may, under appropriate circumstances, attempt to equalize the parties’ respective standards of living.

(e) When a marriage of long duration dissolves on the threshold of a major change in the income of one of the spouses due to the collective efforts of both, that change shall be considered in dividing the marital property and in determining the amount of alimony. If one spouse’s earning capacity has been greatly enhanced through the efforts of both spouses during the marriage, the court may make a compensating adjustment in dividing the marital property and awarding alimony.

(f) In determining alimony when a marriage of short duration dissolves, and no children have been conceived or born during the marriage, the court may
consider restoring each party to the condition which existed at the time of the marriage.

(9)(a) The court shall calculate the amount of the default award by taking 30% of the payor’s gross income minus 20% of the recipient’s gross income.

(b) The amount of the default award shall be calculated independent of child support.

(c) The duration of the default award shall be determined by an Alimony Duration Table.

(d) The court may adjust the default award only if any of the following deviation factors exist:

(i) A spouse is the primary caretaker of a disabled person;

(ii) A spouse has pre-existing court-ordered support obligations;

(iii) A spouse is complying with court-ordered payment of other obligations;

(iv) A spouse’s age or health makes the default award inequitable;

(v) A spouse has received a disproportionate share of the marital estate;

(vi) There are unusual tax consequences;

(vii) The recipient spouse worked in a business owned or operated by the payor spouse;

(viii) The recipient spouse was disproportionately at fault in causing the divorce;

(ix) Other factors make the default award materially inequitable.

(e) The court has continuing jurisdiction to make substantive changes and new orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse’s financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor’s improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(10) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.
Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabiting with another person.