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COMMENT

ALIMONY REFORM FOR NORTH CAROLINA

BARBARA HEGGIE*

I. INTRODUCTION

*Case No. 1*¹

Mary and John have been married for seventeen years. John has worked at a local tobacco company during most of their marriage and now earns \$3,000 per month. Mary, who has a high school diploma, spent her married life raising their three children (now aged 15, 12, and 9), cooking for the family and cleaning the house. She has not worked for wages since she was single and a part-time typist. For many reasons, Mary and John have grown apart and both now want a divorce. Although they argue more often than not, neither one has been unfaithful or otherwise cruel to the other. Both agree that Mary should have custody of the children. John, however, refuses to pay Mary any alimony.

Case No. 2

Joan and Mark's marriage lasted four years. Mark, like John, makes \$3,000 per month and agrees that Joan should have custody of their two children. Before Joan and Mark married, Joan studied to become a teacher. She interrupted her education when she married Mark, but after their youngest child turned two, she returned to school part-time. Neither Joan nor Mark can be blamed for the break-up. Although Joan wants to eventually become self-sufficient, she would like Mark to support her financially for one year while she finishes her training. Mark disagrees.

In North Carolina, neither Mary nor Joan are entitled to court-ordered alimony. Because their husbands were not "at fault" in ending the marriages,² the law forces courts to ignore the wives' financial need and

* Duke University School of Law, J.D., 1988 (December); Duke University, Graduate Certificate in Women's Studies, 1988 (December).

1. Cases No. 1 and No. 2, though representative of many divorcing couples, are hypotheticals.

2. Mary and Joan may try anyway to persuade a judge that their husbands were at fault, since without a fault finding, there can be no alimony. See, N.C. GEN. STAT. § 50-16.2 (1987). However, North Carolina judges tend to require a high level of proof before declaring a supporting spouse to

contributions to the marriage.³ Even when a woman such as Joan seeks only "rehabilitative alimony"⁴— that is, limited-duration support designed to make the dependent spouse self-sufficient— North Carolina demands that she prove her husband's fault before she can receive any alimony.⁵

North Carolina's alimony laws are in desperate need of an overhaul. The purpose of this note is to draw attention to the unfairness of our state's alimony laws and to suggest an alternative and more just statutory scheme.

II. NORTH CAROLINA'S ALIMONY LAWS

A. History

At the time North Carolina was first settled, a husband's control over his wife approached that of ownership. He had a legal right to her services⁶ and property⁷ and in return for this control, the husband was obli-

be at fault. See, e.g., *Pruett v. Pruett*, 75 N.C. App. 554, 331 S.E.2d 287 (1985); *Settle v. Settle* (Forsyth County District Court, unreported, 1986). See also interview with Meyressa Schoonmaker, director of the North Carolina Center for Laws Affecting Women, Inc., June 6, 1988. Thus most dependent spouses will find that the law works against them both in theory and in practice.

3. N.C. GEN. STAT. § 50-16.2 (1988). A spouse who has proven that s/he is financially dependent on the other spouse will only be awarded alimony if s/he can prove that one of the ten statutory fault grounds exist. See note 18 and accompanying text. A dependent spouse's contributions to the marriage are ignored by the statute, as are his or her lost economic opportunities. Although a handful of states—including North Carolina—still deny alimony for at-fault (usually adulterous) dependent spouses, only North Carolina requires proof of the supporting spouse's fault before allowing an award of alimony. The following states make adultery a bar to alimony: GA. CODE ANN. § 19-6-1(b) (1982); LA. CIV. CODE ART. 160 (West Supp. 1989); N.C. GEN. STAT. § 50-16.6(a) (1988); S.C. CODE § 20-3-130 (Law. Co-op. 1985); VA. CODE § 20-107.1 (19508 Supp. 1988); W. VA. CODE § 48-2-15(i)(1) 1986).

4. North Carolina makes no clear provision for rehabilitative alimony in its statutes. N.C. GEN. STAT. § 50-16.7(a) (1988) simply states: "Alimony or alimony pendente lite shall be paid by lump sum payment, periodic payments, or by transfer of title or possession of personal property. . . ." While the North Carolina Supreme Court has denied the power to award rehabilitative alimony, *Williams v. Williams*, 299 N.C. 174, 179, 261 S.E.2d 849, 853 (1980), lower courts do occasionally award short-term alimony anyway. See, e.g., *Whitesell v. Whitesell*, 59 N.C. App. 552, 297 S.E.2d 172 (1982), cert. denied, 307 N.C. 583, 299 S.E.2d 653 (1983).

5. N.C. GEN. STAT. § 50-16.2 does not distinguish between short-term, post-divorce alimony and long-term, post-divorce alimony in its fault requirements. Slightly different rules apply for the award of alimony pendente lite (alimony awarded during the pendency of the alimony trial). A discussion and critique of North Carolina's alimony pendente lite laws is beyond the scope of this note.

6. See, e.g., J. SCHOULER, A TREATISE ON THE LAW OF HUSBAND AND WIFE § 67 (1982) (the husband has the legal right to his wife's "family services" and to "the comfort of her society"). A married man in North Carolina still has the right to sexual relations with his wife if they are living together. N.C. GEN. STAT. § 14-27.8 (1988).

7. "With respect to her personal property, the idea of the unity of the spouses was followed. When a woman married, all personal things in her possession automatically went to her husband. He could dispose of them in any way he wished during his lifetime or by will afterward. . . . On the other hand, the settlement of the wife's estate after marriage cannot be explained by the maxim of the spouses' unity. . . . The husband had the right to manage and to collect the profits for his own

gated to support his wife.⁸ Since, however, the husband's obligation was thought only to arise from his right of control,⁹ courts believed his duty of support ended when his control ended. Thus we can find courts as early as 1796 ordering husbands to support their wives *during* a marriage.¹⁰ However, until 1967, alimony was not awarded in North Carolina upon divorce unless the divorce was a limited one, called "divorce from bed and board."¹¹ This kind of divorce, akin to legal separation, does not completely sever all marital ties (for instance, neither spouse is free to remarry) and thus is not a true divorce.

In 1967, the North Carolina General Assembly enacted a statute allowing the award of alimony upon absolute (complete) divorce.¹² The statute set forth the fault-based grounds for alimony still in force today and required the receiving spouse to be financially "dependent," or needy. Although the 1967 statute presumed that the husband would always be the supporting spouse, an amendment in 1981 deleted this presumption.¹³ The statute is thus sex-neutral on its face now. However, as will be explained below, the burden of the law falls disproportionately upon women, who are less likely to be chief breadwinners than men.

B. *The Theory of Alimony Behind North Carolina's Laws*

The current alimony laws in North Carolina embody an antiquated approach to marriage. Divorce is thought to destroy all rights and obligations the spouses may have had to one another during the marriage.¹⁴ Alimony is thus not considered the right of a dependent spouse; rather, it is an award a needy spouse may win only if s/he is particularly "deserving." "Deserving" is defined only in terms of the suffering the dependent spouse has endured at the other's hands.¹⁵ The marriage is not seen as a partnership and thus the financial benefits accrued to the paycheck-

use, but could not by himself convey her interest in the lands." E.B. WARBASSE, *THE CHANGING LEGAL RIGHTS OF MARRIED WOMEN* 7, 9 (1987).

8. Husbands in North Carolina are still legally obligated to support their wives. *Wilson v. Wilson*, 261 N.C. 40, 134 S.E.2d 240 (1964). If challenged, however, this rule would probably be changed to require that "supporting spouses" support "dependent spouses," thus avoiding sexist language and possible Fourteenth Amendment problems.

9. "The wife's obligation to render family services is at least co-extensive with that of the husband to support her in the family, these services and the comfort of her society being in fact the legal equivalent of such support." J. SCHOULER, *A TREATISE ON THE LAW OF HUSBAND AND WIFE* 101 (1882).

10. Anonymous, 2 N.C. (1 Hayw.) 347 (1796).

11. 2 R. LEE, *NORTH CAROLINA FAMILY LAW* § 140 (1980). Lee states: "The awarding of permanent alimony at the time of the granting of an absolute divorce was unknown at common law, and the first statute allowing it to be awarded in connection with an absolute divorce in North Carolina was enacted in 1967."

12. N.C. GEN. STAT. §§ 50-16.1 - .10 (1967).

13. Compare N.C. GEN. STAT. § 50-16.1(4) (1980) with N.C. GEN. STAT. § 50-16.1(4) (1981).

14. See 1 R. LEE, *NORTH CAROLINA FAMILY LAW* § 34 (1979).

15. N.C. GEN. STAT. § 50-16.2 (1987).

earner as a result of the dependent spouse's work as childrearer and homemaker are ignored.

North Carolina's alimony system is thus fault-based. In order to make a claim for alimony, a dependent spouse must prove that at least one of the following conditions exist:

- (1) The supporting spouse has committed adultery.
- (2) There has been an involuntary separation of the spouses in consequence of a criminal act committed by the supporting spouse prior to the proceeding in which alimony is sought, and the spouses have lived separate and apart for one year, and the plaintiff or defendant in the proceeding has resided in this State for six months.
- (3) The supporting spouse has engaged in an unnatural or abnormal sex act with a person of the same sex or of a different sex or with a beast.
- (4) The supporting spouse abandons the dependent spouse.
- (5) The supporting spouse maliciously turns the dependent spouse out of doors.
- (6) The supporting spouse by cruel or barbarous treatment endangers the life of the dependent spouse.
- (7) The supporting spouse offers such indignities to the person of the dependent spouse as to render his or her condition intolerable and life burdensome.
- (8) The supporting spouse is a spendthrift.
- (9) The supporting spouse is an excessive user of alcohol or drugs so as to render the condition of the dependent spouse intolerable and the life of the dependent spouse burdensome.
- (10) The supporting spouse willfully fails to provide the dependent spouse with necessary subsistence according to his or her means and condition so as to render the condition of the dependent spouse intolerable and the life of the dependent spouse burdensome.¹⁶

Judges are generally very strict in their interpretation of this statute. For example, repeated verbal abuse, threats, and even physical abuse are often not deemed serious enough to qualify the dependent spouse for alimony under condition (7).¹⁷ In addition, another statute states that if the dependent spouse has committed adultery, s/he can never receive alimony, no matter how cruel or adulterous the supporting spouse has been and no matter how desperately the dependent spouse needs the money.¹⁸

III. HARM CAUSED BY NORTH CAROLINA'S SYSTEM OF ALIMONY

The most obvious problem with our current laws is that the statutes ignore the plight of the divorcing "career homemaker." A spouse who devotes years of his or her life solely to childbearing and/or homemaking (thus freeing the other spouse to advance a career and earn more money)

16. *Id.*

17. *See, e.g., Settle; Berouth v. Berouth* (Forsyth County District Court, unreported, 1988).

18. N.C. GEN. STAT. § 50-16.6 (1987).

may face poverty upon divorce if his or her spouse cannot be proven to be at fault. This is especially true when there is little marital property to divide. A homemaker in North Carolina can be assured of a fair share of the marital estate, due to our state's liberal equitable distribution act,¹⁹ but it is a rare homemaker who finds s/he can live off of this share of the property for any length of time.

In *Pruett v. Pruett*²⁰ the couple had been married for sixteen years. Custody of the two children was awarded to the wife. The Court described the wife's dependent financial condition:

After ten years of marriage, the defendant [the wife] developed myasthenia gravis, a neuro-muscular disease. Defendant underwent an operation and takes medication. Her physical condition is good, although occasionally she suffers from weakness and is unable to perform her normal tasks. Defendant has not worked [for pay] for four years. She receives full-time social security disability benefits in the amount of \$314.00 for herself and \$121.00 for her children per month.²¹

Her total income was thus \$435 per month. The Court stated that her monthly expenses came to \$649. The Court went on to state that her husband's income was \$1,623.75 per month.²² Although the wife tried to prove constructive abandonment and "indignities to the person," two of the statutory fault grounds, she failed and thus received no spousal support at all.

In another case, the wife worked part-time outside her home sporadically throughout her twenty-six year marriage. She concentrated on raising her three children, and as a result earned only \$700 per month at the time of her divorce. Her husband, on the other hand, was able to concentrate his energies on his job throughout the marriage. Thus, by the end of the marriage he earned \$2,900 per month.²³

As in the *Pruett* case, this woman tried to win an alimony award by proving that her husband committed indignities to her person. She presented evidence that he constantly humiliated and insulted her, threatened her, kept her in complete financial dependence, and even refused to speak to her for months at a time. She became so depressed that she sought psychiatric care. The doctor who treated her came to fear that she would take her own life if she stayed with her husband. Again, the Court did not believe the husband had committed sufficient indignities to enable the wife to qualify for alimony and so awarded her nothing.²⁴

19. N.C. GEN. STAT. § 50-20 (1987).

20. 75 N.C. App. 554, 331 S.E.2d 287 (1985).

21. *Id.* at 554-555, 331 S.E. 2d at 288.

22. *Id.*

23. *Settle.*

24. *Id.*

This latter case is particularly unjust because it appears that the husband really was at fault. The judge construed the "indignities to the person" fault ground much too strictly. It must be remembered, however, that this woman would have been in the same position financially even if her husband had *not* been cruel to her. A system based upon fault—even one which runs smoothly—is inherently unfair.

Another—less obvious—category of spouses ignored by our alimony statutes is comprised of dependent spouses who have been either in less traditional marriages or in traditional but short marriages. These spouses, like the "career homemakers," have sacrificed career and financial opportunities in order to take care of the home and children, and as a result have helped the other spouse earn more money. However, they either did not do so for as long as the career homemakers, or their sacrifices were not as complete (that is, they did take outside jobs, though low-paying or part-time). Similarly, their spouses have received some, but not all of the financial and career benefits that their long-term traditional counterparts have received from their spouses. Thus what is appropriate in these cases may not be the permanent alimony award that long-term homemakers deserve, but one tailored to each spouse's role, position, and sacrifices and designed to help the dependent spouse become self-sufficient.

For instance, in Case No. 2, described in the Introduction, such a "rehabilitative alimony" award would last long enough to enable Joan to earn her teaching certificate—one year. Without rehabilitative alimony, Joan would have to drop out of school and try to find a job that does not require a college degree and that pays enough to provide her toddlers with daycare.

In another case, a man and a woman were married for three years and at the time of divorce had a two-year-old daughter. The mother, who had a high school education, had stayed at home during the marriage to cook, clean and raise the child. Because of the mother's emotional problems, the father was awarded custody of their daughter. He made \$2,500 per month when they divorced. She received no alimony.²⁵

Had this woman received a one- or two-year rehabilitative award, she could have completed an educational or training program to help her acquire the skills to become self-sufficient. Instead, she had to rely on her parents, who fortunately were willing and able to take her in.²⁶ Without her parents to fall back on, her choices would have been limited to such jobs that would likely bring her below the poverty line.²⁷ If she

25. *Takach v. Takach* (Forsyth County District Court, unreported, 1988).

26. *Id.*

27. A full-time minimum wage worker who heads a family of three, for example, earns \$6,968.00 a year, 20% below the federal poverty line.

had had custody of her child (as is traditionally the case), she may well have ended up on the welfare rolls.

IV. SOLUTION TO NORTH CAROLINA'S ALIMONY PROBLEMS

The best solution to our state's current system of injustice is to base a dependent spouse's right to alimony not on fault but on a contract theory of marriage.²⁸ This theory is applicable when we recognize that a marriage is a partnership, and typically both the husband and the wife are responsible for the dependent spouse's needy financial state. Most couples assign the primary financial obligations to the husband and the primary childrearing/home-making duties to the wife. Thus where the wife does not work outside the home, each spouse is free to concentrate most of his or her energies on one role. Where the wife *does* work outside the home, the husband is typically *still* free to concentrate on earning money, since in most two-paycheck families, it is the wife who assumes a dual role of wage-earner *and* primary child-rearer/home-maker. Because of her homemaking responsibilities, a wife in such a family may find that she—unlike her husband—cannot maximize her potential as a wage-earner. She will be less likely to put in overtime (or even full-time) hours and more likely to take extended leaves of absence to care for children and elderly parents without the benefit of job protection.²⁹ The result is generally a paycheck lower than her husband's.³⁰

This type of arrangement depends on a pooling of resources and serv-

28. One early feminist, Suzanne LaFollette, felt that by not valuing a homemaker's services, the alimony system at once gave some homemakers too much alimony and others too little. Her solution was to have each marrying couple assign rights and obligations to husband and wife by "mutual agreement." This agreement—and *only* this agreement—would then dictate the terms of alimony. S. LAFOLLETTE, CONCERNING WOMEN (1926), reprinted in ROSSI, THE FEMINIST PAPERS 358 (1988).

LaFollette's libertarian presumption of equality of bargaining power is troublesome, but not fatal to her theory. Several jurisdictions today interpret antenuptial agreements in light of this problem. ELLMAN, KURTZ, AND STANTON, FAMILY LAW 653-674 (1986). What is most disturbing is LaFollette's suggestion that without such an agreement, the parties can have no claims to one another's services or income upon divorce. This is not the type of "contract theory" on which I mean to base a new system of alimony. Rather, I would look to the theories of "unjust enrichment," reasonable reliance to one's detriment," and "implied contract" to determine what is just in each case. In this way, courts can look at the arrangements made by each couple during the marriage and the contributions and sacrifices made by each spouse.

29. The United States is one of only two industrialized nations that lack a federally-guaranteed, job-protected parental leave program. S. HEWLETT, A LESSER LIFE: THE MYTH OF WOMEN'S LIBERATION 96 (1986).

30. In 1982, American women earned on the average 61 cents to the average American man's dollar. U.S. BUREAU OF THE CENSUS, *Money Income of Households, Families and Persons in the United States: 1982*, CONSUMER INCOME, series P-60, no. 142 (Washington, D.C.: Government Printing Office, 1984). Several factors account for this wage differential, the most important being woman's typical role as childbearer and childrearer. Without job-protected parental leave, women can lose their seniority, their pay increases, and even their jobs when they have children. Without adequate childcare arrangements, women who assume primary childrearing responsibilities are less likely to take jobs which demand more of their time. Flexible jobs tend to pay less than others.

ices within one family unit, with the wife providing most of the childcare and homemaking services and the husband providing most of the financial resources. When a couple divorces and establishes two family units, this arrangement must be broken down and reformed. It is the job of the courts and the legislature to make sure that the sacrifices and adjustments made to create the original arrangement do not leave one party unjustly enriched and the other without any means of support.³¹

A divorce typically leaves the care of the children the mother's responsibility. Thus, except for some added housecleaning and cooking duties, the man's position remains as it was during the marriage: he does not have to take primary responsibility for his children and thus is free to concentrate on earning money and increasing his earning capacity. The woman, on the other hand, is in a slightly different position. First, she continues to assume the responsibility she held during the marriage (that of caring for the children). Second, and more important here, this service continues to benefit the husband just as it did while the original family was intact. She thus continues to provide her husband with childcare services simply by continuing her role as childrearer. The divorced father, on the other hand, does *not* continue to provide the same service—that of contributing money to the whole family—simply by continuing his role as wage-earner. Nothing compels him to do so, save an active conscience. Since there is no law in North Carolina compelling a father to pay for the childcare services his children's mother provides him absent a fair alimony statute, the father gets a free ride.

Even the most traditional theory of a husband's duty to support his wife supports this reasoning. The old theory of support linked a wife's right to support with the husband's right to her services. Surely one of the wife's "services" was the care of the couple's children. If the woman still cares for the children after divorce, then she is still providing the man with services and thus still, under the old theory of marriage, should have a claim for support.

This approach to alimony focuses on a direct exchange of goods and services and on the inequity of allowing one party to receive services without paying for them. Another component of alimony reform looks beyond the bare sale of services to the creation of the arrangement itself. We can thus focus on the lost opportunities of the dependent spouse who concentrates on childrearing and homemaking at the expense of a higher paycheck.

This approach has the advantage of treating each couple individually,

Corcoran, Duncan, and Hill, *The Economic Fortunes of Women and Children: Lessons from the Panel Study of Income Dynamics*, 10 SIGNS 232-248 (1984). See also Hewlett, *supra* note 29.

31. In the area of property division, North Carolina accomplishes this job in its equitable distribution statute. N.C. GEN. STAT. § 50-20 (1988).

according to what is fair and just. Thus if a couple divorces after a short marriage, or if the dependent spouse has not foregone many financial opportunities, then this new theory of alimony would not require the supporting spouse to permanently and completely support her or him. In other words, the "transfer of earning power" is not as great in such a case.³² Conversely, if there has been a great, extended transfer of earning power, such that the dependent spouse has developed no marketable skills and the other spouse's earning capacity has increased as a result, then the dependent spouse will not be forced to support herself or himself on whatever meager income s/he may be able to earn. Thus an older "career homemaker" should not be forced to support herself simply because she no longer provides childcare services for her now-grown children.

In short, this approach bases a dependent spouse's right to alimony on what s/he has earned, bargained for, and relied on, not on what cruelties s/he may or may not have endured. Most states now approach alimony in this way and fully half have explicitly approved of rehabilitative alimony awards.³³ More importantly, almost every state with rehabilitative alimony uses such awards as an alternative to, and not a substitute for, indefinite alimony. These states recognize that short-term awards are not meant for 20-year homemakers. Rather, the purpose of rehabilitative alimony is to help dependent spouses of short-term or less traditional marriages get back on their feet and achieve self-sufficiency. Typically, when a marriage appears to fall somewhere between the two extremes, a court in a rehabilitative alimony state will award both rehabilitative alimony and a small indefinite award.

The current state of alimony in North Carolina cries out for new legislation. In the area of rehabilitative alimony, our attorneys and judges have no guidance. The alimony statute we have only allows for alimony to be paid in lump sum or periodically.³⁴ While a couple of judges have upheld short-term alimony awards as alimony in "lump sum,"³⁵ most judges and lawyers adhere strictly to the wording of the statute. Thus, judges are often faced with the choice of either indefinite alimony or no alimony, when neither extreme is appropriate or fair. A new statute authorizing and defining rehabilitative alimony would enable courts to fashion awards to fit the needs and equities of the parties. Moreover, such a piece of legislation would allow dependent spouses to better plan their finances. Currently, if a divorced dependent spouse struggles to increase

32. Beninger & Smith, *Career Opportunity Cost: a Factor In Spousal Support Determination*, 16 FAM. L.Q. 201 (1982).

33. Krauskopf, *Rehabilitative Alimony: Uses and Abuses of Limited Duration Alimony*, 21 FAM. L.Q. 573 (1988).

34. See *supra* note 4.

35. *Id.*

her or his earning power and succeeds, the supporting spouse can decrease the alimony payments if a judge believes that there has been a substantial change in circumstances.³⁶ If rehabilitative alimony were an option spelled out in a statute, both parties could plan their financial futures better. Moreover, the dependent spouse could more easily achieve the state of self-sufficiency.

It would not be enough, however, for North Carolina to simply insert a statute allowing short-term alimony awards. More important is the need for North Carolina to legally change its theory of alimony rights. It should abolish its fault basis and focus instead on transfers of earning power, lost financial opportunities, unpaid services, and spouses' reliance interests.³⁷ Fault could still be retained as a factor to be taken into account in determining the *amount* of alimony, since endurance or infliction of extreme cruelty may render a spouse more or less deserving of payment from the other spouse. Fault, however, has no place in the determination of whether alimony should be awarded at all.

The following proposed statute incorporates the reforms suggested in this note:

A BILL TO BE ENTITLED
AN ACT TO CREATE NONFAULT-BASED GROUNDS
FOR ALIMONY

The General Assembly of North Carolina enacts:

Section 1. G.S. section 50-16 of Chapter 50, Divorce and Alimony, is amended by adding a new subsection to be numbered section 50-16-1.1 and to read as follows:

Section 50-16.1.1. In any action for divorce, whether absolute or from bed and board, or for alimony without divorce, the court may order a party to pay for the support of the other party any amount, and for any period of time, as the court may deem just and reasonable. In making the award, the court shall consider all of the following circumstances of the respective parties:

(1) The earning capacity of each spouse, taking into account the marketable skills of the dependent spouse, the job market for those skills, the time and expenses required for the supported spouse to acquire the appropriate education or training to develop those skills, and the possible

36. N.C. GEN. STAT. § 50-16.9 (1988).

37. See Brinig and Carbone, *The Reliance Interest in Marriage and Divorce*, 62 TUL. L. REV. 855, 894-904 (1988). The authors use "the concept of the 'reliance interest' to describe each spouse's change of position in reliance on the expectation that the marriage would continue long enough to realize a return on the individual adjustments undertaken." Brinig and Carbone, at 894. In pushing for recognition of the reliance interest in alimony awards, the authors discuss both the lost opportunity to marry and lost career opportunities. See also Krauskopf, *supra* note 33 at 583-589.

need for retraining or education to acquire other, more marketable skills or employment.

(2) The extent to which the dependent spouse's present or future earning capacity is impaired by periods of unemployment that were incurred during the marriage to permit the dependent spouse to devote time to domestic duties.

(3) The extent to which the dependent spouse contributed to the attainment of an education, training, a career position, or a license by the other spouse.

(4) The needs of each party.

(5) The obligations and assets, including the separate property, of each party.

(6) The duration of the marriage.

(7) The educational, professional, and/or career goals of the parties.

(8) The ability of the dependent spouse to engage in gainful employment without interfering with the interests of dependent children in the custody of the spouse.

(9) The age or health of the parties.

(10) The standard of living of the parties.

(11) The extent to which the custodial parent provides unpaid child care for the parties' children.

(12) The fault of the parties, as defined in G.S. section 50-16.

(13) The tax consequences of the property division on the economic circumstances of the parties.

(14) Any other factors which the Court deems just and equitable to consider.

At the request of either party, the Court shall make appropriate factual determinations with respect to the circumstances.

Section 2. G.S. section 50-16 of Chapter 50, Divorce and Alimony, is amended by deleting G.S. section 50-16.2 and replacing it with a new subsection to be numbered section 50-16.2 and to read as follows:

A spouse is at fault for purposes of determining the amount of support to be ordered when that spouse:

(1) Commits adultery.

(2) Involuntarily separate from the other spouse in consequence of a criminal act committed by the first spouse prior to the proceeding in which support is sought, where the spouses have lived separate and apart for one year, and the plaintiff or defendant in the proceeding has resided in this State for six months.

(3) Commits bestiality.

(4) Abandons the other spouse.

(5) Maliciously turns the other spouse out of doors.

(6) By cruel or barbarous treatment, endangers the life of the other spouse.

(7) Commits indignities to the person of the other spouse, rendering her or his condition intolerable and life burdensome.

(8) Spends money profusely and improvidently.

(9) Excessively uses alcohol or drugs so as to render the condition of the other spouse intolerable and life burdensome.

(10) Willfully fails to provide the other spouse with necessary subsistence according to her or his means and condition so as to render the condition of the other spouse intolerable and life burdensome.

No spouse shall be denied support solely because s/he is at fault or because the other spouse is not at fault.

Section 3. G.S. section 50-16 of Chapter 50, Divorce and Alimony, is amended by deleting G.S. section 50-16.5.

Section 4. This act shall become effective upon ratification.³⁸

38. This proposed statute borrows heavily from CAL. CIV. CODE § 4801 (West 1988).