



**NEW YORK
CITY BAR**

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**REPORT ON LEGISLATION BY THE
COMMITTEE ON MATRIMONIAL LAW¹**

**A.9753-A
S.3890-A**

**M. of A. Bing
Senator Hassell-Thompson**

AN ACT to amend the domestic relations law, in relation to no fault divorce.

THIS BILL IS APPROVED

The Committee on Matrimonial Law and the New York City Bar Association support Assembly Bill 9753-A and Senate Bill 3890-A. This bill would allow for a judgment of divorce to be granted when a marriage is irretrievably broken for a period of at least six months, but only after resolution of issues such as the distribution of marital property, spousal support, child support, payment of counsel fees, and custody and visitation. Currently, New York law states that divorce can only be procured by alleging fault such as cruel and inhumane treatment, adultery, or abandonment.

Historically, New York has led the country in legal reform to ensure that its laws protect the welfare of its citizens. However, New York alone is stuck in the past when it comes to marriage. Every other state in the United States permits marriages to end without one spouse casting blame upon the other and rehashing the often harsh, painful and embarrassing reasons for the divorce. The fault requirements of the New York State statutes are more than just a reminder of outdated notions of marriage. They have significant financial and emotional costs. A trial on the issue of grounds often costs the litigants thousands of dollars in legal fees, as well as costing the legal system significant court time hearing the details of a marriage which is obviously dead, but may not be entitled to come to an end under the current law. Most troubling, the inability to get divorced may increase incidents of domestic violence and jeopardize the safety and well-being of the spouses.

Since 1967 some portion of the Family Law Statutes of the State of New York (the Domestic Relations Law or the Family Court Act) has undergone major modifications approximately every ten years. This march of change has permitted the modifications to take hold while giving time for reason to prevail before the next modification. Thus, the Legislative and the Executive Branches have had the benefit of reviewing societal change, court rulings or federal mandates before enacting statutory changes. For some, this move for change has been too slow, for others, too fast. It is now, however, clearly time for the next modification, the enactment of legislation permitting grounds for divorce based upon the irretrievable breakdown

¹ This report has been reissued to reflect amendments made to the legislation.

of a marriage.

In enacting legislation to permit “No Fault” divorce, New York would be joining every other jurisdiction of the union that permits marriages to end without casting blame on either party.² The proposal under consideration does not eliminate any of the grounds for divorce that presently exist under Section 170 of the Domestic Relations Laws. Rather, the proposal would amend Section 170 by adding legislation to permit parties to end their marriages without the finding of fault on the part of either party while permitting other parties to still avail themselves of the fault grounds if they choose.

There has been much discussion over the years that the institution of marriage is the foundation of civilization and as such everything should be done to foster its continuation. However, there is no indication that the advent of "No Fault" statutes actually undermines the institution of marriage. The varying rates of divorce cannot be tracked to any particular state's "No Fault" statute. It does no damage to the importance of marriage, as an institution, to understand and accept the fact that the ideal of a perfect marriage or relationship, while important, may not always be attainable, or that some marriages should end even when adultery has not been committed, one spouse has not been abandoned or the marriage has not reached such a turmoil that it is unsafe or improper to expect the parties to continue to live together. Through no fault of either party, many couples may just fail to attain the ideal, and to keep them bound in legal relationships which have both social and economic repercussions is both unfair and potentially damaging to all involved. Furthermore, the fact that divorce can only be obtained by a finding of fault does not repair relationships that are not working. Rather, since divorce can only be obtained upon the finding of fault, parties to a failing relationship must enunciate fault grounds to obtain their freedom. This involves the inflaming of emotions as either party or both are forced to develop grounds for divorce and set those grounds into legal documents. It is obvious that after years of trying, neither the courts nor the Legislature can force people to maintain a relationship if they do not want to continue in that vein. It is about time that this fact is recognized in law by the enactment of A.9753-A/S.3890-A.

Perhaps the most profound effect of requiring fault grounds for divorce is found in the area of domestic violence. While many believe that requiring fault to be proven before a divorce may be granted protects the victims of domestic violence, the opposite is true. The study “Bargaining in the Shadow of the Law: Divorce Laws and Family Distress” (Stevenson and Wolfers [2003]) indicates that No Fault divorce statutes actually have a very real effect on such matters as reducing female suicides and reducing domestic violence while also leading to a decline in women murdered by their partners. The study indicates that female suicide rates declined approximately 20% in states that have adopted No Fault divorce statutes while domestic violence reports of husbands against wives were reduced by more than one-third. Even domestic violence reports of wives against husbands were reduced significantly when a jurisdiction enacted a No Fault divorce statute. Clearly, providing couples with a “neutral” way out of their

² A survey of divorce statutes for the fifty states, Puerto Rico, the US Virgin Islands and the District of Columbia indicates that 35 jurisdictions recognize some form of Irreconcilable Differences or Irretrievable Breakdown of the marriage as a basis of ending the marital relationship, 6 jurisdictions recognize Incompatibility as a basis of ending marriages and 11 jurisdictions permit living separate and apart without legal proceedings or the finding of fault as a basis for divorce. Only New York requires the finding of fault or the living apart pursuant to a legal document as the basis for a divorce.

damaging relationships has tangible benefits to the individuals specifically and society in general.

There are many problems with the current system that requires the finding of fault before a divorce is granted. First, a spouse who lacks economic resources may be forced to remain in a marriage that is not working for them. Meanwhile, a spouse who has economic resources has the option of moving to a neighboring state to obtain a divorce under that state's "No Fault" statute.³ This disparity in options is magnified when children are involved. The spouse who is the primary caretaker of the children is often not in the outside work world or is underemployed so as to permit that parent to care for the children, and thus lacks the resources to move to a "No Fault" state. In addition, since these spouses care for the children, a move to another state is not an easy task socially (i.e., removing a child from their home and school), or even legally (the courts can enjoin a parent from removing a child from the state). Thus, this spouse is given the untenable choice of leaving their children or going out to an uncertain economic future in return for obtaining a divorce in another state. Clearly, this is not the intention of the enactors and supporters of the current law.⁴

Another problem with the current law is that the courts of New York are spending significant amounts of time addressing and litigating the issue of whether a marriage should be allowed to end. This costs the taxpayers money and the litigant's money as well. A survey of matrimonial lawyers in New York State indicates that while the majority of time in litigation is not spent addressing the issue of fault, it is not an insignificant amount of time.⁵ Furthermore, while virtually all cases are resolved by a settlement of the ancillary issues, often the issue of who is to be granted the divorce presents an impediment to final resolution. It is an anomaly that parties are asked to reach a settlement and compromise their positions and in essence continue to trust each other but then the laws of New York State require that one of them accept the fact that they were the reason that the marriage should be dissolved. The courts and attorneys should not be placed in the position of convincing the parties to accept the fact that one of them is the "bad person" and that the other must testify as to the "bad actions" of the other. This charade only further erodes the public's confidence and respect for the legal system and is demeaning to the courts, the attorneys and the parties. Parties should be permitted to end a marriage with dignity and without being forced to call each other names. In fact, an argument can be made that by permitting parties to end their marriages in a non-confrontational manner society is actually supporting marriages and healthy relationships, in that people can end marital relationships without destroying all the feelings that still might exist between the parties. Furthermore, the distaste for the matrimonial proceedings will be reduced, thus encouraging people to remarry without the risk of having to face the repugnant fault divorce procedure again.

³ All the states surrounding New York have some type of no fault divorce statute.

⁴ The Court of Appeals decision in O'Connell v. Corcoran, 1 N.Y.3d 179, 770 N.Y.S. 673 (2003) has raised another concern for those who have left the jurisdiction solely for the purpose of obtaining a No Fault divorce. The Court of Appeals has held that if such an action is taken, the courts of New York must review what issues could have been raised in the foreign court proceeding and if issues (such as equitable distribution) could have been raised and were not, then res judicata will prevent the New York courts from acting on the issue. In O'Connell v. Corcoran, the former wife lost out on equitable distribution because she sought what she and her husband thought was a simple No Fault divorce in Vermont.

⁵ New York State Bar Association Family Law Section Attorney's Questionnaire, Reform of the Statutory Grounds for Divorce in NY Preliminary Report. Three thousand surveys were mailed with a response rate of 24%. Respondents were equally divided between Upstate, NYC and the suburban counties of Long Island and Westchester.

The need to maintain relations in the future is especially important if children are involved in the matter. When children are concerned, the requirement for fault grounds becomes even crueler to all those involved. It is axiomatic that for children to cope with the divorce process, it is best for the parents to work with each other and have as amicable a relationship as possible. As noted previously, by requiring fault, the statute encourages the parties to call each other names and further, to rehash every possible imperfection that the other may possess. One party is thus seen as the good spouse and the other as the bad spouse. This is not a productive framework in which to encourage the parties to cooperate in raising the children. In fact, by forcing the parties to accept or create grounds for divorce the statute is actually denigrating the parties and destroying opportunities to develop cooperation between the parents. Clearly, this is not beneficial to the parties or their children. By making the parents wait for the end of the marriage, the state is requiring the children to live in limbo as well. This is clearly not in the best interests of the children or the state. Children need finality to move forward with their lives and the new beginnings that their parents are striving for by coming to agreement to end the marriage. Forcing the parents to wait a year for the finalization of a divorce is not beneficial to the children.

The proposed legislation is not simply a quick fix. The bill not only stipulates that the relationship between the parties must have been broken down irretrievably for six months, but also accounts for the resolution of all of the parties major issues before a divorce can be granted. Only after resolution of issues such as the distribution of marital property, spousal support, child support, payment of counsel fees, and custody and visitation issues does the bill allow for a divorce, thus protecting both parties' economic interests and rights.

The parties to a divorce action want finality themselves if they have been able to resolve their differences at the courthouse steps. In the reality of the courthouse, once parties reach an agreement as to how to settle the ancillary issues they want to end the actual legal relationship as soon as possible. Unless there is a reason to wait for the divorce to be finalized (i.e., social security eligibility, pension reasons, health insurance coverage) the divorce will be desired immediately. Accordingly, the court, the attorneys and the parties are forced into the charade of placing grounds on the record so that a divorce may be obtained immediately. As noted previously, this makes a mockery of the concept of law and justice and is demeaning to the court, the attorneys and the parties. Thus, the statute as currently enacted, requiring a waiting period of a year, is not working and is not being widely used. It is time that the laws of New York reflect the reality of the lives of the people of the state.

The proposed legislation enables parties to obtain a divorce without the lengthy disputes that could cause additional harm to themselves and their children while at the same time safeguarding the economic and ancillary interests of the parties. Based upon the reasoning set forth, the City Bar urges that A.9753-A/S.3890-A be enacted so that New York State can join every other state in adopting true "No Fault" divorce.

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