

No Fault Divorce Legislation Hurts Women

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Arguments in favor of adding a no-fault ground to New York State law conceal the tragic results of no-fault divorce for women in no-fault states.

The National Organization for Women, New York State, Inc (NOW-NYS, Inc) strongly opposes no-fault divorce legislation that has been introduced in our Legislature. Opposition to unilateral no-fault divorce has been our long-standing position with strong support from the entire NOW body. We are an organization of advocates for equality for women. The majority of calls received by our chapters are from women in the midst of severe matrimonial problems.

The New York State Bar Association has stated that New York needs no-fault because New York is the only state without unilateral no-fault grounds. This is not a good enough reason, as we will explain. New York State is also the only state requiring child support until age 21. This is a shining example of protecting our children better than any other state.

The following is taken from the opposition memorandum of The Domestic Violence Task Force of the Bar Association of the City of New York: “We find the argument included in the memorandum of support of the proposed bill that no-fault should be adopted because otherwise a spouse who lacks economic resources may be forced to remain in a marriage that is not working for them to be entirely unpersuasive and not representative of our clients lives.

There are myriad reasons why spouses choose to stay in a marriage or to divorce. This is true for battered women as well as women who have never been battered. No-fault divorce takes away their options, it allows the spouse with no grounds, batterer or not, to obtain a divorce over the objections of the less powerful spouse without negotiating a divorce settlement.

Eliminating the requirement to reach a settlement will send more cases into court, thereby increasing rather than decreasing court backlog. This failure to negotiate drives the issues of child custody, child and spousal support, and property division into court where women continue to face gender bias, a fact that even the Office of Court Administration acknowledges.

Proponents of the bill argue that there is no need to “air the dirty laundry” in court. But advocates in the women’s movement know the importance of allowing the judges to hear the facts, behaviors and circumstances that led to the break-up of the marriage.

There is much need for change to the current Domestic Relations Law before we send the weaker party and the children afloat on the sea of no fault induced poverty, as was the case in California, the first state to introduce no-fault divorce.

In addition, as reported in the Domestic Violence Task Force report previously referred to: “experience from other states shows that where grounds are unnecessary, domestic abuse [and other grounds] may be treated as tangential and therefore irrelevant to the allocation of marital resources. This has been precisely the result in some states that have adopted no-fault divorce grounds. For example, in Oregon, which has a no-fault divorce statutory structure, the Court of Appeals denied a wife’s claim for maintenance based on severe domestic violence in In re Koch, 648 P.2d406 (Or. Ct. App.1982). The court held that under Oregon’s law fault could not be considered a factor in dividing the parties’ marital property or in awarding spousal support. Physical abuse afflicted on the wife, could only be considered insofar as it rendered her unable to work, or in her possible

increased need for financial support. Similarly, the Illinois court, in In re Marriage of Cihak, 92 Ill. App. 3d 1123 (Ill. App Ct. 1981) held that the murder of the wife by the husband could not be considered and would have no effect whatsoever on the division of the parties' marital property or any spousal support award because under "true" no fault divorce law a reward can only be based upon the financial needs of parties, regardless of fault.

In contrast, New York's current fault provisions provide a basis for the introduction of evidence concerning domestic violence and its impact on the financial settlement of the divorce. For example, Justice Silberman in Havel v. Islam, 273, A.D., 2d 164 (1st Dept. 2002), found that the husbands' assault on his wife with a barbell was a critical factor in determining the allocation of marital resources. This hard won victory should not be undermined by enacting no-fault legislation that does not specifically address the role of fault in dividing marital property."

Even to consider unilateral no-fault divorce without strong provisions for awards of attorneys' fees, and expert fees to obtain full discovery of income and assets is a barrier to justice for the non-moneyed spouse. It is no secret that adequate fees for discovery are rarely awarded. Attorney General Spitzer and Comptroller Hevesi have made the importance of discovery public in recent actions taken in matters of commercial fraud and school district employee fraud. Without discovery, the court hears only lies and perjury. As long ago as 1989, the height of the early no-fault fight, Leonard Fiorese, in his December 18th New York Law Journal column stated: "I have always believed that the best way to hide \$1 million well is to hide \$100,000, but badly." This statement clearly shows the need for well-trained experts and meaningful awards of expert fees.

New York State presently has a bi-lateral no-fault ground for divorce. This encourages settlement between the parties. In fact, 95% of divorce cases are settled. Unilateral no-fault will discourage settlements. If the guilty, moneyed spouse can move out, obtain a divorce and remarry before property division, he is in the position of being able to transfer assets to a new spouse, defeating the equitable distribution of the property of the first marriage. Some courts today are bifurcating trials with this result. This practice should be stopped legislatively.

There are a lot of issues that should be considered for divorce reform that would help make the playing field level for women and make the entire process fairer. Let's try some of them, see how they work and then and only then, consider unilateral no-fault divorce.

We have looked down on societies in which all a husband has to do is say, "I divorce you, I divorce you, I divorce you" to his wife and they are divorced. Should any one be able to do this? Is unilateral no-fault any different.

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