Marriage & Family | Divorce Reform

Overview

Since 1969, nearly every state, including Arizona, has enacted “no-fault” divorce laws, allowing either spouse to unilaterally make the decision to end the marriage for any reason or no reason. Because of these laws, obtaining a divorce is one of the easiest yet most consequential decisions that a married couple can make. Not only does divorce have negative emotional and social effects for adults and children, divorce is detrimental to society and taxpayers.1

Issue Analysis

Divorce laws today make marriage the most unenforceable contract. It is easier to divorce your spouse of thirty years than to fire your employee of thirty days. So-called “no-fault” divorce laws purport to give couples the opportunity to decide when a marriage is over, but the reality is that these laws empower one individual to unilaterally end a marriage, regardless of the other spouse’s wishes.

Many have bought into the myth that no-fault divorce somehow insulates the process from disputes and that any move back toward fault-based divorce will result in unnecessary, contentious court battles. In reality, the disputes still occur under a no-fault system in other areas of the proceedings, such as custody of children, division of assets, and misuse of orders of protection to gain advantage in the settlement.

Cultural attitudes toward marriage have shifted from a view that was commitment-focused to a view that is consumer-focused. The former commitment-focused view placed the emphasis on marriage as a relationship of duty, obligation, and sacrifice to one’s spouse. The current consumer-focused view places the emphasis on what benefits marriage can bring to an individual in the form of happiness, satisfaction, and fulfillment. In the consumer-focused view that prevails today, quick and easy divorce has become as necessary as a “no-hassle” return policy at a retail store.

Both cultural attitudes and the legal system have devalued marriage and are in dire need of reform. In addition to community and church-led efforts to revitalize the institution of marriage, there are several key areas of public policy relating to divorce that should be addressed.
Waiting Periods

The goal among courts and divorce attorneys today is generally to rush to complete divorces as quickly as possible. Efforts to slow the process down are met with fierce resistance and the idea that couples need to be freed of the inconvenience of an unhappy marriage as quickly as possible. This view relies on the false assumption that once a couple files for divorce the marriage is beyond saving. While that may be true in many cases, in a survey of divorcing parents, at least one spouse indicated they believed their marriage could be saved in about one fourth of cases. Both spouses held this belief in nearly ten percent of divorces and were willing to consider reconciliation services.

Couples often file for divorce before seeking meaningful reconciliation – filing for divorce can be a weapon to get the other spouse’s attention in an escalating conflict. Rushing to finalize these divorces does not allow couples time to “cool off” and think about the consequences of the divorce, particularly if the couple has minor children who are very likely to be adversely impacted by their parents’ divorce.

State laws vary on the length of time required for a divorce. Fifteen states require a waiting period of 180 days or more, with a few of those states allowing exceptions if there are no minor children involved or if both spouses consent to the divorce. Twenty states and the District of Columbia have waiting periods of thirty days or less. Though comparisons are difficult because each state tracks divorces differently and each state’s laws are different, there seems to be some correlation between the length of waiting periods and the rate of divorce. In at least four states where the waiting period is 30 days or less (Florida, Idaho, Alabama, and Oklahoma), the 2011 divorce rate was above 4.3 per 1,000 people. In states with a longer waiting period exceeding six months, such as Illinois and Maryland, the 2011 divorce rate was significantly lower (2.6 and 2.9, respectively).

Across America, states are recognizing that current divorce laws have been detrimental to the institution of marriage and society, and even to taxpayers through increased costs for social welfare programs, law enforcement, and education programs. To help strengthen marriage and curb the rate of divorce, states should implement a longer waiting period for divorce proceedings. Experts recommend at least one year.

Along with the legal change to longer waiting periods, communities and churches should invest in more marriage counseling and reconciliation services, and courts should direct couples to those programs. Some courts offer reconciliation services, but these services will be under-utilized if the prevailing view continues to be that marriages cannot be saved once one spouse has filed for divorce.

A key argument raised against lengthening the waiting period for divorce is the potential danger for victims of domestic violence who have filed for divorce and are awaiting final resolution. Domestic violence is a terrible and tragic circumstance for anyone, and no one would advocate for a victim to stay in a dangerous situation. However, there are several reasons why a longer waiting period should not be rejected on the basis of concern for domestic violence victims. First, waiting period laws can be crafted to allow judges discretion to make exceptions where domestic violence is a concern. Second, domestic violence occurs more often in non-marital relationships than in marriages. Cohabiters are far more likely to be the victims of domestic violence than married partners, and women are at greater risk of being killed by a male partner in a cohabiting relationship than in a marriage. Third, even in states with short or no waiting period, victims of domestic
violence must wait some period of time for the divorce to be finalized. These states, just like those with longer waiting periods, have put in place procedures for victims to receive immediate legal protection. Finally, unfortunately, violence perpetrated by an abuser is not limited by a piece of paper finalizing a divorce.

Given that at least some evidence exists that longer waiting periods can lead to a lower divorce rates, states with short waiting periods should lengthen them. The individual and social costs of divorce are so high that couples should be given more time to consider making this important decision and more resources to repair their relationships. Even if only a small percentage of couples change their minds, this public policy change would make a big positive difference.

**Education Programs for Parents of Minor Children**

Married couples who have minor children and are seeking a divorce must go through an education program in many states. However, those classes are typically geared toward instructing couples on how to be good parents after divorce instead of first highlighting the harms of divorce for both parents and children. These classes need to offer parents encouragement to work out their differences, which often are not severe, in order to benefit their children.

**Consideration of Misconduct**

As a result of the shift toward “no-fault” divorce laws, many state laws now do not allow a judge to consider marital misconduct in the financial settlement from a divorce. Divorce has many negative consequences, with financial difficulties being one of the most tangible. Both men and women can face financial devastation caused by divorce, and children of the marriage especially suffer the consequences. The pain is magnified when the spouse was the victim of some form of marital misconduct by the other spouse.

In marriages that end as a result of a spouse who abandons, commits adultery, or abuses the other spouse, it is almost guaranteed that the innocent spouse will suffer unjust economic costs if that misconduct is not taken into account. When the law expressly prohibits a judge from considering marital misconduct in financial settlements, a judge’s hands are tied, even if it is clear that one spouse engaged in some form of misconduct.

Judges should be allowed, although not required, to take into account circumstances related to marital misconduct and financial misconduct in the divorce proceedings when it is appropriate to do so. An innocent spouse who is the victim of marital misconduct may be compensated to some degree for unjust economic losses during the division of community property.

**Arizona Law**

Current Arizona law allows for a couple to obtain a finalized divorce only 60 days after filing. A spouse can file and receive a divorce for any reason or no reason at all. A Center for Arizona Policy (CAP)-supported law
has offered couples an opportunity to extend the waiting period if the couple has already opted to participate in conciliation services.¹⁵

Parents of minor children are required to take a class under Arizona law.¹⁶ A CAP-supported law enhanced those classes by including information on the negative impacts of divorce on adults and children, resources available to strengthen marriages, and resources available for post-divorce.

Arizona law currently does not allow a judge to consider marital misconduct in the financial settlement from a divorce.¹⁷ This applies to property disposition, spousal maintenance, and child support.

Unfortunately, Arizona policymakers, like those in most every other state, have resisted making any substantive changes to divorce laws. Efforts to extend the waiting period or allow a judge to consider marital misconduct have failed. Although everyone knows a heartbreaking story where divorce was necessary, public policy needs to look at the big picture of the harm caused by divorce and seek to remedy that harm by making divorce a less attractive option, particularly for couples who may be able to reconcile.

Talking Points

- **“No-fault” divorce has wreaked immeasurable harm on our culture.** The law is a moral teacher, and “no-fault” divorce diminishes the importance of a life-long commitment to a spouse.

- **Current divorce laws make no distinction between a cheating spouse who wants to “trade in” for a “younger model” and a victim of domestic violence.** Instead of empowering couples to decide that a marriage is over, “no-fault” divorce allows one spouse to unilaterally end a marriage for any reason or no reason at all.

- **It is easier to divorce your spouse of thirty years than to fire your employee of thirty days.** Marriage is the least enforceable contract. Divorce laws are in dire need of reform.

Conclusion

“No-fault” divorce has severely undermined the institution of the family. Public policy should encourage husbands and wives to work out their differences. Instead, today’s culture and laws all too frequently facilitate and encourage a quick end to marriages, leaving much harm to men, women, and children in the aftermath. “No-fault” divorce makes a false promise that divorce can be pain-free, but that is far from the reality, especially if only one spouse wants the divorce.
have questions about your specific situation or believe your legal rights have been infringed. This publication is educational in nature and should not be construed as an effort to aid or hinder any legislation.


3 *Id.*

4 In some states, like Arizona, the waiting period begins once a couple has filed for divorce. In others, the waiting period is a time that a couple must live “separate and apart” before filing for divorce.

5 The fifteen states are: California (6 months), Illinois (2 years), Louisiana (6 months; 1 year if minor children involved), Maryland (2 years; 1 year if both spouses consent), Massachusetts (6 months; 1 month if both spouses consent), Michigan (6 months if minor children involved; 60 days otherwise), Montana (6 months), Nevada (1 year), New Jersey (18 months; 6 months if both spouses consent), New York (1 year), North Carolina (1 year), Ohio (1 year; no waiting period if both spouses consent), Tennessee (2 years), Vermont (6 months), and Virginia (1 year).

6 The twenty states are: Alabama (30 days), Alaska (none), Arkansas (30 days), Delaware (none), Florida (20 days), Georgia (30 days), Hawaii (none), Idaho (none), Maine (none), Minnesota (none), Mississippi (none), Missouri (none), New Hampshire (none), New Mexico (none), North Dakota (none), Oklahoma (none), Pennsylvania (none), Rhode Island (none), West Virginia (none), Wyoming (20 days).

7 *Id.*


12 *See, e.g.*, Ariz. Rev. Stat. § 25-315(C)(allowing either party to request a temporary restraining order or preliminary injunction excluding the other from the family home because of potential for violence).


