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Fault or No-Fault: Divorce Case Studies

By *THE EDITORS*

Harvey T.

The New York Senate approved legislation this week that would [pave the way for no-fault divorces](#) in the state. [Room for Debate took a look](#) at how no-fault laws have affected the rest of the country, and what the law would mean for New Yorkers. Many readers wrote in to share tales of their exits from failed marriages or their attempts to hold on to what was a lasting commitment. Here are excerpts of their stories.

A Way Out of Abusive Relationships

One of my relatives lives in New York and has been unable for years to procure a divorce from her abusive, alcoholic husband due to the state's arcane divorce laws. Even though he clearly provides a risk to my relative and their children, and could therefore be shown to be at "fault," the fact that he won't consent to a divorce, coupled with the fact that they have children, makes things much more complicated.

She can't move out of the house with the kids before finalizing a divorce lest she risks being charged with "kidnapping" and jeopardizing her case when it comes time to determine custody. Further, although she has collected evidence of his abusive behavior that could be used to prove her case, the fact that she would be forced to stay under the same roof as him until the divorce is finalized makes the prospect of initiating the proceedings that much more intimidating — especially given studies showing that the most dangerous period in an abusive relationship is the point at which the abused partner attempts to leave.

In the end, she is left to hope that the laws will change or, perversely, that he will eventually do something so violent that she'll have grounds to involve the police. Until then, she is stuck without a job (as he does not permit her to work), a nest egg of her own and, most important, a safe way to leave her and her children's tormentor.

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— concerned relative

A Catholic's View

I am all in favor of a no-fault divorce. My ex committed adultery with a woman he claims he "was meant to be with." But as a Catholic, I really did not want to be the plaintiff. Since he had no grounds to sue me for divorce based on fault, I had to sue him. Had there been a no-fault provision, he could have sued me, and I could still respect my religion.

— R Foster

Unfair to Older Women

As the author of a book about older women and divorce, and a wife who was left at age 60 for a younger woman, I strongly oppose no-fault divorce.

It penalizes older women who are left by their husbands after a long marriage. Such ex-wives often wind up in dire poverty because they have been homemakers and don't have a career. Or they put their career on hold for so long to raise a family that their skills are obsolete.

How is 60-something wife, dumped for a younger woman, supposed to start a career?

They have no way to support themselves post-divorce because their husbands have been the wage earners. Since there doesn't seem to be any such thing as lifetime alimony anymore — at least that's what my lawyer told me — a woman of 55 or 60 or 65 is supposed to "rehabilitate" herself after a short period of collecting alimony, i.e. find a way to support herself. There's no way a woman that age is going to find a career — or even a job, especially in the current economy where even young people can't find work. Older husbands have an enormous advantage since they already have careers.

Older women should be able to count on alimony for life, or a settlement that will support them for life, but without the leverage of refusing to assent to divorce, that's not going to happen.

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— [Erica Manfred](#), author of "He's History You're Not: Surviving Divorce After Forty"

Making It Easier to Call It Quits

New York can now join the other states where either spouse can cheat on the other with an old flame, abandon the children to have another baby with them and then seek alimony and child support as well as custody of the children they left behind. That certainly sounds like progress to me.

— Joeline

What Happens to the Children

I have had the opportunity to research the impact of divorce on children and families and have come to the following conclusions.

Perhaps no-fault divorce would be fine in situations where children are not involved. I am somewhat hesitant in saying this because I do believe it will put women at a disadvantage given the persistent gender gap in earnings, etc. However, with two adults (and no kids) who no longer want to be married, it seems fair to let them get divorced quite easily.

Similarly, it seems that in high-conflict situations (i.e., violence or continual verbal abuse) divorce should be made easier.

But in low-conflict situations that involve children the law should *not* change. This covers most divorces. From my own research I have found that it is pretty clear that when kids are part of the equation it is incredibly unfair to them to have their parents simply break up the family so easily.

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— Katie

Renewable Marriage Licenses

I agree with some of the commentators that in New York most divorces are settled mutually — without any involvement of courts or judges. But mine was different — it lingered for four years in a court. It was handled by a part-time judge, who, prolonged it year after year to bill the government for longer hours. Our case was simple — the family owned an apartment — that's all. It could have been resolved in a matter of hours.

Anyway, I am for no-fault divorce, but I would like an even simpler process. Let marriage licenses expire, say, after 5 years, automatically, like a driver's license. If a spouse doesn't renew the license, the marriage will end automatically. No courts, no lawyers, no sucking of money or resources.

— CFD

Property v. Alimony

California has community property laws. So, in a divorce a woman isn't left destitute or at the mercy of the court. There's no need to show fault because the money and property is split 50-50.

New York has alimony laws, the court decides how much and it's usually quite a bit less. So I'll bet you will get no-fault divorce but you won't get equality in the division of property or anything near justice after that.

— Healthcare Analytics

No-Fault Hurts Men

I live in Wisconsin and had a no-fault divorce. The truth is, there was plenty of fault, but since it was a no-fault state it was not admissible in court. The end result was I was denied justice. I don't much care about the equal division of property. I am a male, by the way, and yet received placement of our minor daughter, so that should tell you something.

What I do care about was that after being reduced to penury where I had to borrow money from a friend just to keep the house, I was still stuck with indefinite maintenance of a third of my salary because my ex had never held a salaried position. If allowed to present evidence to the court I feel confident that would not have happened.

On balance, no-fault has been positive for women but negative for men.

— Tom