

FAMILY RESEARCH COUNCIL

Detering Divorce





A few years ago, Bill and Deb, a married couple, found out that their neighborhood friends, Mario and Judy, were filing for divorce. They had been unsuccessful in resolving their differences and decided to call it quits.

Bill and Deb were extremely concerned not only about Mario and Judy, but also about the looming custody battle over their daughter. They wrote Mario and Judy a letter asking them to reconsider their decision and also invited them to attend a marriage-enrichment conference.

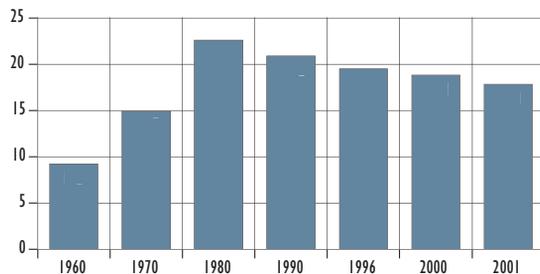
Mario and Judy were initially reluctant to respond to the letter, but found themselves “deeply moved” by it. They attended the conference and, as a result, decided to work through their problems. Their daughter personally thanked Deb and Bill for helping her parents stay together.¹

Prevalence of Divorce

Stories like that of Mario and Judy are heartening. Unfortunately, many other unhappy married

couples lose hope for saving their marriage and opt for divorce. Few in our society remain untouched by divorce. In 2001, the divorce rate was almost double that of 1960. Today, 40 to 50 percent of marriages are likely to end in divorce, with second and subsequent marriages having an even higher likelihood of divorce than first marriages.² Sadly, most divorces occur in low-conflict but unhappy marriages; only one-third of divorces occur in violent or physically abusive marriages.³

Divorce Rate Among Married Women Age 15 and Older, 1960-2001



The Fault-based System

Much of the rise in divorce rates can be attributed to no-fault divorce laws, which give all spouses unrestricted access to divorce. But divorce wasn't always this easy to obtain. Divorce law in the United States used to be based on the fault system, in which fault-based grounds such as adultery, cruelty, or desertion were required for divorce; one spouse was the “innocent” petitioner, while the other was the “guilty” respondent. Divorce could be granted only to the “innocent” petitioner, who had to prove the respondent was at fault.

Requiring fault-based grounds had important consequences. First, it made divorce more difficult; a marriage did not just end at the whim

of one person. The spouse who wanted to end the marriage had to obtain the cooperation of the other spouse. Secondly, it gave spouses incentives to remain committed to their marriages by punishing the guilty and rewarding the innocent. Thirdly, it gave the innocent party the ability to delay or deny the divorce or to bargain for a favorable property or alimony settlement.

Critics argued that the fault-based system often brought hypocrisy to the divorce process. Because one spouse had to be proven guilty of a shameful act, such as desertion or adultery, couples who both desired divorce, but had no grounds, would often collaborate in concocting a story of blame.⁴ While this system may not have been perfect, it discouraged spouses from ending their marriage and underscored the social importance of marriage and family. The fault-based system made it clear that infidelity, abuse, and abandonment of one's spouse and family undermined the social order.

No-fault Divorce

In the early 1960s, the California Assembly Judiciary Committee conducted hearings in an effort to establish uniformity in judicial procedures relating to divorce, alimony and custody of children.⁵ Three major themes emerged from these hearings: concern about California's high divorce rate, the belief that fault divorce causes bitterness and hostility between couples, and the need for a Family Court to help save troubled marriages.⁶

In 1966, then-Governor of California, Edmund G. Brown, established a Commission on the Family to address that state's high divorce rate and its social consequences. The Commission drafted no-fault reforms, eliminating fault from divorce grounds and financial settlements and establishing a Family Court to aid mar-



ried couples in reconciling their marriages or in obtaining a non-adversarial divorce when necessary.⁷ Although Brown was in favor of the Family Court, it was dropped during last-minute legislative negotiations, mainly because it was too expensive, thus eliminating all possibility of legally encouraging reconciliation.⁸ The no-fault reforms were passed in the Family Law Act of 1969, making California the first state in the union to leave marriage completely unprotected.

California's no-fault reforms spread rapidly throughout the nation. By 1974, no-fault divorce had passed in 45 states. By 1985, all 50 states had adopted such laws.⁹ Fault is no longer required for marital dissolution in any state.¹⁰ In fact, 17 states are pure no-fault states, meaning that fault is never considered in the divorce process—even at the stage of financial and property settlement.¹¹ However, according to the American Bar Association, fault is still relevant in determining alimony or spousal support in 29 states.¹²

Consequences of No-fault Divorce

Once fault was removed, divorce rates skyrocketed. Studies have shown that the elimination

of fault from marital dissolution and property settlements has led to an increase in divorce rates.¹³ Other researchers cite studies showing that no-fault reforms increased the divorce rate by up to 25 percent.¹⁴

No-fault divorce makes unilateral divorce possible; that is, a spouse no longer needs to obtain the consent of the other spouse in order to file for and obtain a divorce. Instead, a divorce can be granted automatically to anyone who claims that the marriage is irretrievably broken or that the couple is incompatible. The spouse who wishes the marriage to continue is powerless to prevent its dissolution. Today, four out of every five divorces are unilateral.¹⁵

No Legal Protection for Marriage

Since no-fault divorce laws make it easy for people to opt out of their marriages at any time with few or no consequences, spouses no longer have legal protection for the bond they have created in marriage. The marriage contract, according to Maggie Gallagher, has become “less binding than the average business deal. Marriage is one of the few contracts in which the law explicitly protects the defaulting party at the expense of his or her partner.”¹⁶

With little or no legal protection for marriage, spouses are not given the security and incentive to devote themselves to their marriage, nor are they encouraged to be faithful to their vows. Instead, each spouse has an incentive to focus on self-preservation. Studies have shown that more women entered the labor force after no-fault divorce reforms were passed because they did not want their earning capacity to diminish in case their marriages ended.¹⁷

Public Costs of Divorce

Divorce has huge public costs. According to a 2003 study, divorce costs the United States \$33.3 billion per year. This total includes direct costs to federal and state government for child support enforcement, Medicaid, Temporary Assistance to Needy Families, food stamps, and public housing; it also includes indirect costs for correctional facilities, taking care of single elderly, unwed childbearing, drug problems, delinquency, and other social problems related to divorce. The “average” divorce costs state and federal governments \$30,000 in direct and indirect costs.¹⁸

The Effects of Divorce on Children

At least one million children each year experience the divorce of their parents. Numerous social science studies have demonstrated the devastating effect of divorce on children:

- **Emotional and Behavioral Problems:** A 2002 study found that, compared to children with married parents, children with divorced parents are more likely to



have behavior problems, such as aggression or acting-out.¹⁹ A 1999 study found a higher incidence of depression and delinquency among children whose parents had divorced.²⁰

- **Less Educational Attainment:** Compared to children raised by widowed mothers, children from divorced single-mother homes are significantly less likely to complete high school and to attend or to graduate from college, according to a 2000 study.²¹
- **Illegal Drug Use:** A 2003 study found that compared to persons from intact families, those who experienced parental divorce are one-and-a-half times more likely to use illegal drugs by age 14 and more likely to use illicit drugs at any age.²²
- **Cohabitation and Out-of-Wedlock Childbearing:** A 2004 study found that young women who experience parental divorce are twice as likely to cohabit before marriage and to have a child out of wedlock, when compared to those raised by their married biological parents.²³

Adult Children of Divorce

Divorce has long-lasting consequences on children, often negatively impacting them into adulthood.

- **Depression and Suicide:** A 2003 study found that those who experienced parental divorce by age seven were twice as likely to suffer from major depression as adults (regardless of whether their mother remarried), compared to those raised in

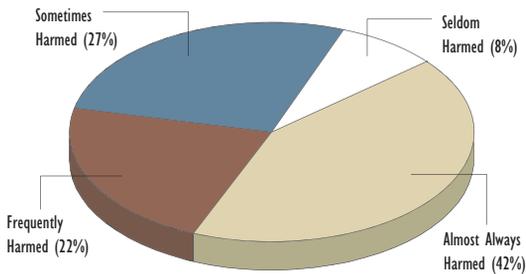


intact families.²⁴ Other research found that compared to those raised in intact families, adults who had experienced parental separation or divorce in childhood were twice as likely to attempt suicide.²⁵

- **Less Economic Achievement:** Compared to children raised by widowed mothers, adults who grew up in divorced single-mother homes are more likely to take lower status jobs and less likely to report happiness in adulthood.²⁶
- **Higher Risk of Divorce:** Children of divorce are twice as likely to divorce as are the offspring of continuously married parents, according to a national longitudinal study of two generations. The authors suggest that their higher risk of divorce is due to a weaker commitment to lifelong marriage.²⁷
- **Weak Family Relationships:** Adults who have experienced parental divorce are less likely to have frequent contact and close relationships with their parents than are adult children from intact families.²⁸

A Time/CNN Poll

Question: "When parents get divorced, are children harmed?"



Effects of Divorce on Those Who Divorce

Divorced men and women also suffer tremendously from divorce.

- **Depression:** A 2001 national study of nearly 800 families found that compared to married mothers with biological children, divorced single mothers report more depression, lower self-esteem, lower self-efficacy, and less satisfaction with their lives.²⁹
- **Suicide:** A 2000 national study found that divorced and separated men and women are more than twice as likely as married couples to commit suicide. Similarly, divorced men are nearly two-and-a-half times more likely than married men to die from suicide.³⁰
- **Financial Loss:** The income of a mother and child decreases by about 50 percent after separation.³¹ When divorce or separation occurs, women, on average, experience a 50-percent decline in their family income, and at least a 20-percent decline in their per capita income. Men, on the other hand, experience only modest declines in family income and 50- to 90-percent increases in their per capita income.³²

Reforming No-Fault Divorce

The devastating effects of divorce on marriage and the family has led to popular support for restricting access to no-fault divorce. In a 2003 poll, 49 percent of those surveyed said divorce should be harder to obtain than it is now; only 26 percent said it should be easier.³³

Divorce can be reformed in a variety of ways, including enacting laws to implement covenant marriage, mutual consent, longer waiting periods, pre-divorce classes, and premarital education. Also, Community Marriage Policies have been effective in reducing divorce rates.

Covenant Marriage

In 1997, Louisiana was the first state to enact a covenant marriage law, followed by Arizona in 1998 and Arkansas in 2001. Covenant marriage laws give couples a choice between two types of marriage licenses: the standard marriage license (which allows virtually unrestricted access to no-fault divorce) and the covenant marriage license (which requires premarital counseling and places restrictions upon no-fault divorce). Couples who choose covenant marriage must obtain premarital counseling, which includes



"We do solemnly declare that marriage is a covenant between a man and a woman who agree to live together as husband and wife for so long as they both may live. We have chosen each other carefully and disclosed to one another everything which could adversely affect the decision to enter into this marriage. We have received premarital counseling on the nature, purposes, and responsibilities of marriage. We have read the Covenant Marriage Act, and we understand that a Covenant Marriage is for life. If we experience marital difficulties, we commit ourselves to take all reasonable efforts to preserve our marriage, including marital counseling."

—LOUISIANA COVENANT MARRIAGE AGREEMENT

discussion in the following three areas: 1) the seriousness of covenant marriage, 2) the fact that it is a lifelong commitment, and 3) the requirement to seek marital counseling when marital difficulties arise.

In Louisiana, divorce or separation may be obtained in a covenant marriage after a couple that has not obtained a legal separation has lived apart for two years. Couples without children who have obtained a legal separation must wait one year before divorcing; separated couples with children are required to wait 18 months. Other grounds for divorce or separation include proof of adultery, conviction of a felony with a sentencing to death or imprisonment at hard labor, abandonment by either spouse for one year, physical or sexual abuse of a spouse or child of one of the spouses, or (for purposes of legal separation only) cruel treatment or habitual intemperance.³⁴

So far, not many couples are choosing the covenant option. Preliminary findings from a study on covenant marriage show that only about 2 percent of new marriages in Louisiana fall into the covenant category. It has been reported that parish clerks of court are discouraging couples from choosing covenant marriage.³⁵ The low number of covenant marriages may also be due to the fact that many couples are unaware of the covenant marriage option; according to the study, 40 to 50 percent of spouses who chose

the standard marriage option had never heard of covenant marriage and only 16 percent had discussed the option.³⁶ Compared to standard marriages, covenant marriages have lower divorce rates in the first five years of marriage due to premarital counseling, lower rates of premarital cohabitation, and wives' strong religious beliefs.³⁷

In 2003, Indiana, Texas, Utah, Virginia, and West Virginia considered covenant marriage legislation, followed by Iowa and Missouri in 2004.

Mutual-Consent Divorce

Mutual-consent laws allow couples who mutually agree to obtain a no-fault divorce. Mutual-consent divorce alleviates the unilateral problem of no-fault divorce, because it does not allow one spouse to leave without obtaining the consent of the other spouse. Also, mutual-consent divorce involves the least amount of government intervention in the divorce process. Rather than having a judge decide the divorce settlement, spouses can determine child custody and how assets and finances should be divided.

In 2002, proposed legislation in Kansas³⁸ and Michigan³⁹ would have allowed mutual consent divorce and reinstated fault for contested divorces. In 2003, New Mexico Senator Mark Boitano introduced legislation limiting "incompatibility" as grounds for no-fault divorce for couples with minor children, unless both spouses agree that incompatibility exists. The bill also required parents with minor children to attend a minimum of six hours of counseling.⁴⁰

Longer Waiting Periods

Lengthening the waiting period, which is the amount of time a couple must wait after filing

for divorce or the time they must live separately before filing, is another way states have limited no-fault divorce. Waiting periods are beneficial for three reasons, according to David Blankenhorn of the Institute for American Values: They “encourage reconciliations ... affirm the importance of the marriage commitment, without actually denying divorce ... [and] are fairer to the spouse who is being left.”⁴¹

A proposed 2004 Georgia bill would have extended the waiting period from 30 days to 180 days for couples with children (age 18 or younger) and 120 days for couples without children. The bill also required divorcing couples with minor children to attend a minimum of four hours of classes on how divorce affects children.⁴² A proposed 2003 New Hampshire bill would have required a six-month waiting period for parents with minor children and attendance at classes on how to help children deal with divorce.⁴³

Reinstating Fault

Some states have attempted to reinstitute fault in the divorce process. Considering fault in the divorce process ameliorates the injustice against the spouse who has not committed a serious fault and who may not want a divorce. The spouse who is at fault is punished, while the other spouse can bargain for an appropriate settlement.

The 2002 Kansas and Michigan proposed legislation allowed for consideration of fault. The Kansas bill would have instituted special requirements for couples with children or if one spouse opposed the divorce. In such cases, the spouse seeking divorce must allege one of nine fault grounds, such as adultery, impotence, abandonment or imprisonment.⁴⁴



The Michigan bill would have allowed no-fault divorce only when spouses mutually consented to it. For contested divorces, the spouse requesting the divorce would have had to prove the other spouse was at fault or would harm a minor child in their home. The at-fault spouse would have been penalized in the financial settlement.⁴⁵

In Montana, a 2003 bill would have allowed courts to consider “marital misconduct” when dividing property or determining custody.⁴⁶

Premarital Education

Several states have passed premarital education laws in an effort to help couples prepare for marriage and avoid divorce. Florida was the first, with its Marriage Preservation Act of 1998, which gives a discount to couples applying for a marriage license who attend a minimum of four hours of marriage preparation, allowing them to waive the three-day waiting period before the marriage can take place. The premarital course may include topics such as communication skills and may be taught by licensed psychologists, social workers or therapists, as well as clergy.

In 1999, Oklahoma passed similar legislation—reducing the marriage license fee for those who receive premarital education—followed by Maryland and Minnesota in 2001 and Tennessee in 2002. Georgia recently passed a similar bill, which will likely be signed by the governor in 2004.⁴⁷ The Iowa Senate recently passed a bill to increase the waiting period for a marriage license from 3 days to 20 days for couples who decline premarital counseling.⁴⁸ In 2002, Michigan considered a bill offering a tax credit of up to \$50 to cover the cost of a premarital or marriage education program.⁴⁹

Community Marriage Policies

Marriage Savers, an organization dedicated to strengthening and preserving marriages, has helped 183 cities in 40 states implement Community Marriage Policies (CMPs). CMPs are signed by clergy and judges in a community, who agree to require engaged couples to undergo at least four months of marriage preparation, including a premarital inventory that helps to identify the strengths and weaknesses of an engaged couple's relationship. Both marriage preparation and the premarital inventory are administered by married couples trained as mentors, who meet with engaged couples at least four to six times before the marriage and continue meeting afterwards. Mentoring couples also help couples in troubled marriages and others who want to strengthen their marriage.

A recent study demonstrated the effectiveness of CMPs in reducing divorce rates. Counties that implemented CMPs had an 8.6-percent decline in their divorce rates over four years, compared to a 5.6-percent decline among counties without CMPs. Over seven years, CMP communities will experience a 17.5-percent decline in divorce

rates, compared to a 9.4-percent decline in counties with no CMP.⁵⁰

Michigan Mediation Project

Some family courts in Michigan plan to have mediators trained in *focused thinking* mediation, a highly effective technique that teaches couples how to listen to each other and to resolve conflict, thereby reducing acrimony between spouses. The developer of *focused thinking* mediation, Stan Posthumus, has successfully used this method on divorced couples in The Third Circuit Court in Wayne County, Michigan. After working with Mr. Posthumus, 40 out of 50 couples who had repeatedly litigated over child custody issues settled their cases out of court, and after one year, only five couples returned to court.⁵¹

Conclusion

Clearly, America's embrace of no-fault divorce has weakened the institution of marriage, with disastrous fiscal, societal, and human consequences. The link between the emergence of no-fault divorce and the rapid rise in the nation's divorce rate is utterly indisputable.

Fortunately, state legislatures and communities are beginning to craft creative and effective ways for protecting marriage instead of undermining it. Covenant marriages, Community Marriage Policies, and pre-marital counseling show great promise for motivating couples considering marriage to enter matrimony with an eye to maintaining a lifetime commitment to each other.

Another encouraging sign is the number of states that are enacting or considering legisla-

tion that would lengthen the waiting period for divorce, reinstitute fault into divorce proceedings, and require pre-divorce counseling.

But these steps are only a beginning. Replacing the culture of divorce in America with a culture of marriage will require a lot of innovation, education, and hard work. But every effort to encourage couples like Mario and Judy to save their troubled marriage will be well worth it.

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Additional Resources

I Do: Portraits from Our Journey

A VIDEO FROM FAMILY RESEARCH COUNCIL

The magical words “I do” are not the introduction to a fairy tale. Real-life marriages face tough times, as the marriage vows remind us. *I Do: Portraits from Our Journey* tells the stories of six marriages that have faced struggles and endured. To order the video and accompanying workbook, call FRC’s order line at 1(800) 225-4008 or visit www.frc.org.

The Family Portrait: A Compilation of Data, Research and Public Opinion on the Family

In order for marriage and family to be restored, we must first understand the current condition of these vital institutions. *The Family Portrait* offers a comprehensive picture and is an invaluable resource. To order call FRC’s order line at 1(800) 225-4008 or visit www.frc.org.

Marriage Savers is an organization dedicated to strengthening and preserving marriages.

www.marriagesavers.org

For more information about the Covenant Marriage movement and how your community and church can get involved, visit www.covenantmarriage.com

Focus on the Family began in 1977 in response to Dr. James Dobson’s increasing concern for the American family.

www.fotf.org

Family Life, a ministry of Campus Crusade for Christ, offers many resources for strengthening marriages and families.

www.fltoday.org

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