



The National Organization for Women-NYS **OPPOSES**

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No-Fault Divorce

A9753 (Bing) S3890 (Hassell-Thompson)

NOW-NYS strongly opposes A-9753/S3890. This bill has a large loop hole in the wording. It states that **"Except under exigent circumstances placed on the record by the court**, no judgment of divorce shall be granted under this subdivision unless and until" certain conditions are met. NOW-NYS questions this wording as we wonder who defines "exigent circumstances" and exactly what these circumstances might be. Further this loosely worded legislation leaves a large window for abuse by the monied spouse (usually the husband).

New York is currently a fault state. That means that if you want a divorce, and your spouse does not agree, you must have grounds. The two most common grounds are cruel and inhuman treatment and abandonment.

New York State also has one no-fault ground. It is a bi-lateral no-fault ground. If both parties want to divorce they negotiate a separation agreement, which is a contract spelling out all the terms which a court would decide, such as custody, child support, maintenance (formerly called alimony) and property division. Then after living apart for one year, the agreement becomes the ground for the divorce.

The NYS Legislature continues to consider proposals for unilateral no-fault divorce. This amounts to "divorce on demand." Either party can go into court, say the marriage has broken down, and get a divorce. No grounds are necessary. Additionally, under all the bills that have been proposed to date in New York State, fault would not be considered in determining alimony, maintenance or property division. Under all the proposed bills the judge wouldn't hear the facts, behavior and circumstances that led to the break-up of the marriage. Will the judge hear these facts in custody disputes? We are not sure.

Currently, separation and divorce are negotiated by couples. This is how approximately 95% of divorce cases in New York are resolved: by the parties themselves, not by the judge, without going to court. This is the best possible process.

No-fault takes away any bargaining leverage the non-monied spouse has. Currently she can say "If you want a divorce I'll agree, but you have to work out a fair agreement." That is not "blackmail" as has been claimed by some no-fault proponents. Negotiating the terms of the break-up of a partnership is the way partnerships are dissolved in the business world. Women should have the same protection. Another benefit of separation agreements is that couples can agree to terms that the court cannot order. One notable example is child support until graduation from college. The court may order child support only up to the child's 21st birthday. Without a separation agreement with this provision included, children are left to finish college under severe financial hardship, or to drop out.

In fairness, any partner to a marriage should be provided with notice that the other partner wants a divorce and given an opportunity to negotiate the terms for the divorce. With “divorce on demand,” not only can the more-monied spouse begin hiding assets (which happens even under our current laws), but this spouse can proceed quickly with legal actions before the other spouse, with limited means, even has the time to find and hire an attorney.

Who is pushing for no-fault? The push was begun by the New York State Bar Association, whose wealthy clients just want out of the marriage without negotiating an agreement. They would rather have the case go to court to decide the issues of custody, child support, maintenance and property division. **Should domestic relations law be changed to satisfy only the needs of wealthy clients or to help the legal profession gain more fees?** Current law encourages private settlements. In contrast, the Bar Association proposal would flood the court with cases. There is another downside: The Office of Court Administration does a periodic study of gender bias, and they acknowledge that gender bias against women still permeates the court system.

The Women’s Bar Association has reversed its long standing opposition to no-fault divorce and is now going along with the NY State Bar. Attorneys in the Women’s Bar Association have some clients who want out of the marriage and have no grounds. But the Women’s Bar Association also says that women are doing so well financially they no longer need the protection of fault grounds. However, on December 24, 2006, The New York Times published an article entitled “Scant Progress Closing Gap in Women’s Pay.” The sub-title was “For College Graduates, the Disparity Worsens.” It doesn’t seem that most women are doing so well in the workplace.

A small number of attorneys who represent victims of domestic violence want no-fault because their clients are being denied divorces by some judges who tell them that the domestic violence they suffered is not severe enough to be considered cruelty that would warrant a divorce

NOW-NYS has worked on the national and state levels to raise the issue of domestic violence, to reduce its incident rates, and to develop legal strategies under criminal and civil laws to help victims. New York's domestic relations laws should not be changed to disadvantage a majority of women, especially homemakers with children, because a few judges are not following the law. It is the judges who have to be changed or removed. We need thorough judicial education to enlighten judges as to the meaning of domestic violence. Contrary to popular belief, it doesn’t necessarily mean a woman will appear in court with black eyes and broken bones.

The National Organization for Women (NOW-NYS) has a long standing position of opposition to unilateral no-fault divorce. Our opposition is based upon the study of the harmful effects of no-fault laws on women and children in other states.

We must look at the socio-economic standing of women in our society. Women clearly continue to be the non or lesser monied spouse, as women continue to give up careers and financial independence for the role of housewife and mother. For this reason alone we must look closely at how divorce affects the lives of women and children and the role that the state should play to ensure that homemakers and children not be left destitute after divorce.

In 1987, 17 years after California enacted the first no-fault law in the country, California’s Senate issued a report entitled Report on Family Equity which found, among other things, that no-fault had created “unintended hardships” for women and children.

Ten years later, in 1997, the prestigious Family Law Quarterly put out by the American Bar Association published an article by Peter Nash Swisher, Professor of Law, at the University of Richmond (Virginia) Law School. Professor Swisher studied the effects of no-fault all over the country. In the article he states that “when no-fault divorce was first introduced in most states, a disturbing number of courts failed to provide adequate financial protection to women and children of divorce.”

Swisher goes on to say, “Consequently, many children of divorce have suffered long-lasting psychological, as well as economic, damage resulting from divorce. Indeed, a number of commentators have concluded that the no-fault divorce revolution in America has failed.” Swisher recommends that, at the very least, even in states with no-fault grounds, fault should be considered in maintenance and property division, as it is in approximately 38 states.

Divorce reform is needed. However, NOW-NYS sees the most urgent need as a strong bill regarding expert and legal fees. The party in control of the finances should be ordered to pay meaningful expert and legal fees to the other party during the divorce proceedings in order to ensure both parties have a level playing field. Further, we must ensure that the lesser monied spouse is covered with health insurance and that any move by a party to hide assets results in meaningful penalties to that party. Let’s have both parties equally represented, see how that works and then, and only then, consider unilateral no-fault divorce.

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