

2013 HOUSE JUDICIARY

HB 1423

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1423
Job 18710
DATE February 11, 2013

☐ Conference Committee

Carmen Hinkle

Explanation or reason for introduction of bill/resolution:

Relating to a waiting period for divorce and to mandatory counseling.

Minutes:

Testimony 1,2,3,4,5,6,7,8,9,10,11

Chairman Kim Koppelman: Opens HB 1423

Rep. Muscha: Handout's #1,2,3,4,5. time on tape 1:58 to 4:17. Introduced the bill.

Rep. Lois Delmore: This bill as written seems the only tool that's offered and there is also a cost to it. How did you come up with the idea of six months? How can you convince us that something mandated and takes away from a couples right to choose what they wish to do in a very personal situation of marriage?

Rep Muscha: Can we guarantee that everyone will have a totally different opinion or stop a divorce or feel okay how I know what my child will go through if I proceed with this divorce? I don't believe anything can do that. It's an attempt, something that will help you go in with your eyes wide open to be aware of possible consequences. The six months' time frame, we cut all the timeframes in half from a bill that was introduced in the 62nd session. She referenced handout #5 from Arnold Fleck, an attorney, who could not be present today.

Rep. Lois Delmore: Is this putting a financial burden on those who already may have big time problems with finances? Money causes more divorces than anything. In the rural areas are we going to have that counseling available without a substantial cost?

Rep. Muscha: I completely agree with you, I have spoken with some Clergy they said yes they would feel capable of doing something on this. On the bill it does say volunteer and Human Service Centers do offer some type of education. Adding the cost was a concern that is where I propose that the state have a vested interest. Statistically people who are on the bottom half of the financial economic spectrum that do divorce creates further need for assistance in our state. The intent is not to add further burden. Of course there is counseling services that will do counseling for pay, so the rural areas a free source could be a religious affiliation. I realize there are people who don't have any ties to a church, might they be willing to go, possible. Massachusetts has a bill like this and offers an online course although there is a cost. The state organizes some free classes as well.

Rep. Ben Hanson: I see there is an exemption included for substantiated allegations of domestic abuse. Are there any other exceptions for infidelity on the behalf of the spouse? Would that couple still be mandated for six months of counseling sessions?

Rep. Muscha: Sen. Mattern is presenting an amendment that will details a little more of the substantiated abuse. It is not the intent of the bill to have anyone who has gone through such cases to be prolonged.

Rep. Ben Hanson: There is no provision for infidelity on behalf of one of the spouses that would essential be stuck in that marriage for another six months when they know how it will end at the end of six months?

Rep. Muscha: She said she had not read the amendment.

Chairman Kim Koppelman: I assume the exception for domestic violence is because there is a perceived damage versus whatever reason present for contemplating divorce, is that true?

Rep. Muscha: Yes, as did work with some people who deal with abuse because that is not the intent of the bill to keep people in any other danger. This is not just abuse to an adult but also to a child.

Chairman Kim Koppelman: Do you how many other states do this, if so it is successful?

Rep. Muscha: Others that are going to testify know more of the statistical data. If states implement education like this even if it affects a few families it's cost effective for the state.

Chairman Kim Koppelman: In ND we have a no-fault divorce, I have an attorney friend who said it's much easier to get a divorce in ND than get married is that your understating?

Rep. Muscha: Yes, as you read Mr. Lloyd's testimony. I was amazed divorce was the simple and he got a lot of it off the internet.

Sen. Mattern: Handout # 6 proposed amendments. Time on tape 16:09 to 21:38. I suggested to Rep. Muscha that she focus the bill on the primary concern or where there would be primary benefit. For example is the focus on trying to maintain a marital relationship or on children who are the byproducts of a marital relationship have a proper upbringing following a divorce? We agreed the primary focus should be on the children. On line 7 of the HB 1423, this is in regards to an action which includes the issue of parental rights and responsibilities. This is not a general bill regarding divorce or marriage. It is specific to deal with the needs to children. The amendments to clarify that this bill and the requirements of counseling do not apply in situations where there is domestic violence whether there is a charge or a conviction. The greatest benefit to children's development is to have their moms and dads speak positively about one another or certainly not negatively about one another.

Rep. Lois Delmore: Do you think we can save everybody from divorce by using this bill or take all the hurt away from children who probably have been in a situation? This doesn't cover emotional and mental abuse, which can be as influential on any child. I don't see any time in the interim. For example I might be so frightened of my husband from bullying, maybe he hasn't physically assaulted yet. He has treated my children the same way there is no allowance here that says they will not keep their children in this relationship any longer and I am not going through it any longer. Physical is there but there are a lot of abuses that aren't covered in this bill that can be as detrimental as the physical.

Sen. Mattern: This bill is not drafted in any way to affect the process of divorce. To assume this is to change someone's mind about divorce would be an incorrect reading of this bill. This bill addresses the issues of children after divorce. In one or two appointments would deal with bullied and how do we make sure that arrangements for visitation would not permit a bullying atmosphere to continue in that process. The focus is what is the best thing we can do to help the kids?

Rep. Lois Delmore: I am not questioning the intent of the bill sponsors. I am just saying when we deal with this issue there are a lot of things. Are we a high divorce rate state, where do we rank in divorce among 50 states?

Sen. Mattern: I don't know the ranking but around average.

Vice Chairman Larry Klemin: The amendment you proposed as sections that are referenced from the criminal code, could you go through those and tell us what they are?

Sen. Mattern: I said to Legislative Council to please find every reference to the criminal code that would relate to being convicted of an offense where one of the parties was involved in a divorce and one of the parties might have been involved in domestic violence or protection order and to draft an amendment that who has been involved in these situations an exemption from this counseling requirement. The intent was to make sure the law didn't become a burden on the individuals who might have gone through a traumatic experience. I also got input from Counsel on Abused Women's Services to get a listing of concerns they had about the sections in the law that were troublesome and gave that list to Legislative Council.

Rep. Lois Delmore: Is there a written curriculum for this since you are mandating exactly what areas people have to be counseled on? How did you reach those areas, the child part I understand, but did you consider other things that these people might also need to talk about in counseling?

Sen. Mattern: There was a list of issues that would be available through professional codes and services offered by marriage and family therapist, social workers, psychologists, psychiatrists, and the intent was not get into all of those areas but only to focus on what the needs of the children are. Those two needs are financial support and post-divorce effects on children. In the fields of counseling there is a body of knowledge that relates to those two areas that would be sufficient. There are some people who might say there is need for many more sessions or many more weeks or years, I think the intent of the sponsor and certainly my encouragement to the sponsor was this be focused to what are the immediate concerns for children.

Rep. Karen Karls: In concept I can agree with this bill but this does not even begin to cover couples who were never married but have children.

Sen. Mattern: This relates only to the divorce proceeding and so to the extent where there is no divorce proceeding this would not apply.

Rep. Ben Hanson: My reading of the bill is specific regards to counseling for divorce so why at that point would there be mandatory six months? The amendments do specify more for child care but why not have a bill that entire intent is to educate divorcing couples on the cost of children and the children's mental health?

Sen. Mattern: This bill is to deal with the financial costs and the mental health of the children. This bill does not deal with issues outside of that.

Rep. Andy Maragos: Are you aware of any studies, since we have had this issue previously in the Legislature, that were proposed in the last two, three or four sessions regarding this matter? Do you think it would be a good idea if we took and studied this issue in depth and gather more data?

Sen. Mattern: I believe the last Legislative session was the bill dealing with the marital relationship was changed from a requirement of counseling to a study resolution. So I can see that turning around here. I think it is dramatically different, there are many studies done for children following the outcome of divorce. Two aspects of children doing fine after divorce is having financial support that properly ordered and that they have environment wherein the parents have agreed to deal with each other in certain ways when they are with the children. Is there a study need for this bill? I don't think so.

Rep. Diane Larson: This bill as Rep. Hanson said focusses on financial and mental health of the children, does it prohibit any counseling regarding having marriage be restored so that in certain situations the divorce may not happen?

Sen. Mattern: This bill would not limit that counseling and in fact it's tough to address financial planning in a couple of sessions. Two sessions must focus on post-marital financial planning. That is a short amount of time and would find other issues to work on. This bill does not require any limitations.

Rep. Vicky Steiner: If you look at a realistic situation, a man in his 40's met a woman in her 20's and decided and he would rather be with the younger woman than his wife. In this situation the wife wanted to go to counseling, he did not so he has moved out and under this law she would be required to wait six months and he would be forced into counseling? If he has made his decision would he be bringing his girlfriend to those counseling sessions and how is that going to work in the real world?

Sen. Mattern: The new spouse does not know the financial obligations or the degree to which the man is going to be sending checks every month. That will have great strain on the new marriage. This doesn't cover that new spouse but the spouse that is getting divorced is getting some help on what the financial requirements.

Tom Freier, ND Family Alliance: Handout #7,8 Time on tape 44:50 to 57:34. Page 11 of the handout stated four out of five marriages end against one spouse's will.

Rep. Lois Delmore: Are these ND facts?

Tom Freier: This is nationwide but I think it does give us a foundational look. I think most of these statistics will be close to what we find in the state. 50% divorces with low conflict or no abuse, that is important. Page 16 20% of those who divorced said their lives were enhanced. Page 17 45.8% of children reach the age of seventeen with their biological parents still married. Page 18 children of divorce are 2 to 3 times more likely to suffer from social or psychological pathologies. Twelve more times likely to be incarcerated. An intact family 52.5% fall into that category in ND. Page 5 when children are involved the very best environment is a home occupied living with their biological mother and father, who are living together in a committed relationship.

Rep. Andy Maragos: Why did you put the word committed in? What if they are living in a husband and wife relationship where they are not committed?

Tom Freier: That is our editorial language. Even in those cases where the marriage is not perfect and the adults who are married understand they need to do that the stability of that home is the very

best place for those children. The research shows in a marriage that is less than perfect the best place is the stability of the home.

Rep. Roger Brabandt: Do you know how ND ranks nationally in divorce rates.

Tom Freier: We rank 9th.

Rep. Lois Delmore: Do we have anything that shows up what happens when we force people to do things they really don't want to do?

Tom Freier: There are 19 states that have waiting period and relationship education. The government offers marriage licenses and issue divorce decrees so it puts an obligation to the government to be involved to some extent.

Rep. Bill Kretschmar: In the research has there been any study about minor children of parents who are divorced then these minor children become adults, what percent who become or not become good citizens?

Tom Freier: Research speaks that children of divorce have a more difficult time in education, in finances they might not have the opportunity to have as good of job. It puts them at a disadvantage to those situations as well as emotional and social.

Rep. Gary Paur: In the 19 states are you aware of any it's affects?

Tom Freier: Specifically I will refer that to Mr. Fagan.

Pat Fagan, Ph.D. Director of the Marriage and Religion Research Institute: See attached handout #9 that was received following the hearing. Time on tape 1:07:48 to 1:16:28. Pat Fagan testified via phone. He testified in support of HB 1423 in particular to the waiting period and the counseling of couples contemplating divorce. All counselors and therapists know in dealing with couples that you have to have all parties interested in bringing out whatever is good at stake. You can never force two people to engage in counseling. Those contemplating divorce the earlier you catch them in the process the more you are going to help maintain the marriage. ND ranks 3rd in the nation for families remaining intact. With the continued increase Medicare and Medicaid costs will be extremely high. The highest crime rates in youth are from the divorced and re-married families. Suicide rates are highest in divorced families.

Pat Fagan: In Detroit a study was completed with those waiting to get into divorce court with expert counseling 50% of those marriages were saved from divorce. The expertise of which the counseling was done was very high.

Vice Chairman Larry Klemin: The bill is described as two sessions on post-marital financial planning and three sessions on the effects of divorce on children and doesn't mention to try and save the marriage. Do you read it that way?

Pat Fagan: I agree with your interpretation on the bill. Both of those types of counseling would yield many goods. But the counseling I also think ought to be considered is the counseling to try and save the marriage particular when both of the couples are open to considering that, both have to be open. Given your relatively high rate of marriage I think you could modify it and put this in as an option.

Chairman Kim Koppelman: You mentioned early intervention is the most successful, in the 19 states that have something like this how does it work in the practical realm? If a couple with minor

children were to contemplate divorce and contact an attorney. Would the attorney likely say, assuming this was in law, in ND before you can get a divorce because you have minor children unless there has been criminal activity or domestic violence, you need to have some counseling? It seems to be counterproductive that if you come to the court and the Judge says come back and see me in six in months because you have to go and get counseling.

Pat Fagan: I agree with your observations. How you solve this problem is very tricky. The big reason is looking at divorce lawyers as a group, the vested interest there is not repairing the marriage but having it break up.

Rep. Andy Maragos: Are you aware of any state that requires this type of counseling that have expressed an interest in marriage?

Pat Fagan: There are none that require it. Although there are some those have a reduced cost in the marriage license if you took a pre-marriage course. In foster the culture of marriage the rights of the adults are kept to the floor but the rights of the child is to the married love of his or her parents.

Merle Hoots, Pastor of Bismarck Baptist Church: Handout #10, see attached. Time on tape 1:31:10 to 1:33:27. He encouraged support for the bill and said we live in a society where things happen fast but there comes a time when there is children involved. We have to think about the children. When you go through a divorce there is a time of grieving involved and the counseling would involve working through that grief process. How can parents help children going through grieving? The counseling time would allow that, working with your grieving as well as your children's.

Rep. Lois Delmore: Do you have a list of what would be included in the sessions that are being mandated? We are setting up five restrictive things and also in your research you have a lot of '95 and '96 those statistics are not necessarily in this very quickly changing age. I would hope what we are offering couples would be ND based and would also be recent.

Merle Hoots: I have thought if this were to pass what would I cover? I believe two of the sessions are mandated with finances. The first session would be going back over the history, what is causing this? Then deal with, if you are going to get married again how are you going to avoid these same things from happening all over again? The next part would be what they are seeing happening in their children's lives and what can we do to work on that? How can we relationally work things out with mom and dad so they can each have access to the children and yet have a solid home? Also that their finances and care are looked after.

Rep. Lois Delmore: So there is really nothing written out. Counselors can do whatever they want and it's all acceptable, how do we know that we are getting across to these people some of the same information?

Merle Hoots: Unless you set down specific guidelines it is going to be hard to deal with. The things I think are important I have mentioned. To some extent you want to leave it free because every person and every situation is unique. If you take away that freedom of the therapist to deal with their unique situation nothing might get accomplished.

Rep. Lois Delmore: Many are not trained therapist correct?

Merle Hoots: You are correct. There would be some that would not have the same training as a professional counselor.

Chairman Kim Koppelman: Do you sense there is a difference in outcome or sometimes does the training correlate with success of the counselor?

Merle Hoots: Yes, not just the training even the experience. Because there are some Pastors, some counselors that deal a lot more with this than others as you work with this more the outcome can be more positive with more experience.

Sherry Mills Moore, Lobbyist for the State Bar Association of ND: Handout #11, see attached. Time on tape 1:37:35 to 1:47:27. She said the unintended consequences of this bill are the rational decision that people want to be divorced and they figured out how to do it and who is going to get what and where the children are going to be. They have done it peaceably and they have done it without a lot of court interference and reach an agreement and file with the court then they sit for six months. While they are waiting for six months things fall apart, not the decision to get divorced but the issues they have worked through can fall apart. They can't refinance their house, they can't go out and get new housing because they have to wait until the court has finalized, their children are left in a state of flux because instead of carrying through with their parenting plan to deal with their children they have to live in a state of limbo waiting for physical moves and other finalities that come. So who you are impacting are those who have done this in a responsible and grown-up way. If the purpose is to help children I think it has to some degree the opposite effect, because you are imposing upon them a delay and implementing what their parents have come to. We have Children of Divorce courses or Parents Forever. These are courses that are put on primarily through the Extension Service to help parents figure out how to raise their children when they don't live together. So it hits the people who are divorcing as well as the people that have never been married. The Bar Association and the Family Law Bar have said we would promote it every way we could so every order that is issued from the court has to address that. Here is when your timeframe is here is when you have to have this done and here is when you will get to court and here is when you have to have Children of Divorce done. So that is available, it is available if you have a computer through online services but not through ND it comes through MN. The curriculum is teaching parents, here is what your children are going through now; here is what they will go through when they are 14 year olds and wondering about divorce and remarriage. Here is a good way to speak to each other, here is a bad way to speak to each other, they have video tapes of children who are now adults sitting and talking about their experiences. You don't have to finish it before you are divorced it can be a part of the court order. Another thing is our mediation program. It is in place across the state it is for people who have children and haven't resolved the issues of their custody and then they have to go to mediation unless they are domestic violence victims. In that mediation they talk through the issues how are we going to deal with money and how are we going to deal with our children going back and forth, when are you going to see the kids and when am I going to see them? It is paid for up to six sessions by the state of ND. It has been very successful and an opportunity to take care of the exact concerns you has. The waiting period of six months for those that have figured it out they are going to be negatively impacted by having to sit around and wait to implement what they have done. The mandatory counseling seems to ignore that a lot of these people have already done counseling; I hardly have any clients that walk in that haven't. Most of the Lawyers I know say are you sure. My form has is there any chance of reconciliation? Does the other person want to? Now you are going to make them go through more sessions when they have already acted responsibly and done that work and come to the conclusion they can't stay together. I have concerns about access to counseling after the point of a formalized divorce process beginning. The language says counseling can't have happened before and can't happen after so you are going to have people trying to get into counselors and I don't think you are going to find people who are dually trained in financial planning issues and how to take care of the children. That will be expensive and I don't think there will be the access. Why don't be fund the Children or Divorce class fully? So every parent of a child who doesn't raise a child with the other parent can get access to this information and help. The laws from a couple of sessions ago about parenting plans states every parent who is going to raise their children need to submit a parenting

plan. These are like a manual of what we are going to do with our kids. It's an educational process as well as filing out a form. I think we can do better helping kids get through tough times as well as helping parents get through tough times but this is not the way to go about it.

Rep. Lois Delmore: Do you see a place where someone may even defy the order so it could go beyond six months because if they haven't completed it and gotten a certificate? Is the court going to be able to mandate it enough so that doesn't happen?

Sherry Mills Moore: I don't think you can underestimate somebody's ability to spoil the system. So yes you can drag it out. The way it is worded says it needs to be done in six months so if it is done in eight months it doesn't count. I think the courts would need to seek compliance and since there is a wide array of people who can provide the services I think it will get difficult to see if there has actually been compliance.

Rep. Diane Larson: The programs you talked about are they mandatory for anybody going through divorce that has children?

Sherry Mills Moore: The mediation is mandatory for people who haven't come up with a specific plan of what they are going to do with their kids. They get mediation on all issues including financial. The Children of Divorce classes are not mandatory although many court orders make them mandatory. So that is on a case by case basis it is part of our standard forms.

Chairman Kim Koppelman: Discussed if the bill goes forward to have a waiver if the counseling has already taken place. Also the finality if someone doesn't want the divorce.

Sherry Mills Moore: I agree I am opposed to the bill. I think it is difficult to impose on people who have already made a horrible decision and imposing another layer of bureaucracy.

Chairman Kim Koppelman: Do you oppose the court doing mandatory things on a case by case basis?

Sherry Mills Moore: I think it is a good idea to require because we are looking at what is going to happen to these kids.

Vice Chairman Larry Klemin: Have we studied this issue before?

Sherry Mills Moore: Not mandatory waiting period. The counseling issue was to be a study before and that didn't happen. Counselors have come in and I have concern if we have a bank of counselors who have this skills. They are hard to find sometime.

Chairman Kim Koppelman: I'm sure everyone that comes to you hasn't sorted it out have they?

Sherry Mills Moore: No but the ones who haven't sorted it out it takes a longer period of time to get into the process to do that.

Chairman Kim Koppelman: Recessed and will continue after the floor session.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1423
DATE February 11, 2013
JOB 18748

☐ Conference Committee

Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to a waiting period for divorce and to mandatory counseling

Minutes:

Testimony 1,2,3

Chairman Kim Koppelman: Reopens HB 1423

Bill Newman, State Bar Association: Handout #1 see attached, time on tape :20 to 10:34. We were told this morning about the educational effect the family mediation program which is mandatory throughout the state for divorcing parents who haven't been able to work out the arrangements for their children. The family law mediation program has an amazing effect as they learn communication skills, they learn how to talk with other, and the requirement put in place for parenting plans is also help them focus on how they feel about what's happening to them. Family's Forever is an excellent program; Sherry Mills Moore suggested to make that that mandatory and fund it fully might be very effective. I agree with the statistics but don't agree with them as the effects of divorce on children that Dr. Fagan referred to them as. Correlation is not causation, there is a high correlation but that does not mean that's what causing it.

Allen Austad, Executive Director of ND Association of Justice: Time on tape 11:50 to 14:28. He stated many of the members practicing in family law and divorces are opposed to the bill. What helps them most is the mediation and counseling only works if both people are amenable to it. What happens if one spouse will not attend counseling? What happens if the spouse is abandoned? What are some of the marital costs, one of the spouses is a gambling addict that extra six months gives that person a significant amount of time to put more marital debt on. One of the spouses can use every financial resource that family may have for the six months' time period. What happens in the case where the couple has already gone through counseling? Do they have to do it again? These things have not been considered when you look at this bill.

Chairman Kim Koppelman: Do you know in the other states that have laws similar are they have difficulty with divorces?

Allen Austad: I don't know.

Janelle Moos, Executive Director of Counsel on Abused Women's Services, CAWS: Handout #2. Time on tape 15:21 to 18:38. The biggest myths around domestic violence is most people believe victims are the safest when they leave relationships. Actually that is the opposite, the most lethal time when victims choose to leave. The violence often escalates and stalking occurs quite a bit. The post separation violence which could include physical, emotional, verbal abuse often

happens and is usually around custody and child support when those victims have made the decision to leave. The amendment takes specific sections of the criminal code. They are simple assault, assault, aggravated assault, stalking, gross sexual imposition, continual sexual abuse of a child, and sexual assault. Rep. Delmore asked about signs of abuse you cannot see, they are verbal abuse, emotional abuse, the things you can't actually see. Just looking at criminal code leaves out the victims that often don't verbalize abuse, have never identified it themselves or disclosed it to anybody. In some cases it may not be brought up in the divorce process. Judges don't give protection orders when there are no signs of physical abuse. I think this would allow another tool for abusers if they want to prolong the abuse, it tightens it up but leaves too many areas where victims could be further victimized.

Rep. Lois Delmore: Is there reluctance to report for the victim?

Janelle Moos: Absolutely, it is something victims are very hesitant to come forward with especially when they start to see the negative impact that could happen. We often see victims lose their children when they come forward to get divorced, most often in divorce proceedings abusers receive children than abused women.

Rep. Kathy Hogan: We heard about the capacity of the counseling system to absorb and provide this service to all divorced families can you talk about how many counselors are available and does the state have enough capacity to meet a need if this bill passed?

Janelle Moos: I can't speak to the number of counselors available but if I look at the number of counselors who specialize in domestic violence cases that is few and far between. We have counselors in the eastern part of the state that focus on domestic violence and sexual assault. We would never recommend counseling in domestic violence relationships. There has been a lot of talk about the mediation project and victims are screened out of the process. In the western part of the state we can barely keep up with the request in our shelters and crisis centers.

Chairman Kim Koppelman: When someone comes to you who have been a victim of this treatment is counseling something you recommend they do since you said you don't encourage counseling?

Janelle Moos: We are non-profit and do more of the training and provide assistance for programs. All of our 21 crisis centers is where the victims come into to receive services, they provide shelter, most often counseling, protection order assistance, emergency assistance. We wouldn't recommend couples counseling but we often highly recommend individual counseling. Each victim's journey is different. Abuses tend to use services like mediation to further victimize and threaten, they have certain cues they use.

Chairman Kim Koppelman: So if there have been no criminal charges, there is no evidence, no protection order or discussion of domestic violence in the past might individual counseling be a scenario to draw that kind of information out? Or when do victims that have never talked about it do talk about it?

Janelle Moos: It's going to be very different for every victim; it can be at times be years before they discloses violence. This bill would only prolong those situations in which violence could get worse. Also there is situations in which victims would work side by side with their advocate, if the opted in for counseling they safety plan.

Chairman Kim Koppelman: You are suggesting the amendment takes care of the known cases, or attempts to? The people who may have been victims of abuse but never talked about it; if someone like that comes to a situation contemplating divorce and they were to say they would do counseling

separate isn't it plausible it might unearth the very thing you are concerned about and get them the help they need?

Janelle Moos: Absolutely it is.

Chairman Kim Koppelman: Recessed.

Minutes of the

(HOUSE) (SENATE) BILL NO. 1423 SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEE

Meeting location: Prothon

Date of meeting: 2-13-13

Time meeting called to order: 3:35 pm

Members present: Rep Paar, Rep Hagan, Rep Tomen

Others present (may attach attendance sheet):

Topics discussed:

How to proceed on HB 1423 SR or
change the time of required counseling

Motion and vote:

Time of adjournment: 3:45

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1423
DATE February 18, 2013
JOB 19134

☐ Conference Committee

Carmen Heide

Explanation or reason for introduction of bill/resolution:

Relating to a waiting period for divorce and to mandatory counseling

Minutes:

Rep. Gary Paur: Opened the meeting for the subcommittee.

Those attending were committee members Rep. Gary Paur, Rep. Kathy Hogan, Rep. Nathan Rep. Nathan Toman. Brad Condal, Sally from Supreme Court and Rep. Muscha were also present.

Rep. Gary Paur: We are proposing requiring counseling early in the mediation process of the divorce proceedings. Within the first 35 to 45 days.

Rep. Kathy Hogan: I did not put any time frame in my proposed amendment. She put in an action for divorce.

Brad Condal, NDSU Extension Service: In the mid 90's there was a community concern about divorces where children were impacted. They conducted a pilot project to develop a parenting education program for parents contemplating divorce. This program was called Children of Divorce. Six years ago the program was revised entering into an agreement with the University of Minnesota Extension Service to adopt their program. This is Parents Forever. In MN the program is court mandated and based on 20 standards. Their course is eight hours of instruction. ND program is Parent's Forever four and a half or five hour program, done face to face and on line. Both involve a fee and the on line program is out of MN. The programs in ND are full and only scheduled one or less times per month.

A certificate is provided for both the on line class and face to face classes.

Rep. Kathy Hogan: What happens if a person cannot pay the fee and is it \$55 per person or per couple?

Brad Condal: It's per person. I assume the expense is assumed some part of the judicial process.

Rep. Gary Paur: In MN United Way picks up the fees if the individual cannot pay.

Brad Condal: We had a number of scholarships opportunities if the person did not have the ability to pay. But now we do not have that.

Sally, from Supreme Court: The court does not take any position on this. Out of 43 Judges that responded to the survey we had 16 who usually sends the parties, 15 who sometimes send the parties, 10 said they didn't send parties to classes, they are available throughout the state. In Fargo and the southwest the Judges send the parties most all of the time. The rest of the state is sporadic.

Rep. Gary Paur: How would you see the courts integrating this with the mediation services?

Sally: I don't see any integrating at all. Partly because they have difference functions, mediation and parenting classes don't have counseling. Parenting classes are strictly educational. Mediation its working on custody and visitation and how are you going to resolve disputes.

Rep. Gary Paur: Do you think the courts would be able to draw up the parameters for that class or should it be done in the bill?

Sally: I think the court would be uncomfortable drafting the content. In MN when the classes were mandated the providers the came forward with options. The court does not pick up the fee for someone who can't pay in ND. Mediation is free to the parties for the first 6 hours, although the court pays \$170 per hour for the mediator.

There was discussion on the proposed amendment and not having mandatory language in the bill as well as programs in other states and a study resolution. Rep. Paur will meet with Legislative Council on the proposed amendment, then meet again to review it.

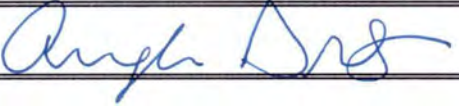
Rep. Gary Paur: Adjourned the subcommittee meeting.

2013 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

HB 1423
February 19, 2013
Job 19188

☐ Conference Committee



Explanation or reason for introduction of bill/resolution:

Relating to a waiting period for divorce and to mandatory counseling.

Minutes:

Chairman Koppelman called the committee to order.

Rep Paur: The bill, as it was introduced, had several elements. The committee would like to propose an amendment which would narrow the focus of the bill to just providing parental education as a requirement for divorce. The amendment would remove the waiting period. Something similar to this was adopted in 46 states. The part that we might have a little trouble with is the legislative management study. This amendment allows for the court to set the standards and implement the whole process.

Rep Klemin: On page 1, line 20 "The court shall adopt rules to define the standards for the education program". Which court does this refer to; the District Court where the divorce is pending or the Supreme Court that normally adopts everything? The Supreme Court may have some issue with the legislature telling them what to do in regards to Supreme Court rules. We give rule making authority to the Supreme Court. Did you look into that or having any discussions with the Supreme Court about this?

Rep Paur: Yes we had Sally Holloway from the Supreme Court in our committee meeting. We were also working with Ms. Ferderer who is the administrator of the mediation program there. I did not detect any resistance to this.

Chairman: Would a "may" versus a "shall" solve that issue?

Rep Klemin: It might from the standpoint of the court. But it's the Chief Justice and the other justices who really run the court, not the people they hire to administer the office.

Rep Hogan: We had Ms. Holloway with us and we had Brad Cogdale who coordinates the parent forever program. Ms. Holloway also shared with us a survey they did in 2011 regarding how judges are currently doing this. Of the 43 judges who responded to her survey, 16 are already doing this. Another 11 were doing it some of the time. It's a practice that's kind of in place now. That's why they felt this was a reasonable thing to manage.

Chairman: My understanding is that basically what the amendment does is hog house the bill and change it into a different requirement. The requirement would be that there is some parent education that goes on in divorces where children are present.

Rep Paur: Some indication we received was that this education program also helps with the mediation.

Rep Klemin: The rule making authority of the Supreme Court in our Century Code is in chapter 2702. It gives the Supreme Court the authority to adopt all kinds of rules. I'm a little uncomfortable with saying the court shall adopt rules. I think "may" would be better because in all of these other sections when it talks about the Supreme Court adopting rules, it says "may".

Rep Paur: In MN, Health and Human Services are the ones that set up the parameters for their programs.

Rep Hogan: But that's not what the law says. It says the court.

Chairman: It says the court shall adopt rules to define the standards for the education program. I think the court could decide to send this to human services.

Rep Paur: Sally said they would ask for proposals and then build the rules off those.

Chairman: The motion has not been made yet for the amendment so we'll correct the amendment before it is proposed to change "shall" to "may".

Rep Paur moved the amendment.

Rep Hogan seconded.

Voice Vote: Motion carried.

Rep Hogan moved for a Do Pass as Amended.

Rep Paur seconded.

Rep Hanson: When you're saying the change in the amendments to the education program, is that what you're referring to 46 other states currently have?

Rep Paur: Yes.

Rep Hanson: I'm going to resist the Do Pass as stands amendment because I thought the way the bill was presented originally; it was essentially a holding pattern in order to obtain a divorce no matter the circumstances outside of some set circumstances for abuse with no caveats for infidelity or any other circumstance. What this has essentially done is this is a hog house for an issue that needs to be addressed which is educating divorcing parents on what the cost and emotional toil this will be on children. I would be in favor of that if it were

part of a separate bill. I think this has entirely changed the intent of the original bill. Senator Mattern testified that this is about trying to educate people about children and that is very wrong. The bill is about the holding pattern for two people making a choice that is often times very harmful and psychologically damaging. I don't think parental education should be tacked on as part of this bill. I thought the original intent of the bill had negative enough consequences that I would be voting against it.

Rep Klemin: On page 1, line 6 of the amendment, it ends with the word "exception". What is the exception?

Rep Hogan: On page 1, line 9 after abuse it says or other showing of good cause. The judge would have permission to exempt the requirement.

Roll Call Vote:

Yes: 6

No: 7

.Absent: 1

Motion failed.

Rep Hanson motioned for a Do Not Pass as Amended.

Rep Boehning seconded.

Rep Larson: It's not that I'm opposed to this whole idea, the biggest reason I'm opposed at this point is that this seems that it's already being done. They have mediation. They have children of divorce classes. This seems a bit redundant. To study to see if there is something more that should be done or more money put into the programs seems like a good part of the bill to me. But to just order some of these things is the reason I'm against it.

Rep Hogan: I think about half the judges are currently doing it. This would just require it for the other half. That is why I'm supporting this.

Chairman: It would standardize our system.

Rep Paur: The requirement is basically four or five hours. It can be done on-line through NDSU that might be acceptable. The requirement is not very large.

Rep Boehning: Rep Hogan, they currently have divorce counseling?

Rep Hogan: This is really parent education about the impact of divorce on children. It's a program called Parenting Forever. This bill would make it standardized across the state.

Rep Paur: This is not counseling. We are not trying to change their mind.

Chairman: So to clarify, the amended bill no longer has any counseling; it is strictly education on the effects of divorce on children and the study.

Roll Call Vote:

Yes: 9

No: 5

Absent: 0

Motion carried.

Rep Hanson carried the bill.

✓K
2/19/13
1002

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1423

- Page 1, line 2, replace "a waiting period for divorce and to mandatory counseling" with "a mandatory education program for parties to a divorce proceeding involving parental rights and responsibilities; and to provide for a legislative management study"
- Page 1, line 6, replace "**- Waiting period - Mandatory counseling**" with "**involving parental rights and responsibilities - Education program required - Exception**"
- Page 1, line 9, after "abuse" insert "or other showing of good cause"
- Page 1, line 9, remove "may not issue a final order for at least six months from"
- Page 1, line 10, replace "the date of the filing of the petition" with "shall order the parties to the action to participate in an education program regarding the impact of divorce on children"
- Page 1, line 11, remove "Within the six-month waiting period, the adult parties to the action shall participate"
- Page 1, remove lines 12 through 16
- Page 1, line 17, remove "3."
- Page 1, line 17, after "court" remove "may not require both parents to attend the same counseling sessions at the"
- Page 1, line 18, replace "same time. Each party shall arrange for participation in the counseling sessions" with "shall prepare a list of appropriate education program providers"
- Page 1, line 18, after the underscored period insert "The education program may be an online or a classroom program."
- Page 1, line 19, replace "counseling session" with "education program"
- Page 1, line 20, remove "counseling"
- Page 1, line 20, after "costs" insert "of the education program"
- Page 1, line 20, after the underscored period insert "The court shall adopt rules to define the standards for the education program."
- Page 1, line 21, replace "4." with "3."
- Page 1, line 22, replace "counseling" with "education program. The court may impose sanctions for the failure of a party to the proceedings to comply with the requirements of this section"
- Page 1, after line 22 insert:

"SECTION 2. LEGISLATIVE MANAGEMENT STUDY - MARRIAGE AND DIVORCE LAWS. During the 2013-14 interim, the legislative management shall consider studying the state's laws regarding marriage and divorce. The study must include a review of options for strengthening the institution of marriage and reducing the incidents of divorce in the state, including premarital education, marriage

counseling, parenting education, and the implementation of predivorce requirements, such as divorce-effects education and waiting periods. The study must include a review of the minimum standards established by the court for the divorce education programs and the efficacy of the programs in the state. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement those recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

Date: 2-19-13
Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB1423**

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Paur Seconded By Rep. Hogan

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman			Rep. Lois Delmore		
Vice Chairman Lawrence Klemin			Rep. Ben Hanson		
Rep. Randy Boehning			Rep. Kathy Hogan		
Rep. Roger Brabandt					
Rep. Karen Karls					
Rep. William Kretschmar					
Rep. Diane Larson					
Rep. Andrew Maragos					
Rep. Gary Paur					
Rep. Vicky Steiner					
Rep. Nathan Toman					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote - Carried

Date: 2-19-13
Roll Call Vote #: 1

2013 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1423

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☒ Do Pass ☐ Do Not Pass ☒ Amended ☐ Adopt Amendment
☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Hogan Seconded By Rep. Paur

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman	/		Rep. Lois Delmore		
Vice Chairman Lawrence Klemin		/	Rep. Ben Hanson		/
Rep. Randy Boehning		/	Rep. Kathy Hogan	/	
Rep. Roger Brabandt		/			
Rep. Karen Karls	/				
Rep. William Kretschmar	/				
Rep. Diane Larson		/			
Rep. Andrew Maragos		/			
Rep. Gary Paur	/				
Rep. Vicky Steiner		/			
Rep. Nathan Toman	/				

Total (Yes) 6 No 7

Absent 1

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2-19-13
Roll Call Vote #: 2

2013 HOUSE STANDING COMMITTEE

ROLL CALL VOTES

BILL/RESOLUTION NO. HB 1423

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: ☐ Do Pass ☒ Do Not Pass ☒ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By _____ Seconded By _____

Representatives	Yes	No	Representatives	Yes	No
Chairman Kim Koppelman		<input checked="" type="checkbox"/>	Rep. Lois Delmore	<input checked="" type="checkbox"/>	
Vice Chairman Lawrence Klemin	<input checked="" type="checkbox"/>		Rep. Ben Hanson	<input checked="" type="checkbox"/>	
Rep. Randy Boehning	<input checked="" type="checkbox"/>		Rep. Kathy Hogan		<input checked="" type="checkbox"/>
Rep. Roger Brabandt	<input checked="" type="checkbox"/>				
Rep. Karen Karls		<input checked="" type="checkbox"/>			
Rep. William Kretschmar	<input checked="" type="checkbox"/>				
Rep. Diane Larson	<input checked="" type="checkbox"/>				
Rep. Andrew Maragos	<input checked="" type="checkbox"/>				
Rep. Gary Paur		<input checked="" type="checkbox"/>			
Rep. Vicky Steiner	<input checked="" type="checkbox"/>				
Rep. Nathan Toman		<input checked="" type="checkbox"/>			

Total (Yes) 9 No 5

Absent 0

Floor Assignment Rep Hanson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1423: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO NOT PASS** (9 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING). HB 1423 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "a waiting period for divorce and to mandatory counseling" with "a mandatory education program for parties to a divorce proceeding involving parental rights and responsibilities; and to provide for a legislative management study"

Page 1, line 6, replace "- **Waiting period - Mandatory counseling**" with "**involving parental rights and responsibilities - Education program required - Exception**"

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such as divorce-effects education and waiting periods. The study must include a review of the minimum standards established by the court for the divorce education programs and the efficacy of the programs in the state. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement those recommendations, to the sixty-fourth legislative assembly."

Renumber accordingly

2013 TESTIMONY

HB 1423

Testimony - HB 1423

Judiciary Committee

February 11, 2013

Good morning Chairman Koppelman and members of the committee. I am Naomi Muscha from Enderlin, representing District 24. I am here today to present House Bill 1423.

I propose that this bill could be one tool to help parents proceed through a divorce process. You may be thinking - "Why should the government be interested in helping people go through a divorce?" I propose a few reasons.

The state of North Dakota has established regulations on who may enter into a marriage contract and who may legally seal that contract. The state also sets regulations on how a marriage contract may be ended. If children are born during a marriage, the state also may determine where the children will live once a marriage is terminated. The state regulates how the parents will provide finances for the children and sets laws in place to take action if the regulations aren't followed. On February 1 of this month, HB 1214 was unanimously passed on the House Floor. This will continue the 2009 enactment of a parenting coordinator program, which works with divorced parents.

It's in this light that I bring before you HB 1423. I contend that the state of North Dakota has a vested interest in doing what it reasonably can to ensure divorcing parents have some vital information as they proceed through the process of ending a marriage contract. One may argue that such a law can't be guaranteed to accomplish the intent of the bill. Should we then quit trying to improve our state, our quality of life? If that is the only determining reason to not pass a bill, we could all return home in much less than 80 days of a Session.

I was asked by a constituent to bring a bill, such as this one, to the legislature. He and his wife had gone through a bankruptcy and had been required to receive some education in financial planning before a judge would sign off on the bankruptcy. His question is - "If the government can require counseling for the subject of money, why can't it be required on a much more important matter, such as divorce?"

Mr. Chairman and committee members, I thank you for your time. I welcome any questions.

HB 1423

2-11-13

Testing #2



Photo: [illegible]

Rep. muestra 14B 1423

2-11-13 #13

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January 5, 7	July 5, 7
February 2, 4	August 2, 4
March 1, 3	September 6, 8
April 5, 7	October 4, 6
May 3, 5	November 1, 3
June 7, 9	December 6, 8

West Springfield

*CHD, 246 Park Street **
Tuesdays and Wednesdays
6:00 p.m. to 8:30 p.m.

January 17, 18	July 17, 18
February 21, 22	August 21, 22
March 20, 21	September 18, 19
April 24, 25	October 23, 24
May 15, 16	November 13, 14
June 19, 20	December 18, 19

Ware

*Mary Lane Hospital **
Wednesdays and Thursdays
6:00 p.m. to 8:30 p.m.

February 8, 9	August 8, 9
April 11, 12	October 10, 11
June 13, 14	December 12, 13

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- The five-hour seminar is divided into two sessions, each 2½ hours long
- To complete the program, participants must attend both sessions in their entirety
- Approved by the Probate and Family Court in Massachusetts
- Programs are offered monthly, evenings and weekends at convenient locations
- Pre-registration is required
- Spouses may not attend the same sessions
- We regret that we cannot offer child care
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To take the course online, please click on the link below. The cost is \$60.00 and we accept Visa, MasterCard and American Express. Once you register and pay for the course using our secure server, you will be directed to a page that will allow you to download the course materials in either Microsoft Word or PDF format which can then be saved to your computer for completion and future reference.



You complete the course in your own time. When you are finished, and we receive the answer sheets to the workbook questions, we will send your official certificate of completion that you will file with the court. Complete the course today, and your official certificate of completion is in the mail tomorrow.

Certificates are mailed out within 24 hours upon receipt of your answer sheets. Certificates of completion are sent via regular mail. You may request overnight or 2-3 day delivery options which are available at an additional charge.

About the "Positive Parenting Through Divorce" Program

The court approved Positive Parenting Through Divorce program was initiated and developed by Paul Maione, Ph.D., LMFT. Dr. Maione is the program coordinator and author of the Positive Parenting Through Divorce workbook, Second Edition.

Dr. Paul Maione has been working with individuals, couples, and families involved in the divorce process for over 12 years. As the clinical director of The Atrium Family Center in Davie, Florida, Dr. Maione works extensively with the Broward County Family Court helping divorcing couples navigate their way through the divorce process while keeping their sanity and their children's best interests. He received a Doctorate in Marriage & Family Therapy from Nova Southeastern University in Fort Lauderdale, Florida. In addition, Dr. Maione is a clinical member and approved supervisor for the American Association for Marriage & Family Therapy and has written several articles in the field of Marriage & Family Therapy including a handbook on violence prevention. Dr. Maione teaches in the Marriage & Family Therapy programs at Nova Southeastern University and Barry University and is the current President of the Broward Association for Marriage & Family Therapy.

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Families Divided

written and owned by Michele Diamond, LICSW, BCD

Families Divided, a court-approved parent education program for divorcing parents in MA, is now in both Weston on Saturday mornings & Watertown on Wednesday evenings. See below for class dates and registration information.

Families Divided™ is a parent education program for divorcing parents, which has been approved by the Chief Justice of the Massachusetts Probate & Family Court and meets the mandate for education for parents filing for divorce.

A goal of **Families Divided™** is to empower parents to recognize that they are the experts on their own children and that they will make the difference in how their children are impacted by the divorce. This philosophy, presented at the beginning of the 5 hours, helps to immediately put participants at ease and reduces resistance related to the mandate of being there. Once this is accomplished, group members are at ease to both listen to the content of the program and to share their own thoughts and experiences.

Families Divided™ is based on the very latest research on divorce. Part interactive, part lecture, it also makes use of an excellent video, "*Children: The Experts on Divorce*" which features children speaking from their own experience of going through a parent's divorce. The video was awarded 1995 "Best in Media" by Children's Rights Council in Washington, D. C.

The actual content of **Families Divided™** includes all of the information required by the MA Probate Court plus more. There is a strong emphasis throughout the five hours on the necessity to reduce conflict between the divorcing parents. Several innovative and easy techniques are taught in order to help participants gain distance, both physical and emotional, from their spouse. A continuum from parallel parenting to co-parenting is demonstrated and explained to help parents recognize the parenting styles for divorced parents and understand where they are on the continuum now and where they might like to be in the future. Through the use of brainstorming, participants are encouraged to share their own conflictual situations and ways they have found to be helpful in dealing with them.

COURSE DATES & LOCATIONS

Courses are held in two locations: Weston and Watertown. Please see below for time and dates of each location.

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Time: 10:00 A.M. to 12:30 P.M.

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2013 Course Dates

- March 23 & March 30
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Location: Watertown High School, 50 Columbia St. Watertown.

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Registration Form	
Month you are registering for:	<input type="text"/>
Class Location:	<input type="radio"/> Watertown <input type="radio"/> Weston
Full Name:	<input type="text"/>
Street Address:	<input type="text"/>
City/Town:	<input type="text"/>
State & Zip Code:	<input type="text"/>
Daytime Phone:	<input type="text"/>
Evening Phone:	<input type="text"/>
Email Address:	<input type="text"/>
Full Name of Other Parent:	<input type="text"/>
City and State Where Other Parent Resides:	<input type="text"/>
Comments / Questions / Other Info:	
<input type="text"/>	

By submitting this registration, the participant agrees that neither DivorceStep, Michele Diamond or Jonathan Nathan shall have any liability for any injuries, property losses or any other damages incurred while participating in any facet of this program.

Please check and initial here:

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A NATIONWIDE SURVEY OF MANDATORY PARENT EDUCATION*

Susan L. Pollet and Melissa Lombreglia

In an effort to take positive steps toward coping with problems for families and children created by high levels of separation and divorce, ever increasing civil caseloads and the exposure of children to interparental conflict, court-affiliated educational programs have emerged in the United States for parents separating from their spouse or partner or going through a divorce. This article will provide an overview of the creation of such programs and their development, which includes a discussion regarding the numerous states currently mandating parents to attend. It will summarize some of the research which has been conducted as to the efficacy of the programs and will provide the results of our nationwide research for each state's parent education status. There is a discussion of domestic violence issues and sensitivities in the context of parent education programs and possible future directions for mandatory parent education.

Keywords: parent education; mandatory parent education; divorce; separation; children of divorce or separation; domestic violence; parental conflict; court-affiliated programs

Pain is inevitable, suffering is optional.
—a Hindu quotation

INTRODUCTION

The development and well-being of children of separation and divorce continues to be of paramount concern. At this point in the evolution of family services and interventions to address this issue, there are parent education programs in forty-six states throughout the United States.¹ Some of these programs mandate attendance by state statute (twenty-seven states),² others have county-wide or district-based mandates (five states),³ and some states have judicial rules and orders (six states).⁴ Some states mandate all parents to attend (fifteen states),⁵ while others leave it within the discretion of the judge (fourteen states).⁶ There are two states which provide parent education programs but do not mandate them.⁷ For purposes of discussion in this article, we will focus on the mandatory programs. In large measure, these programs seek to focus on the development and well-being of children and to encourage better outcomes for children and families resulting from parental attendance at the courses.

This article will provide an overview of the creation of parent education programs and their development. We will then discuss some of the research which has been conducted thus far analyzing selected programs. The next part includes the results of our nationwide research for each state's parent education status. In the next part we will highlight domestic violence issues and, looking toward the future, discuss possible directions for mandatory parent education.

Correspondence: spollet@courts.state.ny.us; mlombrel@gmail.com

BACKGROUND OF PARENT EDUCATION

It has been widely acknowledged that caseloads in domestic relations courts are large and often unmanageable and that they are the "largest and fastest growing segment of state-court civil caseloads."⁸ According to research, as a result of "high levels of both divorce and non-marital child bearing . . . over 20 million children reside with only one biological parent."⁹ Statistics show that in a "typical year, over 1.2 million divorces occur in America . . . [and] it is projected that approximately 40% of children born to married parents will experience parental divorce."¹⁰ Furthermore, with respect to nonmarital childbearing, "in 2002, 34% of all American births were to unmarried women."¹¹

What has concerned both the legal and mental health communities are the studies which show "problematic child outcomes" for children of divorce or of unmarried parents. In a summary of the research it is stated that:

Numerous studies have documented outcome deficits in children who experience parental divorce . . . or who are born to unwed mothers . . . These include reports of poorer psychological adjustment . . . more physical health problems . . . , lower academic performance . . . , a greater likelihood to engage in antisocial or delinquent behavior . . . , reduced social competence . . . , lower self-concept . . . , and a greater likelihood to divorce as adults.¹²

Another concern, which is discussed in the literature, is that "[c]hildren exposed to high levels of interparental conflict are at risk for developing a range of emotional and behavioral problems, both during childhood and later in life."¹³ Studies have shown that children who witness parental hostility and aggression exhibit high levels of anxiety, depression, and disruptive behavior and "are more likely to be abusive toward romantic partners in adolescence and adulthood and to have higher rates of divorce and maladjustment in adulthood."¹⁴ Interestingly, however, only a minority of all divorces have high levels of chronic conflict, and children seem to benefit from their parents' separation in these cases.¹⁵ That the separation of parents may pose risks to adults' physical and emotional well-being, affecting their ability to function as a parent, has been documented in the literature as well.¹⁶

Researchers have found that children of divorce can have good outcomes if "their family has an adequate income, if their parents are competent, and if the children are able to maintain good relationships with their parents."¹⁷ Sadly, large proportions of these children face income problems, less time with both of their parents, and a "decrease in the quality of parenting."¹⁸ While there has been controversy in the mental health field over "the extent to which divorce is responsible for these long term problems," most would agree that divorce (and separation) is a public health issue and that children and adults going through it are at risk.¹⁹ At its extremes, when one parent denies the noncustodial parent parenting time with the children, it may result in "pass-along hate becomes a boomerang" once the children are grown and realize what has occurred.²⁰ Most of the literature supports the view that early intervention in working with the family is critical.²¹

In an effort to address these troublesome issues, court-affiliated educational programs emerged in the United States for separated and divorcing parents in the mid 1970s, and they proliferated in the 1980s and 1990s²² and have continued to do so to date. As of 2002, more than half a dozen states had statewide mandatory parent education,²³ according to one article, and another scholarly law review noted that, as of 2001, "twenty-eight states had enacted legislation or statewide court rules mandating or establishing divorce education programs. Of the remaining twenty-two states, at least seven have local court rules in effect for divorce

education programs."²⁴ At that time fifteen states mandated attendance, eight states allowed the court to exercise its discretion as to attendance, and five states allowed optional attendance.²⁵

As stated earlier, our research has revealed that there are now forty-six states with mandatory programs.²⁶ As was recognized by the early architects of parent education programs, they are a "positive step toward coping with the problems for families and children created by the revolution in family law and attitudes during the last generation."²⁷ It is believed that "interventions, such as parent education, can have a positive influence on the adjustment of children if such programs can increase parental sensitivity to their children's needs, reduce conflicts, and promote more cooperative approaches to parenting."²⁸ (Cooperative parenting should not be utilized where there are safety issues for the parent or children, a subject which will be discussed more fully below).

The content of the programs varies. By way of summary information,

[T]hese programs are generally short (mode of 2 hours for court-provided programs and 4 hours for community-provided programs), and may either be mandated for all families or be widely available but not required. *These programs are generally rated as positive and helpful by parents and court personnel* (Giesler & Blaisure, 1999). . . . Giesler and Blaisure (1999) report that many programs target reducing children's exposure to conflict (64%), improving parenting skills (55%) and decreasing legal complaints (32%). Braver et al. (1996) report that three of the most intensively covered topics involved interparental conflict (i.e., benefits of cooperation vs. conflict, impact of badmouthing, conflict resolution skills). Parenting skills received somewhat less coverage and legal options for dispute resolution received still less coverage.²⁹

The content of these programs has continued to evolve since these summaries were created, as will be discussed more fully below.

With respect to techniques to decrease interparental conflict, programs may provide information about how such conflict negatively affects children and can lead to increased adjustment problems for them, information about resources, motivational video-taped vignettes describing how conflict affects children, and teaching problem-solving and communication skills to help parents resolve the conflict.³⁰

With respect to techniques to improve parenting, programs use different approaches including focusing on increasing contact between the children and the noncustodial parent (when it is safe to do so), improving the quality of the relationship between the child and the parents, and teaching parenting skills including helping parents plan family activities, limit setting, and developing a specific behavior plan for the child.³¹

For example, the Assisting Children through Transition (ACT). For the Children program, given by a certified provider of the New York State Parent Education and Awareness Program, is designed to help parents "reduce the stress of a breakup on their children."³² "The goal of the program is to provide information and skills to parents to strengthen relationships with their children and protect them from the toxic effects of ongoing parent conflict."³³ It should be noted that the "feedback from parents has been consistently positive, with participants indicating that they learned skills for keeping their children out of the middle of the conflict."³⁴ Positive parent evaluations were also found for the Parent Education and Custody Effectiveness (PEACE) program in New York State.³⁵

The next section will address, in more depth, the literature about the efficacy of mandatory parent education programs.

RESEARCH REGARDING MANDATORY PARENT EDUCATION

Mandating attendance at parent education programs "makes a strong social policy statement of the court's intent [and] allows the program to reach many parents who otherwise would not avail themselves of the service."³⁶ As stated by the architects of the PEACE program in Nassau County, New York, and pioneers for the development of these programs, "a required educational program for divorcing parents is a moral statement . . . Just as the driver who drinks or speeds puts lives at risk, parents who divorce put their children at emotional risk. Both should learn how to prevent harm to others from reoccurring before being granted a privilege by the state."³⁷

In the 1990s, there were studies conducted and articles about them as to various states regarding their particular programs, and we will highlight a few, as well as studies conducted thereafter. Because the parent education programs may "vary considerably in content, style, and theoretical basis" it is difficult to generalize about their effectiveness, because some may be effective, while others may not, and the mixed outcomes of the studies reflected that.³⁸ Research has provided evidence that:

[t]he overall effectiveness of parent education programs may vary according to: (1) the level of conflict that parents report . . . , (2) the timing of a parent's attendance at the divorce education program . . . or (3) the content and teaching strategies used in the program.³⁹

Another difference with respect to evaluations of programs is that some studies look at "brief informational programs," while others look at multisession interventions which may target specific groups, such as programs for primary residential parents.⁴⁰ We will mention some of the research, recognizing that it is not conclusive for all programs and that some researchers have questioned the design of the evaluations and the conclusions which can be drawn from them.⁴¹ It has been noted that evaluation evidence for parent education programs with divorcing parents is "still in its early stages," but that there is "modest evidence for the efficacy and effectiveness of parents' programs, and only meager ideas about the possible cost effectiveness of these programs."⁴² In addition, it has been noted that "[t]he primary evaluation tool that court-connected parent education courses use to determine the effectiveness of their programming is the customer satisfaction survey."⁴³ One commentator maintains that more evaluations need to be conducted which give "meaningful information about the program's impact on parent-child interaction, interparental conflict, child adjustment, or litigation rates, which are the primary objectives of such programs."⁴⁴

With respect to the brief informational programs, a review of the research indicated more positive evaluations, as follows:

Three evaluations of brief informational programs have been conducted. Shifflett and Cummings' evaluation demonstrated that, relative to parents who attended a general parenting class, those who participated in a program specifically for divorcing parents reported a decrease in conflict with their ex-spouses. Parents in a program based on the *Children in the Middle* video reported putting their children in the middle of conflict less frequently at six-month follow-up than a comparison group who had filed for divorce before the program was instituted. Finally, an evaluation of the Children First program showed that, compared to a group of divorcing parents from a county without a mandated program, parents who were more conflicted prior to participation reported declines on a measure that included conflict behaviors.⁴⁵

Another summary of studies as to the efficacy of post separation education programs report the following core findings:

- Parents like these programs and recommend them:
Participation in separated-parent education programs results in reduced conflict between ex-spouses and less exposure to conflict for children;
Relitigation rates are maximally affected by early attendance at a parenting program;
Programs have been found to improve communication between ex-spouses, increase cooperation, and create a greater focus on the needs of their children;
The skill level of the group facilitator is an important predictor of improved coparenting relations;
- More durable outcomes are evident from attendance at skill-based programs:
A focus on a smaller number of themes over a longer period of time appears to be more effective than coverage of a greater number of issues within a shorter time frame;
- Most separated-parent programs did not include children and very few provided child-minding facilities. Professionals cited this as the most desired modification to their existing program. Many argued that children benefit through involvement in specialist children's groups and in appropriate groups with parents. One context allows for the safe expression of feelings while the other enables parents and children to practice skills together.⁴⁶

Kansas had one of the first mandatory divorce programs in the country beginning in 1976. The condensed program came into being in 1986, and by local court rule, it became mandated for every parent with minor children seeking a divorce in Johnson County and subsequently in numerous other counties in Kansas.⁴⁷ The two-hour program given in the courthouse was entitled "General Responsibilities as Separating Parents." It was directed at "helping parents understand the emotional and behavioral components of divorce," to "give parents the knowledge necessary to keep their children out of the middle of their battles, and reinforces the fact that children will continue to have an ongoing relationship with both parents."⁴⁸

An article was written about the mandatory parent education program in Ohio, called "The Helping Children Succeed After Divorce" seminar, which was established by administrative rule for all parents with children eighteen years of age or younger who file for divorce, dissolution, or legal separation in Franklin County.⁴⁹ The authors described the mandatory nature as "mandating an opportunity" with the goal of "empowering" parents with information and resource options.⁵⁰ They discussed the fact that mandating parent education for all parents going through separation or divorce is a "major social policy step" for the courts and that it "reflects the growing recognition that divorce may have social and economic costs for society as well as for the individual."⁵¹ The two-and-one-half-hour seminar is described as a "ritual" to assist in easing a difficult passage⁵² and mentions a hallmark of these programs that the parents learn not only from the material presented, but also from being with other parents and learning that they are not alone with respect to the challenges they face.⁵³ Their evaluation resulted from 600 initial seminar participants and indicated, among other things, that 86% of the parents said they would recommend the seminar to others.⁵⁴

In a study in Ohio involving the "Children in the Middle" program, which was operated by the local office of the statewide Children Services agency, two groups of parents were tracked for two years following their divorce.⁵⁵ One group of eighty-nine attended a mandatory divorce education class and a comparison group of twenty-three did not.⁵⁶ The study found that "the parents who attended the class had relitigated (over all issues) less

than half as often than those who had not attended the class."⁵⁷ Other researchers have argued that relitigation is a "crude measure" of how well a parent education program is working in that "many post divorce families who are having significant difficulties may not return to court to settle disputes," and "some forms of relitigation may be beneficial for families."⁵⁸ It should be noted that Ohio's mandatory parent education program started from a "single, grant-funded parent education program" in 1992, and as of 2004 "more than 50 of Ohio's 88 counties require parents to complete a parenting course before a divorce is granted."⁵⁹

An article was written about a program in Maryland called "Making it Work," which began in 1992. In 1993 all divorcing parents in Montgomery County had been mandated to attend it. The study had a pretest and a six-month follow-up posttest. The study found, in part, that the parents observed improvement in their own adjustment to the divorce, as well as improved communication skills with their children, and the parents recommended that this course should be mandated.

A follow-up study of the "Children First" program in Illinois found that it was most helpful for high-conflict families as their frequency of relitigation over a six-year period was lower than the control group, but the authors opined that the relitigation rates may not be the best way to assess the effectiveness of that program, or any other.⁶⁰

In a multisite study involving parent education programs in Phoenix, Arizona; Camden, New Jersey; statewide in Connecticut; Tulsa, Oklahoma; and Grand Rapids, Michigan, the authors found, in part, the following, which they contend justifies the continued provision of parent education services:

About two-thirds of all participating parents say that programs should be mandatory. About 70 percent credit the programs with helping to sensitize them to their children's needs, and six months later, a similar proportion of interviewed parents report using information gleaned in the program to help their children cope and to make visitation more successful and enjoyable. Program attendees are also somewhat more apt than their counterparts in the comparison group to report decreases in the amount of fighting over decisions about their children and better compliance with the child support and visitation terms of their divorce decrees.⁶¹

Another study by Indiana researchers of the k.i.d.s. parent education program found that it had ameliorative effects on parents' understanding of conflict/divorce issues and their reports of conflict-related behavior and that they maintained these changes over time.⁶²

In a study conducted in Utah, the researchers were trying to assess the association between divorced parents and their attendance or nonattendance at a parent education program. They found "some association between participation in a divorce education program and lower levels of post-divorce conflict," however they were not certain why the association existed.⁶³

One can read about the development of a divorce education intervention program in the Ninth Judicial Circuit in Orange County, Florida, which is a mandatory program.⁶⁴ A legislative mandate in Florida required that "all divorcing parents attend a 4-hour education session as soon as possible after their initial filing with the domestic court (Clement, 1999)."⁶⁵ The program changed and developed a variety of interventions beyond legal and financial concerns after the formation of a multidisciplinary task force because it was felt that the original program did not change the interactions of "conflictual parents."⁶⁶

With respect to a program in Minnesota which mandates that parents attend a court-approved program in contested custody or parenting time cases a survey of the parents

revealed that "(a) parents value the program, (b) parents learn useful parenting and communication skills, and (c) there are encouraging findings that the program results in lowered exposure of children to parental conflict and greater tolerance for the parenting role of the other parent, with attendant positive changes in children's well-being."⁶⁷

In New York, one of the now certified providers of the New York State Parent Education and Awareness Program is the PEACE program. An evaluation study of its program was conducted in 2000, involving the responses of eighty-nine parents who had attended the program as compared to a control group of parents who had not yet attended the program.⁶⁸ The study found that parental satisfaction was "very high," and, compared to the control group at "levels of statistical significance," it was found that PEACE parents

had more knowledge of the divorce process including its legal aspects, potential effects on both parents and children, and coping strategies to help children; had more positive attitudes about their children, their children's behavior, and the parent-child relationships. As parents learned more about how divorce affects their children, their level of understanding, acceptance, and tolerance of certain child behaviors increased; and, reported fewer and less severe problems in the parent-child relationship at the three-month follow-up.⁶⁹

In New York, another of the now certified providers of the New York State Parent Education and Awareness Program is the ACT program in Rochester, New York, referred to earlier, which is "an interdisciplinary, educational, and prevention program designed to reduce the stress of separation or divorce on families."⁷⁰ The curriculum is based, in part, on the Hofstra University PEACE program.⁷¹ The study of the ACT program, which is skills based, revealed that "[p]arents reported overwhelmingly that they (a) found the program helpful, (b) have increased their understanding of their children's divorce-related needs and how to meet them, and (c) were planning to put into practice program principles and skills."⁷² A follow-up study was conducted via telephone interviews with eighty-five randomly selected parents assessing outcomes at six months and one year after participating in the ACT program.⁷³ The key results included "statistically significant decreases in conflict between parents (especially on child-related issues), increases in effective parenting practices, decreases in the need or desire to litigate and, more importantly, increases in children's healthy adjustment."⁷⁴ (Note, however, that the "findings are mixed as to the extent to which other brief programs promote better child and parent adjustment, or reduced conflict and litigation").⁷⁵

Some states have created special parent education programs for high-conflict families. For example, in Multnomah County Circuit Court in Portland, Oregon, they developed an "educational approach teaching conflict resolution skills."⁷⁶ The parents were referred by a judge, and they attended six two-hour classes.⁷⁷ The evaluation of the program which was conducted indicated that all twenty-six participants "rated the sessions 'very helpful' in their evaluations. They wanted more than six sessions, the majority reported that they resented having to attend but all thought that they should have had the classes earlier in their careers as parents."⁷⁸ The authors indicated that whether the training has had "long lasting effects needs to be established."⁷⁹

In another article and evaluation of the Oregon program for high-conflict families, they performed an evaluation with forty-four participants.⁸⁰ The parents were referred by the judiciary in either Multnomah or Clackamas counties.⁸¹ The evaluations mirrored the comments for the Oregon program set forth above.

Some commentators have advocated for lengthier parent education programs. The barriers cited include funding and attendance.⁸² One suggestion made is that "it may be that

a referral system that links attendance at the short mandatory classes with voluntary referral to more extensive parenting classes would provide a mechanism for parents who want these services to access them."⁸³

It is difficult to generalize about all of these findings. What seems to be clear is that parent satisfaction is high with many of these programs, and depending upon the curriculum, they are effective as well.

THE RESULTS OF OUR NATIONWIDE SURVEY

In conducting our nationwide survey of parent education programs, we contacted parent education directors, social workers and psychologists who lead the programs, and court personnel who are familiar with them. Through telephone conversations we asked the contacts about their program curriculum, who were required to attend, whether there were any ways for those required to attend to opt out of the program, and the cost of attendance. We compiled our research into the chart attached as Appendix A.

The results of our research indicate that, overall, fourteen states have statutes that mandate all parents who file for divorce, separation, child custody, and/or visitation to attend parent education programs; thirteen states have state statutes that permit judges, counties, or districts to create their own mandates for parent education programs; one state permits local court rules to create parent education programs; one state makes mandatory parent education programs for all parents, but has not codified its mandate; four states have small areas in which programs are mandatory; six states require parent education programs through local court rules; five states have counties or districts that mandate the programs; three states do not have any statewide mandate, but judges sometimes require parents to attend a program in order to grant a divorce; one state offers a program in conjunction with an outside agency, but does not require it; and three states do not require parents to attend a program, nor do they offer a program.

DOMESTIC VIOLENCE CONCERNS AND FUTURE DIRECTIONS FOR PARENT EDUCATION

The question of whether there "needs to be a concern about domestic violence when the parties have separated" was answered succinctly by an expert in the field as follows:

Although divorced and separated women comprise only 10% of all women in America, they account for three quarters of all battered women and report being battered 14 times as often as women still living with their partners. Many divorcing or separating parents who are referred to parent education programs are victims or perpetrators of domestic violence. Indeed, domestic violence is the reason stated for divorce in 22% of middle-class marriages.

The period between the separation of husband and wife and divorce can be the most dangerous time for the victim. Separation may trigger abuse, even when domestic violence has not previously been present. Research has determined that 75% of spouse-on-spouse assaults occur after separation or divorce. Because the period of time during divorce or separation proceedings can be the most dangerous time for the victim because it is a time when the perpetrator feels as though her or she is losing control of the partner, it is imperative that victim's safety be a priority.⁸⁴

With respect to current issues in parent education, one ongoing area is the issue of whether victims of domestic violence should attend parent education programs. In the past, this had been described as a controversial area in that, traditionally, parent educators "favor their attendance," while "domestic violence advocates believe attendance should be waived."⁸⁵ Commentators have noted that "understanding that there are several types of violence could, possibly, unlock the domestic violence/parent education impasse."⁸⁶ Not every case rises to the level of "intimate terrorism." Currently, in ten states, all parents are mandated to attend, whether or not there is domestic violence. In thirteen states, there is an opt-out available for victims. There is still much work to be done and collaborations which must be developed in different jurisdictions to support the attendance of parents at parent education classes without putting them at risk.

It has been recognized that, while it "may be dangerous to encourage communication and cooperation if these behaviors lead to more frequent or more abusive confrontations," it has been suggested that parent education programs might teach victims communication skills that serve to intervene in the first stage of the cycle of domestic violence when tension is building.⁸⁷ In addition, it has been suggested that, because there is a relationship between conflict and violence, if there are reductions in reported conflict then logically that would "correspond to reductions in the frequency and severity of domestic violence."⁸⁸ In a pre- and postevaluation study with a control group to compare the effectiveness of two divorce education programs in Florida, "skill-based" Children in the Middle and "information-based" Children First in Divorce, rates of domestic violence were not affected by either program, while the control parents experienced "significantly more domestic violence" than did the other two groups.⁸⁹ It was found that "parents with greater divorce knowledge experienced better parental communication and less domestic violence, and better kept children out of conflict."⁹⁰ Further, the study found that the "skills-based approach was more effective than the information-based approach at improving parental communication."⁹¹

As a domestic violence advocate has noted, because screening for domestic violence and waiver provisions "will not eliminate the presence of domestic violence victims and abusers in these courses, [i]t is, therefore, necessary that parent education curricula and logistical protections encompass all situations. . . ."⁹² As was wisely stated, "simply precluding victims of domestic violence from attending parent education classes to ensure safety is not optimal, because the information concerning the harmful effects of exposure to domestic violence on children is especially important to separating or divorcing parents."⁹³

Some suggestions which have been made, and which were incorporated in large measure into New York's requirements, are that messages about cooperative parenting are dangerous and inappropriate for victims of "intimate terrorism," and the curriculum should therefore stress separate parallel parenting in that situation, provide detailed safety planning, and provide information about the "dynamics of abuse, ways that their partner may try to manipulate the divorce process and community referrals."⁹⁴ Other suggested special safety precautions for victims of intimate terrorism include requiring the parents to attend separate sessions, keeping the location of the classes confidential, and providing heightened security precautions.⁹⁵

Additional suggestions include having sessions at various locations and times, providing a location close to public transportation and parking that is well lit, keeping attendance lists and records confidential, and providing certain baseline information about domestic violence both orally and in handouts.⁹⁶ In sum, "[b]y weaving commonsense logistical, administrative and curricular recommendations into the fabric of every parent education program, the safety of victims and children will be prioritized as it must be, while all

attendees still receive the maximum benefit from these valuable programs."⁹⁷ There is an excellent description about how the Advisory Board of the New York State Parent Education and Awareness Program incorporated many of these suggestions in a multifaceted approach through the development of court guidelines with safeguards, administrative protocols that focus upon safety, and "guidelines for curriculum content and delivery that is based upon current research and is sensitive to domestic violence and its effective delivery."⁹⁸ Domestic violence advocates were part of the Advisory Board which developed these guidelines, and their continued input is welcomed.

What are some future steps for parent education and related programs? According to a recent article, "[a] number of legal and family scholars have issued calls for a variety of court-affiliated support programs for families engaged in legal proceedings."⁹⁹ In addition to parent education programs, these include "court policies that are explicitly child focused . . . educational and support programs for children . . . supervised visitation services . . . court-affiliated parenting coordinators . . . alternative dispute resolution and collaborative approaches . . . case managers and counseling interventions . . . and greater monitoring and evaluation of family law reform."¹⁰⁰ One model which was discussed in the literature, in Maine, posits that

[f]or all divorcees or other first-time custody disputes involving parents, the administrator would issue the court's standard order informing the parents that they will be required to attend a parent education program; ensure that any of the family's minor children attend a similar program offering information and support about adapting to divorce; and develop and commit to a parenting plan as a condition for the granting of any divorce (or other final residence/access order). Thereafter, unless the parents, on their own or with the aid of counsel, were able to confer a parenting plan without further intercessions from the court, all conflicted parents would be required to attend a preliminary session with a mediator . . . If after attending the preliminary instructional session the parents refuse to continue, then they would be redirected to arbitration and/or counseling.¹⁰¹

We will be seeing more and more jurisdictions using combinations of different interventions over time.

For purposes of this article, we will focus on the educational interventions. A list of suggestions for future program development was compiled by Geasler and Blaisure (1999) pursuant to a 1998 nationwide survey of court-connected divorce education programs.¹⁰² They include "(a) adoption of more active teaching strategies to assist parents in learning co-parenting and communication skills, (b) inclusion of a children's program, (c) adoption of written standards to guide the implementation of programs and ensure quality control, and (d) documentation of program effectiveness through various evaluation strategies, a process that is already commenced and is being carefully reviewed now that the program is reaching its initial operating goals."¹⁰³ One additional suggestion was "to design programs that serve all parents of minor children who are litigating child-related issues."¹⁰⁴ This would include parents not yet involved in a divorce and those that are not high conflict.¹⁰⁵ Because early intervention has been found to be most effective, all parents who want information and skill enhancements should receive them.¹⁰⁶

Some commentators have suggested that there be psycho-educational programs for the children as well.¹⁰⁷

Geelhoed, Blaisure, and Geasler (2001) identified forty-six different programs being utilized in 152 counties in the United States. Nearly all counties that had a children's program also had

a program for parents: in some jurisdictions child programs are linked to and integrated with parent programs, and in other cases they function independently. Like parent programs, most of the universal prevention efforts for children are brief in duration: on average, they meet for one to four sessions for a total of 4-5 1/2 hours.¹⁰³

According to one early about classes for children in Jackson County, Missouri, it was noted that they had been met with "considerable positive consumer response."¹⁰⁴

In an article which reported on programs for children with separating or divorcing parents, the authors looked at data from sixty-seven courts and eighty-one program providers throughout the country.¹⁰⁵ They sorted the goals for the psychoeducational groups into six categories, as follows: "(a) facilitation of feelings, (b) development of coping skills, (c) adjustment to changes, (d) provision of information, (e) normalization of the experience, and (f) provision of support (Bloch & Crouch, 1985)."¹⁰⁶ The survey study revealed that

[o]f the 67 counties in which information was obtained from court personnel, 25 counties required children's attendance at a program, whereas 42 counties encouraged children's attendance. In some counties, judges required individual parents to enroll their children in a program on a case-by-case basis. Attendance policies issued by state statute may be interpreted differently by counties.¹⁰⁷

The authors noted that "judges' support and advocacy were consistently a key in successful implementation of programs."¹⁰⁸ They noted further that "[p]arents are responsible for their children's attendance, although courts did not report a problem with compliance when mandating attendance."¹⁰⁹

Some of the literature suggests that there needs to be special educational programs for various groups beyond children, including never-married parents, various ethnic groups, and "high-conflict, violent, and chronically litigating families."¹¹⁰ With respect to high-conflict families, one program that has been cited as effective was "developed and tested in Alameda County, California" and involved "eight families meeting simultaneously for eight sessions in ninety-minute, mixed-gender groupings. A nine-month evaluation showed that program participants registered more cooperation, less dispute, and fewer court filings than a comparable group of high-conflict couples without treatment."¹¹¹ One commentator maintains that courts need to provide legal information to pro se parents, either within the context of parent education or through other programs.¹¹²

Finally, a suggestion that is made frequently in the literature is that there needs to be better scientific evidence of program effectiveness, to help guide the future development of the programs, so that the most effective strategies are utilized to better address the needs of separating and divorcing parents.¹¹³

CONCLUSION

Mandatory parent education for divorcing and separating parents has been found to be an effective tool to improve the lives of parents and children throughout this country. It opens the door to accessing resources to continue the process of reorganization of families in a way that is most beneficial to all concerned. The sheer numbers of families who need this education is staggering--the goal now should be to get as many of them to attend as possible, while continuing to be vigilant to maintain the safety of parents while attending these programs.

NOTES

* The views expressed in this article belong to Susan L. Pollet and do not reflect the views of the New York State Unified Court System.

1. We are grateful to Samar Siyam, a Pace Law Student Intern and Zachary C. Robock, a University of Michigan student, for their assistance in compiling the information for Appendix A, in researching the state statutes, and speaking with key persons involved with the various programs.

2. See *infra* Appendix A.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. Randall W. Leite & Kathleen Clark, *Participants' Evaluations of Aspects of the Legal Child Custody Process and Preferences for Court Services*, 45 FAM. CT. REV. 260, 260 (2007).

9. *Id.* at 260.

10. *Id.*

11. *Id.* at 261.

12. *Id.*

13. John H. Grych, *Interparental Conflict as a Risk Factor for Child Maladjustment: Implications for the Development of Prevention Programs*, 43 FAM. CT. REV. 97, 97 (2005).

14. *Id.*

15. JoAnne Pedro-Carroll, *The Promotion of Wellness in Children and Families: Challenges and Opportunities*, 56 AM. PSYCHOLOGIST 993, 995 (2001).

16. *Id.* at 997.

17. Stephen J. Bahr, *Social Science Research on Family Dissolution: What It Shows and How It Might Be of Interest to Family Law Reformers*, 4 J. L. & FAM. STUD. 5, 11 (2002).

18. *Id.*

19. Virginia Petersen & Susan B. Steinman, *Helping Children Succeed After Divorce: A Court-Mandated Educational Program for Divorcing Parents*, 32 FAM. & CONCILIATION CTS. REV. 27, 28 (1994).

20. Dana E. Sullivan, *When Spousal Spite Brainwashes the Kids*, NEW JERSEY LAWYER, Dec. 19, 2005, at 1.

21. Cathleen Gray et al., *Making It Work, An Evaluation of Court-Mandated Parenting Workshops for Divorcing Families*, 35 FAM. & CONCILIATION CTS. REV. 280, 281 (1997).

22. Peter Salem, *Education for Divorcing Parents: A New Direction for Family Courts*, 23 HOUSTON L. REV. 837, 839 (1995). (There is international interest in these programs, as well, which is beyond the scope of this article.)

23. Jack Arbutnot, *A Call Unheeded: Courts' Perceived Obstacles to Establishing Divorce Education Programs*, 40 FAM. CT. REV. 371, 371 (2002).

24. Solveig Erickson & Nancy Ver Steegh, *A Minnesota Comparative Family Law Symposium: Mandatory Divorce Education Classes: What do the Parents Say?*, 28 WM. MITCHELL L. REV. 889, 895-96 (2001).

25. *Id.* at 897.

26. See *infra* Appendix A.

27. Andrew Schepard & Stephen W. Schlissel, *Planning for P.E.A.C.E.: The Development of Court-Connected Education Programs for Divorcing and Separating Families*, 23 HOUSTON L. REV. 845, 857 (1995).

28. Brenda L. Bacon & Brad McKenzie, *Progress in Parent Education: Parent Education After Separation/Divorce: Impact of the Level of Parental Conflict on Outcomes*, 42 FAM. CT. REV. 85, 86 (2004) (discussing a study performed in Canada).

29. Matthew Goodman et al., *Parent Psychoeducational Programs and Reducing the Negative Effects of Interparental Conflict Following Divorce*, 42 FAM. CT. REV. 263, 268-69 (2004) (emphasis added).

30. *Id.* at 269.

31. *Id.* at 270.

32. JoAnne L. Pedro-Carroll, *Fostering Resilience in the Aftermath of Divorce: The Role of Evidence-Based Programs for Children*, 43 FAM. CT. REV. 52, 59 (2005).

33. *Id.*

34. *Id.*

35. See Andrew Schepard, *Symposium on Unified Family Courts: Parental Conflict Prevention Programs and the Unified Family Court: A Public Health Perspective*, 32 FAM. L.Q. 95, 119-20 (1998).

36. Gray et al., *supra* note 21, at 282.
37. Andrew Schepard et al., *Preventing Trauma for the Children of Divorce Through Education and Professional Responsibility*, 16 NOVA L. REV. 767, 774 (1992).
38. Jack Arbuthnot et al., *Patterns of Relitigation: Following Divorce Education*, 35 FAM. & CONCILIATION CTS. REV. 269, 277 (1997).
39. Margie J. Geasler & Karen R. Blaisure, *A Review of Divorce Education Program Materials*, 47 FAM. REL. 167, 168 (1998).
40. Sharlene A. Wolchik et al., *Programs for Promoting Parenting of Residential Parents: Moving from Efficacy to Effectiveness*, 43 FAM. CT. REV. 65, 67 (2005).
41. *Id.* (expressing doubts as to whether the effects on child outcomes have been demonstrated by these studies).
42. Robert Hughes, Jr. & Jacqueline J. Kirby, *Strengthening Evaluation Strategies for Divorcing Family Support Services: Perspectives of Parent Educators, Mediators, Attorneys, and Judges*, 49 FAM. REL. 53, 54 (2000).
43. Jeffrey T. Cookston et al., *Prospects for Expanded Parent Education Services for Divorcing Families with Children*, 40 FAM. CT. REV. 190, 190 (2002).
44. *Id.*
45. Wolchik et al., *supra* note 40, at 67.
46. Jennifer McIntosh & Helena B. Deacon-Wood, *Group Interventions for Separated Parents in Enmeshed Conflict: An Exploration of Evidence-Based Frameworks*, 9 J. FAM. STUD. 187, 192-93 (2003).
47. Carol Rooder-Esser, *Families in Transition: A Divorce Workshop*, 32 FAM. & CONCILIATION CTS. REV. 40 (1994).
48. *Id.* at 41.
49. Petersen & Steinman, *supra* note 19, at 35.
50. *Id.* at 28.
51. *Id.*
52. *Id.* at 30-31.
53. *Id.* at 31.
54. *Id.* at 37.
55. Arbuthnot et al., *supra* note 38, at 269.
56. *Id.*
57. *Id.* See also Patrick C. McHenry et al., *Evaluation of a Parent Education Program for Divorcing Parents*, 48 FAM. REL. 129 (1999) (discussing another evaluation in Ohio).
58. Laurie Kramer & Amanda Kowal, *Long-Term Follow-Up of a Court-Based Intervention for Divorcing Parents*, 36 FAM. & CONCILIATION CTS. REV. 452, 453 (1998).
59. Eileen Pruett & Cynthia Savage, *Statewide Initiatives to Encourage Alternative Dispute Resolution and Enhance Collaborative Approaches to Resolving Family Issues*, 42 FAM. CT. REV. 232, 238 (2004).
60. Kramer & Kowal, *supra* note 58, at 462-63.
61. Nancy Thoennes & Jessica Pearson, *Parent Education in the Domestic Relations Court: A Multisite Assessment*, 37 FAM. & CONCILIATION CTS. REV. 195, 215 (1999).
62. Kelly Shifflett & E. Mark Cummings, *A Program for Educating Parents About the Effects of Divorce and Conflict on Children: An Initial Evaluation*, 48 FAM. REL. 79, 86 (1999).
63. Monte N. Criddle, Jr. et al., *The Relationship Between Mandatory Divorce Education and Level of Post-Divorce Parental Conflict*, 39 J. DIVORCE & REMARRIAGE 99, 109 (2003).
64. Alicia M. Honrich et al., *The Program Profile: The Court Care Center for Divorcing Families*, 41 FAM. CT. REV. 141 (2004).
65. *Id.* at 146.
66. *Id.*
67. Erickson & Ver Steegh, *supra* note 24, at 909.
68. Andrew Schepard, *Evaluating P.E.A.C.E. (Parent Education and Custody Effectiveness)*, N.Y.L.J., May 11, 2000, at 3.
69. *Id.*
70. JoAnne Pedro-Carroll et al., *Assisting Children Through Transition: Helping Parents Protect Their Children From the Toxic Effects of Ongoing Conflict in the Aftermath of Divorce*, 39 FAM. CT. REV. 377, 380 (2001).
71. *Id.* at 379.
72. *Id.* at 387-88.

73. JoAnne Pedro-Carroll & Evelyn Frazee, *A.C.T. For the Children: Helping Parents Foster Resilience and Protect Children from Conflict in the Aftermath of a Break-up*, N.Y.L.J., Jan. 4, 2001, at 1-4.

74. *Id.*

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76. Hugh McIsaac & Charlotte Finn, *Parents Beyond Conflict: A Cognitive Restructuring Model for High-Conflict Families in Divorce*, 37 FAM. & CONCILIATION CTS. REV. 74, 74 (1999).

77. *Id.* at 76.

78. *Id.* at 80.

79. *Id.* at 81.

80. Hugh McIsaac, *Programs for High-Conflict Families*, 35 WILLAMETTE L. REV. 567 (1999).

81. *Id.* at 570.

82. Cookston et al., *supra* note 43, at 200.

83. *Id.* at 201.

84. Victoria L. Lutz & Cyra E. Gady, *Necessary Measures and Logistics to Maximize the Safety of Victims of Domestic Violence Attending Parent Education Programs*, 42 FAM. CT. REV. 363, 363-64 (2004).

85. Nancy Ver Steegh, *Differentiating Types of Domestic Violence: Implications for Child Custody*, 65 L.A. L. REV. 1379, 1405 (2005).

86. *Id.* (citing Gieri S.W. Furhmann et al., *Parent Education's Second Generation: Integrating Violence Sensitivity*, 37 FAM. & CONCILIATION CTS. REV. 24, 27 (1999)).

87. Kevin M. Kramer et al., *Effects of Skill-Based Versus Information-Based Divorce Education Programs on Domestic Violence and Parental Communication*, 36 FAM. & CONCILIATION CTS. REV. 9, 11 (1998).

88. *Id.*

89. *Id.* at 19.

90. *Id.* at 24-25.

91. *Id.* at 28.

92. Lutz & Gady, *supra* note 84, at 364.

93. *Id.*

94. Ver Steegh, *supra* note 85, at 1405.

95. *Id.* at 1405-06.

96. Lutz & Gady, *supra* note 84, at 365-70.

97. *Id.* at 371.

98. Evelyn Frazee, *Sensitizing Parent Education Programs to Domestic Violence Concerns: The Perspective of the New York State Parent Education Advisory Board*, 43 FAM. CT. REV. 124, 125 (2005).

99. Leite & Clark, *supra* note 8, at 262.

100. *Id.*

101. Lucy S. McGough, *Protecting Children in Divorce: Lessons from Caroline Norton*, 57 ME. L. REV. 13, 34-35 (2005).

102. Alice M. Honrich et al., *The Court Care Center for Divorcing Families*, 42 FAM. CT. REV. 141, 157 (2004).

103. *Id.*

104. *Id.*

105. *Id.* at 158.

106. *Id.*

107. Grych, *supra* note 13, at 105.

108. *Id.*

109. Joe Edgar Glenn, *Divorce Education for Parents and Children in Jackson County, Missouri*, 36 FAM. & CONCILIATION CTS. REV. 503, 508 (1998).

110. Robyn J. Geelhoed et al., *Status of Court-Connected Programs for Children Whose Parents are Separating or Divorcing*, 39 FAM. CT. REV. 393 (2001).

111. *Id.* at 396.

112. *Id.* at 395.

113. *Id.* at 400.

114. *Id.*

115. Johnston, *supra* note 75, at 468-69.

116. Thoennes & Pearson, *supra* note 61, at 215-16.

117. *Id.* at 216.

118. Goodman et al., *supra* note 29, at 275.

Susan L. Pollet, Esq. is counsel and director of the New York State Parent Education and Awareness Program of the Office of Court Administration, an initiative of Chief Judge Judith S. Kaye. Parent education is offered by certified providers to help separating or divorcing parents better understand the effects of their breakup on their children and to give them information and ideas about how to make the new family situation easier and more livable for themselves and their children. She also works on special projects for the Office of the Deputy Chief Administrative Judge for Court Operations and Planning. Prior to her position at the Office of Court Administration, she was the executive director of the Pace Women's Justice Center, a former president of the Westchester Women's Bar Association, and a former vice president of the Women's Bar Association of the State of New York. She is a recipient of the Joseph F. Gagliardi Award for Excellence in May 2004, given to a nonjudicial employee of the Unified Court System in the Ninth Judicial District for "distinguished service, devotion to duty and the administration of justice, and for outstanding service to the public." She is a recipient of the Marilyn Menge Award for Service, also in May 2004, given to a member of the Women's Bar Association of the State of New York for "valuable and significant contributions to a chapter or to the statewide organization." She has participated in multiple legal education training programs as an organizer, speaker, and moderator. She is a published author of thirty-nine legal articles in the New York Law Journal and periodicals about family law, employment law, and related issues.

She is married to Richard Pollet, general counsel of J. Walter Thompson Co., and they have two children, Katharine, age 22, and Eve, age 18. They have resided in Chappaqua, New York, for the past 23 years.

Melissa Lombreglia is a third-year student at Hofstra University School of Law, where she is Managing Editor of Notes and Comments on Family Court Review for the 2007-2008 school year. Her student note, "The Calm After the Storm: Mandating Mediation for Child Custody Disputes in the Wake of Natural Disasters," is published in this issue Family Court Review.

Appendix A

Current as of September 10, 2007

<i>State</i>	<i>Statute/Court Rule</i>	<i>Required Attendance</i>	<i>Opt-out provisions</i>	<i>Cost of Attendance</i>	<i>Curriculum</i>	<i>Misc.</i>
Alabama*	Mandatory in Calhoun County	By order of the court				
Alaska**	Local court rules					
Arizona	ARIZ. REV. STAT. § 25-351, 25-352, 25-353, 25-355 (LexisNexis 2007)	Parties in divorce, separation, annulment, paternity proceeding where custody, visitation, support or parenting time is an issue	None	Not to exceed \$50 per person	4-6 hours in person class	
Arkansas	ARK. CODE ANN. § 9-12-322 (2007)	Judge may require, after divorce decree but before custody, parenting or visitation issues decided	None	\$40 per person; fee waivers for indigent	Movie and lecture	
California**	Local Court Rules					
Colorado	COLO. REV. STAT. § 14-10-123.7 (2007)	Parties to a divorce or separation	May take other courses	\$50-\$55 per person; can be waived by court if indigent	Videos, simulated role playing, and a guidebook	
Connecticut	CONN. GEN. STAT. § 46b-69b (2007)	Parents filing for divorce, separation, annulment, or support	May take comparable courses	\$100 per person; court can grant fee waiver	2-3 hour class	
Delaware	13 DEL. CODE ANN. tit. 13, § 1507 (2007)	Must attend, unless court deems unnecessary	None	\$100 per parent; may ask for fee waiver from provider	6-8 hour class	
District of Columbia†	Judge's discretion					
Florida	FLA. STAT. ANN. § 61.21 (LexisNexis 2007)	Parties to dissolution of marriage or paternity action involving parental responsibility	Court may excuse	\$30 per person	4 hour in-person program	

Georgia	GA. UNIF. SUP. CT. R. 24.8	Judge's discretion; usually any party to a divorce or separation	May ask the court for an exemption	\$30 per person, although the court can supply fee waivers	4 hour class; lecture, video and role play	
Hawaii	No codified statute, but mandatory	All divorcing parents with children under 18 and their children 6-18; anyone contesting custody or visitation	No. In instances of domestic violence, will schedule parents on different days	\$50 per family	In person class with video; will send video and handbook to those who cannot attend	
Idaho	IDAHO R. CIV. P. 16j (permits local rules to require "mediation orientation"; this includes Parent Education Classes; Local rules)	Generally, all divorcing parents or parents contesting custody	No. In instances of domestic violence, will schedule parents on different days	\$25 to \$30 per person, with sliding scale for indigent	Two and a half hour class with instructor and video	
Illinois	750 ILL. COMP. STAT. ANN. 5/404.1 (1993)	Judge's discretion	Can attend separate classes; ask court for waiver	\$40 per person	4 hour in-person class	
Indiana**	Local court rules	Anyone filing custody or visitation dispute	Judge's discretion; past completion	\$30 per person with waiver available through the provider	4 hour class with handbook, video and interaction	Judge may require children to attend counseling
Iowa	IOWA CODE § 598.15 (2006)				2 1/2 to 3 hours small group class	
Kansas	KAN. STAT. ANN. § 60-1626(4)(b) (2006)	Judge's discretion				
Kentucky**	Local court rules	Generally, parents with children under 18 and children 5-16		\$15-25 per person	2 videos with discussion	
Louisiana	LA. REV. STAT. ANN. § 9:306 (2007)					
Maine†		Judge's discretion; courts offer programs				
Maryland	MD. CODE ANN. FAM. LAW § 7-103.2 (LexisNexis 2007)	Judge's discretion; permits Court of Appeals to adopt rules		Fee varies by program	6 hour in-person class	

New York***	N.Y. COMP. CODES R. & REGS. tit. 8, § 144.3 (2007)	Judges may order, in their discretion, unless there is a history, specific allegations or pleadings of domestic violence or other abuse involving the parents or their children		Not to exceed \$100; no fee for anyone whose income is at or below 240% of the poverty guidelines	Multi-modal; 6-8 hours minimum	
North Carolina*	Required in 12 th District					
North Dakota	Not required					
Ohio**	Local Court Rule					
Oklahoma	OKLA. STAT. tit. 43, § 107.2 (2007)	Judge's discretion		\$30-40 per person	4 hour in person class	
Oregon	OR. REV. STAT. § 3.425 (2005)	Allows courts to design and mandate programs	By motion of parties, or court's motion to waive requirement	\$35-70 per person	3 hour in person class	
Pennsylvania***	County-based	Generally, parents filing for divorce with children under 18	Generally, judicial discretion	Generally, \$50 per person with fee waivers possible through program	Generally, 4 hour class with video and handouts	
Rhode Island‡	Not required	Voluntary, the Family Court offers the Divided Yet United program in cooperation with St. Mary's Home for Children				
South Carolina	Not required					
South Dakota	Not required					
Tennessee	TENN. CODE ANN. § 36-6-408 (2007)	Parties to any action where a parenting plan is or will be created	None	No set fee; set by provider	4 hour in person or sometimes internet class	Failure to attend does not preclude parties from divorce
Texas	TEX. FAM. CODE ANN. § 105.009 (2007)	Judge's discretion to send any party in an action affecting "parent-child relationship"	Generally, none	\$50 for non-resident; \$40 for resident; \$10 for parties receiving Legal Aid	1½-5 hour in person class	

Appendix A Continued

State	Statute/Court Rule	Required Attendance	Opt-out provisions	Cost of Attendance	Curriculum	Misc.
Utah	UTAH CODE ANN. § 30-3-11.3 (2007)	Mandatory for divorcing parents; judge's discretion for unmarried parents	None	\$35 per person	2 hour in-person class	
Vermont*	Judicial discretion					
Virginia	VA. CODE ANN. § 16.1-278.15 (2007)	Judge may require on "good cause" only	Judge may exempt on "good cause shown"	Fee ranges from \$0 to 50 per person	4 hour in-person class	
Washington**	County-based Mandate					
West Virginia	W. VA. CODE ANN. § 48-9-104 (LexisNexis 2007)	Parties to a divorce required; court may require parties to paternity, maintenance or modification of divorce	Exempt "for good cause shown"	\$25 per person	2 hour in-person class	
Wisconsin	WIS. STAT. § 767.115 (2006)	Parties to a divorce	None	\$45 early payment; \$50 regular	In-person video, handouts and book	
Wyoming***	District-based Mandate					

* Only a small area of the state requires parents to attend a parent education course. Thus, the chart reflects that, as a whole, this state has no mandatory attendance requirements (four states).

** Parent education courses are only mandated by local court rules. Thus, there is no uniform requirement throughout the state. Check your local court rules to see if a program is required and for course details (six states).

*** There is no statewide mandate, but many counties or districts in this state have county or district-wide mandates. New York has a judicial order that allows judges to mandate parents to attend upon judicial discretion. Check your county or district rules to see if a program is required and for course details (five states).

† Although there is no statewide, county-based, or local rule requiring parents to attend parent education programs, many judges are mandating parents attend a program before their divorce is finalized. This mandate varies by individual judge, so check with each judicial chamber for more details (three states).

‡ Although there is no requirement for parents to attend, the courts offer voluntary parent education programs (one state).

HB 1423

2-11-13

4

Ladies and Gentlemen:

I apologize for not being able to be present today for the hearing of this very important bill. My name is Brett Lloyd. I am from Valley City North Dakota. I am 50 years old and DIVORCED!

My daughter Cacie is 14 years old and a freshman at Valley City High School. My other daughter Courtney is a seventh grader at Valley City Junior High and Cayden my son is a fourth grader at Washington Elementary in Valley City. All three kids live with me in the family home and their mother lives a block down the street.

In December of 2011 my former wife Susan of 14 years told me she was unhappy and wanted a divorce. No matter the circumstances leading to this conversation, I asked for marriage counseling or anything possible to save our marriage and the devastation this would cause our children. She wanted nothing to do with counseling or anything to save this marriage. She told me she had been unhappy for the majority of our marriage. Not knowing what to do I gave her what she wanted. Through friends, we were able to get a copy of an old divorce decree and plugged in our information. Any other help needed was achieved from the internet. Within 4 months, the \$80 dollar filing fee and the \$20 civil service fee our 14 year marriage was reduced to a divorce.

Sure we had our obstacles, we had our pains and heartaches. Three kids 2 cars and a house. Do you promise to Love, Honor and Cherish in Sickness and in Health till Death do you part? No not really! What are we teaching our kids today?

If this bill was law before my divorce, I believe it would have helped my wife realize what effects divorce would have on our kids. I believe it would have made her realize that a marriage takes two and that she contributed to the problems in the marriage. It is too easy to divorce today. I hope you will assist me in changing this. Lets save marriages and families.

Thank you,

Brett Lloyd

2-11-13

5

Arnold Heck

- Rep. Miska

With these thoughts in mind, I would suggest that House Bill No. 1423 be completely revised to simply read:

"No parent may commence an action involving parental rights and responsibilities, as defined in section 14-09-00.1, against the other parent of a child until that parent has completed at least five one-hour counseling sessions. The counseling, which may be provided by a paid or volunteer counselor, clergy member, or any state-certified or licensed marriage mediator or therapist, must include two sessions that focus on post-marital financial planning and three sessions that focus on the effects of divorce on children.

Certification of completion of the counseling sessions must be served with the summons, before an action involving parental rights and responsibilities may be considered as having been commenced. In situations where a parent or a parent's child has been the victim of domestic violence committed by the other parent, this section shall not apply to an action involving parental rights and responsibilities commenced by that parent where there exists one substantiated incident of domestic violence which resulted in serious bodily injury or involved the use of a dangerous weapon or there exists a pattern of domestic violence within a reasonable time proximate to the action that has been substantiated. The word, "substantiated," as used in this section shall mean the issuance of either at least three domestic violence protection orders against the other parent over the course of the five previous years, or a criminal conviction of the other parent for violating a domestic violence protection order or for physically abusing the parent or a child of the parent wherein the other parent used a dangerous weapon or seriously injured either the parent or a child of the parent."

February 8, 2013

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1423

Page 1, line 7, replace "In" with "Except as provided in subsection 2, in"

Page 1, line 8, remove "and which does not include substantiated allegations"

Page 1, line 9, remove "of domestic abuse,"

Page 1, line 11, after "2." insert "The court may waive the six-month waiting period required under subsection 1 if, during the marriage:

- a. Either party to the divorce was convicted of an offense under section 12.1-17-01, 12.1-17-01.1, 12.1-17-02, 12.1-17-07.1, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, or 12.1-20-07 against the other party or against a minor child; or
- b. After due notice and full hearing, a domestic violence protection order under section 14-07.1-02 or a disorderly conduct restraining order under section 12.1-31.2-02 was issued based upon a final determination that one party committed or threatened physical violence against the other party or against a minor child of either party.

3."

Page 1, line 11, after "period" insert "under subsection 1"

Page 1, line 17, replace "3." with "4."

Page 1, line 21, replace "4." with "5."

Renumber accordingly

North Dakota Family Alliance

A Trusted Voice Impacting Our Legacy

Tom D. Freier, EXECUTIVE DIRECTOR

**House Judiciary Committee
February 11, 2013
HB 1423**

7

Mr. Chairman and members of the House Judiciary Committee, I am Tom Freier with the North Dakota Family Alliance. I am here in support of HB 1423. And in fact if we could title bills, I would title this the "Children's Parent's Marriage Preservation Act".

We believe the state does have a vested interest in this issue as evidenced by Century Code law providing for the issuance of marriage licenses and divorce decrees.

HB 1423 simply provides for a 6 month waiting period with 5 required informational sessions educating the couple seeking a divorce, with an emphasis on consideration for the well-being of their minor children.

Nationally, each year over 1 million American children will experience the divorce of their parents; moreover, about half of the children born this year to parents who are married will see their parents' divorce before they are 18 years of age. Mounting evidence in social science journals demonstrates the devastating physical, emotional, and financial effects divorce is having on children will not only have an immediate effect, but will last well into adulthood and affect future generations.

Researchers Robert Rector at the Heritage Foundation and Pat Fagan at the Family Research Council state the following:

- Children whose parents have divorced are increasingly the victims of abuse. They exhibit more health, behavioral, and emotional problems, are involved more frequently in crime and drug abuse, and have higher rates of suicide.
- Children of divorced parents perform more poorly in reading, spelling, and math, and are more likely to repeat a grade in school.
- Families with children that were not poor before the divorce see a drop in their income, with as high as 50 percent of the parents with children that are going through a divorce move into poverty after the divorce. Divorced women with children are four times more likely than a married woman to be living under the poverty level.

In addition, I want to draw your attention to the NDFA Marriage Task Force Report. This report is the result of a 2012 study, involving experts from around the country. Let me direct your attention to just a few references.

Dedicated To Strengthening Families

3220 18th Street South Ste 8 • Fargo, ND 58104 • Phone: 701-364-0676

www.ndfa.org • admin@ndfa.org

While this research and these references are national in scope, they most certainly apply right here in North Dakota, and most certainly bear out our concern for the best interests for the well-being of children.

Here in North Dakota, averages for recent years would show that we have about 4200 marriages per year, 1900 divorces, and of those 1900—about 900 will involve minor children, and involved with those 900—a total of 1600 children.

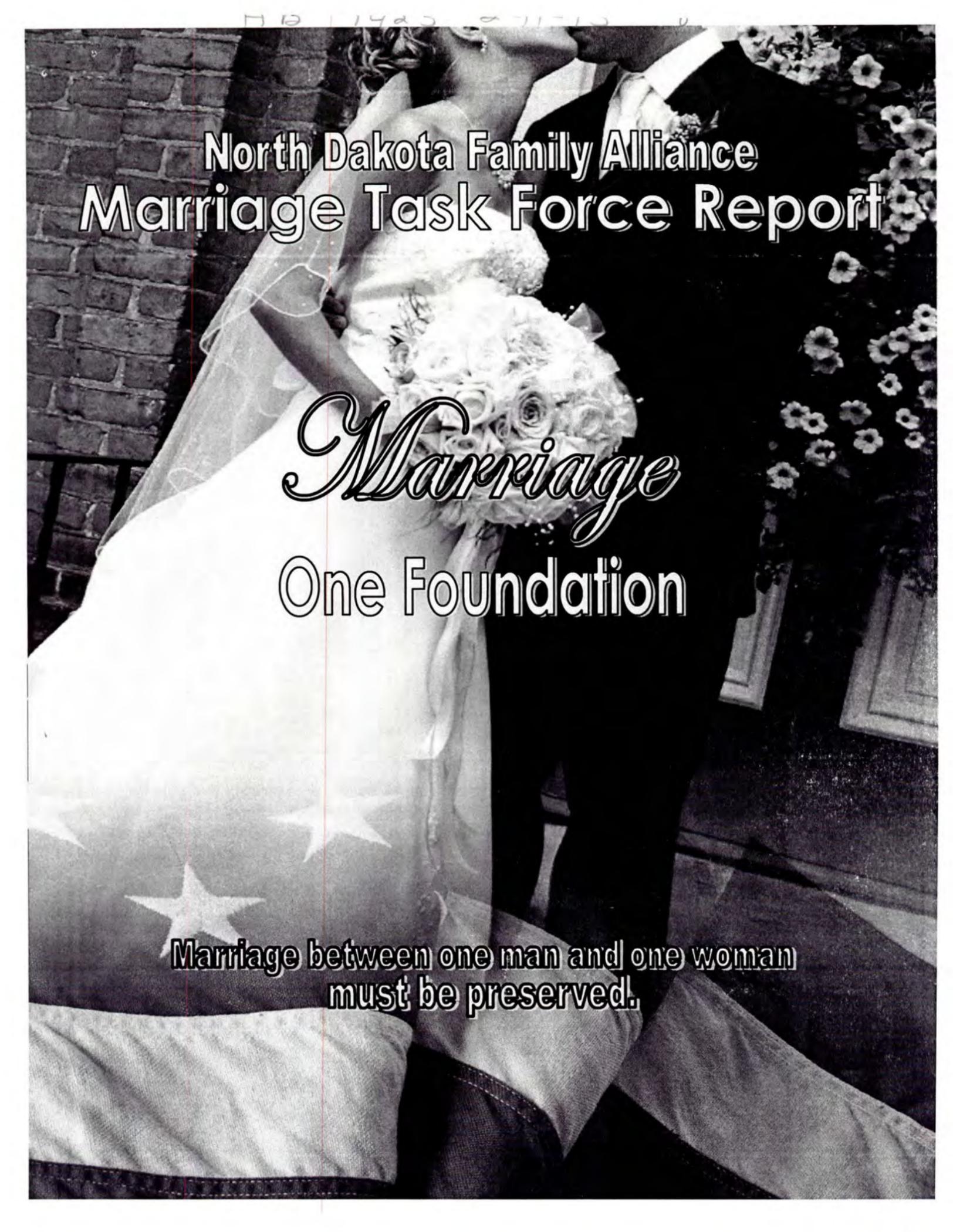
The Heritage Foundation estimates the cost to taxpayers is between \$25,000 to \$35,000 per divorce, depending on location. In fact a study shows that divorce and unwed child bearing costs the government \$112 billion annually. This is in addition to the cost to the divorcing couple.

While the numbers are staggering and important, they pale in comparison to the main purpose of this legislation—to provide every opportunity for children to grow up in an intact and stable home. Research documents that a child's well-being as it relates to emotional, social, physical, and financial measurements is best provided for in a home living with their biological parents.

We believe that adoption of HB 1423 would have the effect of preserving some marriages which otherwise would end in divorce, and the result would be positive for the couple and their children.

We believe that the family is truly the foundation of society, and as the family goes so goes society. Marriage is the cornerstone of that family, and together with the children of that family have the power to influence generation after generation. As a people, as a state, we have a responsibility to do all in our power for the wellbeing of these vulnerable children.

We are asking for your support and urge a Do Pass on HB 1423.



North Dakota Family Alliance
Marriage Task Force Report

Marriage
One Foundation

Marriage between one man and one woman
must be preserved.

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Executive Summary

The purpose of the North Dakota Family Alliance Marriage Task Force was to study the state of the institution of marriage in America today, and specifically in North Dakota. The task force was made up of 14 North Dakotans, representing a cross section of the state. This included pastors, legislators, counselors, housewives, attorneys, and others. The task force held six meetings and gathered information from fifteen national experts.

While the primary purpose was to determine the state of marriage, the study most certainly was seeking insight in regard to why marriage appears to be declining, what can be done to restore and preserve it, and what the role is of the church and the state.

The institution of marriage has been an integral part of the family and society for as long as history has been recorded. The institution of marriage has been foundational in every civilization. The propagation and welfare of children, the wellbeing of society, and the orderliness of civilization are dependent on the stability of marriage. If undermined, society becomes unstable, and invites sure disaster.

So where are we in United States today? Well, nearly four out of five graduating seniors look forward to a successful marriage, with many wanting children. That is the good news for marriage. The not so good news is that marriage rates have declined by 50 percent over the past 35 years, the number of cohabitating couples has increased by over 1500 percent since 1960, divorce rates have stabilized, but remain at a relatively high rate, 41 percent of all births occur in a non-marital situation, and 27 percent of children live in a single parent home, most without a father.

In today's world of self-centeredness, it is understandable that the institution of marriage would be challenged. Why would someone want to be legally bound to another? Why not allow

my feelings, and maybe my changing emotions, to be played out as per my wishes? Why should I be bound by commitment and duty?

The institution of marriage is more than a private relationship between two consenting adults. Marriage is a social institution that directs otherwise volatile sexual desires toward another person for life. Marriage links parents to the fruit of that union, their children. It creates an expectation of duty and commitment, and their union affects those of the next generations, and the larger community, for good or ill. Marriage is not just for each personally, but affects the common good.

Today, three factors are having a huge impact on marriage: 1) cohabitation, 2) divorce, and 3) same-sex attraction relationships.

Many hope and believe cohabitation will be their path to happiness and will lead to a successful marriage. They see the “test drive” as a means to determine compatibility and validate a permanent relationship. Unfortunately, research documents reveal just the opposite. Cohabitation leads to less stable relationships, greater likelihood of divorce if they marry, higher incidences of spousal abuse for women, and the worst environment for children.

Even with the leveling off of divorce rates, the average couple marrying for the first time today still faces a 40 to 50 percent chance of divorce. In 2012 only 48 percent of United States households were occupied by married couples. A large percentage of divorces occur because of a lack of affection for the spouse, ‘falling out of love’, and a sizable number who have divorced question their decision. Most divorcees cite a longing for a new beginning after the divorce, many are disappointed, and in virtually all cases, the divorce is just the beginning of instability and heartache for the children.

Same sex relationships challenge the legal status of marriage. The political discussion and the media fascination have caused many to question the centuries old view of marriage. Those supporting legalization of same-sex unions debate why those of the same sex who love each other should not be legally bound. Many arguments for same-sex marriage center on the shortcomings of marriage; such as, infidelity, divorce, and cohabitation. Redefining marriage by focusing on its shortcoming has the potential to destroy the foundational core of marriage itself.

A mountain of evidence documents the case for marriage. One portion of that evidence can be found in just one book, the Bible. For Christians, Scriptural truths provide the foundational tenets for marriage between one man and one woman, and the natural procreation of children.

The other book of evidence is much, much larger— containing thousands of pages of documented research from hundreds of sources, all validating the positive influence of marriage on society, families, and specifically children. This comprehensive research addresses the emotional, physical, social, financial, and spiritual wellbeing of men, women, and children.

All fifteen marriage experts agreed on one premise: when children are involved, the very best environment is a home occupied by a child living with his or her biological mother and father, who are living in a committed husband and wife relationship.

In conclusion, we must remain committed to restoring marriage. The key component to the legacy we leave our children and the freedom of this country is the restoration of the sanctity of marriage as the foundation of society.

Marriage Task Force Research Results

Marriage is the foundation of society. This is because healthy marriages bear and raise the most healthy, well-rounded children (George, 2010). Families shape future generations and provide stability for the nation. Children's outcomes are much better if they are raised in homes with married biological parents (Girgis, et al.). Marriage holds everything together. As David Lapp writes, "Marriage is bigger than the couple – it's an institution with its own norms and obligations. This elevation of marriage to the status of institution is not belittling of human love but a tribute to its peculiar power and goodness" (Lapp, 2009, p.2).

The tragedy is that fewer people are marrying. Despite the fact that national divorce rates have slightly decreased in recent years from 54.2 percent to 45 percent (Fagan & Zill, 2011), cohabitation has increased 15-fold since 1960 (Stanton, 2011) and same-sex marriage advocates are trying to redefine the very essence of society (Anderson, 2009). The future does not look optimistic after considering these statistics, so the urgent reality of defending traditional marriage is of paramount importance.

Fighting for Marriage

Marriage is worth defending. As a Christian organization we believe that promoting a Christ-centered marriage is our first duty in this debate; a God-honoring, heterosexual, faithful, covenantal marriage. The Holy Bible is our first source for what we stand for, but there is also a substantial amount of research outside of the bible that supports our conclusions.

Marriage is more than an agreement; it is an institution. This institution is beneficial to all parties involved. Marriage directs sexual desires towards one spouse, provides for a deep and lasting commitment, and the love of the couple extends to the community around them, including their children (Lapp, 2009). The love of a committed couple ripples around them, causing their

family and community to be more committed (Stanton, 2011). The positive investment of love in community is just one beneficial aspect of marriage.

Marriage creates financial stability. Getting married is one of the top three activities to avoid poverty (Stanton, 2011). Of those who finish high school, marry after age 20, and then have children, only 3.8% live in poverty. Of those who don't finish high school, have children before marriage, and marry before age 20, 79 percent live in poverty (Stanton, 2011). Married people are less likely to live in poverty because it is cheaper to live together than apart (Wilcox, 2011). Marriage also encourages couples to invest more in the future, and men are more productive in the workforce if they are married (Wilcox, 2011). With all these factors combined married couples are wealthier and more economically productive than single people.

Marriage increases the well-being of both the man and the woman. A wife has much more negotiable power in a married relationship than in a cohabitating relationship (Stanton, 2011). The relationship also benefits the woman because it's on her terms and marriage requires commitment before she gives herself to a man. Marriage is beneficial for men because they become more productive in a committed relationship. Married men tend to help out more with domestic tasks and become more productive in the workplace (Stanton, 2011).

Married couples are also physically healthier than single people. Marriage encourages healthier lifestyles in spouses (Stanton, 2011). It then makes sense that married people have fewer doctor visits and lower death rates (Stanton, 2011). Marriage also protects mental health. Married parents experience less depression than unmarried parents (Wilcox, 2011).

Overall, happiness among married couples is higher when compared to single people. Married couples are on average 3.4 times more likely to report happiness than cohabiters (Stanton, 2011). Married parents also do not see parenting as an obstacle to their happiness

(Wilcox, 2011). Relational attributes of marriage such as sacrificial love (Lapp, 2009), generosity, and sexual satisfaction lead to this increased happiness (Wilcox, 2011).

Culture and Marriage

If marriage is beneficial, it can be difficult to understand why so many are failing and why so many couples are not pursuing marriage. Instead, more couples are deciding to cohabitate. The beginning of a societal change is cultural change. The United States was founded on Christian principles that protect families and religious freedom, but these are quickly fading.

Americans have always had a sense of independence and individual achievement, but recently this view has taken a new extreme. As the Wall Street Journal has said, “The dominant view of marriage in today’s America: less partnership than a joint venture between two parties concerned with preserving their own autonomy.” (Doherty, 2011) The very essence of marriage as becoming one is being forgotten. Instead couples are more concerned with their individual needs than the needs of the other and the relationship. Overall, the United States is shifting from a religious, family-based economy to an individualistic, secular one (Potrykus & Fagan, 2011).

Along with individualism, consumerism is increasing. Individualism is manifested in marriage when marriage is viewed as a means to raise children and meet personal emotional needs (Lapp, 2009). The concerning part of this belief is that it focuses on individual wants and the reality is that relationships cannot satisfy all these emotional needs. Not all a person’s needs are always met in marriage. This is why many marriages are failing today; because some believe marriage can fulfill their every need and when this doesn’t happen they give up (Doherty, 2011). William Doherty (2011) says it well;

“My concern is less with consumer culture in the marketplace than with what it is teaching us about our family relationships. Consumer culture tells us that we never have enough of anything we want, that the new is always better than the old – unless something old becomes trendy again. It teaches us not to be loyal to anything or anyone that does not continue to meet our needs for the right price.”

A natural outcome of an emphasis on individualism and consumerism is an increase of a selfish outlook. This has transpired to more concern for adults' welfare instead of children's welfare. Instead of increasing adults' welfare, this focus has decreased the welfare of both children and adults (Lapp, 2009). Another result is that children are no longer seen as an important aspect of marriage (Fagan & Potrykus, 2011). This can be observed in the fact that today 33 percent of married households have children compared to 50 percent in 1960 (Wilcox, 2011).

People are seeing less of a need and purpose for marriage. Along with this trend, beliefs like, “romance is uncertain”, that “the right spouse will never be found”, and that “parenting will harm marriage”, deter people from marrying (Wilcox, 2011). If people adhere to these rising beliefs, the necessity of marriage will become far less compelling. The biblical view of marriage is vanishing from our society and is being replaced with a selfish, individualistic, and consumerist view.

Divorce

Biblically, marriage is intended to be a covenant. Not a shallow promise or even a contract, but a lifelong covenant made before God. Marriage is intended to reflect God's covenant with His people. Examples of God making a covenant would be with Noah; to never destroy the earth by a flood again (Genesis 9:15), with Abraham to increase his numbers and establish a nation (Genesis 17), and with the Israelites to bring a Savior; Jesus Christ (Isaiah

42:6). God fulfills these covenants and will never break them. In the same way Christians are called to never break the covenant of marriage. As Jesus says in Matthew, “So they are no longer two but one flesh. What therefore God has joined together, let not man separate.”

Marriage is referred to as a covenant in Malachi 2:14-16.

“But you say, “Why does he not?” Because the Lord was witness between you and the wife of your youth, to whom you have been faithless, though she is your companion and your wife by covenant. Did he not make them one, with a portion of the Spirit in their union? And what was the one God seeking? Godly offspring. So guard yourselves in your spirit, and let none of you be faithless to the wife of your youth. “For the man who does not love his wife but divorces her, says the Lord, the God of Israel, covers his garment with violence, says the Lord of hosts. So guard yourselves in your spirit, and do not be faithless.”

In this passage a man has been unfaithful to his wife and Malachi explains how he made a covenant of marriage before God. A covenant is God’s design for marriage and is not meant to be broken. Breaking this covenant is seen by the Lord as covering a garment with violence. God only allows divorce when his people had hardened their hearts or committed adultery (Matthew 19:8). Biblically, divorce was not intended, but a result of the sinful nature of man. The biblical view of a marriage covenant is fading from American culture and divorce is a common occurrence.

Americans are still divorcing more when compared to other countries. 23 percent of Americans are divorcing compared to 8 percent of British and French couples (McManus, 2011). Not only does the U.S. have one of the highest divorce rates in the world, but divorce is still twice the amount that it was in 1960 (Wilcox, 2011). This increase is despite the fact that there

has been a decrease in rates over the past decade. Divorce rates should concern Americans because it is costly to everyone and has led to increasing welfare and state spending (Gallagher). In 2002, divorce cost Americans approximately \$30 billion.

Another tragedy associated with divorce is that many divorces could be prevented. Both parties involved do not always want the divorce. 40 percent of those who have divorced regret it (Doherty, 2011). Four out of five marriages end against one spouse's will. The main reason for divorce is because people are just not happy. 50-60 percent of divorces occur in marriages that had low conflict and no abuse (McManus, 2011). The picture becomes clear: people are losing their faith in marriage.

Cohabitation

Divorce is so common that some people are seeking alternatives to marriage because they fear failure. Some may have experienced the pain of their parents divorcing and do not want to repeat it again (Stanton, 2011). As stated by Brad Wilcox (2011, p.2), "Cohabitation has emerged as a powerful alternative to and competitor with marriage." Cohabitation, in part, was a result of the sexual revolution in the 1960's when marriage began to be viewed as an obstacle to passionate love (Stanton, 2011). The rise of those seeking passionate love ties right in with the cultural trend towards consumerism. Instead of couples seeking a positive, stable, meaningful relationship, people are seeking an immediate gratification of their desire for passionate love. Passionate love can most quickly be attained before the process of marriage. For others cohabitation is more like a trial run for marriage that has resulted from an increasing fear of divorce (Stanton, 2011). Because of these reasons for cohabitation, unmarried couples have increased by 17 times (Wilcox, 2011).

One aspect of a Christ-centered marriage is abstinence before marriage. If couples are cohabitating it is assumed that in the majority of cases this biblical command is not lived. The biblical text that supports abstinence can be found in 1 Thessalonians 4:3. It reads, “For this is the will of God, your sanctification: that you abstain from sexual immorality; that each one of you know how to control his own body in holiness and honor”. Scripture also says in Hebrews 13:4, “Let marriage be held in honor among all, and let the marriage bed be undefiled.” According to scripture, abstinence is the will of God and is a sanctifying process that honors the institution of marriage that He created.

Some have more faith in cohabitation than the biblical view of marriage, but there are many misconceptions. The three main misconceptions are that living together can be a training ground for marriage, women are treated more as an equal, and children can strengthen a cohabitating relationship. Cohabitation does prevent bad marriages, but it does not improve marriage (Wilcox, 2011). Cohabitors that eventually marry experience divorce rates that are 50-80 percent higher and experience more difficulties in marriage (Stanton, 2011). It is often a widespread belief that marriage is degrading towards women. This has led to the encouragement of women to be sexually assertive in casual relationships. Instead of this increasing the well-being of women, it has given men an excuse to disrespect women because there is no commitment. The relationship is on the man’s terms. As Glenn Stanton (2011, p.13) states, “Boys fail or refuse to become men – while still getting what they want from their female peers who desire husbands: companionship, regular sex, and someone to cook for them.” Some couples who are experiencing difficulties in their cohabitating relationship, think that children might strengthen their relationship, but this is also false and can be damaging to their children (Stanton, 2011).

The main aspect that differentiates cohabitation from marriage is the lack of commitment. Many couples do not plan to cohabitate, but instead fall into living together (Stanton, 2011). One party does not want to make the commitment that is required for marriage and there is usually no formal decision. This makes it much easier to get out of the relationship. “Intimate emotional, physical, and even spiritual bonds are being made without being backed up by the kind of commitment they demand. It is like walking a tightrope without a net below.” (Stanton, 2011, p.63) The results of this type of semi-commitment have shown to prove this concern.

According to new research, divorce is no longer the greatest threat to family stability and child well-being, but now cohabitation is the greatest threat (Burzumato, 2011). Cohabitation before marriage and engagement shows the highest rates for divorce (Stanton, 2011). Children do not improve the picture. Even after cohabitating parents marry, while their risk for disruption drops, they still have 151 percent greater chance of disruption. For example, 65 percent of cohabitating parents breakup before their children turn 12 as compared to 24 percent of married couples (Wilcox, 2011). Because of these results, children of cohabitating households can be expected to have a more unstable home.

Negative behavior is also associated with cohabitation. Cohabitating couples are more likely to experience adultery, alcoholism, drugs, and an attitude of independence (Stanton, 2011). Insurance companies know this; that is why rates are higher for those who are not married (Stanton, 2011). Abuse is also more prevalent with it occurring in 48 percent of cohabitating households compared to 19 percent of married households (Stanton, 2011).

Cohabitation should concern Americans. It is associated with negative behavior and has not fulfilled its wide-believed “promises”. The newest statistics indicate that cohabitation is the

greatest threat to families (Burzumato, 2011). It is clear that cohabitation is not the answer to the breakdown of marriage.

Same-Sex Marriage

There has been a new view of marriage termed the revisionist view that defines marriage as a union of two people that love and care for each other as well as share domestic burdens and benefits. This contrasts with the view of traditional marriage in which a man and a woman are in a permanent exclusive relationship commitment fulfilled through children and for the welfare of children (Girgis, George, & Anderson). The difference is that this new view of marriage both weakens the covenant aspect and allows for couples of the same sex to marry. The foundation of this new view of marriage is built on emotion while the traditional view of marriage is built on the permanence of bodily union and children (Girgis, George, & Anderson).

The bible clearly outlines that marriage is between a man and a woman. Mark 10:6-8 says, “But at the beginning of creation God 'made them male and female.' 'For this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh.’”. It is commanded not to partake in homosexual relationships in the bible (Leviticus 18:22 & Romans 1:27). One reason for this is that God created both male and female to be complimentary in marriage. This is often expressed in commands for the husband to lead his wife and for the wife to submit to her husband (Ephesians 5:22-33).

A deeper look into same-sex marriage will reveal that even without the bible, marriages of a husband and a wife are most beneficial. Throughout history it becomes apparent that most societies and religions also agree (Girgis, George, & Anderson). If most religions agree on heterosexual marriage it speaks to its natural moral goodness. As Anderson (2009, p.1) says,

“There is something good and morally upright about the chaste sexual union of husband and wife.” There are several reasons why many have come to this conclusion.

An aspect of heterosexual marriage that makes it good and morally upright is the generative act between the couple that cannot take place in a homosexual couple. Every relationship has an activity that seals its meaning and for marriage it is the generative act (Girgis, George, & Anderson). This act brings the married couple together in unity to do something they cannot do alone. The defining aspect of the marriage is not the outcome of the generative act, the children, but the generative act itself. A marriage is still a marriage if a couple cannot bear children because they are still able to come together to partake in the generative act. Same-sex couples cannot partake in this act even though they are able to partake in other sexual activities. There is a distinction between heterosexual and homosexual relationships. That distinction is the generative act (Girgis, George, & Anderson).

Heterosexual marriage is better for raising children. Children fare better on virtually all well-being indicators if they are raised by their biological married parents (George, 2010). Infidelity negatively affects children and same-sex couples are much more likely to seek other sexual relationships. For example, in a survey of 156 individuals in same-sex relationship, 60 percent expected an exclusive relationship. Within five years none of those relationships were exclusive (Girgis, George, & Anderson). It is clear that heterosexual marriage fares the best for children and the marriage itself.

Legalizing gay marriage is the current debate with revisionists (those working to redefine marriage), but this could lead to other legalizations and has implications for how marriage is viewed in our society. With the revisionist view, other types of unions cannot be fought against like polygamy (Girgis, George, & Anderson). If gay marriage is legalized it will open up the

possibility for other types of unions to be legalized. Another implication of the revisionist view is that it makes the foundation of marriage emotional. A foundation based on emotions is unstable and takes away the more stable foundation of bodily union and children. People would see less of a reason to marry because its purpose can be fulfilled outside of a marriage agreement. The purpose in a redefined marriage would be to satisfy oneself emotionally and to share a life together which can be accomplished in a friendship or a cohabitating romantic relationship. The question then becomes what holds a marriage together and unlike a traditional view, revisionists cannot answer this question (Girgis, George, & Anderson).

The Breakdown of Marriage

The breakdown of marriage has manifested itself in the three ways discussed; divorce, cohabitation, and same-sex marriage. Most of this can be traced to the cultural trends towards a selfish emotionally based marriage. As William Doherty believes, marriage can break down in less than a year if you focus on yourself and the failures of your spouse (Doherty, 2011). There is less of a sense of “us” and couples are not willing to fight for their marriage instead of fighting for themselves (Doherty, 2011). The breakdown of marriage can clearly be seen in the dramatic rise of couples cohabitating, marrying later, marriages are less happy, and divorced people are not remarrying (Wilcox, 2011). Marriage seems to have been increasingly less desired and also less stable in the United States.

Harm to Adults

After a divorce the lives of the adults involved are not always improved. Only 20% of those who get a divorce say that their lives were enhanced (Lapp, 2009). Breakups of cohabitating couples do not fair better. Women of those breakups experience just as much trauma as those who go through a divorce (McManus, 2011). Divorce also takes a toll adults’

physical health. Divorced men live 10 years less on average (McManus, 2011). With the emotional and physical trauma of adults alone, one should see the urgency of the state of marriage in the United States. Unfortunately the picture for children is not much better and in fact worse.

Harm to Children

Because of the breakdown of marriage, more children are living in homes without both of their biological parents. Only 45.8 percent of children reach the age of seventeen with their biological parents still married. An unstable home can severely harm a child (Fagan & Zill, 2011). As former president Reagan's son Michael Reagan says, "Divorce is where two adults take everything that matter to a child – the child's home, family, security, and a sense of being loved and protected – and they smash it all up, leave it in ruins on the floor, then walk out and leave the child to clean up the mess." (McManus, 2011, p.160) Divorce is the number one factor to undercut a child's quality of life (Wilcox, 2011). Children need a stable home to thrive; to feel loved and secure. Divorce, cohabitation, and same-sex marriage undermine a child's future of growing up in a home with both of their biological parents who can provide the most stable environment for them.

Children have more negative life outcomes if they come from an unstable home. One reason is that children of cohabitating households are three times more likely to get abused (Burzumato, 2011). They are also 8 times more likely to die of maltreatment (Stanton, 2011). Of this abuse 64 percent is caused by the boyfriend (Stanton, 2011). Abuse of children should always be prevented. If marriage is the answer, the sanctity of marriage needs to be protected.

Poverty affects the outcomes of children's lives and child poverty rates are higher among children who live in cohabitating homes. 31 percent of children in cohabitating homes are living

in poverty compared to 6 percent of children in married households (Stanton, 2011). Patrick Fagan (2011) did a study of family belonging in the United States and found that for every 10% decrease in family belonging there is a 2.5 percent increase in child poverty. This occurs because child support is not always paid and fathers feel less responsible for their children. Living apart is also more costly because the biological parents are no longer able to work together and contribute (Fagan & Zill, 2011). Breaking apart a marriage is simply more costly to a family.

The negative outcomes associated with children who live in broken homes, starts with their behavior. Their negative behavior is often a result of them not taking the authority of cohabitating parents as seriously (Stanton, 2011). These children have 122 percent greater odds of being expelled for delinquency (Stanton, 2011). Children of divorce are 2-3 times more likely to suffer from social or psychological pathologies (Lapp, 2009). They are also 12 times more likely to be incarcerated in their lifetime (McManus, 2011). The pattern continues as children of unwed parents are 3 times more likely to have a baby out of wedlock (McManus, 2011).

Broken homes lead to lower education outcomes for children. Fagan's (2011) study on family belonging shows that for every ten percent increase in family belonging there is a seven percent increase in graduation rates. This shows that for children who feel they are part of a family are more successful in school. This correlation is more strongly related than negative behavior. Education is related to the economy. The breakdown of the family is reduced with education. If fewer children graduate high school they are less likely to succeed in marriage themselves (Wilcox, 2011).

North Dakota

In North Dakota the picture is not perfect. Patrick Fagan and Nicholas Zill (2011) conducted research on all fifty states to calculate a family belonging index. The family belonging index reflects how many families are intact. An intact family would have both biological parents together raising their children. While the state comparatively has a better family belonging index than most other states, it is still only at 52.5 percent. That is just over half. It should concern North Dakotans that almost half of North Dakota families are not intact because family belonging is associated with child poverty, graduation rates, and teenage pregnancy (Fagan & Zill, 2011).

Family Legislation

Children are the future and they are harmed by the breakdown of the family. Public policy can have an impact on the future; many believe that family is a private matter and should not be brought into the public realm (Fagan & Zill 2011). The reality is for the past century legislation has had an impact on families and the government should take an interest because the government has an interest in its citizens and especially its children (Nimocks). One way that legislation has negatively affected family is from the passing of “no-fault” divorce. Since the “no-fault” legislation, divorce has increased (McManus, 2011). “No-fault” was intended by Ronald Reagan to make divorce less acrimonious, less contentious, and less expensive, but it has failed to do so (McManus, 2011). This change in the law made the process of divorce easier, but the importance of marriage was lost and American families suffered the consequences.

Another reason that marriage is falling apart is the failure to recognize DOMA. Congress enacted DOMA by an 86 percent margin to protect the institution of heterosexual marriage for the interest of responsible child-bearing and procreation (Nimocks, 2011). With increasing

acceptance of homosexuality and other alternative forms of family, DOMA has not been taken seriously. The interest of the country as a whole is being forgotten and the interests of individuals married has become the focus. Austin Nimocks has commented on this reality.

“Our discussion of DOMA and its appeal should not be about private reasons why individuals should marry, why the institution of marriage benefits any particular couple, or why any two people should or should not marry. Instead, we must speak about social policy for our country as a whole and the government’s interest in marriage as an institution.” (Nimocks, p.1)

The focus of the marriage debate has shifted from the common good to arguments about meeting individual’s desires. This has negatively affected our country and the mindset must shift back to where it once was. There are also many more poor policy decisions that have been made. This is only a couple of the more significant changes in the public policy realm concerning family.

The Future of Marriage

The future of marriage is not optimistic if it continues on the same path. Patrick Fagan (2011, p.1) sees a future of more divorce and cohabitation overall. He writes, “With out of wedlock birthrates now above 40%, declining marriage rates, and very high divorce rates, it seems safe to predict that the Index of Rejection will continue to mount.” According to Time Magazine, some see a future of renewable marriages where the agreement is renewed every 5-7 years (Doherty, 2011). Others see the definition of marriage expanding to other alternatives. As Maggie Gallagher (p.2) states, “If libertarians accept the premise that redefining marriage is a basic ‘freedom’ or an individual right then libertarians would be required to accept all people’s definitions of marriage”. The future of our economy in association to marriage is also a concern for some. As marriage breaks down state spending increases (Girgis, George, & Anderson).

Those who know the facts see a future of continued economic depression (Potrykus & Fagan, 2011). Many see a future of less religious freedom and hate. Traditional marriage supporters would be viewed as more hateful, as bigots, and morally insane (Girgis, George, & Anderson). Gay Marriage will continue to be normalized into the culture, schools, and media (Anderson, 2009). Eventually, some think, that the marriage debate will cause a complete severance of Christianity and its relationship to the United States.

On the opposite side of the spectrum if marriage was restored the future of the United States would be brighter. If marriage levels rise, half of Americans wouldn't be living alone, the number of unwed mothers would drop, more children would live in middle class homes, American students would be more competitive internationally, and crime, poverty, and dropout rates would fall (McManus, 2011). The good news is that teenagers are still indicating that they have a desire to get married and have children (Wilcox, 2011) and as Wilcox (p.95) puts it, "To find out what the future may hold for marriage and family, it is important to determine what our nation's youth are saying and thinking." If the future of the United States still desires marriage and family there is still hope.

Reform

A better future can be achieved by reversing the poor decisions that have been made. There are many ideas of how to go about this. Often the best starting place is to fund research on marriage so that the best decisions can be made (Fagan & Zill, 2011). Once marriage can be defended with sound arguments, the fight for it becomes much easier.

After the fight for marriage is at the forefront, Americans can start to work to prevent divorce. Mike McManus (2011) proposes several reforms that may help. The first he proposes is to have mutual consent divorce, a marriage education requirement before divorce, and ill-fit

parent legislation. A lot of families living in cohabitation are also on welfare even though this is against policy. Cohabiting mothers are receiving welfare based on their income, but are also supplemented by the income of their boyfriend. The welfare system should encourage marriage and corruption should be addressed. All these reforms could have a positive impact in the restoration of marriage in the U.S.

Lastly, all citizens can begin fighting for traditional marriage more fervently and they can do this in the public policy realm. “The more effectively the law teaches the truth about marriage, the more likely people are to enter into marriage and abide by its norms.” (Girgis, George, Anderson, p.269). More simply put, the framework for a cultural view of marriage can be reflected in how the government defines it. Robert George encourages supporters of traditional marriage to go through the courts and legislators because this has been successful for same-sex marriage supporters (Anderson, 2009). By affecting a society’s government much can be changed in the society itself.

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North Dakota Family Alliance Marriage Task Force Final Report and Action Plan

Prayer

First and foremost, we must lead an effort to pray, without ceasing, that God's institution of marriage between one man and one woman would be preserved, restored where it has been discarded or revised, and flourish as God's foundation for the family and society.

Owners

The owners of the Marriage Task Force Final Report are inter-denominational clergy which will be organized by NDFA Pastors for the Family.

Timeframe

The time frame is continuous and until Jesus comes back.

Awareness

We will implement marketing and communication plans to share the positive attributes of marriage to every North Dakotan. The plan will prioritize demographic groups, systematically seeking to reach all groups over the course of a generation.

Owners

The owners are of the Marriage: One Foundation Communication Committee which will be organized by North Dakota Family Alliance.

Timeframe

The time frame will be within 20 years or a generation and then we will start over.

Churches/Pastors

We will develop resources and programs for churches to promote marriage as between one man and one woman to achieve not just survival, but excellence. These programs will include, but not be limited to, pulpit initiatives speaking to the importance of marriage, marriage

preparation programs, marriage enrichment programs, marriage mentoring programs, abstinence until marriage programs, manhood and fatherhood programs, and programs about womanhood.

Owners

The owners are Pastors for Marriage part of the Marriage: One Foundation which will be organized by Pastors for the Family and North Dakota Family Alliance.

Timeframe

The time frame is one year milestones which will be fully implemented in five years, and dynamically revised yearly thereafter.

Legislative Initiatives

We will develop and seek passage of a prioritized list of legislative initiatives that will promote marriage between one man and one woman. Those initiatives will include, but not be limited to: marriage and relationship education, positive divorce reform, pro-marriage tax reform, marriage incentive reform for single parents and cohabitating couples, and incentives for marriage longevity.

Owners

The owners are Legislators for Marriage, Advocacy groups which will be organized by North Dakota Family Alliance.

Timeframe

The time frame is five years, three biennial legislative sessions, and is dynamic to always planning ahead for three sessions.

Received
1-13-13

HB 1423

9

Testimony of Patrick F. Fagan, Ph.D.

Director of the Marriage and Religion Research Institute (MARRI)

Effects of Divorce on Children

Each year, over a million American children suffer the divorce of their parents. Divorce causes irreparable harm to all involved, but most especially to the children. Though it might be shown to benefit some individuals in some individual cases, over all it causes a temporary decrease in an individual's quality of life and puts some "on a downward trajectory from which they might never fully recover."¹

Divorce damages society. It consumes social and human capital. It substantially increases cost to the taxpayer, while diminishing the taxpaying portion of society. It diminishes children's future competence in all five of society's major tasks or institutions: family, school, religion, marketplace and government. The reversal of the cultural and social status of divorce would be nothing less than a cultural revolution. Only a few generations ago, American culture rejected divorce as scandalous. Today, law, behavior, and culture embrace and even celebrate it.

Divorce also permanently weakens the family and the relationship between children and parents.² It frequently leads to destructive conflict management methods, diminished social competence and for children, the early loss of virginity, as well as diminished sense of masculinity or femininity for young adults. It also results in more trouble with dating, more cohabitation, greater likelihood of divorce, higher expectations of divorce later in life, and a decreased desire to have children. Paul Amato, professor of sociology at Pennsylvania State University summed it up: divorce leads to "disruptions in the parent-child relationship, continuing discord between former spouses, loss of emotional support, economic hardship, and an increase in the number of other negative life events."³

¹ Paul R. Amato, "The Consequences of Divorce for Adults and Children," *Journal of Marriage and Family* 62 (2000): 1269.

² Paul R. Amato and Juliana M. Sobolewski, "The Effects of Divorce and Marital Discord on Adult Children's Psychological Well-Being," *American Sociological Review* 66 (2001): 917.

³ Paul R. Amato, "The Consequences of Divorce for Adults and Children," *Journal of Marriage and Family* 62 (2000): 1282.

The last year for accurate numbers on children annually affected by divorce was 1988 when the Center for Disease Control stopped gathering the data. That year the number was over 1,044,000. However, since then the percent of women who have been divorced has continued to rise.⁴ Therefore, conservatively, we estimate the number to be at least 1,000,000 children per year. Should one add the number affected by the dissolution of “an always intact” cohabitation of natural parents, the number is significantly greater. We do know that for all U.S. children, as of the latest data from the 2009 American Community Survey, only 47 percent reach age 17 in an intact married family.⁵

Divorce detrimentally impacts individuals and society in numerous other ways:

- Religious practice: Divorce diminishes the frequency of worship of God and recourse to Him in prayer.
- Education: Divorce diminishes children’s learning capacity and educational attainment.
- The marketplace: Divorce reduces household income and deeply cuts individual earning capacity.
- Government: Divorce significantly increases crime, abuse and neglect, drug use, and the costs of compensating government services.
- Health and well-being: Divorce weakens children’s health and longevity. It also increases behavioral, emotional, and psychiatric risks, including even suicide.

The effect of divorce on children’s hearts, minds, and souls ranges from mild to severe, from seemingly small to observably significant, and from short-term to long-term. None of the effects applies to each child of every divorced couple, nor has any one child suffered all the effects we will discuss. There is no way to predict how any particular child will be affected nor to what extent, but it is possible to predict divorce’s societal effects and how this large cohort of children will be affected as a group. These effects are both numerous and serious.

A full overview of the research can be found at
<http://marri.us/publications/research-synthesis/>

⁴ Patrick F. Fagan, Thomas J. Tacoma, Brooke A. Tonne, and Alexander W. Matthews, “The Annual Report on Family Trends: The Behaviors of the American Family in the Five Major Institutions of Society,” (Washington, D.C.: Marriage and Religion Research Institute, February 2011). See Section 4: Structures of the Family, subsection “Divorces.” Available at <http://downloads.frc.org/EF/EF11B27.pdf>.

⁵ Patrick F. Fagan and Nicholas Zill, “The Second Annual Index of Family Belonging and Rejection,” (Washington, D.C.: Marriage and Religion Research Institute, 17 November 2011).

HB 1423 Testimony

Merle Hoots

1021 E. Highland Acres Rd.

Bismarck, ND

HB 1423 addresses the need for a waiting period and mandatory counseling before a divorce can be permitted. I believe that this is so important in the case of married couples who have children. Each year, over a million American children suffer the divorce of their parents. Divorce causes irreparable harm to all involved, but most especially to the children. While divorce may benefit some individuals in some cases, over all it causes far more harm than it does good.

As former president Reagan's son Michael Reagan says; "Divorce is where two adults take everything that matters to a child – the child's home, family, security, and a sense of being loved and protected – and they smash it all up, leave it in ruins on the floor, then walk out and leave the child to clean up the mess" (Michael McManus, 2011, p. 160).

- When parents' divorce each other, another sort of divorce occurs between the parents and their children. The primary effect of divorce (and of the parental conflict that precedes the divorce) is a decline in the relationship between parent and child. Elizabeth Meneghan and Toby L. Parcel, "Social Sources of Change in Children's Home Environments: The Effects of Parental Occupational Experiences and Family Conditions," *Journal of Marriage and Family* 57 (1995): 69-84.
- Immediately after a divorce, most parents have two sets of problems: their adjustment to their own intrapsychic conflicts and to their role as a divorced parent. The stress of divorce damages the parent-child relationship for as many as 40 percent of divorced mothers. Judith S. Wallerstein and Joan Berlin Kelly, *Surviving the Breakup: How Children and Parents Cope With Divorce* (1996, Basic Books,), 224-225.
- The support they receive from home is rated much lower by children of divorced parents than by children from intact homes Jane E. Miller and Diane Davis, "Poverty History, Marital History, and Quality of Children's Home Environments," *Journal of Marriage and Family* 59 (1997): 1002.

- Children in divorced families receive less emotional support, financial assistance, and practical help from their parents. Paul R. Amato and Alan Booth, *A Generation at Risk* (Cambridge, MA: Harvard University Press, 1997), 69.
- Divorced homes show a decrease in language stimulation, pride, affection, stimulation of academic behavior, encouragement of social maturity, and warmth directed towards the children. Carol E. MacKinnon, Gene H. Brody, and Zolinda Stoneman, "The Effects of Divorce and Maternal Employment on the Home Environments of Preschool Children," *Child Development* 53 (1982): 1392-1399.
- Though some studies show that parental divorce itself may not affect parenting, it often leads to worry, exhaustion, and stress for parents. These factors affect both parenting and parental control. Thomas L. Hanson, Sara S. McLanahan, and Elizabeth Thomson, "Windows on Divorce: Before and After," *Social Science Research* 27 (1998): 329-349.
- Children of divorce almost all cohabit as adults, and most unwed births are to cohabiting couples. Taxpayers pick up the tab, unaware that divorces fueled cohabitation and unwed births. Mike McManus, Ronald Grignol, Dr. Michael Ross; Finally Fixing Broken Family Law! *Responsible Spouse Guidelines*, 2012, p. 3

The statistics that I just quoted are not universal. There are exceptions and those exceptions take place when one or both of the parents getting divorced slowed down and took the time to think through the process of how they could best look after their children. This bill encourages more parents to do the same.

Parents have responsibilities for the children that they have brought into this world together. This bill may save some marriages and keep some families intact, but if it doesn't, it will at least give them time and resources in developing a responsible exit plan from their marriage that will give the best help and guidance for their children.

I encourage you to pass this bill.

//

**STATE BAR ASSOCIATION OF NORTH DAKOTA
TESTIMONY ON HB1423
SHERRY MILLS MOORE**

I am Sherry Mills Moore, a volunteer lobbyist for the State Bar Association of North Dakota opposing HB1423.

Before doing so, however, I think it would be helpful for you to know that I am and have been an attorney in private practice in Bismarck for over 30 years. While my practice is varied, the vast majority of my time is spent handling family law cases, and I do so by preference. Family law is an extremely important area of the law that allows me the opportunity to work with all kinds of people, with all kinds of problems, and to influence a branch of the law that deals with that which is most dear to us all -- our families. I am also the Past President of the Family Law Section of the Bar Association, chair of the Family Law Task Force, Chair of the Custody and Visitation Task Force, have served on the child support guideline advisory committee to the Department of Human Services and am past President of the State Bar Association of North Dakota.

Our concerns with HB 1423 are with the unintended consequences for families. Under the bill, parents who are divorcing, having worked out all the issues and signed an agreement will have to wait six months for their divorce to be finalized. Reaching agreement on all issues is sometimes a very delicate balance and until it is signed by the court, may be subject to change.

Both parties begin to feel buyer's remorse, not at the divorce but on the terms. The peaceful resolution they have reached begins to unravel. Rather than to allow this family the dignity and respect of their choices, we are leaving it open for continued disagreement. Many times the agreement involves transfers of money, buying out the others interest in the home, selling a family home that is too big and too expensive for either party to maintain, dividing up pensions, and dividing up debt. Little of this can happen until the divorce is finalized. Do they continue to reside in the same home during this six months? What happens to the debt that builds up during that six months?

If the purpose of this is to help children, for the vast majority of cases it will have the opposite effect. One of the truly difficult parts of a divorce for children is the waiting. Once they have absorbed the fact of their parents divorcing, they just want it over with. They want to know what is going to happen and they want their parents to be at peace. This bill does not promote that peace.

I will grant you that in the contested nasty divorce, this bill will have less effect because trials are not as likely to happen within a year, for many reasons. This bill will effect the "good" divorces, those where the parents have successfully gone through mediation or in some other way come to resolution.

divorce action filed immediately because they want to protect their privacy and that of their children for as long as possible. Once they have gone "public" so to speak, it is much more difficult to step back and reconcile. That certainly seems counterproductive to the stated purpose of the bill.

Let me talk about timeframes. Someone comes in to me to see about a divorce. There is then communication either between the parties directly, in mediation, or through attorneys, directed at resolution. Resolution involves gathering of information often times in an informal process so the parties are informed. Sometimes that also involves efforts at reconciliation. Once a case is filed, however, the courts, with information provided by the parties, establish a timetable to take it towards trial. The path to litigation is not always conducive to reconciliation. For this reason, the attorneys may simply work on settling the case and then present the entire package to the court. If the parties decide to reconcile they can do so with ease and less expense. If they decide they need a judge to decide their differences, then they file and seek the timeframes the court imposes. To sum up, if we have to file the case to get the 6 month time period running, we jumpstart the family to litigation rather than settlement.

Mediation complicates the proposed waiting period. Currently the court issues an order for mediation immediately after the case is filed. Within 20 days the parties have to contact the mediator and within 90 days the mediation is to be done. This is a very successful program through the courts which helps many divorcing parents mediate their issues, particularly what they are going to do with their children. If they have mediated an agreement will they really have to simply wait to divorced for another 3 months?

HB 1423 is likely to result in more litigation over the temporary issues. For parents to manage their parenting and finances while a divorce is pending requires some management. If it is going to be a long period of time they seek interim orders. Between mediation and negotiation, we can often patch together temporary solutions while working on the final resolution. If that period is going to stretch out to six months, the parties are going to have to get interim orders. That means more cost to the parties financially and emotionally. The trouble with interim orders is that they entail a purging of faults early on in the case. This sets a tone which is far more negative than it need be.

The mandatory counseling provisions are also of concern. For the most part, nearly all of my clients have already been through counseling when they arrive on my doorstep. Many have gone through marital counseling, some simple individual counseling. None of that would count towards the requirements of this bill. We are also concerned about the requirement for post marital financial planning sessions. My experience is that few marital counselors are also qualified financial planners. So the parties would now need to each go to two separate types of counselors and this regardless of their individual abilities to manage their finances. Forced counseling seems unlikely to be effective.

The domestic violence exception is puzzling. How does someone substantiate domestic violence without a trial or hearing? Families may well have domestic violence and imbalance of power issues that have never been made public. If the victim has finally overcome the fear of violence attendant to leaving a marriage, must the victim first go to trial to substantiate the domestic violence in order to avoid a 6 month waiting period?

For all these reasons, we believe HB1423 to be problematic. I thank you for the opportunity to speak to this bill. If you have any questions, I would be happy to try to answer them. If any arise in the future you may contact me by telephone at 222-4777 or e-mail address of sherry@millsmoorelaw.com Thank you.

February 11, 2013

House Judiciary Committee

House Bill No. 1423

CHAIRMAN KOPPELMAN AND COMMITTEE MEMBERS:

I am Bill Neumann, appearing for the State Bar Association of North Dakota. I realize the proponents of this bill are deeply concerned about people who diminish the value of marriage and family by rushing into divorce when they have a disagreement that, with help, could be resolved, and their marriage could be saved. During my long legal career I have seen some cases like that, and I agree, if those people had tried harder to see past their own selfishness, their marriage might have been saved, and their children would not have had to suffer the trauma of their parents' divorce. This bill would slow selfish parents like these from a rush to divorce.

But out of the hundreds of divorces I've seen, only three or four have been like that. Only three or four have been an immediate rush to divorce as soon as a problem arises. In all the rest of them, the parties started out with a serious commitment to their marriage and to each other. In just about every divorce I've seen, the parties spent years trying to make their relationship work. By the time one or both of them finally considers divorce, any chance of reconciliation is long gone. They have gone from being two people who loved and trusted one another enough to make children, to people who now feel totally betrayed by each other. In almost every case I've seen, divorce was not the first thing the parties thought of; it was the last thing the parties were finally forced to.

That means for almost all divorces, the well-intended help offered by this bill comes too late to do any good. This bill has the best of intentions, but it's like requiring people to buckle their seat belt after the accident has happened.

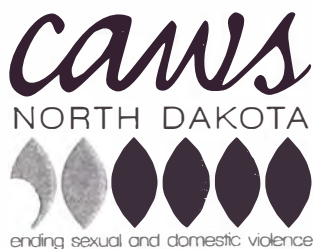
This bill is based on the idea that, if the parties could just get help in time, their marriage could be saved. And I think that's a true idea, if they could get help in time. But the disintegration of a marriage doesn't happen all at once; it takes a long time, usually many years. If counseling is going to save a relationship, it has to come while there's still some marriage left to save. By the time people file for a divorce, that divorce is almost always the only thing left that can help them move on with their lives.

If all divorcing couples had enough money to afford competent counseling, I would have no objection to a requirement that they at least get a little divorce counseling to help them through their hurt and resentment, and help them get on with their lives. But a great percentage of divorcing parents can't even afford to get a little legal advice. The Bar Association runs a no-fee and reduced-fee legal services program for people who can't afford to hire a lawyer. In 2012 we were able to place 239 clients with volunteer lawyers. Another 383 had to be turned away. Almost every one of those 622 cases was a divorce case. And none of them could have afforded counseling.

We might think pastors and other volunteer counselors can fill that gap. But most pastors I know hate doing this kind of work, and of the few who are willing, too many will say the husband is the head of the household, and it's a woman's responsibility to cleave to the man, and do as he says. That kind of counseling may make one of the parties happy, but it isn't going to save any marriages.

The truth is, this well-intended bill will place an additional emotional and financial burden on couples, the great majority of whom are already stretched to the breaking point or beyond, both emotionally and financially. Though we recognize and value the good intentions that motivate this bill, because of the additional burden it will place on couples whose relationship is already past saving, the Bar Association opposes H. B. 1423. We agree with the goal of encouraging and supporting marriage and families, but we don't think this bill will do that.

If you have any questions, I will try to answer them.



Testimony on HB 1423

House Judiciary Committee

February 11, 2013

2
525 N. 4th St. Bismarck, N.D. 58501
(P) 701.255.6240 (TF) 1.888.255.6240 (F) 701.255.1904
www.ndcaws.org • facebook.com/NDCAWS • [Twitter @NDCAWS](https://twitter.com/NDCAWS)

Chairman Koppleman and Members of the Committee:

My name is Janelle Moos and I am the Executive Director of CAWS North Dakota. Our Coalition is a membership based organization that consists of 21 domestic violence and rape crisis centers that provide services to victims of domestic violence, sexual assault, and stalking in all 53 counties and the reservations in North Dakota. I'm speaking this morning on their behalf in opposition to HB 1423.

Most people believe that a victim of domestic violence will be safe once he/she separates from the abuser. They also believe that victims are free to leave their abusers at any time. Unfortunately, leaving does not usually put an end to the violence. Oftentimes, post separation can be the most dangerous time in a relationship. Abusers may, in fact, escalate the violence as a way of coercing the victim into reconciliation or a way of retaliating for the victim's perceived abandonment or rejection of the abuser.

Post separation violence can take many forms, including physical or sexual assault, threats of physical abuse, stalking, harassment or threats related to taking custody of the children or refusing child support.

Some studies suggest that up to ¾ of domestic assaults reported to law enforcement are inflicted after the separation of the couple and almost ¼ of victims killed by their partners were separated or divorced at the time of their death. And yet another ¼ of victims killed were attempting to end the relationship when they were killed.

The fact that leaving can be dangerous does not mean that the victims should stay. Leaving an abuser requires strategic planning and legal intervention to avert separation violence and to safeguard victims and their children.

Although it appears HB 1423 would not require victims to be subjected to the 6month waiting period as indicated on lines 8-9 of the bill we have concerns about how "substantiated allegations of domestic abuse" is defined by the sponsors and have recommended an amendment to the bill sponsors to include specific exceptions that we may feel provide exemptions for domestic violence victims but our concern remains for victims that choose not to disclose domestic violence during divorce proceedings so despite the proposed amendment we request a DO NOT PASS on HB 1423.

I'd be happy to answer any questions that you may have. Thank you.

NDLA, H JUD - Hickie, Carmen

From: Koppelman, Kim A.
Sent: Monday, February 11, 2013 2:44 PM
To: NDLA, H JUD - Hickie, Carmen
Subject: Fwd: HB 1423
Attachments: HB 1423.docx; ATT00001.htm

Sent from my iPhone

Begin forwarded message:

From: Kim Jacobson <kim.jacobson@co.traill.nd.us>
Date: February 11, 2013, 12:27:16 PM CST
To: "kkoppelman@nd.gov" <kkoppelman@nd.gov>
Subject: HB 1423

Chairman Koppelman,

Please find my attached testimony regarding HB 1423 - Waiting Period for Divorce and Mandated Counseling. I attended the hearing today, but became ill and was unable to present. Please share my testimony with the Committee. If questions arise, I can be reached at the contact information below.

Respectfully,

Kimberly Jacobson, Director
Traill County Social Services
PO Box 190
Hillsboro, ND 58045
(701) 367-6508
kim.jacobson@co.traill.nd.us

North Dakota House of Representatives Judiciary Committee
February 11, 2013
Testimony regarding Waiting Period for Divorce and Mandatory Counseling
House Bill 1423
By Kim Jacobson, Director – Traill County Social Services

Chairman Koppelman and members of the House Judiciary Committee, my name is Kim Jacobson, Director of Traill County Social Services and member of the North Dakota County Social Service Director's Association. I speak in opposition to House Bill 1423.

In North Dakota, we have a long-standing belief that government should not dictate personal freedom unless necessary. While the intent of HB 1423 appears very honorable and in the best interest of families, there are many ripple effects of this bill that would do the contrary and in fact, cause harm.

HB 1423 requires mandated counseling for all individuals with children who seek divorce and provides an exception for situations of substantiated allegations of domestic abuse. Most instances of domestic violence are not reported to officials. Rather domestic violence is an often-kept silent, a "family secret". National statistics indicate that 1 in every 4 women will experience domestic violence in her lifetime (National Institute of Justice and Center of Disease Control and Prevention).

Under HB 1423, it is unclear on how would the term "*substantiated*" is defined. For cases that do not meet the agreed upon definition of "*substantiated*," has consideration been given to what harm may be brought by prolonging divorce between the two parties? What if the parent is seeking divorce after the other parent physically, sexually, or emotionally abused the child? This bill would not provide a safety net for those individuals. I am concerned that this bill may also lead to more reporting of child protection or law enforcement reports by parents seeking to manipulate the process to avoid the counseling mandates and/or manipulate the placement of the children. I urge you to consider, does HB 1423 effectively speak for all individuals and all family situations?

HB 1423 requires both parties to participate in counseling provided by a paid or volunteer counselor, clergy member, or any state-certified or licensed marriage mediator or therapist including

two sessions on post marital financial planning and three sessions on the effects of divorce on children. Counseling can only be effectual if the individuals engage and express a desire to change. Forcing individuals to participate in counseling as a condition of granting a divorce will not be effectual, rather creating barriers and burdening existing systems. North Dakota does not have a surplus of trained counselors. HB 1423 would require counselors to "sign-off" indicating that the parties attended sessions even if no real motivation or engagement was noted.

HB 1423 assumes that all counselors, clergy, mediator or therapist are well versed in both post-divorce financial planning and the effects of divorce on children. I would urge the committee to consider does this assumption of qualifications meet the desired outcome of the mandate? Will there be a required curriculum to be followed to help educate and counsel individuals participating in the mandated requirements? If so, who will determine the appropriateness of the materials?

HB 1423 requires both parties to complete the counseling sessions. This is a significant area of concern within this bill. What if one party chose to not complete this process? The divorce would be stalled. Child support would not be established and neither would custody arrangements, visitation requirements, etc. One party could choose to not implement this mandate as an effort to further control, harm, and manipulate the other party or to control assets. This would lead to further conflict between the parties and place the children in the midst of conflict, unsettlement, parental alienation, and financial harm. Who would monitor the efforts of the parents and what would be the consequence if one parent willingly failed to cooperate with the mandate? What if volunteer or reduced-cost counseling not readily available in a community and the individual had financial hardship in obtaining services?

If HB 1423 was engrossed as written, it could result in the delay of divorce for an extended period of time. Such delays could increase the friction between parties because the Court would be unable to rule on custody, visitation and child support issues. This uncertainty further limits the ability of authorities

(law enforcement, social services, child support, etc.) to assist in legal, social and economic matters which could result in a negative impact upon children and families.

HB 1423 while honorable in intent, it is not appropriate for North Dakota families. Mandated counseling for both parties as well as tying the hands of our courts by dictating when a divorce decree can be granted will negatively impact the wellbeing of children and parent-child relationships. Furthermore, HB 1423 will lead to further barriers for individuals attempting to leave abusive relationships and limit individual freedoms.

For these reasons, I encourage you to take this time to fully understand the ripple effects of this bill. I urge you to give House Bill 1423 a "Do Not Pass" recommendation.

Chairman Koppelman and members of the Committee, thank you for the opportunity to provide testimony on HB 1423 and I would be happy to address any questions you may have.