

## No-Fault Divorce Creates Strange Bedfellows

by {ga=dking}

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There is no denying that divorce in New York can be an ugly process. Yes, even uglier than in most states. When North Dakota in 1985 adopted a no-fault divorce law, it left New York as the only state in the country not to have a process by which two people can legally end their marriage without any accusations of wrongdoing or evidence hearings.

In New York, to get a divorce, one member of the couple must prove wrongdoing by the spouse or the couple must sign a separation agreement and live separately for a year before a judge makes it official. Now, Sen. [Ruth Hassell-Thompson](#) and Assemblymember [Jonathan Bing](#) have introduced

[legislation](#)

that would bring New York up to speed with the rest of the country as far as divorce law goes. The Hassell-Thompson bill was voted out of the

[Senate Judiciary Committee](#)

on Tuesday, and Bing says his legislation has major bipartisan support in the Assembly.

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But there are those who still feel the legislation will hurt women, and others who say divorce should not be made any easier. The legislation faces fervent opposition from two organizations -- an odd couple of sorts -- the [Catholic Conference of New York](#) and the National Organization for Women-NYS . Both oppose the measure, but for very different reasons.

### Finding Fault

Proponents of no-fault divorce say that forcing couples to accuse each other of wrongdoing, abuse, infidelity, neglect, can make a difficult process even worse -- not only for the couple but for the children involved and also can lead to tremendous legal costs. "No one cares about no-fault divorce until their marriage is falling apart and they find out, "Oh, my god, there is no no-fault option," said Sen. [Liz Krueger](#) , who supports the Hassell-Thompson legislation, "Couples find out they have to allege something that may not really be true."

Bing said the legislation will decrease domestic violence by helping the abused partner get out of a bad marriage quickly. "I think for years there was concern that women in a lesser financial situation than their spouse would be in a bad position," said Bing, "But we've seen it work in other states, and it has reduced rates of domestic violence and the cost of divorce, because people aren't spending years in litigation."

The National Organization for Women, though, fears the bill, if passed, would put women at a disadvantage.

"We all know that divorce often plummets women into poverty. And when women live in poverty, their children are affected too. All we are asking is that the ... legislature take steps to protect the lives of women and children in divorce situations," Marcia Pappas, president of National Organization for Woman-NYS [said in a March speech.](#)

While not opposing no fault divorce, Pappas [told the Legislative Gazette](#) Hassell-Thompson bill includes a loophole that could be damaging to women. She said there is a "huge loophole in the bill for the monied spouse to trump up the reason to get a divorce without having to settle all of the issues. What it does is it leaves the lesser monied spouse in a situation where then they have to go into court and try and fight all of these issues one at a time. It leaves the lesser moneyed spouse at a disadvantage in terms of negotiating."

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Basically Pappas is concerned the wording of the bill could allow the wealthier spouse to tie up their spouse in court and might give them an advantage in negotiating for custody and spousal support.

Supporters of the legislation say they feel that the new law combined with the current system will protect the rights of women. "As far as being practicing attorneys, we know the relevant legal factors. And we feel their objections are not completely founded. We don't think it will hurt women or prevent them from succeeding in negotiations," said Cynthia Shrock, president of the [Women's Bar Association of the State of New York](#)

Shrock said that some opponents of the legislation say removing "grounds" from divorce proceedings could hurt the "non-monied" spouse in divorce hearings, because they won't be able to present abuse or other conditions that could influence custody or monetary arraignments. But Shrock said that is not so. She said the courts will still be able to consider claims of abuse when considering custody and monetary awards for child and spousal support.

### Divorce Prevention

The Catholic Conference of New York opposes no-fault divorce in general, contending that it makes it too easy to end a marriage.

"The fact that there is a low divorce rate in New York is not a bad thing," said Dennis Proust, spokesman for the Catholic Conference of New York. New York has traditionally had an annual divorce rate around 3 percent, according to the [National Center for Health Statistics](#) . States like California and Nevada have about a 6 percent rate.

"Marriage is supposed to be for life. It is not a cell phone contract or a car lease," said Proust. "People who are in abusive relationships have a quick way to get out and people who want to get divorced otherwise have to wait a little while, and that is not necessarily a bad thing."

Kyle McCauley Belokopitsky, director of government relations for the New York State Catholic Conference, [argued before the Senate Judiciary Committee](#) on May 6 that the proposed law would allow a divorce to happen if one member of the relationship wanted a divorce and the other didn't, "for any reason or for no reason at all."

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"No-fault divorce laws in other states and countries, including Canada and England, have resulted in measurable increases in the divorce rate," he testified. "Yet, according to the social sciences, marital dissolution brings with it significant negative impacts on children, adults, families, and society as a whole."

Under the current law, divorces in New York can be granted on six grounds, such as cruel treatment, abuse or abandonment. If none of these grounds exist, a divorce can be granted if a couple lives separated for a year and a separation agreement has been reached. However, if one party fails to take court action after that year the divorce does not happen.

### Easing the Pain

The Women's Bar Association of the State of New York has shifted its position on no fault divorce over the years, according to Shrock. While the organization once was afraid it would hurt women, it now believes no-fault will make divorce less hurtful for all parties involved. "I represent the child, and the longer the matrimonial action lasts the harder it is on the child. The claims made in court can be against the wife or the husband but all sides end up suffering."

Shrock said that a woman in an abusive situation who does not have much money would not benefit from the one-year separation, or "cooling off period" as some refer to it, because she would not have the means to support herself and her children away from her spouse. Meanwhile, a divorce based on the grounds of abuse would also be too costly, leaving her in the abusive relationship. She says the law will make it easier and more affordable for women to get out of abusive marriages.

A 2004 [study](#) by the Stanford Business School looked at how no-fault laws have affected rates of domestic violence and divorce in states that adopt the law. According to the study, divorce rates go up sharply after the law is passed but level out to pre-law rates in about a decade. On the other hand, domestic violence dropped sharply in states that accepted no-fault divorce as did suicide rates.

Two other bills are under consideration as part of a package of divorce reform including the no-fault provision in both the Senate and the Assembly. The first, sponsored by Sen. [John Sampson](#) and Assemblymember

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### [Helene Weinstein](#)

, would have judges decide whether one spouse should pay the other spouse's legal fees before a final judgment is made during a divorce case.

The second piece, sponsored by Hassell-Thompson and Assemblymember [Amy Paulin](#), would create a formula for determining the amount and duration of spousal support payments. Similar legislation exists for child support payments.

### Prospects for Change

So is New York likely to become the 50th state in the nation to have no-fault divorce this year? "The chances are better now than they were before," said Proust, "but it's not a slam dunk if it gets to the floor. I think the fact that two such diverse groups as the Catholic Conference and National Organization for Women oppose this sends a message."

Proust and others who oppose the legislation think there is a good chance it could fail in the Senate. At least one Democrat -- Sen. [Ruben Diaz](#) -- opposes the measure, and it seems unlikely Democrats will be able to marshal all the votes they need from within their party. Opponents of the legislation say they expect a number of legislators probably won't voice their opinion on the matter until it comes time to vote. Eight Republican senators voted against moving the bill out of the judiciary committee. Those senators were John DeFrancisco, Kenneth LaValle, George Maziarz, Michael Nozzolio, Michael Ranzenhofer, Steve Saland, Dale Volker and George Winner. Other Republicans voted for the bill.

Bing said he hopes to translate bipartisan support for his bill in the Assembly into Republican support in the senate. "It may be hard to get through the senate with such a tight majority, but my hope is that the Republican Assembly members signed onto my bill will lobby their senators to support it so it won't be held up if all Democrats aren't on board. I am hopeful it will pass this year."

Sen. Neil Breslin, a lawyer who is on the judiciary committee, said that he expects bipartisan support in the Senate. He said he was personally proud to move the bill because of things he has seen during his law career. "Just having witnessed, as a lawyer, the process of divorce it is horrific. So this is very important and I think people realize that," he said.

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Krueger said New York has been last on a number of child and family issues. It was, she said one of the last states to pass legislation that would allow unmarried couples with children, same sex couples or the elderly to file for restraining orders based on domestic violence. Krueger blames this on the decades-long Republican control of the Senate but she hopes Republicans now understand the issue of divorce: "I'm sure Republicans have heard from their constituents and their horror stories, they might have even experienced it themselves."