

January 11, 1974

4

DIVORCE REFORM PROPOSAL

State Representative Alan E. Norris

The divorce reform proposal represents a middle ground between positions of "no-fault" divorce advocates and defenders of Ohio's "one-partner-at-fault" divorce laws.

The "one-partner-at-fault" concept would be retained in divorce actions where there is controversy between the parties on the question of divorce, child custody, property settlement, child support, or alimony. Under these circumstances the present adversary court procedure where the party seeking the divorce must show the other spouse is guilty of marital misconduct -- i.e. prove "grounds" exist for a divorce -- would be retained.

However, if both spouses agree on a divorce and reduce to writing their agreement on custody, property division, child support and alimony, under the proposal they could together petition the court for a "Dissolution of Marriage". Their written agreement would be filed in court along with their Petition for Dissolution of Marriage.

The court would then be required to order a child custody investigation and hold a hearing on the Petition not more than 90 days after its filing. At the hearing, both parties would be required to reaffirm the signed agreement and agree to changes the court believes to be necessary or the Petition must be dismissed.

This Dissolution of Marriage procedure is designed to rid divorce courts of hypocrisy now widespread where marriage partners who are free of fault agree to a divorce, but must manufacture grounds to satisfy present Ohio law. Retention of the one-partner-at-fault concept in cases where one partner opposes a divorce, is intended to avoid the pitfalls of the pure no-fault divorce system, where no defense is available to a spouse attempting to hold a family together.

The proposal does include "no-fault" divorce in one situation where both parties have not agreed upon a divorce. It recommends addition of a new ground for divorce where divorce would be authorized when the parties have lived apart without any cohabitation and without interruption for two years, whether or not either party is at fault. This ground would supplement the present 10 grounds which require a showing of marital misconduct.

Also recommended is adoption of guidelines to be used by courts in determining original child custody awards and changes of child custody. Here, a child would stay with the original custodian under a divorce decree, unless the court finds upon facts that have arisen since the prior decree or which were unknown to the court, that change has occurred in the circumstances of the child or his custodian, and that the modification of custody is necessary to serve the best interests of the child.

Guidelines are also included to assist courts in setting child support and alimony payments, in an effort to minimize the wide variance now found in awards throughout Ohio.

Included in the package are proposals to strengthen court-ordered reconciliation procedures and to require pre-marital counseling for youthful applicants for marriage licenses.

Repealed by the proposal are the common law defenses of condonation, recrimination, and collusion, which presently bar judges from granting divorces where these defenses are proved at trial. Under recrimination, a party seeking a divorce may not obtain one, unless he himself is completely free of fault. Condonation means that a brief period of reconciliation operates to forgive all previous misconduct. Under collusion, parties are prohibited from working together for a divorce.

Residency requirements would be reduced to permit a spouse to file a divorce after having lived in Ohio six months, rather than one year as at present. No prior residency would be needed in order to file an action for alimony and child support only.

The proposal was introduced in the Ohio House of Representatives as House Bill 233 on February 15, 1973, and was passed by the House on January 10, 1974. It now awaits Senate action.