

REPORT OF THE JOINT COMMITTEE ON DOMESTIC RELATIONS TO THE  
109th GENERAL ASSEMBLY PURSUANT TO H.J.R. NO. 38  
OF THE 108th GENERAL ASSEMBLY

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of the 108th General Assembly

As directed by House Joint Resolution No. 38, 108th General Assembly, your committee on Domestic Relations has examined the inequities, hardships, and social problems resulting from divorce, and has studied existing Ohio divorce law in detail, to determine any elements which may tend to needlessly intensify social and individual problems emanating from family disorganization. Innovations in family law enacted in California and Iowa, and the proposals of the National Conference of Commissioners on Uniform State Laws, and of the Ohio State Bar Association, and other laws and proposals, were compared and contrasted with Ohio law and with each other. The testimony and advice of professionals active in domestic relations work, of laymen who have been victims of inequities in current domestic relations laws, and of other interested persons, was actively sought and carefully considered.

The Committee concludes that Ohio's divorce laws (many of which have carried over from the Nineteenth Century) need major revision. Either of two alternative approaches to such revision might provide material aid in strengthening family life and protecting minor children.

The first alternative is to make changes in specific, separate aspects of existing family law, while keeping the basic "one partner at fault" concept of divorce. The second alternative is to completely revise the concept of divorce, by adopting a system for dissolution of marriage which does not question the fault of either partner. Appendix "A" of this report is a suggested bill based on the first alternative. Appendix "B" is a legislative proposal designed to give effect to the second alternative. Since the information gathered by your committee, including both factual evidence and opinion, is evenly divided in support of one or the other of these proposals, your committee respectfully recommends that consideration be given

to both proposals, with a view to adopting one or the other.

Amending Existing Law

If the existing requirement of proving the fault of a marital party is retained, your committee recommends the following specific improvements in Ohio law, all of which are included in the proposed legislation attached as Appendix "A".

1. Provide that when a husband and a wife live separately for two years, it is a ground for divorce. This in effect recognizes that such a marriage is broken beyond reasonable hope of reconciliation, and allows a divorce without specific proof of fault in such case.

2. Adopt a "comparative fault" concept, by abolishing condonation, recrimination, and collusion as defenses to divorce. This allows a divorce to be granted even though both parties may in some way have breached their marital duties, and discards the unrealistic system which requires that one party be totally free of wrongdoing.

3. Authorize the court to order the parties to undergo a conciliation procedure.

4. Require the submission of all agreed property settlements to the court, rather than submission only when a dispute is charged by one party. This is directed at eliminating unfair settlements induced by the pressure of one party.

5. Require the granting of an interlocutory divorce decree, to be effective for six months before a final decree is made. This is designed to reduce the current high incidence of persons who jump into a bad marriage, "on the rebound."

6. Eliminate the right of a child over fourteen to choose the parent with whom he lives. This would help to reduce friction between the parties and

older children caused by attempts to unduly influence the child's decision, and would also help eliminate disciplinary problems arising out of the older child's ability to play one parent off against the other.

7. Change the test for determining custody from "parental fitness" to "best interests of the child," but give the court the right to require parents to submit to medical and psychiatric exams in connection with custody determinations. This should help to prevent the "dragging through the mud" of one parent by another to show unfitness.

8. Give the court continued jurisdiction in matters of custody or support even though the divorce action has been denied or dismissed. This is to give the court power to deal with custody and support problems where the divorce is not granted but the parents remain separated.

9. Clarify existing language to assure the court's authority to require support until the child reaches age twenty-one or older under special circumstances, such as a necessity to provide for higher education. The purpose of this is to assure that the child will receive as nearly as possible the same financial aid he would have had if the marriage had not broken up.

10. Lower the residency requirements for filing divorce from one year to six months, and remove any residency requirements for support actions. This should alleviate some of the difficulties incurred by a spouse who has moved into this state and is trying to support minor children. Now, such a spouse must wait a full year for either a divorce or support order.

11. In those counties where the Common Pleas Court does not have a domestic relations division, place all divorce and support action jurisdiction in the probate division. Since juvenile offenders, guardianships, and issuance of marriage licenses are now handled by the probate division in these counties, this would combine all marriage, juvenile and custody problems in the same court.

12. Give the probate court discretionary power to require premarital counseling where both parties are under twenty-one, as a condition precedent to issuing a marriage license. Require such counseling if either party is under eighteen. Statistically, young couples run the greatest risk that their marriages will fail, and mandatory premarital counseling should help assure that young people do not marry "unadvisedly or lightly," but enter marriage "discreetly, advisedly, soberly...."

13. Require family living instruction in high school. This will provide all youth with needed information about marital responsibilities.

14. Add criminal sanctions to the current civil duty to support one's spouse. This would allow an additional means of enforcing support orders, and allow the prosecuting attorney to aid the needy spouse.

15. Permit the court to divest dower rights in an action for alimony only. This will clear up some existing title problems when a spouse wishes to sell real property.

#### Adoption of "No-Fault" Concept

As an alternative to retaining the present concept of divorce based on determination of fault in one of the parties, the proposed legislation marked Appendix "B" is offered for consideration.

The basic premise of this proposal is that a marriage which is irretrievably broken should be dissoluble without a determination of the fault of either partner. This system has been adopted in California and Iowa, and has been proposed as the basis for the "Uniform Marriage and Divorce Act" by the National Conference of Commissioners on Uniform State Laws. Testimony of those supporting this approach indicated a conviction that the irretrievable breakdown test was a true measure of the point at which dissolving the marriage would be beneficial to all concerned.

Adoption of this approach would also help to avoid some current problems

by eliminating the need to prove fault and thereby eliminating the need for much of the vitriolic recrimination that occurs under the present system. The new approach would also do away with the existing practice of having the children testify in the divorce proceeding. Further, since there would no longer be a "reward" for bringing to light the faults of the other spouse, there would be a substantial reduction in the intensity of the antagonistic atmosphere normally associated with divorce proceedings today. Witnesses expressed optimism that lessening tensions during the marriage dissolution procedure would be beneficial in inducing reconciliations.

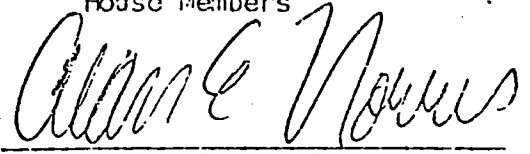
If the "no-fault" approach is adopted, your committee specifically recommends a system based on the "Uniform Marriage and Divorce Act," excluding those provisions dealing with the commencement of marriage. The specific recommendations include:

1. Replace all references to "divorce" in the Revised Code, with references to "dissolution of marriage."
2. Provide for the dissolution of a marriage upon a showing of irretrievable breakdown of the marriage, or of incurable insanity of either party. Abolish all existing grounds and defenses.
3. Upon dissolution of a marriage, provide for an equal division of the marital property, except as to: property acquired prior to marriage; the family residence; a going business operated by a marital partner; marital property deliberately misappropriated; and a marital estate totalling less than \$5,000 where the responding party has fled the jurisdiction.
4. Empower the court to exercise broad discretion in matters of alimony, support, and custody.
5. Create formal reconciliation courts, with appropriate procedures.

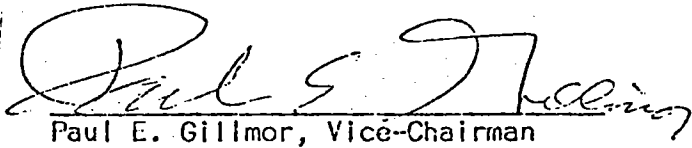
The foregoing report is respectfully submitted this 1st day  
of APRIL, 1971, by the Joint Committee on Domestic Relations.

Senate Members

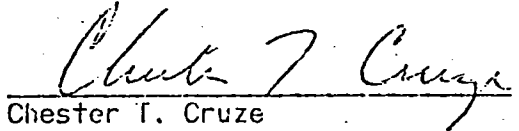
House Members



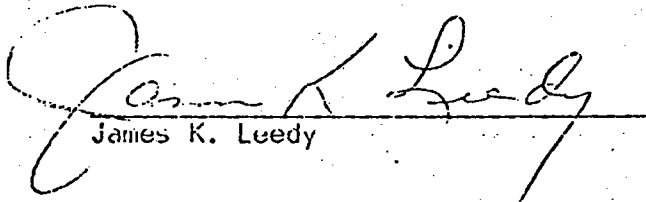
Alan E. Norris, Chairman



Paul E. Gillmor, Vice-Chairman

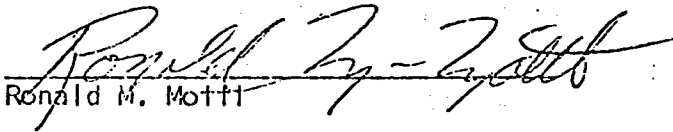


Chester T. Cruze

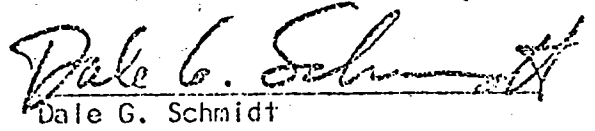


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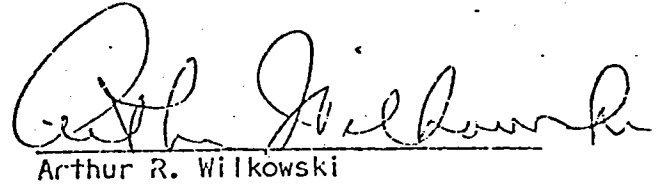
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