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REMARKS BY STATE REPRESENTATIVE ALAN E. NORRIS
ON THE HOUSE FLOOR, JAN. 10, 1974, IN SUPPORT OF HIS
COMPREHENSIVE DIVORCE REFORM BILL (H.B. 233)

There are some things about divorce that are not open to serious dispute:

First: With one in every three marriages ending in divorce, nearly everyone has been touched by divorce, either by living through one personally or with a friend or relative.

Second: The result is, that after experiencing divorce first or second hand, few people support Ohio's present divorce system, most characterizing it as "cruel", "hypocritical", "unrealistic", "antiquated", or in less genteel x-rated terms.

Third: While most people don't like what we've got, few have any real idea of what form any legislative relief ought to take.

With these premises in mind, the General Assembly in 1969, charged a joint select committee with studying revision of Ohio's divorce laws. I was privileged to chair that committee during hearings held throughout the fall of 1970. The bill, then, represents nearly 4 years of work by the General Assembly in searching for legislative solutions to divorce reform.

HB 233 is essentially the work product of that special study committee, although the bill has undergone substantial changes in the years since the study committee completed its work.

Permit me to suggest several areas of caution you ought to bear in mind as we consider comprehensive divorce reform:

First: This bill does not call for an easy divorce system similar to California's "no-fault" divorce. I am opposed to the California system -- and let me tell you why. In California, if either spouse wants a divorce -- for any reason -- or for no reason at all -- that spouse gets his or her divorce, with the other marriage partner having no opportunity to contest or defend. It's almost a return to the early biblical practice of three times repeating "I divorce thee".

Now that kind of one-sided procedure offends my sense of justice -- it took both parties to enter into the marriage, both should be involved in deciding whether to terminate it.

With one minor exception -- where a marriage is hopelessly beyond saving -- HB 233 assures that in Ohio, both marriage partners will be fully protected and involved in any divorce proceeding.

The second area of caution: HB 233 would not, in my opinion, make divorces easier to obtain in the sense that our divorce rates would jump in Ohio. In that sense, we already have easy divorce in Ohio, since today in some months the number of divorces granted, exceeds the number of marriage licenses issued, in our urban counties.

But it would make divorce easier on the parties and their families, in the sense that it would humanize procedures and avoid much of the deep emotional antagonism mandated by our present divorce system.

And third, the term "divorce reform" is not limited to simply changing the mechanics of dissolving the marriage contract; but in addition includes a number of collateral considerations such as

child custody and support, alimony, pre-marriage counseling, reconciliation procedures, and other steps designed to strengthen and preserve the family unit.

What specifically does HB 233 do? Well, first it represents a middle ground between the positions of "no-fault" divorce advocates on the one hand, and defenders of Ohio's "one-partner-at-fault" divorce laws on the other.

The "one-partner-at-fault" concept would be retained in a divorce action where there is controversy between the parties on the question of divorce, child custody, property settlement, child support, or alimony; in other words, where one spouse wants to "contest" a divorce. Under these circumstances the present court procedure where the party seeking a divorce must show the other spouse is guilty of marital misconduct, in other words, prove that "grounds" exist for 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, then they could together petition the court for a "dissolution of marriage"; and neither would be required to prove the other party is guilty of anything, since there is no dispute over the divorce.

This dissolution of marriage procedure, suggested by a committee of domestic relations judges, avoids the hypocrisy inherent in our present system where, when both spouses agree on a divorce and all the collateral issues, but neither is guilty of anything, they must nevertheless "manufacture" grounds in order

to get a divorce. And no one is kidding anybody -- the judge knows what's going on, the lawyers know what's going on, but the law nevertheless requires the parties to engage in that kind of hypocrisy. Most who have experienced the sordid mess would agree with the sage that "if the law requires that, then the law is an ass."

The bill does include "no-fault" divorce in one limited situation where both parties have not agreed upon a divorce: that's the exception I mentioned earlier. Here, 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. All this provision really proposes is a statutory definition of a marriage which is beyond saving; where one spouse has absented himself for two years the possibility of reconciliation is remote indeed -- and the other spouse ought not be permitted to in effect enslave the absent spouse to an impossible marriage for the rest of his life.

Also recommended is adoption of guidelines to be used by courts in determining original custody of minor children and changes of child custody. The test to be used is the "best interest of the child", which means that for the first time, a man realistically can expect to be awarded custody where he is the better-suited custodian.

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.

In an effort to protect and strengthen the family unit, the bill includes provisions to beef-up court-ordered reconciliation procedures, and to require pre-marriage counseling for youthful applicants for marriage licenses.

Repealed by the bill are the archaic 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, regardless of how outrageous is the misconduct of the other spouse. Condonation means that a brief period of reconciliation, even bedding down for one night, 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 for 6 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.

Mr. Speaker, Ohio needs to reform its divorce laws by doing away with practices which by common consent are indefensible in the 20th century. But, we don't need to throw out the baby with the bath water by repealing those parts of our system which have weathered the tests of time. Neither do we need to jeopardize the family unit by allowing one party to a marriage to dissolve it on any pretext, with no heed paid to the effect his often rash decision will have on others.

I believe this bill strikes a proper balance: it humanizes procedures, but avoids the pitfalls and mistakes experienced by states which have adopted "no-fault" divorce. It tries to make some sense out of custody, child support, and alimony determinations. It gives our courts new tools to enable them to provide services to agonizing marriage partners who so desperately need help. And it attempts to better prepare our young people for marriage.

Mr. Speaker, Ladies and Gentlemen of the House, no bill can eliminate the problems society experiences when families are torn assunder by the darkening shadow of divorce. When two people who were once so close, can no longer reconcile their differences, then we can't realistically expect the courts and other outsiders to be in a better position to put the pieces back together again. But we can help: by humanizing the system, by extending the offer of healing services, and by better preparing our citizens for marriage. In those regards, HB 233 represents a giant step forward.