SB

318

SENATE COMMITTEE REPORT
First Committee of Referral

DATE: 2/16/98

FURTHER: Judiciary

Date of 5-Day Notice: 4/2/98
(in accordance with Uniform Rule 23)

DATE TURNED IN TO OFFICE: 4/7/98

Health, Education and Social Services Committee considered SENATE BILL NO. 318

"An Act relating to marriage; and amending Rules 54 and 56, Alaska Rules of Civil Procedure."

and recommends:

[~~]~~ be **replaced** with _____ CS SB 318 (HES)

[ ] adopt **previous** _____ CS _____ (_____)

[ ] attached amendment(s)

[ ] adopt Letter of Intent by _____ Committee

[ ] further referral to the _____ Committee

Senate Bill:
[~~]~~ same title
[ ] new title

House Bill:
[ ] same title
[ ] technical title
[ ] new: SCR*_____

SIGNING: DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
Lorew A. Leman	✓	J. Ellis	✓		
		Lyda Green	✓		
CHAIR:		CHAIR: Gary Wilken	✓		

NEW FISCAL NOTE(S):

Department	Date	Zero	Fiscal
SB H+SS	3/20/98		13.3
CSSB H+SS	4/6/98		8.3

PREVIOUS FISCAL NOTE(S):*

Department	Date	Zero	Fiscal

[ ] **APPROPRIATION -- no fiscal note**

***include fiscal notes accompanying Governor's bill**

0-LS1581\E
.Lauterbach
4/3/98

CS FOR SENATE BILL NO. 318( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR LEMAN

A BILL

FOR AN ACT ENTITLED

"An Act relating to marriage; and amending Rules 54 and 56, Alaska Rules of Civil Procedure."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** AS 25.05 is amended by adding a new section to read:

Sec. 25.05.015. Charter marriages. A charter marriage is a marriage authorized under AS 25.05.011 between a man and a woman who have

(1) agreed that the marriage between them will be a lifelong relationship;

(2) received counseling emphasizing the nature, purposes, and responsibilities of marriage;

(3) declared in their application for a marriage license their intent to enter into a charter marriage as required under AS 25.05.091(c); and

(4) have executed a declaration of intent to contract a charter marriage under AS 25.05.096.

* **Sec. 2.** AS 25.05.091 is amended by adding a new subsection to read:

(c) If an application under (a) of this section is for a charter marriage, the application must, in addition to the requirements of (a) and (b) of this section, include a statement substantially similar to the following:

We, (Name of Intended Husband) and (Name of Intended Wife), declare our intent to contract a charter marriage and, accordingly, have executed a declaration of intent to contract a charter marriage that is attached to this application.

* **Sec. 3.** AS 25.05 is amended by adding a new section to read:

Sec. 25.05.096. Declaration of intent for charter marriage. The declaration of intent to contract a charter marriage that is required under AS 25.05.091(c) must include

(1) a recitation by each party that the party

(A) intends to enter into a charter marriage governed by the laws of this state;

(B) understands and agrees that the marriage will be a lifelong relationship;

(C) has received counseling emphasizing the nature, purposes, and responsibilities of marriage;

(D) believes that the party's intended mate is a wise choice as a mate for life;

(E) has disclosed to the intended mate all facts that may adversely affect the intended mate's decision to enter into the charter marriage; and

(F) is committed to seeking marital counseling to strengthen the marital relationship if the parties have marital difficulties;

(2) an affirmation by the parties that both parties have received counseling from a priest, minister, rabbi, clerk of the religious society of friends, clergy member of a religious sect, psychologist, psychological associate, licensed clinical social worker, or marital and family therapist that included

(A) a discussion of the seriousness of charter marriage;

(B) communication of the fact that a charter marriage is a commitment for life; and

(C) receipt of a copy of AS 25.24.270 and 25.24.275;

(3) an attestation by the counselor that the parties were counseled as to the nature, purposes, and responsibilities of marriage; the attestation must be signed by the counselor but need not be notarized; and

(4) the notarized signatures of both parties.

*** Sec. 4.** AS 25.05.111 is amended by adding new subsections to read:

(c) If the parties to the marriage have complied with AS 25.05.015, the licensing officer shall indicate on the marriage license that the parties have entered into a charter marriage.

(d) If the parties to the marriage have not complied with AS 25.05.015, the licensing officer shall indicate on the marriage license that the parties have entered into a testament marriage.

*** Sec. 5.** AS 25.05.321 is amended by adding a new subsection to read:

(b) A marriage certificate for a charter marriage and copies of a marriage certificate for a charter marriage must include a designation that the parties entered into a charter marriage.

*** Sec. 6.** AS 25.24.050 is amended to read:

Sec. 25.24.050. Grounds for divorce. <u>(a) Except as provided in (b) of this section, a</u> [A] divorce may be granted for any of the following grounds:

(1) failure to consummate the marriage at the time of the marriage and continuing at the commencement of the action;

(2) adultery;

(3) conviction of a felony;

(4) wilful desertion for a period of one year;

(5) either

(A) cruel and inhuman treatment calculated to impair health or endanger life;

(B) personal indignities rendering life burdensome; or

(C) incompatibility of temperament;

(6) habitual gross drunkenness contracted since marriage and continuing for one year **before** [PRIOR TO] the commencement of the action;

(7) [REPEALED

(8)] incurable mental illness when the spouse has been confined to an institution for a period of at least 18 months immediately preceding the commencement of the action; the status as to the support and maintenance of the mentally ill person is not altered in any way by the granting of the divorce;

(8) [(9)] addiction of either party, subsequent to the marriage, to the habitual use of opium, morphine, cocaine, or a similar drug.

* **Sec. 7.** AS 25.24.050 is amended by adding a new subsection to read:

(b) A spouse to a charter marriage may obtain a judgment of divorce only upon proof of one of the following:

(1) the other spouse has committed adultery;

(2) the other spouse has physically abused the petitioning spouse;

(3) the other spouse has physically or sexually abused a child of the marriage or a child of one of the spouses;

(4) the other spouse has treated the petitioning spouse cruelly in a manner that impairs the health or endangers the life of the petitioning spouse;

(5) the other spouse has been convicted of a felony and has been sentenced to death or a term of incarceration of three years or more;

(6) the other spouse has been convicted of a felony under AS 11.41;

(7) the other spouse has abandoned the matrimonial domicile for one year and consistently refuses to return; or

(8) the spouses have been living separately and apart continuously without reconciliation for one year after the date of a judgment of separation from bed and board was signed under AS 25.24.270 and 25.24.275, except that, if there is a minor child of the marriage, the spouses must have been living separately and apart continuously without reconciliation for 18 months from the date the judgment of separation from bed and board was signed.

* **Sec. 8.** AS 25.24.110 is amended to read:

Sec. 25.24.110. Separate domicile or residence. In an action for divorce or

separation from bed and board, a spouse may acquire a separate residence or domicile from that of the other spouse without reference among other factors to misconduct or consent of the other spouse.

* **Sec. 9.** AS 25.24.130 is amended to read:

Sec. 25.24.130. Defenses to other divorce grounds. When the divorce action is for any of the grounds provided in **AS 25.24.050(a)(4) - (6) or (b)(4) or (7)** [AS 25.24.050(4) - (6)], the defense of procurement or that the defendant has been expressly forgiven may be made. When the divorce action is for the ground provided in **AS 25.24.050(a)(3) or (b)(5) or (6)** [AS 25.24.050(3)], the defense of procurement or that the defendant has been expressly forgiven or that the action was not brought within two years after conviction may be made.

* **Sec. 10.** AS 25.24.150(a) is amended to read:

(a) In an action for divorce**, separation from bed and board,** or [FOR] legal separation or for placement of a child when one or both parents have died, the court may, if it has jurisdiction under AS 25.30.020 [,] and is an appropriate forum under AS 25.30.050 and 25.30.060, during the pendency of the action [,] or at the final hearing or at any time thereafter during the minority of a child of the marriage, make, modify, or vacate an order for the custody of or visitation with the minor child that may seem necessary or proper, including an order that provides for visitation by a grandparent or other person if that is in the best interests of the child.

* **Sec. 11.** AS 25.24.200(a) is amended to read:

(a) **Except as provided in (f) of this section, a** [A] husband and wife together may petition the superior court for the dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament has caused the irremediable breakdown of the marriage;

(2) if there are unmarried children of the marriage under the age of 19 or the wife is pregnant, and the spouses have agreed on which spouse or third party is to be awarded custody of each minor child of the marriage and the extent of visitation, including visitation by grandparents and other persons if in the child's best

interests, and support to be provided on the children's behalf, whether the payments are to be made through the child support enforcement agency and the tax consequences of that agreement;

(3) the spouses have agreed as to the distribution of all jointly owned real and personal property, including retirement benefits, and the payment of spousal maintenance, if any, and the tax consequences resulting from these payments; the agreement must be fair and just and take into consideration the factors listed in AS 25.24.160(a)(2) and (4) so that the economic effect of dissolution is fairly allocated; and

(4) the spouses have agreed as to the payment of all unpaid obligations incurred by either or both of them, and as to payment of obligations incurred jointly in the future.

* **Sec. 12.** AS 25.24.200(b) is amended to read:

(b) <u>Except as provided in (f) of this section, a</u> [A] husband or wife may separately petition for dissolution of their marriage under AS 25.24.200 - 25.24.260 if the following conditions exist at the time of filing the petition:

(1) incompatibility of temperament, as evidenced by extended absence or otherwise, has caused the irremediable breakdown of the marriage;

(2) the petitioning spouse has been unable to ascertain the other spouse's position in regard to the dissolution of their marriage and in regard to the fair and just division of property, including retirement benefits, spousal maintenance, payment of debts, and custody, support, and visitation because the whereabouts of the other spouse is unknown to the petitioning spouse after reasonable efforts have been made to locate the absent spouse; and

(3) the other spouse cannot be personally served with process inside or outside the state.

* **Sec. 13.** AS 25.24.200 is amended by adding a new subsection to read:

(f) A spouse to a charter marriage may not petition for the dissolution of the marriage under AS 25.24.200 - 25.24.260.

* **Sec. 14.** AS 25.24 is amended by adding new sections to read:

Article 2A. Separation from Bed and Board in a Charter Marriage.

Sec. 25.24.270. Separation from bed and board. (a) A spouse to a charter marriage may obtain a judgment of separation from bed and board only on proof of having obtained personal counseling within the six months preceding the date of filing the petition for separation of bed and board and proof that

(1) the spouses have been living separately and continuously apart without reconciliation for one year; or

(2) the other spouse has

(A) committed adultery;

(B) been convicted of a felony under AS 11.41 or convicted of an offense under a law in another jurisdiction with elements substantially similar to a felony under AS 11.41;

(C) abandoned the matrimonial domicile for one year and consistently refuses to return;

(D) physically abused the petitioning spouse;

(E) physically or sexually abused a child of the marriage or a child of one of the spouses;

(F) been habitually intemperate in the consumption of alcohol or in the use of drugs;

(G) treated the petitioning spouse cruelly in a manner that impairs the health or endangers the life of the petitioning spouse; or

(H) inflicted on the petitioning spouse personal indignities rendering life burdensome.

(b) During the pendency of an action for separation from bed and board under this section, the court may, upon application and in appropriate circumstances, issue orders that are authorized under AS 25.24.140 during the pendency of divorce proceedings.

(c) The court may not make a judgment on the pleadings, except for a default judgment, or grant a summary judgment in an action for separation from bed and board under this section.

Sec. 25.24.275. Effect of decree. A decree of separation from bed and board issued under AS 25.24.270

(1) does not dissolve the bond of matrimony; the separated husband and wife are not at liberty to marry again;

(2) puts an end to the parties' conjugal cohabitation and to the common concerns that existed between them;

(3) remains in effect until either reconciliation or divorce.

* **Sec. 15.** COURT RULE CHANGE. AS 25.24.270(c), enacted by sec. 14 of this Act, has the effect of amending Rules 54 and 56, Alaska Rules of Civil Procedure, by prohibiting a court from making a judgment on the pleadings, except for a default judgment, or granting a summary judgment in an action for separation from bed and board in a charter marriage.

* **Sec. 16.** AS 25.05.111(d), enacted by sec. 4 of this Act, applies to marriage licenses issued on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. CS SB 318 (HES)

Revision Date:
Title: An act relating to charter marriages
Sponsor: Leman
Requestor: Senate HESS

Dept. Affected: Health and Social Services
BRU: State Health Services
Component: Bureau of Vital Statistics
COMPONENT SERIAL NO. 961
See also (SN#):

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY99	FY00	FY01	FY02	FY03	FY04
PERSONAL SERVICES						
TRAVEL	2.0					
CONTRACTUAL	2.5					
SUPPLIES	3.8					
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	8.3	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES						
CHANGES IN REVENUES ( )						

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	8.3					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (please specify)						
TOTAL	8.3	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY98) cost: $0.0

ANALYSIS: (Attach a separate page if necessary)

Line 200 - $2.0 is needed for travel to Anchorage and Fairbanks to conduct training for the new marriage processing requirements.

Line 300 - $2.5 for the revision of the bureau's computer programs to accommodate the new certificate design.

Line 400 - $3.8 for redesign and reprint of marriage applications and licenses, and for the design and printing of the declarations for charter marriages.

Prepared by: Peter M. Nakamura, MD, MPH
Division: Public Health
Phone: (907) 465-3090
Date: 04/06/98

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services
Date: 4/6/98

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SENATOR LOREN LEMAN

Northwest Anchorage

716 W 4th Ave, Suite 520, Anchorage, AK 99501 (907) 258-8189
Web Site: http://www.akrepublicans.org/Leman.htm

Session: State Capitol, Juneau, AK 99801 (907) 465-2095
Email: Senator_Loren_Leman@legis.state.ak.us

Sponsor Statement – Senate Bill 318

"An Act relating to marriage; and amending Rules 54 and 56, Alaska Rules of Civil Procedure."

SB 318 creates a new option for persons seeking a marriage license from the state. Couples can receive a license for a "testament marriage," which is already provided for under existing statute, or they can apply to receive a license for a "charter marriage," sometimes referred to as "covenant marriage."

The two options offer each partner significantly different rights and responsibilities. A charter marriage is a union more difficult to enter into, and also more difficult to dissolve. Couples seeking a charter marriage must receive premarital counseling and sign a declaration of intent stating an understanding that their marriage will be a lifelong relationship. The declaration also includes a statement that each partner has disclosed "all facts that may adversely affect the intended mate's decision to enter into a charter marriage." The couple commits to seeking counseling in the event of marital difficulties.

In contrast to the existing testament marriage law, a spouse in a charter marriage may obtain a judgment of divorce only under four conditions: adultery committed by the other spouse; felony conviction by the other spouse resulting in a sentence of three or more years incarceration; abandonment by the other spouse lasting at least one year; or if the two spouses have been living apart for more than a year following a legal separation (18 months if the couple has a minor child). Certain other grounds for divorce allowed under existing law, such as "incompatibility of temperament," are insufficient for granting a divorce in a charter marriage.

Spouses in a charter marriage enjoy rights and bear responsibilities not recognized by the existing testament marriage law. Most couples believe marriage is much more than a business partnership, but under existing no-fault divorce law the marriage contract is treated as much less than a business partnership. Charter marriage provides couples the option of entering into a marriage contract that is at least as binding as a business contract.

Establishing two types of marriage contracts under state law will provoke useful discussions among engaged couples, since every couple will have to decide which option is best for them. If couples make more educated decisions about marriage, it will likely result in fewer failed marriages and fewer broken families. Alaska's divorce rate is higher than the national average, with 5.1 divorces per year for every 1,000 people, compared to the national rate of 4.1 per 1,000 (statistics from 1995).

Many social problems the Legislature has struggled to address in recent years have been linked to broken marriages and families, including domestic violence, teenage pregnancy, drug and alcohol abuse, and increased juvenile crime. To the extent charter marriage law succeeds in keeping some marriages intact, or in preventing some marriages from occurring in the first place, it will do more to mitigate these social pathologies than any government program could ever hope to accomplish.

Prepared by Mike Pauley, Staff Aide to Senator Loren Leman (465-3841)
Last updated: February 19, 1998

Summary of Changes in Proposed CS for Senate Bill 318

[Page & line numbers refer to the original SB 318 – draft 0-LS1581\A]

1) Page 2, lines 1 –14: all material deleted.

This change was made at the request of the Bureau of Vital Statistics. Paragraph (b) provided that couples who were already married under existing law could "upgrade" to a charter marriage. A representative from the Bureau of Vital Statistics testified that the agency cannot change the terms of marriage licenses for Alaska couples who were married in other states. Only couples married under Alaska law would be able to "upgrade" to a charter marriage. This could create a legal problem on equal protection grounds.

2) Page 2, line 28: after "charter marriage" insert: **governed by the laws of this state**

This is a technical change to make the bill consistent with the change discussed under (1) of this document.

3) Page 3, line 11: after "psychological associate" insert: **licensed clinical social worker**

This change adds "licensed clinical social worker" to the list of persons (e.g., clergy member, marital therapist) authorized to provide the premarital counseling required before a couple can enter into a charter marriage. This change was made at the suggestion of the Alaska Chapter of the National Association of Social Workers.

4) Page 4, beginning on line 24: new paragraphs added under subsection (b)

The proposed CS adds four new conditions to the "grounds for divorce" allowed under a charter marriage:

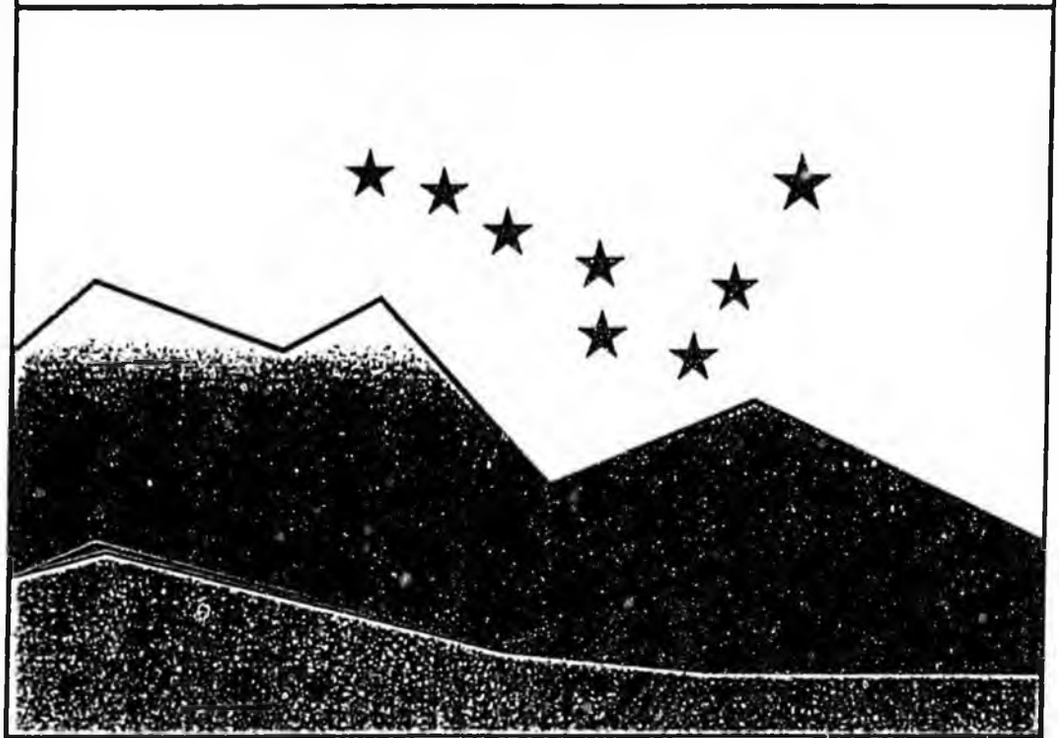
1) **the other spouse has physically abused the petitioning spouse;**
2) **the other spouse has physically or sexually abused a child of the marriage or a child of one of the spouses;**
3) **the other spouse has treated the petitioning spouse cruelly in a manner that impairs the health or endangers the life of the petitioning spouse;**
4) **the other spouse has been convicted of a felony under AS 11.41**;

These changes were made at the suggestion of the Alaska Women's Political Caucus to address the concern about spouses who are victims of domestic violence.

Prepared by Mike Pauley, Office of Senator Loren Leman (465-3841)
April 6, 1998

ALASKA

BUREAU OF VITAL STATISTICS



1995 ANNUAL REPORT

TONY KNOWLES
Governor

STATE OF ALASKA

STATE of ALASKA
DEPARTMENT of HEALTH and SOCIAL SERVICES

KAREN PERDUE
Commissioner

DEPT. OF HEALTH & SOCIAL SERVICES

MARRIAGE AND DIVORCE

5,514 MARRIAGES
3,095 DIVORCES

MARRIAGES

There were 5,514 marriages performed in Alaska in 1995, involving 4,990 Alaska resident brides and 4,968 Alaska resident grooms. This is a decrease of 0.8% from the 5,557 marriages which occurred in 1994.[1] The crude marriage rate in 1995 was 9.1 marriages per 1,000 residents, down from 9.2 marriages per 1,000 in 1994.

Marriage rates vary widely between census areas in Alaska. For instance, the lowest rate of 2.2 marriages per 1,000 residents was in the Aleutians East census area. The highest rate of 12.7 marriages per 1,000 residents was in the Ketchikan Gateway Borough census area.

The average age for brides was 29.9 and the average age for grooms was 32.5. It was the first marriage for 55.7 percent of brides and 59.0 percent of grooms.

June, July and August were the months with the most marriages with 682, 711, and 685 marriages respectively. January had the fewest marriages with only 303.

There were 378 marriages in which neither the bride nor the groom was a resident of Alaska, a 9.2 percent increase over the 346 non-resident marriages in 1994. The Anchorage census area had the greatest number of non-resident marriages with 114; however, Juneau had the second largest number of non-resident marriages with 65, 19% of all marriages occurring in Juneau.

1 Crondahl, J., Mitchell, P., Zenk, A.E., Anderson, C., Walden, S. and Juan, I. Department of Health and Social Services, Division of Public Health, *Alaska Bureau of Vital Statistics 1994 Annual Report*, Juneau, Alaska, June 1996, p. 67.

TABLE 4.1A MARRIAGES AND CRUDE MARRIAGE RATES BY CENSUS AREA OF OCCURRENCE, ALASKA, 1995

CENSUS AREA	OCCURRENCES		RESIDENT GROOMS		RESIDENT BRIDES	
	MARRIAGES	CRUDE RATE	MARRIAGES	SEX-SPECIFIC RATE	MARRIAGES	SEX-SPECIFIC RATE
ALEUTIANS EAST	5	2.2	8	6.6	8	7.9
ALEUTIANS WEST	39	6.5	39	11.1	38	15.6
ANCHORAGE BOROUGH	2,301	9.1	2,155	16.4	2,192	17.9
ANGOON-HOONAH-SKAGWAY	41	11.0	25	12.6	29	16.6
BETHEL	89	5.8	92	11.5	96	13.1
BRISTOL BAY BOROUGH	11	9.1	12	18.5	11	19.8
DENALI BOROUGH	19	10.6	14	14.5	13	15.7
DILLINGHAM	27	6.2	30	13.1	31	14.9
FAIRBANKS NORTH STAR BOROUGH	854	10.4	757	17.5	760	19.7
HAINES BOROUGH	22	9.6	16	13.6	14	12.5
JUNEAU BOROUGH	340	11.8	269	18.3	270	19.2
KENAI PENINSULA BOROUGH	491	10.7	401	16.7	387	17.5
KETCHIKAN GATEWAY BOROUGH	187	12.7	155	20.0	152	21.6
KODIAK ISLAND BOROUGH	114	7.8	111	13.8	108	16.3
LAKE AND PENINSULA	6	3.3	8	8.3	6	7.0
MATANUSKA-SUSITNA BOROUGH	461	9.4	388	15.2	393	16.7
NOME	50	5.6	53	11.2	52	12.5
NORTH SLOPE BOROUGH	34	4.9	41	11.3	40	12.1
NORTHWEST ARCTIC BOROUGH	33	5.0	32	9.3	33	10.5
PRINCE OF WALES-OUTER KETCHIKAN	45	6.7	50	13.4	49	16.2
SITKA BOROUGH	85	9.6	68	14.9	66	15.3
SOUTHEAST FAIRBANKS	41	6.3	38	11.0	33	10.9
VALDEZ-CORDOVA	86	8.2	72	12.9	78	16.0
WADE HAMPTON	23	3.5	27	7.8	27	8.5
WRANGELL-PETERSBURG	67	9.3	61	15.9	61	18.1
YAKUTAT	3	3.9	2	4.8	2	5.7
YUKON-KOYUKUK	40	6.3	44	12.6	41	14.3
TOTAL	5,514	9.1	4,968	15.8	4,990	17.3

TABLE 4.1B MARRIAGES BY NATIVE REGIONAL CORPORATION OF OCCURRENCE, GROOM'S RESIDENCE, AND BRIDE'S RESIDENCE, ALASKA, 1995

NATIVE REGIONAL CORPORATION	OCCURRENCES	RESIDENT GROOMS	RESIDENT BRIDES
AHTNA INC.	21	14	16
ALEUT CORP.	44	47	46
ARCTIC SLOPE CORP.	34	41	40
BERING STRAITS CORP.	50	53	52
BRISTOL BAY CORP.	42	47	46
CALISTA CORP.	112	119	123
CHUGACH NATIVES INC.	124	94	95
COOK INLET REG CORP.	3,197	2,911	2,941
DOYON LTD.	953	853	847
KONIAG INC.	114	111	108
NANA REGIONAL CORP.	33	32	33
SEALASKA CORP.	790	646	643
TOTAL	5,514	4,968	4,990

TABLE 4.2 MARRIAGES BY CENSUS AREA OF BRIDE'S RESIDENCE, AND BY CENSUS AREA OF GROOM'S RESIDENCE, ALASKA, 1995

BRIDE'S RESIDENCE	GROOM'S RESIDENCE														
	ALE	ALW	ANC	AHS	BET	BRB	DEN	DIL	FBK	HNS	JUN	KPB	KET	KOD	LKP
ALEUTN EAST	8														
ALEUTN WEST		37													
ANCHORAGE		1	2,058						5		4	16	1	3	1
ANG-HNH-SKG				25							1				
BETHEL			5		88	1		1							
BRISTOL BAY						10			1						
DENALI							10								
DILLINGHAM					1			28							1
FAIRBANKS			1						711						
HAINES										14					
JUNEAU			4								256		1		
KENAI PEN			4				1		2			371			
KETCHIKAN													149		
KODIAK			2									1		101	
LAKE-PENIN															6
MAT-SU			19									5			
NOME			1		1										
NORTH SLOPE			2												
NW ARCTIC							1								
PRINCE-WALES															
SITKA											1		1		
SE FAIRBANKS															
VALDEZ-CORDV			3								1			1	
WADE HAMPTON															
WRANGELL-PBG			1									1			
YAKUTAT															
YUKON-KOY					1										
OUT OF STATE		1	54		1	1	2	1	38	2	6	7	3	6	
TOTAL	8	39	2,155	25	92	12	14	30	757	16	269	401	155	111	8

Continued →

TABLE 4.2 CONTINUED

BRIDE'S RESIDENCE	GROOM'S RESIDENCE													TOTAL
	MSB	NOM	NSB	NAB	POW	SIT	SEF	VAL	WAH	WRF	YAK	YUK	OOS	
ALEUTN EAST														8
ALEUTN WEST													1	38
ANCHORAGE	18	1	1	1			2	1		1			78	2,192
ANG-HNH-SKG										1			2	29
BETHEL									1					96
BRISTOL BAY														11
DENALI	1						1						1	13
DILLINGHAM													1	31
FAIRBANKS						1	1					3	43	760
HAINES														14
JUNEAU						1							8	270
KENAI PEN	2											1	6	387
KETCHIKAN													3	152
KODIAK													4	108
LAKE-PENIN														65
MAT-SU	359												10	393
NOME		48											2	52
NORTH SLOPE			37										1	40
NW ARCTIC		1	1	30										33
PRINCE-WALES					47								2	49
SITKA						63							1	66
SE FAIRBANKS							31	1					1	33
VALDEZ-CORDV					1			70					1	78
WADE HAMPTON									26				1	27
WRANGELL-PBG										57			2	61
YAKUTAT											2			2
YUKON-KOY												40		41
OUT OF STATE	8	3	2	1	2	3	3			2			378	524
TOTAL	388	53	41	32	50	68	38	72	27	61	2	44	546	5,514

TABLE 4.3 MARRIAGES BY AGE OF GROOM AND AGE OF BRIDE, ALASKA, 1995

AGE OF BRIDE	AGE OF GROOM									TOTAL
	15-19	20-24	25-29	30-34	35-39	40-44	45-49	50-54	55+	
15-19	152	323	68	20	4	3	1			571
20-24	56	733	452	146	42	12	7	4	1	1,453
25-29	3	157	417	312	136	49	31	7	1	1,113
30-34	2	34	141	273	194	107	41	8	11	811
35-39		10	55	116	180	157	70	32	13	633
40-44		4	11	52	80	118	88	40	25	418
45-49			4	18	36	41	79	58	41	277
50-54			1	4	9	16	28	35	48	141
55+							7	8	82	97
TOTAL	213	1,261	1,149	941	681	503	352	192	222	5,514

DIVORCES

There are three administrative methods for terminating a marriage in Alaska:

- **Divorce** is an adversarial process in which the terms of the decree are decided by the courts based upon evidence, testimony, and in accordance with Alaska statutes. These terms include disposition of property, living arrangements, and custody and support for any minor children involved. In 1995, there were 1,004 divorces granted in Alaska. This is a 2.9 percent decrease from 1994.

- A **dissolution** of marriage is a cooperative agreement between the husband and wife in which both parties agree to the terms for distribution of property, living arrangements, and support and custody of minor children. The agreement is reviewed by the court which can amend it, if it determines the terms are not equitable. In 1995, there were 2,079 dissolutions of marriage in Alaska. This is a 7.8 percent decrease from 1994.
- An **annulment** is a judicial pronouncement declaring a marriage never existed. In 1995, there were 12 annulments granted in Alaska. This is a 42.9 percent decrease from 1994.

When not otherwise stated, the term *divorce* refers to all three methods collectively.

In 1995, the total of 3,095 divorces, dissolutions, and annulments resulted in a crude divorce rate of 5.1 divorces per 1,000 population. This is a 7.3 percent decrease from the crude divorce rate of 5.5 in 1994.[2]

TABLE 4.4 DIVORCES, DISSOLUTIONS AND ANNULMENTS BY JUDICIAL DISTRICT, ALASKA, 1995

JUDICIAL DISTRICT OF DECREE	DECREE TYPE			TOTAL
	DIVORCE	DISSOLUTION	ANNULMENT	
01-FIRST	133	303	1	437
02-SECOND	11	21		32
03-THIRD	691	1,337	9	2,037
04-FOURTH	169	418	2	589
TOTAL	1,004	2,079	12	3,095

2 Crondahl, J., Mitchell, P., Zenk, A.E., Anderson, C., Walden, S. and Juan, I. Department of Health and Social Services, Division of Public Health, *Alaska Bureau of Vital Statistics 1994 Annual Report*, Juneau, Alaska. June 1996. p. 79.

TABLE 4.5 DIVORCES AND DIVORCE RATES FOR WOMEN AND MEN BY CENSUS AREA OF RESIDENCE, ALASKA, 1995

CENSUS AREA	WOMEN		MEN	
	NUMBER	RATE	NUMBER	RATE
ALEUTIANS EAST	5	4.9	6	4.9
ALEUTIANS WEST	10	4.1	15	4.3
ANCHORAGE BOROUGH	1,215	9.9	1,113	8.5
ANGOON-HOONAH-SKAGWAY	12	6.9	17	8.5
BETHEL	22	3.0	22	2.8
BRISTOL BAY BOROUGH			2	3.1
DENALI BOROUGH	4	4.8	3	3.1
DILLINGHAM	7	3.4	11	4.8
FAIRBANKS NORTH STAR BOROUGH	446	11.5	416	9.6
HAINES BOROUGH	12	10.7	5	4.2
JUNEAU BOROUGH	173	12.3	165	11.3
KENAI PENINSULA BOROUGH	222	10.0	220	9.2
KETCHIKAN GATEWAY BOROUGH	93	13.2	75	9.7
KODIAK ISLAND BOROUGH	56	8.5	62	7.7
LAKE AND PENINSULA	2	2.3	3	3.1
MATANUSKA-SUSITNA BOROUGH	214	9.1	212	8.3
NOME	14	3.4	18	3.8
NORTH SLOPE BOROUGH	6	1.8	11	3.0
NORTHWEST ARCTIC BOROUGH	10	3.2	9	2.6
PRINCE OF WALES-OUTER KETCHIKAN	30	9.9	27	7.2
SITKA BOROUGH	44	10.2	41	9.0
SOUTHEAST FAIRBANKS	16	5.3	18	5.2
VALDEZ-CORDOVA	33	6.8	37	6.6
WADE HAMPTON	5	1.6	6	1.7
WRANGELL-PETERSBURG	39	11.6	40	10.4
YAKUTAT				
YUKON-KOYUKUK	10	3.5	9	2.6
CENSUS AREA UNKNOWN	11		20	
TOTAL	2,711	9.4	2,583	8.2

TABLE 4.6 DIVORCES INVOLVING CHILDREN UNDER THE AGE OF 18 YEARS BY JUDICIAL DISTRICT, ALASKA, 1995

JUDICIAL DISTRICT	CHILDREN UNDER 18			
	NO		YES	
	DIVORCES	PERCENT	DIVORCES	PERCENT
FIRST	209	47.8	228	52.2
SECOND	12	37.5	20	62.5
THIRD	976	47.9	1,061	52.1
FOURTH	297	50.4	292	49.6
TOTAL	1,494	48.3	1,601	51.7

Marriage bill for serious couples

By MARK SABBATINI
THE JUNEAU EMPIRE

A bill allowing people to opt for "charter marriages" requiring pre-marital counseling and limiting when divorce can occur has been introduced by a Fairbanks legislator.

REP. PETE KELLY

House Bill 390 is similar to a law enacted last year in Louisiana allowing people to choose between conventional and "higher tier" marriages, said Rep. Pete Kelly, a Republican. He said the alternative measure will force couples to think more carefully about the commitment they are making and hopefully lead to fewer divorces.

"If a couple comes to city hall to get their marriage license this will force them into a meaningful dialogue right off the bat: 'What kind of marriage do you want?' " he said today. "If they can't agree on that maybe they won't get married in the first place."

Couples wanting a charter marriage must seek counseling and sign an agreement stating they understand the marriage is a lifelong commitment, according to the bill. Each person must also disclose "all facts that may adversely affect the intended mate's decision to enter into the charter marriage."

Divorce from a charter marriage is allowed only if a spouse commits adultery, has been convicted of a felony and is serving three or more years in prison, abandons the house for more than a year and refuses to return, or has been living separately for a year. If the couple has children under 18, the couple must live separately for at least 18 months before divorcing.

Separation is permitted only if the couple has obtained at least six months of counseling, or for circumstances such as adultery, assault, substance abuse or

Please turn to Marriage, Page 8

Marriage...

Continued from Page 1

inflicting "indignities rendering life burdensome."

Couples married in traditional ceremonies can renew their vows using the charter provisions.

Royce Christmas, pastor of Glacier Valley Baptist Church, said he has not seen Kelly's bill, but supports the concept. Christmas said he requires couples to go through at least two counseling sessions, and prefers more, before he performs a marriage for them.

"It makes them sit down and look at the cold hard facts of what this relationship is going to require at the outset," he said. "It blows the rainbow of romance aside for a moment maybe and puts reality there."

He said requiring counseling before a divorce probably doesn't hurt anything, but he doesn't think it preserves troubled marriages in most cases.

The restrictions on divorce troubles some advocates for women, who fear wives might have difficulty escaping abusive husbands.

"One of our fears is, 'Would this be used in violent relationships?' " said Caren Robinson, a former Juneau lawmaker and spokeswoman for the Alaska Women's Lobby.

Alaska had five divorces per 1,000 people in 1995, compared to 4.4 per 1,000 nationally. The national rate in 1996 was 4.3 per 1,000, equating to a 2 percent drop and representing the lowest rate in more than 20 years.

Louisiana's Covenant Marriage Act took effect last Aug. 15, said Tracy Lemoine, an assistant to Rep. Tony Perkins, a Republican lawmaker who introduced the bill there.

It got off to a slow start. Only 26 covenant licenses were sold in the month after the law took effect. Louisiana issues about 3,000 marriage licenses in a typical summer month.

Lemoine said the state's vital statistics office is lagging behind on tracking who has taken advantage of the new law. She said she expects the number of couples in charter marriages to skyrocket this weekend when more than 200 churches participate in a "covenant weekend" where couples can renew their vows under the new law.

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The Associated Press contributed to this report.

Fairbanks Daily News-Miner • March 4, 1998

Stronger marriages needed

Legislature should offer the option

Guest Opinion

By DEBBIE JOSLIN

The '60s brought us the concept of "free love." The '70s brought us "no fault" divorce and told us how resilient kids are in recovering from divorce. Now in the '90s we are finding out that we bought into a lie.

■ Since "no-fault" divorce was first introduced in 1970, the national divorce rate has risen 279 percent, resulting in 352 percent more kids living with a divorced parent. The majority of those children are living with their mothers. (Statistical Abstract of the U.S., quoted in Focus on the Family magazine, January 1995 edition.)

■ The national statistics on children from broken homes are staggering. Fatherless daughters are 111 percent more likely to have children as teenagers, 164 percent more likely to given birth to an illegitimate child and 92 percent more likely to fail in their own marriages. Fatherless sons are 300 percent more likely to be incarcerated in state juvenile facilities. Seventy percent of all young men incarcerated in the United States come from fatherless homes. Fatherless children are twice as likely to drop out of schools and are failing school not because they are intellectually or physically impaired but because they are emotionally incapacitated. (Statistics from "The Five Key Habits of Smart Dads" by Paul Lewis, quoting from Barbara Whitehead in the April 1993 Atlantic Monthly; Myron Magnet in Fortune magazine, Aug. 10, 1992, and; Nancy Gibbs in Time, June 28, 1993.)

■ According to the National Center of Health Statistics, fatherless children are from 100 to 200 percent more likely to have emotional and behavioral probelsm. The most reliable predictor of crime is neither poverty nor race but growing up fatherless.

We need to turn this situation around and quick! The breakdown of the family is causing the breakdown of our society and our country.

In an attempt to provide a solution to the disintegration of the family, the Alaska Legislature has been introduced to the concept of charter marriage in HB 390 and its companion bill SB 318. With this legislation, couples contemplating marriage would have a choice between the existing "no fault" (testament) marriage and the new charter marriage. Those choosing a charter marriage will be making a higher level of commitment that in the "no fault" marriage.

There are some similarities between the proposed charter marriage and the marriages couples entered into 30 years ago, with some notable differences. Premarital counseling is a requirement of charter marriage contracts. In a charter marriage, the engaged couple must execute a "declaration of intent" to enter into a charter marriage and agree that the marriage will be a lifelong relationship. The must obtain premarital counseling emphasizing the nature, purposes and responsibilities of marriage. That in itself serves to give the marriage a much better start. Who hasn't seen a couple get married who seemed doomed from the start and thought it too bad they did not get counseling before entering into an ill-advised marriage? The fact that both parties must agree on this form of marriage is a plus, as it helps assure that they both have the same level of commitment to the relationship. I would certainly think twice if my intended were not willing to make the same level of commitment to the marriage contract.

You may ask what significant effect premarital counseling will have after the romance wears out. An answer to that question can be found in several cities in the Lower 48 where the clergy have banded together and required premarital counseling before performing marriage ceremonies. These cities have shown a marked decrease in the number of divorces.

Just as it is harder to enter a charter marriage, it is harder to get out of one. Not impossible, just harder. Isn't that how it should be? If you truly meant it when you said you intended for this to be a lifelong relationship, then you wouldn't want it ended unless that was the only option left. To obtain a legal separation, they must show proof of having had personal counseling within the six months preceding the date of filing. Divorces are granted only after a finding of fault by the other spouse, such as adultery, conviction of a felony, abandonment for one year, physical abuse of the spouse, physical or sexual abuse of a child in the marriage, being habitually intemperate in the consumption of alcohol or in the use of drugs, or inflicting upon the spouse personal indignities rendering life burdensome. Divorce for other grounds, such as incompatibility, would only be granted after a significant waiting period, as well as additional counseling. The net result of this legislation will be that couples who enter into a charter marriage had better think it through clearly and mean what they say when they say "I do." The bones of matrimony will be stronger and harder to break. This is good news for families and especially for children in families.

It has been said that we cannot legislate morality. However, we have done a great job of legislating immorality for the last 25 years. "No fault" marriage is a prime example. The idea of "choice" has been given such high ranking in our society that it seems this is a bill that should please everyone. The state is not mandating either one but is allowing us to choose. Our legislators deserve a big thank you for addressing one of the biggest problems in our state.

Debbie Joslin is chairwoman of the District 35 Republican Party of Alaska. She lives in Delta Junction with her husband, Steven, and their three children. She notes that her father has married five times and divorced four; her mother has married and divorced three times.

FAMILY RESEARCH COUNCIL
In Focus

STATE-BY-STATE DIVORCE RATES: MASSACHUSETTS LOWEST; NEVADA HIGHEST

Massachusetts and Connecticut rank first and second, respectively, for having the lowest divorce rates in the nation, according to new 1994 divorce data from the National Center for Health Statistics. Both states experienced a moderate drop in divorce rates between 1992 and 1994 to remain at the top of the list. Massachusetts fell from 2.8 in 1992 to 2.4 in 1994, while Connecticut fell from 3.1 to 2.8.

Nevada once again had the highest divorce rate in the country, even though it experienced the most marked drop in divorce rates during the two-year period. Nevada fell from 11.4 in 1992 to 9.0 in 1994.

The divorce rate per 1,000 population for the entire United States was 4.6 in 1994, down from 4.8 in 1992. Generally, rates were lower in the Northeast and Midwest and higher in the West and Southeast.

Only four states (New York, South Dakota, Missouri, and Mississippi) experienced a rise in divorce rates between 1992 and 1994. Eight other states held the same rate during 1992 and 1994. Vermont, with a drop in the divorce rate from 5.2 to 4.0, rose in rank from 27th to a tie for 15th position.

1994 Numbers and Rates for Each State

Rank	State	Number	Rate	Rank	State	Number	Rate
1	Massachusetts	14,530	2.4	28	Delaware	3,385	4.8
2	Connecticut	9,095	2.8	29	Montana	4,153	4.9
3	New Jersey	23,899	3.0	30	Missouri	26,324	5.0
4	Rhode Island	3,231	3.2		West Virginia	9,179	5.0
5	New York	59,195	3.3	32	North Carolina	36,292	5.1
	Pennsylvania	40,040	3.3		Colorado	18,795	5.1
7	Wisconsin	17,478	3.4	34	Georgia	37,001	5.2
	North Dakota	2,201	3.4	35	Oregon	16,307	5.3
9	Maryland	17,439	3.5	36	Texas	99,073	5.4
10	Minnesota	16,217	3.6	37	Alaska	3,354	5.5
	Louisiana	***	3.6	38	Washington	29,976	5.6
12	Illinois	43,398	3.7	39	Mississippi	15,212	5.7
13	District of Columbia	2,244	3.9	40	Kentucky	22,211	5.8
	Iowa	10,930	3.9		Arizona	23,725	5.8
15	Nebraska	6,547	4.0	42	Florida	82,963	5.9
	Vermont	2,316	4.0	43	New Mexico	9,882	6.0

17	Michigan	38,727	4.1	44	Idaho	7,075	6.2
18	South Dakota	3,022	4.2		Alabama	26,116	6.2
	South Carolina	15,301	4.2	46	Indiana	***	6.4
	Hawaii	4,979	4.2	47	Wyoming	3,071	6.5
21	California	***	4.3	48	Tennessee	34,167	6.6
22	Maine	5,433	4.4	49	Oklahoma	21,855	6.7
	New Hampshire	5,041	4.4	50	Arkansas	17,458	7.1
24	Ohio	49,968	4.5	51	Nevada	13,061	9.0
25	Virginia	30,016	4.6				
26	Kansas	12,093	4.7		***United States***	**1,191,000**	4.6
	Utah	8,999	4.7				

Source: Monthly Vital Statistics Report, Vol 43, No. 13, October 23, 1995, Centers for Disease Control and Prevention/National Center for Health Statistics. Note: All statistics are for 1994 except: California (1987), Indiana (1987), and Louisiana (1983). Rates are per 1,000 population in specified area. All data are by State of occurrence rather than by State of residence.

FAMILY RESEARCH COUNCIL
In Focus

DIVORCE AND CHILDREN

The divorce rate has risen steadily over the past few decades. In 1960 there were 393,000 divorces granted. Today, between 1.1 and 1.2 million divorces are granted each year. Three-fifths of these divorces involve parents with children under the age of eighteen.

- According to a 1993 survey by the Family Research Council, 94 percent of all Americans believe divorce has a negative effect on children.
- According to a ten-year study by Judith Wallerstein, divorce is almost always more traumatic for the children than the parents, and the effects are long lasting.
- Wallerstein found that children of divorced parents usually receive less discipline compared to children from intact families, suffer worse health, tend to display more antisocial behavior, suffer from emotional and sexual problems, and have a more negative outlook on life.
- Research by Peter Hill, a professor at St. George's Hospital Medical School in London, found that adolescents from divorced families are more likely to have behavior problems, psychological stress and academic trouble.
- The 1987 American Chicle Poll found that four out of ten children from age eight to seventeen say one of their worst fears is that their parents might divorce.
- According to a USA Today poll, 54 percent of adults think divorce should be made harder to obtain, and 76 percent of children agree. Three out of four children also think that most couples who have divorced didn't try hard enough to save their marriages.
- Children raised in divorced families typically view marriage less favorably, according to a 1992 study done by Marlene Jennings, Connie Salts, and Thomas Smith, Jr. from Auburn University.
- According to research by Dr. Silvio Silvestri from the Center for Adult Children of Divorce, female children of divorced families are five times more likely to go through a divorce themselves. Male children are three times more likely to divorce.

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FAMILY RESEARCH COUNCIL

Perspective

A HARD LOOK AT NO-FAULT DIVORCE

by

David M. Wagner

Let me make a statement that ought to shock, but won't: There's a tremendous amount of divorce in the United States today. The ratio of divorces to marriages rose from a hair over 25% in 1960 to almost 50% in 1985; the 50% mark was reached and exceeded by some of the intervening years. Has our divorce law reflected -- or even, helped cause -- this trend?

Any society's divorce laws reflect what it thinks the family is. In this country, we've gone from considering the family a haven from the harsh and acquisitive world of the marketplace, to considering it merely a tool -- and not always a good one -- for the enhancement of the individual lives of its members. American divorce law reflects this change.

The key to the American divorce revolution has been the "no fault" principle. The law used to require evidence of "fault," such as adultery, cruelty, or desertion, before divorce would be granted. The fault requirement had its roots in the view of marriage as sacramental and indissoluble.

It is sometimes said that the modern era has transformed marriage from a status to a contract. But, in fact, no-fault divorce has made the marriage bond less reliable than almost any business contract. Here's how.

Classic Anglo-American contract law holds that a promise that does not in any way limit the promisor's future conduct is no promise at all, and a contract based on such a promise is no contract at all (it may be called an "illusory contract"). An example might be, "I promise to deliver 100 widgets to your warehouse next week, provided I still feel like it." Now suppose the promisor then adds: "If I don't feel like delivering the widgets, I will instead send you $1." In combination, those two sentences add up to a valid promise, because while the promisor is still free to withhold the widgets, he is not free to withhold them and still avoid paying the dollar.

The trend of modern divorce law is to turn the wedding vow into the legal equivalent of the "promise" to deliver the widgets. Legal incidents and sequelae of divorce -- maintenance payments, child support, the sheer hassle of the process -- function somewhat like the $1 promise. But the trend has been toward removing the barriers to divorce and lightening the burdens of its incidents and sequelae. Present-day divorce law reflects the modern culture's horror of limiting one's future.

The demand for permanent non-encumbrance of the isolated individual turns up also in the proposals of leading family law scholars. For instance, Professor Herma Hill Kay defines marriage as depending on "the continuing existence of a mutual loving commitment between the spouses...." She concludes that "once the marriage is no longer viable, neither its legal existence nor its related incidents should become weapons

used to obtain revenge for the breakdown or to extort a favorable settlement." By requiring "mutual loving commitment" before recognizing a commitment deserving of legal protection, Kay collapses marriage itself into a mere outward symbol of a romantic relationship. Marriage becomes nothing more than notarized dating.

This trend is marketed as a defense of individual freedom and self-determination, but it is not. Guaranteeing the right to keep all options open in perpetuity comes at the cost of eliminating one of the most important freedoms: the freedom to make a binding commitment and to enjoy that commitment's protections.

Without legal back-up for the promises exchanged in the wedding ceremony, all marriages, not just marginal ones, are at risk. After all, marriages do not start out marginal: almost all marriages are solid on their first day. But after the honeymoon comes a long process of learning to live together harmoniously. That process either will or will not go forward successfully, and one of the factors affecting it will be the nature of the applicable divorce law. The more protection the law gives to the marriage contract, the more rational it will be to invest effort in the marriage. The less protection the law gives the marriage contract, the more rational it will be to withhold such efforts, and instead take a look-out-for-number-one approach.

To be sure, many things besides divorce law make a difference in whether or not spouses will expend the effort needed to make their marriages work. But the presence or absence, or ease or difficulty, of the divorce option is one of the most significant factors governing the question of whether it is rational to try hard to build a good marriage -- or, in economic terms, to invest heavily in marriage-specific capital.

It is time to recognize that no-fault divorce has worked a revolution that the American people would have rejected if its implications had been spelled out at the beginning: abandoned wives, fatherless children, fathers dunned for money yet denied any relationship with their children -- all of these yielding a harvest of loneliness, lovelessness, and cynicism. It is time for the no-fault revolution to be reversed.

Ideally, fault should be restored to its place as an absolute requirement for divorce. While a fault requirement might seem useful only where one party seeks to preserve the marriage, and an unnecessary burden where the divorce is consensual, the question to be focused on is whether or not we are giving the party seeking to preserve the marriage a strong enough bargaining tool. If the illusion of mutual consent can be created by a mere signature on a standard form, it will be easy for an at-fault party to bargain for such "consent."

In the alternative, we should confine no-fault divorce to those cases where both parties affirm that the marriage is irretrievably broken, and both desire a no-fault divorce.

Any reintroduction of fault admittedly carries a risk of reintroducing the old-fashioned "mess" factors: private eyes, adulterous couples caught *in flagrante* by flash cameras, etc. However, the present system cannot claim to be mess-free. Indeed, new kinds of "mess" -- e.g., ill-founded and irresponsible allegations of child abuse -- have crept into the system. Hostility has not been eliminated: it has merely been transferred from divorce itself to collateral issues such as child custody.

If legislatures simply cannot be convinced that no-fault divorce is not a human right, then perhaps they can require instead that fault be considered in the distribution of marital assets, in the setting of alimony, and in child custody. The effect would be to diminish the at-fault party's incentive to seek divorce in the first place. In particular, fault could be considered in equitable distribution or in alimony. Equitable distribution, which has played a much larger role in divorce law since the no-fault revolution, is currently carried out without regard to fault, with the result that an at-fault party will typically walk away with much more than

he or she is, arguably, morally entitled to.

In addition, alimony, when granted, should be divested of the obnoxious modern rationale of "rehabilitation," which implies that women's domestic work is some sort of a crime. The traditionalist ideal of marriage as a lifelong status and the feminist ideal of spousal equality begin to merge once one conceives of alimony as a tool for evening out the disparate earning potentials of divorcing spouses by making the better-off party fulfill -- as far as can be done through money damages -- the implied covenants of traditional marriage.

The concept of marriage as an inferior, unenforceable type of contract has been vigorously challenged recently in legal academia. Georgetown University's Milton C. Regan, in his book *Family Law and the Pursuit of Intimacy,* makes a case for returning to the concept of marriage as a status. Reviewing Regan's book for *The Cornell Law Review,* George Mason University Law School Professor Margaret Brinig makes another proposal: why not revive the concept of *covenant?* She writes:

Legally, a covenant frequently is an especially solemn form of contract, one that cannot be broken without significant penalties. A covenant, or promise under seal, will support a gift to a third party where a simple contract would not. Covenant implies donative intent, conferring a benefit upon another. Since the other will act (for our good) regardless of our own behavior, it implies that once we make an initial assent, much of our behavior is constrained by the covenant. When the covenant is made, more than the two people are involved. The imprimatur of the state (or God) is placed upon the solemn promise.

Status and covenant are both better ways to think about marriage than anything found in American statute books and courtrooms today. Our law has deprived marrying couples of the option of making a *legally* binding, lifelong commitment to family life; our society has made a fundamental option in favor of short-term individual self-fulfillment, at the expense of the commitments and connectedness that are foundational for civilized life. Even as we watch, civilization recedes steadily, as the first post-family generation reaches adulthood. We may not have much time left to recover our moorings.

--7/94

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David M. Wagner, Esq., is Director of Legal Policy for the Family Research Council.