

Defending No-Fault Divorce: A Critical Protection for Women

By Sophia Arruda

Consider the position of a mother fighting to protect her child from an abusive father, only to find that the court, meant to serve justice, sides with the perpetrator. A study of 200 divorce cases found that state courts sided with mothers in only 15% of cases involving allegations of child sexual abuse by fathers.¹ This alarming statistic challenges the integrity of the legal frameworks governing family courts and underscores the pervasive discrimination against women within the system. Protecting and expanding no-fault divorce laws is essential for ensuring more equitable outcomes for women in such cases, yet some politicians and lawmakers have recently pushed to dismantle these vital structures.

No-fault divorce, first introduced in California in 1969, allows marriages to end on the grounds of “irreconcilable differences,” removing the burden of proving fault from spouses. This framework, now adopted in some capacity by every state, has become the preferred path for separation.² In California, 90% of divorces are no-fault.³ In South Dakota, 97.6% of divorces are no-fault.⁴ A party can file for divorce without having to prove the other party of committing wrongdoing against them. Fifteen states are strictly no-fault, making it nearly impossible to file for an at-fault divorce. State legislatures recognize that this framework ensures that women in

¹ Klein, J. (2021, August 14). *“Women are routinely discredited”: How courts fail mothers and children who have survived abuse*. The Guardian. <https://www.theguardian.com/lifeandstyle/2021/aug/14/courts-fail-mothers-children-abuse#:~:text=In%202019%2C%20Meier%20looked%20at,claims%20in%20just%20517%20cases>.

² *Divorce*. (2020, December 3). American Bar Association. https://www.americanbar.org/groups/legal_services/milvets/aba_home_front/information_center/family_law/marriage_and_divorce/annulment_separation_divorce/ending_the_marriage/divorce/

³ *California Divorce Statistics 2023*. (2023, July 14). Quinn Dworakowski Family Law Attorneys. <https://www.orangecountyfamilylaw.com/blog/california-divorce-statistics/>

⁴ North, A. (2024, June 13). *The Christian right is coming for divorce next*. Vox. <https://www.vox.com/today-explained-newsletter/354635/divorce-no-fault-states-marriage-republicans>

abusive or subordinate relationships can pursue divorce safely and independently.

The impact of no-fault divorce laws is clear: States that have adopted them have seen an 8-16% decrease in female suicides, a 30% decrease in intimate partner violence, and a 10% drop in women murdered by their partners.⁵ It raises the question, then, why some politicians are pushing to roll back no-fault divorce laws.

Conservative politicians and right-leaning institutions have criticized no-fault divorce for undermining the sanctity of marriage. Vice presidential candidate and Ohio Senator JD Vance remarked that no-fault divorce makes it “easier for people to shift spouses like they change their underwear”—a comparison as reductive as it is laughable.⁶ Beyond the hyperbole, Vance’s line of thinking raises a more fundamental question: Why should the government, or JD Vance, have any say in when or how people choose to end their marriages? The right to make personal decisions about one’s relationships, especially when safety and well-being are at stake, should be paramount.

In January, Senator Dusty Deevers introduced a bill to ban no-fault divorce in Oklahoma. Meanwhile, initiatives like the Heritage Foundation’s Project 2025 aim to re-privatize marriage. These are the next steps in a broader conservative agenda to revert to traditional social values— inhibiting access to abortion, attacking IVF, and limiting birth control. In the *Indiana Law Journal* article entitled “Reaffirming No-Fault Divorce,” Erin Melnick writes, “Increased privatization of the marriage contract assumes that men and women have equal bargaining power going into a marriage and thus can negotiate for the terms most favorable to them—an

⁵ Rubbo, S. (2024, July 12). *Threats to No-Fault Divorce and its Implications for Violence Against Women*. National Organization for Women. <https://now.org/blog/threats-to-no-fault-divorce-and-its-implications-for-violence-against-women/>

⁶ See footnote 4

ideal of formal equality that for many women remains a fiction.”⁷ No-fault divorces are easier to obtain, but that’s for good reason. Before the advent of no-fault divorce, women faced significant challenges in leaving abusive or dysfunctional marriages. Fault divorces left many women trapped in relationships that endanger them and their children. The requirement to prove fault can subject women in such relationships to further psychological harm when they are forced to relive their trauma in court. This process can involve intimidation from an abuser, who may use the legal system as means to control or manipulate them. Moreover, disadvantageous female stereotypes are often perpetuated in court. Women are often dismissed as “hysterical” or accused of “coaching” their children to provide biased accounts.⁸

Of course, the feasibility of no-fault divorce makes it more difficult to incur punishment on a party when deciding financial or custody matters. There are certainly cases where accusation of fault is justified. However, proving fault is time-consuming and expensive. Pursuing divorce through the courts can be prohibitively expensive, considering the cost of attorneys and legal fees. No-fault divorce levels the playing field, enabling women to escape dangerous marriages and secure a fair distribution of assets. It also protects both parties from false accusations of misconduct. An individual in a position of financial subordination to their spouse will face difficulty receiving equal partition of property and custody. Domestic contributions or maternal sacrifices to support a family typically do not advance the power of a woman against her husband. While bargaining power can be relinquished in the case of no-fault divorce, it has removed barriers that previously kept women from obtaining equal assets from the marriage. Additionally, parties are protected from false accusations of infidelity or misconduct in an attempt to gain the upper hand in bargaining.

⁷ Melnick, E. (2000). Reaffirming No-Fault Divorce: Supplementing Formal Equality with Substantive Change. *Indiana Law Journal* 75(2), 22.

<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=2134&context=ilj>

⁸ See footnote 1

Conservative activists are not taking issue with the technical flaws in no-fault settlements. They are concerned with the rising divorce rates within the country. In the United States, the divorce rate rose from 2.4 per 1,000 people in 2000 to 4.0 per 1,000 in 2022.⁹ This increase may signal a shift in attitudes towards marriage and evolving family structures, with divorce becoming more acceptable and accessible. At its best, marriage can be a source of support and partnership. At its worst, marriage confines one party to the other. Individuals in the latter situation should have the capacity to dissolve their marriage without undue hardship.

Nonetheless, improvements in no-fault divorce proceedings are necessary. This begins with a simple social truth: true recognition that, in many instances, women are still not seen as equal in marriage. Tearing down gender stereotypes and pursuing equity in households, communities, and society at large will begin tearing down gender stereotypes in the courtroom. At the end of the day, a judge with implicit bias is subjectively analyzing two separate sets of facts. Over time, societal progress will naturally permeate the courts, influencing the perspectives and judgments of those who preside over them. Additionally, no-fault laws should add further stipulations to the division of assets in marriage. Scholars like Deborah Rhode and Martha Minow suggest that states take a more proactive role in defining and distributing marital property.¹⁰ Asset class definitions can be expanded to ensure that contributions like domestic labor are properly valued alongside higher-paying roles. The evidence is clear: no-fault divorce has been a crucial safeguard for women, and it must be preserved and refined. Electing leaders who recognize the importance of this framework is essential to protecting women's rights and promoting a just society.

⁹ Bieber, C., & Chatterjee, A. (2024, January 8). *Revealing Divorce Statistics In 2024*. Forbes. <https://www.forbes.com/advisor/legal/divorce/divorce-statistics/>

¹⁰ See footnote 7