Looking to the Future to Correct Evils of the Past - Attempts to Modernize Illinois Family Law

Beverly A. Susler

Eloise Johnstone

Follow this and additional works at: https://via.library.depaul.edu/law-review

Recommended Citation
Available at: https://via.library.depaul.edu/law-review/vol23/iss1/13

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact digitalservices@depaul.edu.
LOOKING TO THE FUTURE TO CORRECT EVILS OF THE PAST—ATTEMPTS TO MODERNIZE ILLINOIS FAMILY LAW

Beverly A. Susler* and Eloise Johnstone**

The laws governing family relationships are the subject of criticism throughout the country as an area of the law especially in need of reform. The authors analyze the many important statutory proposals now pending before the Illinois General Assembly, with particular emphasis on the comparative efficacy of these measures in correcting the shortcomings of existing divorce provisions.

EVERY field of law has its peculiar jargon, and the matrimonial area is no exception. Practitioners in family law have heard the following comments from clients and fellow lawyers all too often.

"If I can't have a divorce, she won't get a dime of my money."
"How come I only got _____________ when my neighbor got ______________ plus the car plus the house?"
"Sally's lawyer told her . . . ."
"He will support me for life even without a divorce."
"If I cry, will the judge give me more money?"
"It's the first of the month and John hasn't paid the child support yet."
"He can't have Johnny over the summer—that's when my mother comes."
"My wife called the police on me."
"I know it's 2 a.m. and I'm so sorry to bother you at home."
"How long . . . ?"
"Is it all right for me to have a date for dinner now?"
"Do I have to get out of the house while the ball game is on?"
"I told you not to get into that area."
"You've got it easy—not like mergers, strikes—the daily business grind."
"I wouldn't handle that area if you paid me."
"Listen, I've got this problem—a friend of mine . . . and I thought maybe you'd help me."

† Copyright 1973 by Beverly A. Susler and Eloise Johnstone.
* Associate; Pope, Ballard, Shepard & Fowle, Chicago, Illinois.
** Private Practice, Chicago, Illinois.
“An easy problem—just a couple of minutes of your time—wife lives in Topeka, husband in Albany, children with an aunt in St. Louis who wants to raise them. . . .”

Practicing attorneys holding themselves out as specialists in the field of family law or frequent dabblers in the area recognize some, if not all, of the above comments. Practitioners who avoid the area of family law are urged to read further, for there is currently much controversy concerning the direction of Illinois laws governing marriage and divorce. It behooves every lawyer to give more than a fleeting moment of thought to the role the law plays, or ought to play, in family relationships.

While at first glance the previous quotations may seem ludicrous, they are not humorous. Although at times so disguised as to be barely recognizable, they are in fact cries for help from persons caught in an often unanticipated struggle for survival. Indeed, in every matrimonial proceeding, whether divorce, separate maintenance, or annulment, the need of the human being to survive and his capacity to fight against all odds is apparent. Where the investment and commitment have been as encompassing as society demands of persons entering into marriage—at least theoretically pledging themselves to each other for life—the loss, the sense of failure and frustration upon breakdown of the marriage are devastating. In marriage breakdown the family, the foundation of society, is collapsing; the ego is threatened; the spouses are angry and yet hurt. They feel inadequate—having failed in the most basic, most emotional, albeit most difficult, of human relationships. Every lawyer in the matrimonial field knows, however, that while feelings of guilt are ever present, survival is the strongest of human motivations. The result of all the conflicting human emotional responses in a matrimonial proceeding is open conflict. Present Illinois laws encourage this fight in a variety of ways discussed later in this article.

Any matrimonial law which feeds the fire between discordant spouses cries for reevaluation and reform. It would serve the community well for every lawyer to make an inquiry as to the legitimate and desirable objectives of the matrimonial laws. Old clichés that the state has an interest in marriage and the family, and that the family is the foundation of our society, are over-used and
eroded in significance. While society has an interest in preserving healthy marriages, society should also have an interest in salvaging as much as possible from unhealthy marriages. Much individual dignity and human talent can be saved, but is instead lost in the fury of divorce.

To preserve what is healthy from an unhealthy marriage the law should effect not punishment and reward, but an objective dissolution of an unhealthy partnership. By twisting reality into an artificial set of rules, legislators, judges, and lawyers have done a disservice in the guise of strengthening society. Our task now, as lawmakers, judges, and lawyers, is to evaluate the daily effectiveness of the law and to update laws governing marriage, divorce, separate maintenance, annulment, and the myriad specific problems within each area. Indeed, as more and more states enact reform, Illinois falls further and further behind the trend toward realistic laws governing family relationships.1 Our law is not a guiding light but rather a follower and legitimizer, or at best a regulator, of a variety of human practices—practices which are usually long established but only reluctantly acknowledged by the majority of society.

In Illinois the law governing marriage and divorce is so far removed from reality that it is a sorrowful jest. Marriage, although solemnly entered into and recognized as the epitomy of all partnerships, under Illinois law is none too solemnly, and almost always disastrously, dissolved. But, it does not have to be. One partner in the marriage need not "lose" in terms of ego, money, property, or parent-child relationship. The standards under present Illinois law establishing grounds for divorce,2 child custody and support,3 division of property,4 and alimony5 are archaic; and case law is stumbling along with only occasional inroads into this restrictive, unrealistic legislation. While the current status of the law is discouraging, the prospects for improvement are good. At present, in the field of family law, progress in Illinois appears certain because primary emphasis is on legislative reform as evidenced by the fourteen bills6 now pend-

1. See note 33 and accompanying text, infra.
The most controversial issues concerning marriage legislation are age and licensing requirements. The controversy surrounding the age of requirement is an emotional one. With the alarming increase in the rate of divorce has come the plea to make it more difficult to marry. Consequently, advocates of increasing the legal age for marriage to twenty-one argue that persons having reached this age are better prepared to accept the responsibilities of marriage; that marriages between younger persons are more susceptible to failure; and that the institution of marriage cannot survive widespread acceptance of young marriages.

[hereinafter cited as S.B. 254].

Although advocates of contract marriages and marriages between persons of the same sex are gaining increasing attention and consideration, none of the bills pending before the Illinois legislature recognize such marriages. These concepts may enter our laws at some future date but for the present they have been rejected in favor of the solemnization long present in the law. Section 206(b) of House Bill 1794 is unique among pending bills in that it allows a marriage to be solemnized by proxy.
On the other hand, proponents of age eighteen as the legal age of marriage argue that one old enough to fight for his country, to vote, and to enter into contracts is old enough to marry. Moreover, persons mature at different chronological ages and the arbitrary selection of an age will not solve the problem of the increasing divorce rate.

Consistent with the present legal age of eighteen in Illinois, the two bills currently pending before the legislature which deal with the age of marriage adopt eighteen as the legal age for marriage. On the other hand, the proposed Uniform Marriage and Divorce Act, drafted by the National Conference of Commissioners on Uniform State Laws, permits persons eighteen years of age, or per-

8. ILL. REV. STAT. ch. 3, § 131 (1971) provides:
Persons of the age of 18 shall be considered of legal age for all purposes, except that of the Illinois Uniform Gifts to Minors Act, and until this age is attained, they shall be considered minors.

In clarifying the effect of this Act on ILL. REV. STAT. ch. 89, § 3 (1971) (an act to revise the law in relation to marriages: which provides that the consent of a parent or guardian must be obtained by a male who has achieved the age of 18 years but has not yet attained the age of 21 years in contrast to a female who has attained the age of 18 years being allowed to marry without parental consent), the Honorable William J. Scott, Attorney General of the State of Illinois, in his comprehensive opinion letter, S-490 dated June 30, 1972 to Honorable Don Johnson, State's Attorney of Perry County, concluded at page 8:

It is therefore my conclusion that under the federal Equal Protection clause, the Illinois equal protection clause, Article I, sec. 2, Article I, sec. 18, of the Illinois Constitution providing equal protection to the sexes, sec. 3 of "AN ACT to revise the law in relation to marriages" is unconstitutional insofar as it differentiates between the sexes. The discrimination arises out of the provision that one sex need only be eighteen years old to marry without consent and the other must wait until the age of twenty-one to avail himself of this right. The placing of males and females for marriage purposes in different classes, based solely on age differential, does not rest upon any grounds of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced are treated alike. Therefore, the nondiscriminatory age for both would be the lesser, and both male and female may marry without parental consent at age eighteen.


sons of the age of sixteen with either the consent of both parents or
guardian, or judicial approval, to marry. If under sixteen, consent
of both parents or guardian and judicial approval is required. The
proposed revisions to the Uniform Marriage and Divorce Act, per-
mit persons between the ages of eighteen and twenty-one to marry
with the consent of parent, or guardian, or with judicial approval.\textsuperscript{10} In effect, the legal age of marriage in the Revised Uniform Act is
twenty-one, but the drafters explain that in states where the age
of majority differs, the age for marriage should conform to major-
ity.\textsuperscript{11}

Exceptions to the legal age of marriage are treated differently in
House Bills 477 and 1794. In the former the only exception to the
requirement that persons seeking to marry be at least eighteen years
old is that one between the ages of sixteen and eighteen may marry
if the parent or guardian consents.\textsuperscript{12} Further, it deletes provisions
of the present Illinois law permitting marriages between persons
under the age of sixteen if the girl is pregnant or has given birth to a
child of the applicants.\textsuperscript{13}

House Bill 1794 permits judicially approved marriages of sixteen
and seventeen year olds who have no parent capable of consenting
to the marriage, or whose parent or guardian has not consented to the
marriage, after a reasonable effort has been made to notify the parents
or guardians of the underaged party. A person under the age of

\textsuperscript{10} UNIFORM MARriage AND DIVORCE ACT § 203(1) [hereinafter cited as UNI-
FORM ACT]; PROPOSED REVISED UNIFORM MARRIAGE AND DIVORCE ACT § 203(1)
[hereinafter cited as REVISED UNIFORM ACT]. At the time of this writing the House
of Delegates of the American Bar Association has not considered the recommenda-
tions of the Family Law Section for the Revised Uniform Act which is not, there-
fore, an official ABA statement nor endorsed by the Uniform Commissioners on
State Laws.

\textsuperscript{11} “By a narrow margin the Special Committee voted to require parental
consent for persons under 21 for the reason that early marriage is a substantial
factor in the high divorce rate. Governor Ogilvie of Illinois in 1971 vetoed a bill
permitting persons under 21 to marry without parental consent, 'AN ACT to re-
vise the law in relation to marriages,' ILL. REV. STAT. 1971, ch. 89, § 3, vetoed on
August 24, 1971) although he otherwise approved of majority at 18. Because some
feel there may be a constitutional question in states that have majority at 18, it was
decided to bracket '21' and age of 'majority;' if the latter is 18, then reference to
parental or judicial consent between 18 and 21 should be deleted.” REVISED UNI-
FORM ACT § 203(1), Comment.

\textsuperscript{12} H.B. 477, § 205.

\textsuperscript{13} ILL. REV. STATS. ch. 89, § 3.2(1) (1971).
sixteen having the consent of both parents or his guardian may marry. However, a marriage license may be issued under these circumstances only if the court finds that the underaged applicant is capable of assuming the responsibilities of marriage and that the marriage will serve his best interest; pregnancy alone does not establish that the best interest of an applicant will be served. Further, a person between the age of sixteen and eighteen years may marry with the consent of parent or guardian, or judicial approval.

Another aspect of the age controversy is whether the legal age of marriage must be the same for males and females. The argument most often heard is that statutes specifying different ages are unconstitutional. A rational basis, however, for differentiating between males and females in this aspect was expressed by Judge Margaret Mary J. Mangan of the New York Supreme Court in the recent case of *Friedrich v. Katz*, where she noted that since traditionally the male must support his wife and children, his readiness for marriage requires additional years of training and experience. What effect, if any, this will have on pending Illinois legislation remains to be seen.

Pending legislation reflects the increased social and medical awareness of the numerous diseases affecting not only applicants for a license to marry, but possibly their unborn children. House Bill 1794 adds to the existing premarital testing requirement for venereal diseases the testing for immunity to Rubella, although this has been ruled unconstitutional and the statutory provision to this effect has been repealed, and testing for sickle cell anemia. When

---

15. H.B. 1794 § 205(b).
17. See note 8, supra.
20. Illinois Counsel of the Community Action Program v. Yoder, No. 72 CH 5627 (Cir. Ct. Cook Cty., Ill.). This case involved a class action suit brought on behalf of all women of the State of Illinois against the Director of the Illinois Department of Public Health and all clerks for the issuance of marriage licenses. The court ruled as unconstitutional Public Act 77-2294, approved by the Governor, August 10, 1972, effective October 1, 1972, which provided:
   No marriage license shall be issued unless there is filed by the county clerk an affidavit signed by a duly licensed physician stating that he has admin-
one considers such other possibilities as, for example, Tay Sachs, congenital heart or kidney malfunctions, proclivity toward tuberculosis, cancer, diabetes, and countless additional danger signs discovered through advancing medical technology, it is obvious that these two additional tests are restrictive in their scope of endeavor. Moreover, specific limitations raise problems of class or special legislation.

House Bill 477, on the other hand, in addition to requiring tests for venereal diseases, confronts this problem by requiring that license applicants be advised of abnormalities which may cause birth defects. Contrary to positive findings of venereal disease which prevent issuance of a marriage license, such advice is for the information of affected persons and cannot bar issuance of a license. Variations of diseases are so great that at this time it is impossible with the limited public facilities, finances, and personnel available to establish uniform testing requirements and facilities. This generalization, however, is a step in the right direction to aid the applicants involved, and is a stimulus to the medical profession and the Department of Public Health to perfect procedures in the foreseeable future to make testing facilities readily available to all persons throughout the state.

**ANNULMENT—AN ENIGMA**

Annulment, heretofore a creature whose makeup in Illinois has been determined entirely by case law, offers a unique opportunity for reform in that it may be included as an integral part of the statutory law governing family relationships. As a result of such reform this nebulous creature would be more easily found and understood by persons affected, and practically applied by the legal profession.

An appeal of this decision has been rendered moot as a result of the amendment to the Marriage Act which repeals the requirement that an affidavit of the woman's immunity to Rubella be filed before issuance of a marriage license. *Ill. Rev. Stat. ch. 89, § 6(c) (effective October 1, 1973).*

21. H.B. 1794, § 203(3) is identical to *Ill. Rev. Stat. ch. 89, § 6(b) (Supp. 1972)* which has not been subjected to a constitutional challenge to date.

22. H.B. 477, § 206(d).

In attempting to codify laws relating to annulment and then to correlate those laws with others governing children of broken marriages, property, and support, one is forced to choose between two philosophies as to what annulment is and what its effects are or ought to be. One line of thinking advocates annulment as an alternative to divorce and allows persons who, for whatever reason, prefer annulment to divorce, to seek annulment, provided appropriate grounds are available. Consistent with this philosophy, property, support, and children are treated as in cases of divorce. The other viewpoint perpetuates the essential difference between annulment and divorce. Annulment, or a declaration of invalidity as it is often called, terminates a purported family relationship which is not recognized as a marriage under the law.

Obviously, even a purported marriage may create problems of property, support, and children. These issues must and can be determined without confusing the concepts of annulment and divorce. Spousal support, property rights and obligations grow out of a legal marriage. Where a purported marriage is either prohibited by law or is not recognized by the law, no such rights and obligations can accrue. It is nonetheless necessary to solve these practical problems resulting from annulment, but without fictionalizing the rationale of the results.

Present attempts to revise and codify laws governing annulment adopt similar grounds for annulment and affirmative defenses to the action and generally abandon the confusing characterizations of void and voidable marriages, or those void ab initio and those which can be avoided. Proposals differ with respect to permitting annulment actions after the death of a party to a purported marriage and with respect to time limits within which annulment actions may be brought.24

24. Uniform Act §§ 208(a)(1)-(4); (b)(1)-(3); Revised Uniform Act §§ 208(a)(1)-(4), (b)(1)-(3), and (c); H.B. 1794 §§ 208(a)(1)-(4), (b)(1)-(3), and (c); H.B. 403 §§ 4(a)-(e); and H.B. 477 §§ 303, and 308.

Section 208(c) of the Revised Uniform Act fails to explain how section 207(h), referred to therein, declaring a prohibited marriage valid after removal of the impediment, can apply to impediments listed in sections 207(a)(2) and (3), namely marriages between ancestors and descendants, uncles and nieces, and the like. The only impediment resulting in a prohibited marriage which could be removed is cited in section 207(a)(1), a bigamous marriage. Section 208 of the Revised Uniform Act allows ratification in the cases of parties lacking capacity to consent and
Of all legislation pending in Illinois, House Bill 477 sets forth most clearly those relationships which fall within the grounds for annulment and declares such relationships invalid. Problems of child support and legitimacy, property division, and spousal support resulting from an invalid marriage are treated separately, but consistently with the premise that a legal marriage never existed. The division of property is governed as in cases of divorce with property being segregated first into individually owned property and the balance then divided between the parties, using guidelines of acquisition and contribution to the value of that property made by the individual. Permanent alimony is denied either of the parties except in the case of a bigamous marriage and temporary alimony under-age marriage. House Bill 477 adopts the ratification principles expounded in the Revised Uniform Act and adds the case of impotency to those which may be ratified (section 308(b)), and no time limitation on annulment actions are included. House Bill 1794 adopts the provisions of the Uniform Act, including Alternative B which, in part, allows a Declaration of Invalidity for prohibited marriages to be brought at any time not later than five years following the death of either party (section 208 Uniform Act). See Podell, The Case for Revision of the Uniform Marriage and Divorce Act, 8 FAMILY L.Q. 169 (1973). Judge Podell is Chairman of the Family Law Section of the American Bar Association.

25. House Bill, § 303 provides:
   The following marriages are invalid:
   (a) Marriages entered into in violation of Section 204 of this Act [marriages between certain related individuals];
   (b) Marriages entered into prior to a dissolution of an earlier marriage of one of the parties;
   (c) Common law marriages originating in Illinois after June 30, 1905;
   (d) Marriages wherein one party lacked the mental capacity to consent to the marriage because of mental infirmity or the influence of alcohol, drugs, or other incapacitating substances;
   (e) Marriages wherein one party failed to voluntarily consent thereto because of fraud, duress, or undue influences;
   (f) Marriages wherein either party at the time of the marriage was and continues to be impotent, and the other party at the time of the marriage did not know of such impotence;
   (g) Marriages entered into in violation of Section 205 of this Act.
House Bill 477, § 205 provides: “All persons of the age of 18 years and upwards, may contract and be joined in marriage. A person 16 years of age and upwards may contract a legal marriage if the parent or guardian of such person appears before the county clerk in the county where such minor person resides, or before the county clerk to whom application for a license under Section 206 is made, and makes affidavit that he or she is the parent or guardian of such minor and gives consent to the marriage . . . .”

26. H.B. 477, §§ 310 (spousal support), 311 (child support), 312 (spousal support), and 313 (property).
27. H.B. 477, § 313.
Obviously, the moving party in annulment ought not be permitted, on one hand, to declare that there is an invalid, or non-existent marriage, and on the other hand, to be entitled to that relief which arises only from a valid marriage. In the case of a bigamous marriage, a party may file an action for divorce if he wishes temporary relief. If he wants an annulment, he must forego temporary support.

All pending legislation with the exception of House Bill 403, which is silent on the subject, is uniformly consistent in dealing with children born to parties involved in annulment actions by declaring their legitimacy.30

Ambiguous as the law of annulment has been in Illinois, present legislative efforts strongly suggest that progress will be made in codifying and clarifying the law in this area.

"IF I CAN'T HAVE A DIVORCE, SHE WON'T GET A DIME OF MY MONEY"

This attitude prevalent in the application of present Illinois law is guaranteed to accomplish nothing for litigants but heartache, frustration and unnecessary expense. So too, the attempts of one spouse to paint himself as a noble preserver of the marriage while totally discrediting his spouse are unproductive at best and disastrous at worst. As an alternative, the national trend in laws governing divorce is a shift to "no-fault divorce." This catchy, headline-fitting phrase deserves further analysis.

"No-fault" means regardless of fault. Fault is not to be considered—it is irrelevant. Instead of concentrating on the conduct or misconduct of the parties, the viability of the marriage will be examined. If the marriage is dead, it will be legally terminated. The difference between no-fault and fault is that no-fault focuses on the condition of the marriage while fault concentrates on the conduct of the parties.

There are three different types of no-fault provisions categorized

---

30. Uniform Act § 208—Alternative B(d); H.B. 1794 § 208(3)(d); H.B. 477 §§ 309(b)-(c). Revised Uniform Act § 208(d).
according to their language: (1) those using the modern language of "irretrievable breakdown" or "irreconcilable differences"—often in combination, such as, "irreconcilable differences which have caused the irretrievable breakdown of the marriage"; (2) separation provisions which grant divorce after voluntary separation or after living apart under a separate maintenance decree for a period of time; and (3) those using the language of incompatibility. In addition, Texas has a unique ground for divorce, insupportability, which is in reality a no-fault provision. Considering the variety of no-fault provisions, one finds only eleven states which can truly be called fault states—that is, they have no ground for divorce which

31. Forty states, including the District of Columbia have enacted some type of no-fault provision in their divorce statutes. Seventeen use the modern language of "irretrievable breakdown" or "irreconcilable differences." Seventeen have separation provisions ranging in time from Rhode Island (10 years) to Vermont which has six months coupled with the requirement that "resumption of marital relations is not reasonably probable." Seven states have incompatibility statutes. Two of the seven, Delaware and Nevada, also have separation provisions. Texas is unique. See note 32, infra. The following chart illustrates the states in each category:

<table>
<thead>
<tr>
<th>Irretrievable Breakdown—Irreconcilable differences</th>
<th>Separation</th>
<th>Incompatibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Arkansas</td>
<td>(3 years)</td>
</tr>
<tr>
<td>Arizona</td>
<td>Delaware</td>
<td>(18 months)</td>
</tr>
<tr>
<td>California</td>
<td>District of Columbia</td>
<td>(1 year)</td>
</tr>
<tr>
<td>Colorado</td>
<td>Louisiana</td>
<td>(2 years)</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Maryland</td>
<td>(18 months)</td>
</tr>
<tr>
<td>Florida</td>
<td>Minnesota</td>
<td>(2 years)</td>
</tr>
<tr>
<td>Hawaii</td>
<td>Nevada</td>
<td>(1 year)</td>
</tr>
<tr>
<td>Idaho</td>
<td>New Jersey</td>
<td>(18 months)</td>
</tr>
<tr>
<td>Indiana</td>
<td>New York</td>
<td>(1 year)</td>
</tr>
<tr>
<td>Iowa</td>
<td>North Carolina</td>
<td>(1 year)</td>
</tr>
<tr>
<td>Kentucky</td>
<td>Rhode Island</td>
<td>(10 years)</td>
</tr>
<tr>
<td>Michigan</td>
<td>South Carolina</td>
<td>(3 years)</td>
</tr>
<tr>
<td>Nebraska</td>
<td>Tennessee</td>
<td>(2 years)</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>Vermont</td>
<td>(6 months)</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Virginia</td>
<td>(2 years)</td>
</tr>
<tr>
<td>Oregon</td>
<td>West Virginia</td>
<td>(2 years)</td>
</tr>
<tr>
<td>Washington</td>
<td>Wisconsin</td>
<td>(5 years)</td>
</tr>
</tbody>
</table>

32. TEXAS FAMILY CODE ANN. § 3.01 (1971) provides:

On the petition of either party to a marriage, a divorce may be decreed without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation.
can even remotely be called a no-fault ground. Sadly, Illinois is one of the eleven.33

No-fault is not a new concept. The language of "irretrievable breakdown" or "irreconcilable differences" is relatively new in the United States.34 Of the seventeen states using this language, the earliest to change were California and Iowa in 1970. Most changes occurred in 1971 and 1972 with the latest being Connecticut (act effective October 1, 1973), Indiana (amendment effective September 1, 1973), and Arizona (act effective August 8, 1973).35 The concept, however, of granting a divorce to both parties regardless of their mutual fault, or of not determining which spouse is at fault, is not a new idea.36

The various no-fault provisions are incorporated into statutes as either the sole ground for divorce, "pure no-fault statute," or in ad-


34. Other countries, such as New Zealand, have long recognized breakdown of marriage as a legitimate ground for divorce. See NEW ZEALAND DOMESTIC PROCEEDINGS ACT (1968).


36. Alaska, for example, as far back as 1935, before it was ever a state, had incompatibility as a ground for divorce. Further, no-fault has poked its head through the back door in some states like Kansas which through case law in 1918 made recrimination discretionary, recognizing in effect that divorce can be granted regardless of mutual fault. So too, the recent Illinois case of Mogged v. Mogged, 5 Ill. App. 3rd 581, 284 N.E.2d 663 (1972), in abolishing recrimination as a defense, although not quite advocating irretrievable breakdown as a sole or additional ground, stated:

It should be expressly noted that what we have stated here should not be deemed to constitute a judicial adoption of an additional ground for divorce in this State, e.g. irreconcilable differences, which of course would be wholly improper as an encroachment upon the legislative domain. What we do say, however, is that courts no longer need slavishly or automatically apply the historic doctrine of recrimination in cases where such application would, in the exercise of sound judicial discretion, be unwarranted.

Id. at 589, 284 N.E.2d at 667.

During the last week of October 1973 the Illinois Supreme Court in a split decision reversed and remanded Mogged holding that the abolishment or modification of the defense of recrimination was a question to be solved by legislative change not by the courts. The doctrine of recrimination, therefore, remains present Illinois law. 55 Ill. 2d 221, 302 N.E.2d 293 (1973).
dition to traditional fault grounds, "modified no-fault statute." Of the seventeen states using the modern language of "irretrievable breakdown" or "irreconcilable differences," five states—Alabama, Connecticut, Idaho, Indiana, and North Dakota—add the no-fault provision to traditional fault grounds. States having voluntary separation or incompatibility grounds include these grounds in conjunction with traditional fault grounds. Thus, twenty-seven states, including the District of Columbia, have modified no-fault statutes as defined.

One must be wary of labels because there is disagreement in distinguishing a pure no-fault statute from a modified no-fault statute and fault may enter into the definition or proof of a no-fault ground. Some argue that modified no-fault statutes are not simply defined as those adding a no-fault provision to traditional fault grounds for divorce, but also include those statutes containing a no-fault provision as the sole ground with the qualification of a waiting period and/or mandatory counseling as a condition precedent to the entry of a decree for divorce based on no-fault. Moreover, fault too often is interjected in defining or proving a no-fault ground, as in the California, Oregon, and New Hampshire statutes. Such statutes not only would allow fault to enter into the proceeding, but also would permit the party at fault to raise his own marital misconduct to realize a divorce.

The Revised Uniform Act, for example, adopts irretrievable breakdown of the marriage as the sole ground for divorce. However, section 302(2) requires that this must be established by proof:

(a) that the parties have lived separate and apart for a period of more than one year next preceding the commencement of this proceeding, or,
(b) that such serious marital misconduct has occurred which has so adversely affected the physical or mental health of the petitioning party as to make it impossible for the parties to continue the marital relation, and that reconciliation is improbable. . . .

An amendment has been made to change the above language to read:

(2) the court finds that the marriage is irretrievably broken, if the finding is supported by evidence that (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding, or (ii) there is serious marital discord ad-

versely affecting the attitude of one or both of the parties toward the marriage. . . .

Regardless of the label, if the statute looks only at the viability of the marriage and completely excludes the conduct of the parties in determining whether to terminate the marriage, it is a pure no-fault statute. Therefore, if a statute were to contain, with respect to grounds for divorce, only a provision using the modern language of "irreconcilable differences" or "irretrievable breakdown," incompatibility, or voluntary separation for a period of time without fault entering into either the definition or proof required for terminating the marriage, the statute would qualify as a pure no-fault statute. The authors do not believe that either the requirement of a waiting period or mandatory counseling prior to the entry of a decree for divorce based on no-fault in any way changes the basic concept of no-fault, as such requirements go to the condition of the marriage. On the other hand, if the provision of the statute allows fault to enter into the picture either as an alternative to a no-fault ground or in defining or proving a no-fault ground, it is a modified no-fault statute.

It is helpful to consider the national trends in no-fault divorce in order to understand and evaluate the proposals in Illinois. All pending Illinois legislation seemingly adopt no-fault with respect to grounds for divorce but differ in the degree and method used. Only two out of six proposed bills adopt no-fault as a sole ground for divorce. Section 302(a)(3) of House Bill 1794 adopts pure no-fault as the sole ground in the following language: "the court finds that the marriage is irretrievably broken . . . ." Senate Bill 693 also specifies, as the sole ground for divorce, irreconcilable differences, and defines this term as "[t]hose things determined by the court as substantial reasons for not continuing the marriage and which make it appear that the marriage should be dissolved."39

The other four bills pending in the Illinois Legislature treating this subject are modified no-fault bills with respect to grounds, in that they retain traditional fault grounds but add a no-fault provision as an alternative. To the already existing eleven grounds for divorce, House Bill 465 adds two additional grounds: (1) permanent mental illness; and (2) living separate and apart for two

years provided there remain irreconcilable differences after submission to reconciliation services approved by the court. House Bill 403 contains an additional ground, which is a fault ground. It reads: "Living separate and apart . . . without fault" "for two years after process is sought and parties have submitted to reconciliation service."

House Bill 629 adds to existing grounds: "(1) Regardless of fault irreconcilable differences causing irretrievable breakdown of marriage, and (2) Incurable insanity." In addition, House Bill 629 defines irreconcilable differences in the same manner as Senate Bill 693. Further, House Bill 629 prohibits raising misconduct except when child custody is at issue and where it is necessary to establish irreconcilable differences. Not only does House Bill 629 revert to fault in guise of no-fault, it also allows marital misconduct to enter into child custody. While this is not without precedent, it is the worst possible place in a divorce proceeding to allow the introduction of fault. A child deserves the untainted love and attention of both parents. Confusing issues of custody and visitation with issues relevant only to the viability of the marriage afflicts unnecessary harm and additional burdens on the child. The law should preserve parental respect for the sake of the child.

House Bill 477 adds to the existing grounds the following:

(b) A divorce shall be granted when either spouse has proved that the parties have lived separate and apart for a continuous period in excess of

41. H.B. 403, § 5(a) (emphasis added).
42. H.B. 403 § 6(k). As well as pertaining to fault, sections 5 and 6 of House Bill 403 appear to present some procedural problems. Parties must live separate and apart for two years after process is sought. On what grounds can parties file an initial complaint? Obviously, the traditional fault grounds.
43. H.B. 629, § 1(b).
44. See text accompanying note 37, supra.
45. Among the states which permit fault in relation to custody are California, Nebraska, New Hampshire, and Oregon. Despite this precedent, however, as with the invasion of fault in determining the marriage status, see text accompanying note 37, supra, such a statutory loophole permitting the worst aspects of a divorce situation to directly affect children, often innocent, long-suffering victims of a matrimonial fiasco, is less than desirable.
2 years and irreconcilable differences have caused the irretrievable break-down of the marriage.

(1) The requirement herein of living separate and apart for a con-
tinuous period in excess of 2 years may be waived upon written stipulation
of both spouses.

(2) Such stipulation shall be filed with the clerk of the court not
sooner than 30 days after commencement of the action for divorce.47

This waiver provision permits divorce by consent. Where parties
stipulate in writing to waive the two year separation requirement, they
are allowed a divorce after thirty days upon representation of
irreconcilable differences.

Illinois presently does not have free state-wide conciliation serv-
ices available. Mandatory conciliation requirements written into a
statute are unworkable without funds available to provide the facili-
ties necessary to meet such requirements. Furthermore, counseling
forced upon persons determined to end their marriage is suspect as a
waste of time, money, and energies. Preferable to mandatory coun-
seling is a time period statutorily required to establish proof of
cause for divorce which at the same time allows parties to recon-
sider and to seek counseling if they desire. This is not to say that a
court should not inquire as to reconciliation attempts, especially
where no-fault is the basis of divorce. Indeed, the court should in-
quire, and efforts should be made to establish uniformly effective
marriage counseling throughout the state.

No-fault is in part designed to reduce the animosity between un-
happy spouses. Divorce is here to stay, but all that can be done to
reduce its disastrous effects ought to be done. In keeping with the
no-fault concept is the awarding of a divorce to both parties. Thus,
one party is not the winner and the other the loser, but the dead mar-
riage is legally terminated. House Bills 403 and 477, and Senate Bill
1169 all affirmatively grant decrees to both parties.48

Further, in keeping with the no-fault concept is an innovation
in House Bill 477 of bifurcated trials. A marriage can be dissolved
—a divorce decreed—prior to determination of property, support,
and custody issues.49 This decreases opportunity for blackmail.
Still, safeguards are present in that the court can continue its in-

47. H.B. 477, §§ 403(b)(1)-(2).
48. S.B. 1169, § 10; H.B. 477, § 410(d)(1); H.B. 403, § 8.
49. H.B. 477, § 410(c).
junctive and temporary relief pertaining to yet undetermined issues.\(^{50}\)

"HE WILL SUPPORT ME FOR LIFE EVEN WITHOUT A DIVORCE"

In the area of separate maintenance, or legal separation, the most significant revision suggested in all pending legislation is the automatic conversion of the decree of separate maintenance to one for divorce. Traditionally, separate maintenance was designed to satisfy the spouse who, usually because of religious convictions, abhorred divorce. If separate maintenance were granted, the spouse who did not share such convictions was left in limbo. Further, the device of separate maintenance was a most effective tool of blackmail.

Legislation pending in Illinois suggests this is the time to correct this injustice. The proposals differ only in the length of time preceding the conversion of a decree of separate maintenance to one of divorce.\(^{51}\) Conversion occurs on motion of either party and there is no defense. Thus, the spouse opposed to divorce can justifiably say to himself that he has done all within his power to prevent divorce. Moreover, the other spouse cannot be held in bondage forever.

Only one act pending in Illinois places a condition precedent to the granting of separate maintenance and in so doing strictly limits the use of this action. House Bill 1794 requires both spouses to agree to separate maintenance prior to the granting of such a decree, for if one party objects, the court cannot so decree.\(^{52}\)

"IF I CRY, WILL THE JUDGE GIVE ME MORE MONEY?"

Under present law dollars and cents issues are interwoven with issues relating to status of the marriage. The result is blackmail, particularly where considerable assets are at stake. The argument of

\(^{50}\) Id.

\(^{51}\) H.B. 1794, § 314(b) (6 months); H.B. 477, § 512(b) (2 years); H.B. 403, § 6(k) (2 years after decree of separate maintenance based on no-fault separation).

\(^{52}\) H.B. 1794 § 302(b) (In this Act “separate maintenance” is referred to as “legal separation.”)
the spouse seeking property, alimony, or both, directed against the other spouse often runs as follows: "You have no grounds for divorce, and I won't give you a divorce unless you pay me what I want." Illinois property law states that

If . . . either party holds the title to property equitably belonging to the other, the court may compel conveyance thereof . . . to the party entitled to the same, upon such terms as it shall deem equitable.53

This concept of special equities has, under case law, developed a definite meaning; that is, where title to property is held by one spouse in his or her name alone, the other spouse must prove a financial contribution to the acquisition of that property in order to claim any portion thereof.54 Of course, where title to property is held jointly in the names of both spouses, each is deemed to own one-half.55


54. Overton v. Overton, 6 Ill. App. 3d 1086, 287 N.E.2d 47 (1973). There the court upheld the trial court's concept of equally dividing the property of the parties, title to which the husband had transferred to a land trust to insulate himself from possible liability arising from a business transaction. The plaintiff wife had pleaded special circumstances and equities in the property—a 20 year marriage, her husband's substantial net worth of approximately $160,000.00, her contribution of $1,000.00 in savings, her several months outside employment during the course of the marriage, and assistance to her husband in answering the business phone and making business entries. Although the court denied the trial court's award of alimony to the wife under section 19 of the Divorce Act (Ill. Rev. Stat. ch. 40, § 19 (1971)), it equitably divided the property and held that:

More is required to justify compelling a conveyance of property under Sec. 17 of the Divorce Act (Ill. Rev. Stat. 1969, ch. 40, par. 18.). Special circumstances and equities must be alleged and proven, such as the contribution of money or services other than those normally performed in the marriage relationship which has directly or indirectly been used to acquire or enhance the value of the property. The rights and interest a wife has in the property of her husband by virtue of the marriage relation alone will not support a conveyance of property under Sec. 17 of the Divorce Act. Everett v. Everett, 25 Ill. 2d 342, 185 N.E.2d 201 (1962).

Id. at 1089, 287 N.E.2d at 50.

55. One of the most recent cases reiterating this concept is LaRocco v. LaRocco, 10 Ill. App. 3d 366, 293 N.E.2d 756 (1973). In this case the appellate court reversed and remanded the trial court's award of that portion of a divorce decree directing the wife to quit-claim her interest in the marital home jointly owned by the parties to her husband after finding that there was nothing in the evidence to prove that a gift was not intended when the joint tenancy was created. It was undisputed that both parties had physically worked together to finish the property only partially completed when purchased entirely with husband's funds. The court held that in Baker v. Baker, 412 Ill. 511, at 514-515, 107 N.E.2d 711 at 713, our Supreme Court said:

"* * * Property voluntarily conveyed by a husband to his wife, without fraud or coercion is presumed to be a gift notwithstanding the fact the
Attempts to broaden the special equities concept have been relatively unsuccessful. At best a marital home may be given to the custodial parent where alternative shelter would be the street. The special equities concept is by no means eroded, nor do the courts as a practical matter in most cases divide the property equally, as some contend. The most recent case on the subject as of this writing, Katz v. Katz, should dispel any thought to the contrary. In Katz, a decree was entered granting plaintiff a divorce, giving defendant control and management of all realty and control of his currency exchange business (which powers he had prior to the divorce); all property held in joint tenancy was to be divided and held by the parties as tenants in common; and the parties were to equally divide certain United States Savings H bonds in the possession of the defendant. Defendant appealed only from that portion of the decree relating to the division of the savings bonds. On trial plaintiff alleged that throughout the marriage she had assisted defendant in acquiring personal and real property, some of which was in defendant's name alone, and some in both their names, and that she was entitled to an interest in all of the property. Further, she had contributed $2,000 toward the defendant's business at the outset of their marriage some thirty years prior to the divorce, but she had not contributed to the assets of the parties owned by them at the time of the trial, and no testimony was presented by plaintiff relative to ownership of the bonds in question.

The appellate court reversed the trial court's equal division of the savings bonds, and interpreted section 18 of the Divorce Act stating:

Special equities in that property, however, must be pleaded and proven by the party claiming them. . .

In the recent case of Debrey v. Debrey, Ill. App., 270 N.E.2d 43, [sic]
the plaintiff alleged no special equities in stock held in her husband’s name, but the trial court nevertheless ordered the husband to transfer the title to plaintiff. In reversing that part of the decree, the court on review stated at page 44:

"We do not deem it even debatable but that in order to invoke the provisions of § 17 for a conveyance of property, it is necessary for the plaintiff to allege and prove by evidence or admissions special circumstances or equities warranting such a result."\(^\text{58}\)

Consequently, to effect a satisfactory result with regard to property, litigants generally resort to leverage— contesting the divorce, seeking separate maintenance to “lock in” the other spouse, and, in short, wearing down the spouse anxious for divorce but incapable of winning one under present law. This sorry spouse ends up paying for his freedom and is usually thoroughly relieved when he receives it, but angry, in fact outraged, at his lawyer and the laws. Keep in mind that child support is not an issue here. The issues are support of an ex-spouse and division of property between the parties— partners in this unhappy partnership. To correct present injustice, a revised law must separate the issue of the status of the marriage from issues of property and alimony. Such separation is consistent with the goal of equitably dissolving an unhealthy partnership.

If confusion of facts relevant to status, property, and alimony is the problem, then obviously a no-fault statute cures the evil. Beware! Every state statute on divorce contains provisions on grounds which are separate from those on property and support.

There are discernable patterns in these provisions in the statutes of all states—fault and no-fault alike. These patterns include:

1. Alimony or support, where provided at all, awarded to either party or to the wife alone;
2. Alimony, where provided at all, awarded out of either party's separate estate or the husband's estate, either in addition to property division or in lieu of same;
3. Division of property determined by title, judicial discretion, or factors such as need;
4. Separate property of each spouse restored to that spouse free of marital obligation or subject to division; either party's separate estate, or the husband's estate alone, subject to orders for support but not to orders of property division.

A change to no-fault grounds is not always accompanied by a corresponding change in property and support provisions. No-fault

\(^{58}\) 10 Ill. App. 3rd at 40, 293 N.E.2d at 905 (1973) (emphasis by the court).
as applied to the status of the marriage may obliterate the blackmail by removing the leverage ordinarily held by the spouse who is reluctant to divorce and could, under a traditional fault statute, impede, if not prevent, the divorce entirely. A no-fault statute may, on the other hand, simply shift fault to the property and support area. The entire statute must be reviewed with careful attention given property and support provisions. Fault, or marital misconduct, has no place in determining division of property. Those who accept a punishment-reward premise for divorce laws, of course, contend differently.

Analyzing the statutes of no-fault divorce states incorporating the language of "irreconcilable differences" or "irretrievable breakdown," one finds that the differences among such statutes in their support and property provisions are their specificity. How predictable is the outcome of any property dispute or the amount of any alimony award prior to the parties going to court? The outcome in community property states is very predictable with respect to property—usually an equal division. Discretion is exercised with respect to support. At the other end of the spectrum are states which allow total discretion in property division and alimony awards. Where there is total discretion there is very little predictability. In the middle are statutes which separate the individual property of one spouse and place all other property, regardless of title, into a "marital pot" to be distributed according to guidelines propounded in the statute. Similarly, guidelines govern support. How predictable is this type of law? Predictable enough. Discretion within fairly specific limits ensures the fairest, most equitable result in each case.

All pertinent legislation pending in Illinois with the exception of House Bill 403 divides property and awards alimony without regard to title or marital misconduct in accordance with certain guidelines and thus falls within the middle ground heretofore described. With respect to property, House Bills 477 and 1794 differ slightly

59. See note 31, supra.
60. Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington.
in distinguishing individual from marital property and then dividing
marital property according to guidelines. House Bill 1794 estab-
ishes a rebuttable presumption with respect to marital property.62
The guidelines are designed to set the outside perimeters on judi-
cicial discretion and to afford some certainty of outcome in order to
promote negotiation and settlement of disputes. Further, by setting
forth the nature of evidence necessary to prove an ultimate right
to a portion of the marital property, the law properly compels the
lawyer to assume his role as an advocate. House Bill 403 takes a
unique approach to property division63 and must be quoted verba-
tim without further comment.64

62. House Bill 1794, § 307(c) establishes a rebuttable presumption with re-
spect to marital property in the following language:

All property acquired by either spouse after the marriage and before a
decree of legal separation is presumed to be marital property, regardless
of whether title is held individually or by the spouses in some form of
col-ownership such as joint tenancy, tenancy in common, tenancy by the
entirety, and community property. The presumption of marital property
is overcome by a showing that the property was acquired by a method
listed in paragraph (b) [marital property].

H.B. 1794 § 307(a) contains guidelines as follows:
(1) The contribution of each spouse to the acquisition and improve-
ment of the marital property, including the contribution of either spouse
as a homemaker;
(2) Value of the property set apart to each spouse;
(3) Duration of the marriage, and
(4) Economic circumstances of each spouse when the division of prop-
erty is to become effective, including the desirability of awarding the family
home or the right to live therein for reasonable periods to the spouse having
custody of any children.

House Bill 477, § 607(b) states the following guidelines:
(1) The contribution of each spouse to the acquisition and improve-
ment of the marital property, including the contribution of either spouse as
a homemaker.
(2) The contribution of each spouse to the improvement or enhance-
ment in value of the separate property of the other.
(3) The nature and value of the property.
(4) The duration of the marriage.
(5) The financial needs and capabilities of the parties.

63. The authors are unaware of any divorce statute in force which deals with a
defeasible gift concept.

64. House Bill 403, 2 § 7(a)(b):
Section 27. Adjustment of Property Rights—Defeasible Gifts:
(a) Presumption of defeasible gift.
If an interest is acquired either in contemplation of marriage or after
marriage, by one spouse in property—real or personal—owned by or ac-
quired by the other spouse and it is proven that the spouse granting such
interest owned the property prior to the marriage, or purchased the
property with funds acquired independent of the marital relation, or re-
ceived the property by gift, devise, bequest or inheritance from a person or
A major concern among Illinois lawyers with regard to property reform in divorce is whether tendered proposals in effect make Illinois a community property state. The answer is no. To the extent separate and marital property are distinguished, the approach is the same as in a community property state. Thereafter, the similarity ends. None of the proposed Illinois bills adopt the usual equal division of community property states.

In no-fault states, statutes governing alimony, like those concerning property division, vary as to specifics. All proposed Illinois legislation awards alimony in accordance with certain guidelines, regardless of marital fault. Within these guidelines judicial discretion can be exercised. Alimony can be awarded to either spouse under House Bills 477 and 1794. House Bill 1794, however, initially requires proof that the spouse seeking alimony is incapable of self-support. After such proof, the guidelines control.

House Bill 477 allows fault in the nature of traditional fault grounds to be raised as an affirmative defense to bar or mitigate alimony against a spouse not entitled to the same, for example, the 20-year old blond darling, who, after two years of marriage and repeated nefarious contacts with her high school sweetheart, decides she made the wrong choice of a mate when she married the es-

persons other than his or her present spouse, and that the spouse granted such interest advanced no consideration for the acquisition of such interest, it shall be presumed that such interest was acquired as a gift in consideration of the continuation of the marital relation and known as a defeasible gift.

(b) Effect of cessation of marital relation on defeasible gift.

If a spouse who has granted a defeasible gift proves that the marital relationship has ceased because of the action of the spouse who was granted the gift, the court may make such orders or render such judgment, including a reconveyance, in whole or in part, of such interest to the original grantor, respecting the property as equity and justice require.

In determining its action, the court shall take into consideration the circumstances under which such interest was granted, the length of time such interest has been held by the grantor, the extent to which either or both of the parties have contributed to the maintenance and appreciation in value of the property, the effect of divestiture upon minor children, the extent to which the acquiring spouse helped to create an atmosphere which made acquisition of the entire property possible, the comparative fault of the parties in causing a marital breakdown, and any other factors which will permit the court to arrive at a just decision, bearing in mind that no person should be unjustly enriched.

This defeasible gift concept is the only treatment of property division in House Bill 403.

65. H.B. 1794, § 308(b).
established, hard-working business tycoon whose only diversion in his 60-year life span was to embellish his life with his 20-year old wife. This allowance of an affirmative defense to alimony is a necessary protection against an unjust windfall to a spouse who clearly caused the marriage breakdown. It is the only legitimate place to allow proof of fault because the unpleasantness of such proof is outweighed by the injustice of an otherwise arbitrary alimony award. Where misconduct of the spouse seeking alimony has clearly undermined the marriage, such spouse ought not to expect and receive what amounts to monetary reward for such conduct.

Two other bills pending in Illinois affect alimony. House Bill 1262, now enacted into law, allows one who in good faith married a bigamist the same rights to alimony as in other cases. House Bill 459 defines remarriage for purposes of alimony.

In addition to removing fault as a consideration, the most obvious change in support statutes is the limitation on alimony both in time and amount. Query, whether this results from the changing role of women or the concept of no-fault? Ideally, support laws should treat males and females equally, but until job opportunities, salaries, and promotions for women are the same as for men, the law must retain sufficient flexibility and judicial discretion to alleviate economic inequities where they exist. There is variety among no-fault statutes in the areas of property and support. Illinois proposals containing guidelines on judicial discretion are in line with the majority trend.

"WHAT DO YOU MEAN—HE HAS A RIGHT TO SEE THE CHILD?"

No law can contain too many protections for children of broken marriages. The rule of thumb used in our present law as an appropriate standard in determining questions of custody, visitation and child support is the best interest of the child. All of the legislation pending in Illinois retains this generalized standard while enumerating specific guidelines for these determinations. The presumption that the interests of very young children are better protected by


67. House Bill 459, § 18 reads as follows: "Remarriage includes cohabiting with another person of the opposite sex with or without a marriage license and even if said marriage is later annulled [sic]."
placement with their mothers is certainly subject to question under the language of proposed legislation. In addition to listing certain facts to be considered in determining custody, House Bill 477 specifically provides that conduct of the custodian or proposed custodian which does not affect the child is irrelevant. This bill further provides that either or both parents shall pay child support and sets forth relevant guidelines governing the amount to be paid by each. House Bill 1794 and the Revised Uniform Act are identical in these respects.

Recognizing that a child need not be deprived of the attention and companionship of a grandparent, an aunt, or other persons interested in him, House Bills 477 and 403 allow visitation rights to such interested persons as well as to the parents. This recognition does much to correct wrongs vested upon children by parents who, when left to their own whims, go to extremes to effect such deprivation.

House Bills 477 and 403 parallel each other in providing for the support of non-minor children when they are either mentally or physically disabled, or are students at an educational institution. Further, guardians ad litem are given increased responsibilities. A child's interests may be adverse to those of his parents, and it is of

68. House Bill 477, § 704(a)(1)-(5) reads: Where there is at issue the custody of a minor or dependent child the court may, during the pendency of a proceeding or at any time thereafter, make such order for the custody of such child during his minority or dependency as may be necessary and proper.
(a) Issues for determination. The court shall determine custody in accordance with the best interests and welfare of the child, and shall consider all relevant factors including: (1) The wishes of the child's parent or parents as to his custody. (2) The wishes of the child as to his custodian. (3) The interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests. (4) The child's adjustment to his home, school, and community. (5) The mental and physical health of all individuals involved.
69. H.B. 477, § 704(b).
70. H.B. 477, § 604(a)(1)-(4). The relevant guidelines are: (1) the financial resources of both parents; (2) the standard of living the child would have enjoyed had the marriage not been dissolved; (3) the age, physical and emotional condition of the child and his educational needs; and (4) the financial resources of the child.
72. H.B. 477, § 604(b); H.B. 403, § 20.1(e).
paramount importance that, if this is the case, the court be advised and the child's interests be represented and protected.\textsuperscript{73}

Hopefully, the deletion of fault from questions affecting children, together with additional guidelines for support, custody and visitation, will prevent the all too frequent practice of parents either consciously or subconsciously using children to achieve their own objectives.

\textbf{UNIFORMITY FOR ILLINOIS?}

Progressive, realistic reform in Illinois family law should be our immediate concern, not legislating for the several states to create uniformity.\textsuperscript{74} The proposed Uniform Act and Revised Uniform Act emphasize and guide necessary, enlightened legislation in every state. It is a disservice to make laws governing marriage and divorce the same in every state without regard to the nature and traditions of the people within a given state. Preventing forum shopping is insufficient justification for sacrificing individuality in statutes governing family relationships, because values, living patterns, and human relationships vary from state to state—even among districts or portions within a state.

\textbf{CONCLUSION}

There is no such thing as a perfect law. In family law we need legislation which is progressive but realistic, idealistic yet workable, and futuristic yet acceptable. The law should be sufficiently specific to afford predictability while permitting discretion to effect fairness in each and every case; and while legislating for the majority, we must consider the minority.

In the area of family law, which necessarily involves basic human emotions and hence is highly volatile, a statute must be a compromise. The compromise, however, must be one which preserves an individual's right to be a private person living his life as he sees fit within certain broad outlines acceptable to society.

\textsuperscript{73} H.B. 1794, § 310; H.B. 477, §§ 703(a), (b); H.B. 403, § 20.6.

\textsuperscript{74} House Bill 1794, § 103 states its purpose as:

Section 103. Uniformity of Application and Construction. This Act shall be so applied and constructed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.