

Second Chances: A Proposal to Reduce Unnecessary Divorce

— WILLIAM J. DOHERTY AND
CHIEF JUSTICE LEAH WARD SEARS



ABOUT THE AUTHORS

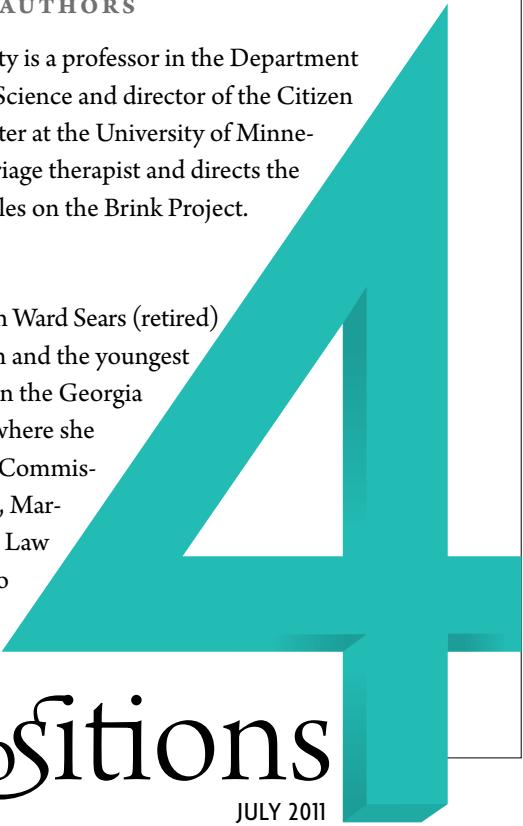
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Chief Justice Leah Ward Sears (retired) is the first woman and the youngest person to serve on the Georgia Supreme Court where she spearheaded the Commission on Children, Marriage, and Family Law and The Access to Justice Project.

Propositions

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IS THERE ANYTHING THAT CAN BE DONE ABOUT THE DIVORCE RATE IN
U.S. states? The conventional wisdom says no. Most people believe that once a couple seeks to initiate divorce, hope for the marriage is all but lost.

But a new study suggests that, contrary to conventional wisdom, a significant minority of persons and couples on the brink of divorce actively desire a chance for reconciliation. [See original document for footnotes.] This finding amplifies a growing body of work suggesting that many of today's divorces are unnecessary and that some may be preventable.

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Each year in our nation, about one million children experience their parents' divorce. In most divorces involving children, research shows that the harm to children is significant and long-lasting. Even a modest reduction in the U.S. divorce rate would likely benefit at least 400,000 children nationally each year.

Our nation's divorce rate is also financially costly. A recent study found that, based on cautious estimates, divorce and unwed childbearing costs taxpayers at least \$112 billion annually. Reducing the divorce rate even modestly would save taxpayers money.

In “Second Chances: A Proposal to Reduce Unnecessary Divorce,” we detail these studies and trends and offer a set of reforms that state legislatures could adopt—we call it the Second Chances Act—that would help couples in crisis without making changes to the no-fault system.

A New Proposal

IN AN ERA IN WHICH JOBS AND THE ECONOMY ARE THE OVERRIDING concerns, why should America care about the divorce rate? The social and economic struggles of young families to enter and be sustained in the middle class, and to raise their children with bright futures, are made all the harder by family instability. A solid body of social science evidence now affirms that marriage is not merely a private arrangement between two persons. It is a core social institution, one that helps to ensure the economic, social, and emotional welfare of children, women, and men.

Since no-fault divorce was first introduced more than forty years ago, America has witnessed the effect of liberalizing divorce laws in nearly every state of our nation. Some legislators believe that nothing can be done about these problems because they represent irreversible cultural trends, or because significant changes in no-fault divorce laws are not politically feasible.

But, in fact, there is a great deal we can do. Surprising new research from the Minnesota Couples on the Brink Project, based at the University of Minnesota (and led by a co-author of this report), has shown that in as many as 40 percent of couples well into the divorce process, one or both of the spouses would be interested in reconciliation services. (In 10 percent of the couples, both spouses are interested but probably haven't told each other.)

We propose that states require pre-filing education for divorcing parents. These sessions would combine parent education with a module on the option of marital reconciliation. States could simultaneously establish a waiting period for divorce of at least one year (currently in some states the waiting periods are as short as ninety days), while providing a voluntary early notification letter that spouses can use to let their spouse know their intentions without necessarily filing for divorce. The extended waiting period would help to slow down the highway that speeds couples to divorce, giving them a chance to consider and explore the reconciliation option if they wish to, or at least to go into divorce better prepared for the challenges that lie ahead. We also propose to create state-level centers of excellence that would develop the capacity of professionals and communities to help couples in the brink of divorce. These centers could work through innovative means—such as by using a new approach called “discernment counseling”—and by connecting troubled couples to sources of support in their communities. States can combine these mutually reinforcing reforms into one piece of legislation that we call the Second Chances Act.

How Does Divorce Affect Our Nation's Children?

WE NOW KNOW THAT DIVORCE ON AVERAGE HAS DRAMATIC EFFECTS on children's lives, across the life course. Research shows that divorced fathers and mothers are less likely to have high-quality relationships with their children. Children with divorced or unmarried parents are more likely to be poor, while married couples on average build more wealth than those who are not married, even accounting for the observation that well off people are more likely to get married.

Parental divorce or failure to marry appears to increase children's risk of school failure. Such children are less likely to finish high school, complete college, or attain high-status jobs. Infant mortality is higher among children whose parents do not get or stay married, and such children on average have poorer physical health compared to their peers with married parents. Teens from divorced families are more likely to abuse drugs or alcohol, get in trouble with the law, or experience a teen pregnancy. Numerous studies also document that children living in homes with unrelated men are at much higher risk of childhood physical or sexual abuse. These studies generally adjust for income and other factors.

How Would Less Divorce Affect the Bottom Line in Our States?

MARRIAGE IS AN ECONOMIC INSTITUTION AS WELL AS A SOCIAL ONE. Marriage generates social and human capital, especially with regard to children. Research on family structure is now suggesting a variety of ways through which lasting marriages may reduce the need for costly social programs.

In a recent national study that included extensive data on all fifty states, and which relied on cautious economic modeling, scholars estimated that divorce and out of wedlock childbearing costs U.S. taxpayers at least \$112 billion every year. These costs arise from increased taxpayer expenditures for antipoverty, criminal justice, and education programs, and through lower levels of taxes paid by individuals who, as adults, earn less because of reduced opportunities as a result of having been more likely to grow up in poverty. If, as research suggests is likely, marriage has additional benefits to children, adults, and communities, and if those benefits are in areas other than increased income levels, then the actual taxpayer costs of divorce and unwed childbearing are likely much higher. The clear implication from this and other emerging research is that even very small increases in stable marriage rates would result in significant savings for taxpayers.

Why Offering Marriage Counseling Is Not Enough

THE MOST COMMONLY AVAILABLE RESOURCE FOR COUPLES IN THE MIDST of a divorce crisis is marriage counseling. Counselors might be members of the clergy, pastoral counselors associated with faith communities, or professional therapists. Among them are skilled practitioners who have helped many married couples. However, there is reason to believe that the quality of marriage counseling services available in many communities is inadequate to serve as the main resource for couples at high risk for divorce.

Most lay people do not realize that therapists practicing marriage counseling in the U.S. usually have not been adequately trained for this difficult form of therapy. Therapists are typically trained in individual therapy, not couples therapy. The theoretical standpoint of most therapists with regard to marriage is also a problem. Counselors typically feel they should hold a neutral stance towards whether the marriage survives or ends in divorce. The therapist feels that he or she should help the client gain clarity on his or her own feelings but not try to influence a client's decision one way or the other.

We believe that a main problem with the neutral approach, as opposed to a pro-marital-commitment stance for working with at-risk married couples, is that the counselor does not work vigorously to restore hope for demoralized spouses.

A recent positive development is found in the area of “discernment counseling.” This intervention is for couples who have started the divorce process, or are seriously considering it, but one or both of the spouses are not sure divorce is the right path. The counselor helps individuals and couples decide whether to try to restore their marriage to health, to continue towards divorce, or to take a time out and decide later. The key innovation in discernment counseling is that it does not ask the parties to try to change their relationship or improve their marriage at this time. The decision is framed as whether to continue towards divorce or agree to a six month period of marital therapy and other services to see if they can restore the marriage. Thus the focus is not whether to stay married forever—which is something that the partner leaning towards divorce usually feels is impossible to commit to—but whether to try to save the marriage over a reasonable period of time, with divorce off the table as an option during that period. At the end of, for example, six months, divorce can be placed back on the table if the marriage has not improved enough for one or both parties. Discernment counseling is one new way to help couples pause, take a breath, and reflect on their relationship and its prospects before moving forward in the divorce process.

Reconciliation Education Available to All

SHOW DO WE REACH THESE COUPLES? FORTUNATELY, WE ALREADY have resources in many states that can be built upon to help couples in crisis.

In recent decades, forty-six states across the U.S. have implemented some form of required parenting classes for divorcing couples with minor children. These classes are typically offered through non-profit agencies, for a fee, and they range from four to twelve hours in length, usually conducted over several sessions.

The goal of these classes is to reduce conflict between divorcing parents and to teach positive co-parenting strategies for parents to use during and after the divorce. Anecdotally, parent educators who teach the required parenting classes report that some parents say, “I wish I had known these things when we first broke up” or “My spouse and I are communicating better than we ever have. I wonder if learning this material beforehand could have helped us stay married.”

Currently, even though the parenting classes are usually required, most parents do not take them until well into the divorce proceedings. And, these classes do not offer a reconciliation module for parents who might be interested in learning more and exploring that option.

We recommend that existing state statutes on mandatory classes for divorcing parents be modified to specify that research-based content on reconciliation be included in required parenting classes for divorcing couples. The content can include questions to help individual spouses reflect on their potential interest in reconciliation; the research on reconciliation interests among divorcing couples; the potential benefits of avoiding divorce for children and adults; resources to assist with reconciliation; and solid information on when the risk of domestic violence should rule out working on reconciliation. We further recommend that states require this education before either spouse files for divorce.

This proposal represents an important coming together of divorce educators and marriage advocates. Divorce educators have long been frustrated by the fact that many parents delay taking co-parenting classes until after they have made many avoidable mistakes that have hurt themselves and their children. Our proposal appeals to divorce educators because it reaches all couples at the outset of the divorce process, before the effects of the process itself lead to poor co-parenting practices. At the same time, the proposal appeals to marriage advocates because it accesses couples at a time when reconciliation might be most possible. No matter whether couples ultimately decide to continue with their divorce or to reconcile, the classes will have helped them to learn more about positive parenting strategies. The classes will also teach parents what the research says about marriage, divorce, and children, and how to access resources in their communities if they need further support.

Should Everyone Reconcile?

OF COURSE NOT. NO ONE ADVOCATES FOR KEEPING DESTRUCTIVE marriages together. Divorce is a necessary safety valve in some cases. But in recent years scholars have gained a deeper understanding of the problems felt by couples who divorce, as well as the impact of divorce on children.

Research has shown that the majority of divorces (anywhere from 50 to 66 percent, depending on the study) occur in couples who had average happiness and low levels of conflict in the years prior to the divorce. These couples look quite similar to continuously married couples, but they have risk factors such as growing up in a divorced family, lower levels of commitment to marriage, and less knowledge of the effects of divorce on children. The other group (about 33 to 50 percent of divorcing couples) shows a pattern of high conflict, alienation, and sometimes abuse.

The research consensus is that children who live with chronic high levels of conflict and hostility between their parents may benefit from a divorce. But children in the average marriages that break up—those that make up the majority of divorces—are likely to be harmed by the divorce. These children are propelled from a relatively stable family life into a post-divorce world that brings many challenges.

A Second Chance

WHY NOT AIM FOR A MODEST GOAL? NEW RESEARCH IS SUGGESTING that among more than a third of couples in divorce court, at least one person in the couple, and sometimes both of them, might be interested in exploring reconciliation. Why don't we help those people who express an interest in learning more about help available in their communities, while also giving them time to explore that option?

We now know what widespread divorce does to children and to the health of our nation. Let's give these children, their mothers and fathers, and our nation a Second Chance. 

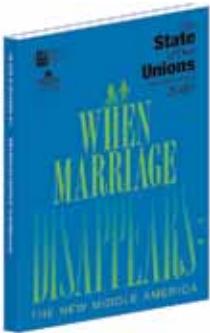
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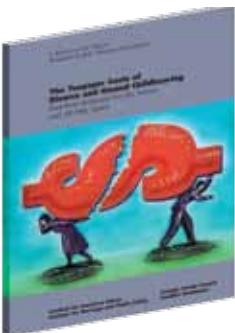
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The State of Our Unions 2010 When Marriage Disappears: The New Middle America

An Annual Report on Marriage in America.

Edited by W. Bradford Wilcox (Broadway Publications 2010) **\$10.00**
The retreat from marriage is placing the American Dream beyond the reach of many in our society, imperiling the social and economic welfare of children from Middle America, and opening up a social and cultural divide in our nation that does not bode well for the American experiment in democracy.



The Taxpayer Costs of Divorce and Unwed Childbearing: First-Ever Estimates for the Nation and for All Fifty States

A Report to the Nation.

By Benjamin Scafidi (Broadway Publications 2008) **\$5.00**
This study provides the first rigorous estimate of the costs to the U.S. taxpayers—at both the national and state levels—that stem from high rates of divorce and unmarried childbearing. Based on a cautious methodology, we estimated that U.S. taxpayers paid \$112 billion each and every year, or more than \$1 trillion each decade.