

# Second Chances

A PROPOSAL  
TO REDUCE UNNECESSARY DIVORCE

*Presented to U.S. State Legislatures*

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As an independent piece of research and analysis, this report does not necessarily reflect the views of any organization or of persons other than the authors.

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October 21, 2011

## DEAR READER:

As co-authors of this report, we come from quite different places and experiences. One of us is from the South, female, African American, a former state supreme court justice, and now a lawyer. The other is from the Midwest, male, white, a university professor, and a marriage therapist. We think we make a pretty good team!



**WILLIAM J. DOHERTY** is a professor of Family Social Science at the University of Minnesota and has worked with couples since 1977. He has seen his share of unnecessary divorces, as well as those that were necessary to prevent further harm. He is committed to the idea of adults doing their best for their children, which sometimes means employing every available resource to restore a troubled marriage to health. Married for forty years himself, Bill knows that the marital journey is not always easy. He believes government has a modest but important role in preventing unnecessary divorces, and hopes that policy makers find this report helpful to their thinking about how to encourage couples to survive the “worst” and restore the “better” in their marriages.



**LEAH WARD SEARS** is the former chief justice of the Georgia Supreme Court who has been considered twice for nomination to the U.S. Supreme Court by President Barack Obama. As chief justice, she spoke frequently about the need to restore the culture of marriage in America. As a jurist, Leah used persuasion to win victories on a court where some viewed her as part of the liberal minority, even though she has always called herself a moderate. In a 1998 concurring opinion against Georgia’s anti-sodomy law, she wrote: “To allow the moral indignation of a majority (or, even worse, a loud and/or radical minority)

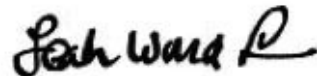
to justify criminalizing private consensual conduct would be a strike against freedoms paid for and preserved by our forefathers.” Since retiring from the bench in 2009, Leah has continued her work on issues surrounding marriage and divorce, while leading the national appellate team at the law firm of Schiff Hardin LLP. Divorced after twenty years of marriage, she has two children and has been married to Haskell Ward since 1999.

Both of us sincerely believe that the modest reforms contained in our proposed Second Chances Act can contribute measurably to reducing unnecessary divorce in the United States. We urge policy makers to read the report, to contact us if you need further information or would like our help—and then to take action.

Sincerely,



William J. Doherty



Leah Ward Sears

# MAJOR FINDINGS

- *About 40 percent of couples already deeply into the divorce process report that one or both spouses are interested in the possibility of reconciliation.*
- *A modest reduction in divorce would benefit more than 400,000 U.S. children each year.*
- *A modest reduction in divorce would produce significant savings for U.S. taxpayers.*



# MAJOR RECOMMENDATIONS

- *Extend the waiting period for divorce to at least one year.*
- *Provide high-quality education about the option of reconciliation.*
- *Create university-based centers of excellence to improve the education available to couples at risk of divorce.*

# 1. RESEARCH FINDINGS

## MANY DIVORCES MAY BE UNNECESSARY

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.

Longitudinal research over the past decade has shown that the majority of divorces (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 generally look quite similar to continuously married couples, but they have risk factors such as having grown up in a divorced family, lower levels of commitment to marriage, and less knowledge of the effects of divorce on children. The other group (from 33 to 50 percent of divorcing couples) shows a pattern of high conflict, alienation, and sometimes abuse.

As for the effects of the divorce on children, the research consensus is that children who live with chronic high levels of conflict and hostility between their parents will likely benefit from a divorce. But children in the average marriages that break up—those that constitute the majority of divorces—are likely to be harmed by the divorce. They do not understand why their parents broke up. They may blame themselves. And they are propelled from a relatively stable family life into a post-divorce world that offers little relief and brings many challenges.<sup>1</sup>

There is a popular assumption among professionals and the public that divorce happens only after a long process of misery and conflict finally drives the spouses to end the marriage. One set of scholars summarized this common but mistaken assumption in this way:

*Many people assume that a trajectory of relationship deterioration typically underlies this decision. According to this scenario, couples disagree and fight frequently, partners become increasingly disengaged from one another emotionally, and each partner's marital happiness declines.*

*Eventually, one or both partners decide that the marriage has eroded to the point where it cannot be salvaged. As a result, one partner, often with the consent of the other, files for marital dissolution.*<sup>2</sup>

This scenario turns out to be inaccurate for many couples confronting divorce. Sociologist Paul Amato of Pennsylvania State University and his colleagues found that most couples who divorce actually look quite similar to most couples who do not divorce. Most divorced couples report *average happiness and low levels of conflict* in their marriages in the years prior to the divorce. It is the minority of divorcing couples who, during their marriages, experienced high conflict, alienation, and sometimes abuse.

In a separate paper, Professor Amato and sociologist Alan Booth offer this promising conclusion: “Our results suggest that divorces with the greatest potential to harm children *occur in marriages that have the greatest potential for reconciliation*” (emphasis added).<sup>3</sup>

## **A LOWER DIVORCE RATE WOULD BENEFIT MANY 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 failure in school. 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, and 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.<sup>4</sup> These studies generally adjust for parental education and income, which means that the negative effects cannot be explained by these demographic factors.

In a compelling use of data, Professor Amato examined indicators of child well-being in America to ask how child trends would look if the nation regained the family trends of recent decades:

*Increasing the share of adolescents living with two biological parents to the 1970 level...would mean that 643,264 fewer children would repeat a grade. Increasing the share of adolescents in two-parent families to the 1960 level suggests that nearly three-quarters of a million fewer children would repeat a grade. Similarly, increasing marital stability to its 1980 level would result in nearly half a million fewer children suspended from school, about 200,000 fewer children engaging in delinquency or violence, a quarter of a million fewer children receiving therapy, about a quarter of a million fewer smokers, about 80,000 fewer children thinking about suicide, and about 28,000 fewer children attempting suicide.<sup>5</sup>*

An important recent trend in research has been to investigate not only the effects of divorce on children, but also the effects of multiple family transitions that often follow after divorce. As mentioned above, the divorce rate for first marriages is about 40 to 50 percent, and about 60 percent for remarriages. Cohabiting unions are even more unstable. Thus, children whose parents divorce often go through not just one family transition, but several or many (especially given that after a divorce a child's mother and father are each following separate relationship paths). These studies are showing that the more transitions children go through, the more behavior problems and delinquent behavior they have, the lower their academic achievement and psychological well-being, and the greater their risk for having a non-marital birth and relationship instability in adulthood.<sup>6</sup> Overall, the optimistic view that if parents divorce they will each soon marry someone else with whom they will be happy, and then the children will have stability, is not typically borne out.

Scholars are also now studying what is called the "intergenerational transmission of divorce," that is, the emerging evidence that getting divorced makes one's children more likely someday to divorce, and hence puts one's grandchildren at risk for growing up in a divorced family. In the most extensive national study of the generational cycle of divorce, sociologist Nicholas Wolfinger of the University of Utah found that divorce increased children's chance of someday ending their own marriages by at least 50 percent. Further, grown children of divorce were 50 percent more likely to marry other children of divorce. If they

did so, their increased risk of divorce was 200 percent greater than couples in which neither spouse came from a divorced family.<sup>7</sup>

These findings suggest that lowering the divorce rate in the U.S. would probably lead to a significant increase in U.S. child well-being.

How much lowering would lead to how much improvement for children? Currently, the U.S. state with the lowest divorce rate is Massachusetts. Illinois has the second lowest rate. Consider these estimates:

- If the national divorce rate were to equal that of Illinois, about 308,000 U.S. children each year would be spared the experience of having their parents divorce.
- If the nation met the Massachusetts rate, more than 400,000 U.S. children each year would be spared the experience of having their parents divorce.<sup>8</sup>

Let's sum up:

- More than half of U.S. divorces today appear to take place in low-conflict homes in which the best outcome for children would probably be a continuation of the marriage.
- Those U.S. divorces today that are most likely to harm children are precisely those divorces that appear to have the greatest potential for reconciliation.

## **OUR CURRENT DIVORCE RATE COSTS TAXPAYERS BILLIONS OF DOLLARS PER YEAR**

Marriage is an economic institution as well as a social one; it 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 relied on extremely cautious economic modeling, scholars estimated that divorce and out-of-wedlock childbearing costs U.S. taxpayers at least \$112 billion every year.<sup>9</sup>

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 researchers adopted the simplifying and extremely cautious assumption that all of the taxpayer costs of divorce and unmarried childbearing stem from the effects that family fragmentation has on poverty, a causal mechanism that is well-accepted and has been reasonably well-quantified in the literature.

Another study focusing solely on divorce estimated that divorces in the year 2001 cost state and federal governments about \$33 billion. An average divorce in 2001 cost taxpayers over \$30,000, based on factors such as higher use of food stamps and public housing along with increased rates of bankruptcies and juvenile delinquency. The public cost per household was \$312. These figures did not include additional expenses in areas such as health care and incarceration.<sup>10</sup>

The clear implication from emerging research is that even very small increases in stable marriage rates would result in significant savings for taxpayers.

## MANY DIVORCES MAY BE PREVENTABLE

According to conventional wisdom, when a couple files for divorce, that marriage is essentially over.

But we now know that this conventional wisdom just ain't so.

New research shows that about 40 percent of U.S. couples *already well into the divorce process* say that one or both of them are interested in the possibility of reconciliation.<sup>11</sup>

This finding is stunning. It tells us that we have a major new opportunity to help millions of American families and to strengthen our society.

Let us tell you a bit more about this important concept.

**FOR THE PAST FORTY YEARS**, law and judicial policy on divorce have been crafted with the assumption that once couples file for divorce, the marriage is over and the only realistic goal is a fair, constructive divorce. Conversations with judges and divorce attorneys about the topic of marital reconciliation are often met with some version of the following: “It’s not our job to be marriage counselors, and by the time people get to us they want help with getting a divorce, not with saving their marriage.”

It was not always this way. In the 1960s, many family court professionals saw their first goal as helping couples reconcile if possible, and then, if this was not possible, helping them have a constructive divorce. This dual focus is documented in the history of the Association of Family and Conciliation Courts, the leading professional organization for divorce professionals, and in landmark works such as *Therapeutic Family Law: A Complete Guide to Marital Reconciliations*.<sup>12</sup> The assumption in the field at that time was that many couples filing for divorce could be helped to reconcile by teams of legal and mental health professionals. Even if they were not successful, it was worth the effort by the courts.

This “reconciliation first” approach was short-lived. A headline in the history section on the Association of Family and Conciliation Court’s website describes the shift this way: “The 1970s: From Reconciliation to Divorce with Dignity.” Marital reconciliation was quietly dropped from the organization’s mission statement as court professionals turned their full attention to “helping couples end their marriages with a greater sense of dignity and self-worth and with less trauma to themselves and their children.”<sup>13</sup> By the 1980s and 1990s, mediation and other forms of collaborative practice replaced marriage counseling in professionals’ work with divorcing couples. No one denied the possibility that marital reconciliation could occur as a result of a good, collaborative divorce process, but restoring the marital relationship was no longer an intentional focus of divorce practice in the United States.<sup>14</sup>

However, neither the early enthusiasm for reconciliation services nor the later abandonment of these services was informed by actual research on divorcing couples. Prior to new research that will be shared in this report, *no studies asked divorcing people if they would be interested in exploring marital reconciliation with professional help*. The study cited below came out of the practical experience of Judge Bruce Peterson of Hennepin County, Minnesota. His meetings with divorcing couples convinced him that at least some couples would

be interested in an “exit ramp” or at least a “rest stop” on the divorce superhighway. Some of these couples seemed to need and even want time to explore the reconciliation option. When Judge Peterson looked at his own court system, widely acknowledged as a progressive one, he saw attempts to meet nearly every need of divorcing couples—legal and financial assistance, protection orders, parenting education, and more—*except* for reconciliation.<sup>15</sup>

**INTRIGUED BY THIS KNOWLEDGE GAP**, an author of this report, William Doherty of the University of Minnesota, recently began with his colleagues to investigate what, if any, interest there might be in reconciliation among divorcing couples. Their surprising findings suggest that policy makers and divorce professionals may have given up too soon on the prospects for couples on the brink of divorce.<sup>16</sup>

The team set out to identify how many parents in the divorce process believe that restoring their marriage is still possible and if they might be interested in services to help them reconcile. A sample of 2,484 divorcing parents completed surveys following their currently required parenting classes. About one in four individual parents indicated some belief (responding “yes” or “maybe”) that their marriage could still be saved, and in about one in nine couples both partners did. As for interest in reconciliation services, about three in ten individual parents indicated potential interest. Among couples, about one in three had one partner interested but not the other, and in over 10 percent of couples both partners indicated some degree of interest in reconciliation services.<sup>17</sup> The majority of participants took the parenting class, and thus completed the project’s survey, toward the end of the divorce process. The fact that a significant minority of individuals and couples surveyed even well into the divorce process expressed interest in learning more about reconciliation suggests that the proportion of couples open to reconciliation might be even higher at the outset of the divorce process—before the process itself has caused additional strife.

In order to gain a more nuanced look at divorcing people’s attitudes towards divorce and reconciliation, Professor Doherty and colleagues developed a typology of different attitudes toward getting divorced and surveyed an additional group of divorcing parents after they completed the parenting classes. The language of the four attitudes was developed in consultation with a group of divorce attorneys with many years of experience. Parents were asked to check which one of the following attitudes was closest to their own:



1. I'm done with this marriage; it's too late now even if my spouse were to make major changes.
2. I have mixed feelings about the divorce; sometimes I think it's a good idea and sometimes I'm not sure.
3. I would consider reconciling if my spouse got serious about making major changes.
4. I don't want this divorce, and I would work hard to get us back together.

In their preliminary report on this typology, Professor Doherty and his colleagues found that about 65 percent of parents fell into category 1 (the marriage is definitely over) and 30 percent were divided among categories 2, 3, and 4. (These figures refer to a sample of individual spouses, not couples.) The results added insight into the original research in which a similar 30 percent of individual parents believed their marriage could be saved and had some degree of interest in reconciliation assistance. Table 1 shows these findings, along with a recent smaller sample of clients whose initial consultation with a collaborative divorce lawyer revealed a degree of ambivalence about the divorce that was even higher than in those surveyed after filing.<sup>18</sup>

When these findings were presented to the original group of divorce attorneys, they were met with surprise and even shock. It was clear, several of the lawyers said, that they had not been paying enough attention to the openness to marital reconciliation among their clients.<sup>19</sup> A working group, the Family Law Marital Reconciliation Option Project, was then formed.<sup>20</sup>

We believe that the 30 percent of those already far into the divorce process who were identified by the Minnesota Couples on the Brink Project as being uncertain about divorce or open to thinking about reconciliation deserve more attention and support than they receive in current law, judicial policy, and professional practice.

A separate research study by Professor Jared Anderson and Professor Doherty has yielded additional insights into marital “turnarounds.”<sup>21</sup> Using a state-of-the-art statistical approach that allowed for a more nuanced analysis of changes in marital happiness over time for couples who stay married, and employing

**Table 1**

**Minnesota Couples on the Brink Project:  
Parents' Attitudes toward Their Divorce**

PARENTS' ATTITUDE TOWARD THEIR DIVORCE	PARENTS AFTER MANDATED PARENTING CLASSES		PARENTS MAILED SURVEYS WITHIN ONE MONTH OF FILING FOR DIVORCE		PARENTS AT FIRST CONSULTATION WITH A LAWYER	
	(N=445)		(N=220)		(N=78)	
	n	%	n	%	n	%
I'M DONE WITH THIS MARRIAGE; IT'S TOO LATE NOW EVEN IF MY SPOUSE WERE TO MAKE MAJOR CHANGES.	286	67.30%	137	62.30%	42	53.80%
I HAVE MIXED FEELINGS ABOUT THE DIVORCE; SOMETIMES I THINK IT'S A GOOD IDEA AND SOMETIMES I'M NOT SURE.	79	18.60%	31	14.10%	11	14.10%
I WOULD CONSIDER RECONCILING IF MY SPOUSE GOT SERIOUS ABOUT MAKING MAJOR CHANGES.	37	8.70%	24	10.90%	12	15.40%
I DON'T WANT THIS DIVORCE, AND I WOULD WORK HARD TO GET US BACK TOGETHER.	23	5.40%	28	12.70%	13	16.70%

Source: William J. Doherty, Brian J. Willoughby, and Bruce Peterson, "Marital Reconciliation Interests of Divorcing Parents: Research and Implications for Practice," *Family Law Forum* 19, no. 3 (Spring/Summer 2011): 48-52.

a data set that has followed a group of continuously married individuals for twenty years (the Marital Stability over the Life Course Study), the researchers found that about one-third of married people who had ever reported low marital happiness later on experienced a turnaround. In other words, about one-third of unhappy marriages recovered.<sup>22</sup> It is interesting that this figure is similar to the 30 percent of divorcing parents who expressed an interest in reconciliation that the Minnesota Couples on the Brink Project revealed.

Overall, an intriguing and growing body of research is suggesting that most couples who divorce have problems that are not much different from those who stay married, that unhappy marriages can experience turnarounds, and that even well into the process a significant minority of those divorcing are interested in exploring the option of reconciliation. Together, the research suggests that it is not only possible but wise for the state to help distressed couples when possible to avoid divorce.

**WHAT HAVE WE LEARNED?** The research findings presented in this report clearly suggest that today's very high U.S. divorce rate is not only costly to taxpayers, it is not only *harmful* to children, it is also, to a degree that we are only now understanding, *preventable*.

## 2. RECOMMENDATIONS

The remaining sections of this report detail our recommendations for giving married couples a second chance when it comes to their marriage.

### EXTEND THE WAITING PERIOD FOR DIVORCE

Across America there is considerable variation in the period that states require couples to wait before they can finalize their divorce. These waiting periods range from no wait at all to two years.

We recommend that states adopt a waiting period of at least one year from the date of filing for divorce before the divorce becomes final.

Why do we recommend a minimum of one year? While some states with low divorce rates have a two-year waiting period—and we believe that there are solid reasons why they should retain this time limit—we believe that as a general and threshold rule (a minimum of) one year is sufficient to accomplish the goals recommended in this report.

Some might suggest that any nontrivial mandatory waiting period is unnecessary and unfair. Why not let people decide for themselves whether they want to divorce quickly or to be more deliberate?

We offer seven reasons why those states without one should adopt a one-year waiting period for a divorce to be finalized:

#### ***1. Law carries meaning about what we value as a society.***

Many states have a waiting period between obtaining a marriage license and the marriage ceremony. The reasoning is that marriage is a serious decision and marrying impulsively should be discouraged. We believe that family stability and the well-being of children are high enough public values that states should require a “cooling off” period before a divorce is granted. This period

should be long enough for both spouses to consider options for reconciliation and to be certain that divorce is the best way to solve their marital problems.

Furthermore, divorce is a contractual agreement. It is not unusual for contract law to provide for a waiting period, often called a cancellation period, before some consumer contracts take effect. The law wants, correctly, to protect consumers from decisions that may have been made in hasty response to a skilled sales pitch.

## ***2. People making a decision to divorce are often at one of the most intense emotional periods of their lives.***

Those seeking to divorce may be feeling betrayed by something their spouse did. They may be in the throes of a new romantic relationship, reacting to a health or job crisis, or in the midst of depression.

People in “hot states” of emotion are prone to make costly decisions based on systematic errors, particularly in the areas of life with which they do not have a lot of experience, such as deciding to divorce. Behavioral economists tell us that such people are prone to overestimate the short-term benefits of taking action and underestimate the likelihood that they will feel better in the future if they hang on.<sup>23</sup> One example of this is how people feel and react after learning about a spouse’s infidelity. When the wronged spouse discovers what has occurred, he or she immediately feels panicked and distressed. In the midst of such feelings, this spouse might understandably conclude that the unfaithful spouse can never be trusted again, and that immediately ending the marriage is the only path to a better life. With a required waiting period, however, other, better outcomes might evolve. Unfaithful spouses who regret their actions and wish to make amends might have time to try to do so. Wronged spouses would have time to calm down and decide whether repairing the marriage is possible.

Research supports the idea that some couples rush to divorce. Sociologists Frank Furstenberg and Andrew Cherlin presented findings on the divorce process of custodial parents based on data drawn from the National Survey of Children. They found that “a third of couples had not openly considered the possibility of the marriage’s breaking up before it actually happened—a disturbingly large proportion who had no prior planning,” noting: “Many couples begin the process of separation undecided about its ultimate outcome.”<sup>24</sup>

In her classic qualitative study of the divorce process, Columbia University sociology professor Diane Vaughan revealed what clinicians and lawyers often see in practice: in many cases one spouse is blindsided by the other's announcement that divorce is imminent. The shocked spouse has little time to adjust to this news, and sometimes moves into panic mode and does something that constitutes a "fatal mistake" in the eyes of the spouse who has been preparing to leave for some time.<sup>25</sup>

As an illustration, consider the scenario of a husband who is stunned by his wife's announcement that she wants a divorce. He moves into a motel that night, and returns home the next day to plead his case, only to discover that his wife has changed the locks. He becomes enraged about being locked out of his own house and breaks a door or window to get inside. His wife understandably becomes afraid. Her lawyer helps her get an Order of Protection against her husband. Now he cannot see his children until he gets assistance from his own lawyer. As this couple heads into divorce, there is recorded judicial support for the idea that the husband is a danger to the wife and perhaps to their children. A nontrivial waiting period before getting a divorce can allow such a couple to cool off and perhaps reflect more deeply about the situation before taking an irrevocable step to end their marriage.

### ***3. The law moves couples more rapidly towards divorce than perhaps they had intended or faster than both spouses want.***

Very short waiting periods, combined with little or no help for exiting the divorce superhighway, leaves little possibility for either spouse to consider reconciliation. In some cases, spouses who do not necessarily want a divorce (at least not yet) visit a lawyer mainly to get the other spouse's attention. But once they do so, before they know it they can become caught up in legal and relationship turbulence, propelled towards a divorce they may later regret.

Even if one spouse is determined not to reconcile, there are strong reasons to think that the pace of the divorce should follow the spouse who is less interested in getting the divorce.<sup>26</sup> Professors Furstenberg and Cherlin, again echoing Diane Vaughan's work, found that four out of five marriages ended unilaterally. Such divorces begin at one spouse's insistence—most often the wife's. Pushing a reluctant spouse, often a husband, to move too quickly through a painful dissolution can increase conflict and litigation at the time of the divorce, and can exacerbate post-divorce conflicts over hot-button issues such as

children and money. Anecdotally, we have heard judges say that spouses who feel forced to divorce immediately are the most difficult people to deal with in the courts, both during the divorce process and later in re-litigation.

Overall, a waiting period can allow the spouse who is considering initiating a divorce time to think it over more carefully, as well as give the other spouse time to adjust to what is happening, not feel pushed, and perhaps become a constructive part of a process he or she does not want—even if it turns out that reconciliation is not a viable option for the couple.

#### ***4. Today, waiting periods to finalize divorce vary considerably among the states, and no other Western nation has waiting periods as short as America has.***

In Western Europe, three-year waiting periods, which can be shortened by mutual consent, are common. In the United States, ten states have no waiting period, twenty-nine states have a waiting period of less than six months, seven states have a six-month waiting period, and five states have a waiting period of one year or more (see table 2).

In a simple comparison, attorney John Crouch of Americans for Divorce Reform analyzed the relationship between waiting periods and divorce rates and found that of the ten states with the highest divorce rates, nine had no waiting period. Of the ten states with the lowest divorce rates, five had waiting periods.<sup>27</sup>

In a well-controlled study, economist Leora Friedberg found that states with longer waiting periods have had smaller increases in divorce rates than states that have shorter or no separation requirements.<sup>28</sup> From Western Europe, the best study found a strong connection between reduced waiting periods and increases in divorce rates. About 80 percent of the increase in divorce rates between 1970 and 1990 could be attributed to the elimination or shortening of waiting periods ushered in by no-fault divorce.<sup>29</sup>

The impact of waiting periods on divorce rates is challenging to study scientifically. In the U.S., states differ in social and economic factors associated with divorce and spouses in the U.S. can move across state lines to seek a divorce.<sup>30</sup> Yet, while the scientific case for waiting periods cannot be considered definitive, a strong defense can be made that they seem to work to diminish divorce rates.

**Table 2****State Waiting Periods for No-Fault Divorce**

<b>STATE</b>	<b>WAITING PERIODS</b>
ALABAMA	30 days
ALASKA	none
ARIZONA	60 days
ARKANSAS	18 months
CALIFORNIA	6 months
COLORADO	90 days
CONNECTICUT	breakdown OR 18 months before filing; then 90 days post-filing
DELAWARE	6 months
DISTRICT OF COLUMBIA	1 year (contested); 6 months (uncontested)
FLORIDA	20 days
GEORGIA	30 days
HAWAII	none
IDAHO	none
ILLINOIS	2 years (contested); 6 months (uncontested)
INDIANA	none
IOWA	90 days
KANSAS	60 days
KENTUCKY	60 days (uncontested)
LOUISIANA	1 year with children; 6 months without
MAINE	none
MARYLAND	1 year
MASSACHUSETTS	9 months; 3 months with consent
MICHIGAN	none
MINNESOTA	none
MISSISSIPPI	60 days with consent; never without
MISSOURI	2 years without consent; 1 year if separation consensual; none if divorce uncontested
MONTANA	none
NEBRASKA	60 days



<b>STATE</b>	<b>WAITING PERIODS</b>
NEVADA	none
NEW HAMPSHIRE	none
NEW JERSEY	6 months
NEW MEXICO	none
NEW YORK	6 months
NORTH CAROLINA	1 year
NORTH DAKOTA	none
OHIO	1 year without consent; none with
OKLAHOMA	none
OREGON	90 days
PENNSYLVANIA	2 years without consent; 90 days with
RHODE ISLAND	none
SOUTH CAROLINA	1 year
SOUTH DAKOTA	60 days with consent; never without
TENNESSEE	2 years without minor children; truly irreconcilable differences with; plus post-filing period of 60 days without minor children; 90 days with
TEXAS	60 days (unless domestic violence order or conviction)
UTAH	90 days OR completing divorce education course for parents
VERMONT	6 months
VIRGINIA	1 year with minor children; 6 months without children and with written separation agreement
WASHINGTON	90 days
WEST VIRGINIA	1 year without consent; none with
WISCONSIN	1 year before filing OR consent OR court finding of breakdown; plus 6 months post-filing
WYOMING	20 days

Prepared by John Crouch, Arlington, Virginia, [www.crouchfamilylaw.com](http://www.crouchfamilylaw.com). Based on a 2011 review of all state divorce statutes by John Crouch and his students, Michael Cardi of West Virginia University School of Law and Courtney Hawkins of Tulane University, and William J. Doherty, University of Minnesota, and his student research assistant, Jennifer Sampson.

***5. States and nations with waiting periods to finalize divorce do address the pragmatic concerns couples have during that time.***

Some critics are concerned that waiting periods leave divorcing couples in limbo, unable to make necessary decisions or move on with their lives. In practice, in jurisdictions in the U.S. and abroad that currently have waiting periods, the courts or the couples themselves decide on custody, financial arrangements, and other aspects of the family situation on a temporary basis as needed during the waiting period.

***6. Sadly, victims of domestic violence are at risk no matter the current legal status of their marriage or divorce, but waiting periods can be waived in the case of domestic violence.***

Domestic violence situations present a special concern that can be handled with a waiver of the divorce finalization waiting period in those cases in which there is a threat to a spouse or the children. Unfortunately, however, the threat of serious domestic violence appears to have little to do with the legal situation of couples. Women can be at risk before or after a legal divorce, irrespective of how long the process takes, and no serious argument has been made that waiting periods put women at any more risk than the absence of waiting periods. Further, children on average are at greater risk of suffering physical or sexual abuse in post-divorce families when cohabiting boyfriends and stepfathers enter their lives.<sup>31</sup> Overall, children on average have more to gain than to lose from a divorce finalization waiting period when it might reduce the risk of experiencing multiple family transitions and adults coming in and out of their lives that too often follow in the wake of divorce.

***7. The public generally supports making divorces involving children somewhat harder to get.***

Polling consistently shows that most Americans favor more speed bumps on the road to divorce for couples with children.<sup>32</sup> We can look to New York as one recent example, where the six-month waiting period instituted as part of a revamped divorce statute produced no apparent controversy.

In recent years, both liberals and conservatives have expressed support for a waiting period combined with other ways to help couples contemplating divorce. For example, former U.S. senator and now Secretary of State Hillary

Clinton advocated that “divorce should be a little more difficult when you have children...making it a little harder, a little longer for people who have children to divorce.”<sup>33</sup> At the other end of the ideological spectrum, conservative ethics and religion columnist Michael McManus has made mandatory waiting periods a part of his proposal to reduce divorce.<sup>34</sup>

## UP CLOSE: EARLY NOTIFICATION

At present, if one spouse does not want to resort to divorce but does want serious changes made in the marriage, a mandatory waiting period can only begin with serving divorce papers on the other spouse. This legal step—often done with the help of an attorney who might suggest additional actions—can be experienced as an emotional blow by the other spouse. It can begin a series of negative effects that neither spouse anticipated and the spouse who served the papers didn’t necessarily want.

We believe that filing a legal action with a court, while an important option, is not very likely to open a pathway to marital reconciliation. To create an alternative pathway that would initiate a waiting period without starting legal divorce proceedings, John Crouch has proposed an “Early Warning and Notification” process. We have adopted his concept in a tool that we are calling an “Early Notification and Divorce Prevention Letter.”

The idea behind this tool is that a spouse who wants to raise serious concerns but also to preserve the marriage has a structured process—using a legally recognized document that communicates the gravity of the situation—to inform his or her partner that divorce is a clear risk unless they both work on solving their problems. The letter can substitute for divorce filing as one way to begin the one-year waiting period. A statute would specify the minimum required information and language in the letter. If they wish to, spouses could then add material relevant to their own situation. We provide here an adapted version, with the legally necessary language, of Crouch’s sample notice.

Who might use this Early Notification and Divorce Prevention Letter? Some judges and divorce attorneys we have talked with say that it could be a valuable tool for those who still love and are committed to their partners but who have not been able to convince their spouses that the problems in the marriage are very serious and require attention. One example might involve an alcoholic husband whose wife has complained about his drinking problem for many

years but has remained in the marriage. An official Early Notification and Divorce Prevention Letter might get such an individual's attention, and encourage him to get serious about addressing his illness in a way that continued verbal attempts by his wife alone have not.

Other evidence supports the idea that such a tool could be useful. In a focus group study of marriages that nearly, but did not, end in which at least one of the spouses reported that the marriage was now happy, several wives said their husbands got serious about their marriage's fate only when they went to divorce lawyers. It is telling that in this sample of still-married couples, more than one wife recalled that the attorney she consulted did not advise filing for divorce immediately but rather suggested she tell her husband that a divorce was imminent unless he got serious about making changes.<sup>35</sup> Such advice might be one reason the marriage is still together. The Early Notification and Divorce Prevention Letter that we propose would offer spouses a legally recognized protocol for accomplishing this goal—and it would give divorce lawyers another option to offer clients they sense are only reluctantly pursuing divorce.

At this point, let us caution that *as much as waiting periods and early notification can be helpful and feasible for states to enact, it is crucial that they be accompanied by services to assist couples who are on the brink of divorce*. Although some unnecessary divorces will likely be prevented with waiting periods and early notification alone, we believe more can be prevented if couples learn new skills and connect with resources in their community to improve their marriages. In the remaining sections of this report we offer our recommendations concerning education and reconciliation services.

## **PROVIDE EDUCATION ABOUT THE RECONCILIATION OPTION**

When people think about how to save marriages, they often think of marriage counseling. Given that there are already thousands of therapists who do marriage counseling in every state in the nation, some might ask why we propose to require something called “reconciliation education.”

### **WHY THE CURRENT MARRIAGE COUNSELING MODEL IS NOT SUFFICIENT**

The most commonly available resource for couples in the midst of a divorce crisis is marriage counseling. These counselors might be members of the

## Early Notification and Divorce Prevention Letter

**MARRIAGE OF** \_\_\_\_\_

**AND** \_\_\_\_\_

**TO:** \_\_\_\_\_

**FROM:** \_\_\_\_\_

I am giving you this notice because I think our marriage has serious problems that I fear may lead to separation or divorce. I would like our marriage to survive and flourish, and I will do my part to make that happen. I need you to join me in recognizing the seriousness of our problems and in working on them before it's too late.

I have consulted with a divorce lawyer who supports my desire to save our marriage and make it healthy for both of us.

Help for our marriage is available through a variety of sources that I hope you will join me in pursuing.

As the next concrete step, I am proposing that you seek the following help with me: (examples: talking to a trusted clergyperson, marriage counselor, alcohol counselor, medical doctor, discernment counselor, or attending a couples retreat weekend like Retrouvaille)

Please let me know if you are willing to take this step.

**DATE DELIVERED OR SENT TO MY SPOUSE:** \_\_\_\_\_

**METHOD OF DELIVERY:** \_\_\_\_\_

**ADDRESS OF DELIVERY:** \_\_\_\_\_

**SIGNATURE OF SPOUSE WHO DELIVERED OR SENT THIS NOTICE:**

\_\_\_\_\_

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.<sup>36</sup>

Most lay people do not realize that therapists practicing marriage counseling in America usually have not been adequately trained for this difficult form of therapy. Therapists are typically trained in individual therapy, not couples therapy. Although an estimated 80 percent of therapists in private practice report that they do at least some marital therapy, most mental health professional degree or recertification programs do not require specific training in marriage therapy. It is an open secret among experienced practitioners of marriage counseling that many of their fellow counselors, even if they are good individual counselors, are poor marriage counselors. The result is that such therapists too often fail in treating conflicted or demoralized couples.<sup>37</sup>

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. Divorcing or staying married are seen as equally valid outcomes, much as might one view staying in a job or moving into a different job. The therapist believes in helping the client gain clarity about his or her own feelings without trying to influence the client's decision to stay in a marriage or get a divorce.

One national study of therapists specializing in marriage and family therapy found that a majority favored this neutral orientation.<sup>38</sup> In Minnesota, a survey of people who received marriage counseling supports this point of view. Of the 43 percent of divorced people in the poll who had seen such a counselor, only 35 percent rated their counselor as wanting to help save the marriage. (The remaining 41 percent of counselors were rated as neutral towards the marriage, 14 percent as encouraging divorce, and 11 percent as "other.")<sup>39</sup>

We believe that a main problem with the neutral approach, as opposed to a pro-marital-commitment stance, to working with at-risk married couples is that the counselor does not work vigorously to restore hope for demoralized spouses.<sup>40</sup>

There is also some concern about the provision of marriage counseling through faith communities. In many communities it is not uncommon for marriage counseling to be conducted more often by clergy and pastoral counselors rather than by licensed mental health professionals. While some counselors in faith communities are quite good at what they do—and many of them have established relationships of trust with their parishioners—most have received little formal training in counseling married couples.<sup>41</sup>

Overall, we believe that marriage counseling alone, as currently practiced in many communities across the country, cannot be viewed as a powerful enough resource to help at-risk couples who may wish to avoid divorce.

### **UP CLOSE: "MARSHA FELT SOMETHING WAS TERRIBLY WRONG WITH HER MARRIAGE"**

This is an illustration of the problems with marriage counseling as it has typically been practiced. It is used with permission of the couple whose names have been changed.

Soon after her wedding, Marsha felt something was terribly wrong with her marriage. She and her husband Paul had moved across the country following a big church wedding in their hometown. Marsha was obsessed with fears that she had made a big mistake in marrying Paul. She focused on Paul's ambivalence about the Christian faith, his avoidance of personal topics in communication, and his tendency to criticize her when she expressed her worries and fears. Marsha sought help at the student counseling center of the university where she and Paul were graduate students. The counselor worked with her alone for a few sessions and then invited Paul in for marital therapy. Paul, who was frustrated and angry about how distant and fretful Marsha had become, was a reluctant participant in the counseling.

In addition to the marital problems, Marsha was suffering from clinical depression: she couldn't sleep or concentrate, she felt sad all the time, and she felt like a failure. Medication began to relieve some of these symptoms, but she was still upset about the state of her marriage. After a highly charged session with this distressed wife and angry, reluctant husband, the counselor met with Marsha separately the next week. She told Marsha that she would not recover fully from her depression until she started to "trust her feelings" about the marriage. Marsha recounts this conversation with the counselor:

MARSHA: “What do you mean, trust my feelings?”  
COUNSELOR: “You know you are not happy in your marriage.”  
MARSHA: “Yes, that’s true.”  
COUNSELOR: “Perhaps you need a separation in order to figure out whether you really want this marriage.”  
MARSHA: “But I love Paul and I am committed to him.”  
COUNSELOR: “The choice is yours, but I doubt that you will begin to feel better until you start to trust your feelings and pay attention to your unhappiness.”  
MARSHA: “Are you saying I should get a divorce?”  
COUNSELOR: “I’m just urging you to trust your feelings of unhappiness, and maybe a separation would help you sort things out.”

A stunned Marsha decided to not return to that counselor—a decision the counselor no doubt perceived as reflecting Marsha’s unwillingness to take responsibility for her own happiness.

Marsha also talked to her priest during this crisis. The priest urged her to wait to see if her depression was causing the marital problem or if the marital problem was causing the depression—a prudent bit of advice. But a few minutes later, the priest said that if it turned out that the marital problems were causing the depression, he would help Marsha get an annulment. Marsha was even more stunned by this remark than she had been by the therapist’s “advice.”

The rest of the story is that Marsha and Paul did find a good marital therapist who helped them straighten out the problems in their marriage. Marsha’s depression lifted, and she and Paul are currently doing well. But they had to survive incompetent and undermining “help” from a professional counselor and a member of the clergy.

## **AN EXISTING EDUCATION MODEL TO BUILD UPON**

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.<sup>42</sup> Classes are typically offered through nonprofit 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 to use during and after the divorce. Anecdotally, educators who teach the required 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.”<sup>43</sup>

Here is where we have an opening. Currently, even though parenting classes are usually required, most parents do not take them until well into their divorce proceedings. In addition, these classes currently do not offer a reconciliation module for parents who might be interested in learning more about and exploring that option.

We recommend that existing state statutes on mandatory courses for divorcing parents be modified to specify that the following content on reconciliation be included:

- Questions to help individual spouses reflect on their potential interest in reconciliation
- Research on reconciliation interests among divorcing couples
- The potential benefits of avoiding divorce for children and adults
- Resources to assist with reconciliation
- Information on when the risk of domestic violence should rule out working on reconciliation at this time

We further recommend that states require completion of a four-hour parent education course *before* either spouse files for divorce. Specifically, before the court accepts any legal paperwork starting the divorce process, both parties would have to take a course, either online or in a classroom, that would teach

communication and conflict management skills related to co-parenting and offer information and encouragement on marital reconciliation.<sup>44</sup> (A model statute with many details including waivers and exceptions can be found in part 3.)

This proposal represents an important coming together of divorce educators and marriage advocates. Divorce educators have long been frustrated by the fact that parents often delay taking co-parenting classes until after they have made many avoidable co-parenting 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 reaches couples at a time when reconciliation may be most possible. *Whether couples ultimately decide to proceed with their divorce or to reconcile, these classes will help 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.<sup>45</sup>

Of course, it is one thing to require content on reconciliation, but another to ensure it is delivered effectively. We suspect that some divorce educators would not be able to deliver the reconciliation message in a credible manner. The professional bias that divorce is the only realistic option for couples in the legal process is very strong. Understandably, some educators might be concerned about stirring up guilt, shame, or anger in parents by talking about the reconciliation option. The material does have to be presented with sensitivity, mindful that many parents are making what they believe is a necessary decision to end a failed marriage, while many others have been given no choice by a spouse who wants out.

For this reason, we believe that the integrity of the presentation and the comfort of the presenter might be better served if the reconciliation module is presented as a video. Afterwards, the classroom presenter could discuss local resources for parents who might be interested in pursuing reconciliation. The center charged with developing the state's capacity to prevent unnecessary divorces (discussed below) would be empowered to review and approve video reconciliation modules.

## THE ONLINE OPTION

Some might respond that our proposal is nice in theory—but how exactly are already budget-crunched states supposed to expand classes for all parents considering divorce? How should states ensure that such mandatory classes are readily available, especially in rural areas, to parents before filing for divorce, if they decide to file? One reason that some parents do not comply with current parent education requirements is that classes are not offered frequently enough outside of urban areas.

We suggest that the key to making mandatory pre-filing education feasible is the recent availability of high-quality, evidence-based online education for parents going through divorce.

One prominent example is “Children in the Middle,” from the Center for Divorce Education, a course that has been found to benefit parents in their co-parenting and children in their adjustment after a divorce.<sup>46</sup> The online version of Children in the Middle has been found as effective as its well-validated face-to-face version.<sup>47</sup> The presentation uses contemporary web pedagogy to involve parents in an active experience of learning. It includes enactments by professional actors that require parents to engage with the material as well as quizzes that demonstrate that they have absorbed the basic content. Children in the Middle Online is currently being expanded to include a reconciliation module and a module explaining non-adversarial legal approaches to divorce. This will be the first program to meet the educational requirements of the Second Chances Act.<sup>48</sup>

Over time, there will be other high-quality online programs to serve as effective alternatives to face-to-face classes for parents. (The model Second Chances Act in part 3 specifies standards for effectiveness of courses.) States could rely on a mix of face-to-face and online classes, or move towards a more fully online model.

One concern might be whether online courses are accessible enough for today’s parents, including those who are poorer or live in rural areas. Fortunately, computers and Internet connections have become increasingly accessible to most Americans, especially those who are married parents. In 2008, the Pew Internet and American Life Project reported that 94 percent of American households made up of married couples with children ages seven to seventeen

had Internet access.<sup>49</sup> In addition, public libraries have computers with online access, which local residents would be permitted to use to take a state-required online educational program.

People in rural areas do lag behind their urban peers in Internet access, but the gap is shrinking. According to another Pew survey, there was a 16 percent gap in broad band access in 2009.<sup>50</sup> However, divorcing couples in rural areas must already periodically drive to courthouses in towns or county seats. These locations would also have public libraries that house computers with public access.

Finally, there is some concern parents could just let the educational presentation run on the computer and not get any value out of it. But with programs such as Children in the Middle Online, it is not possible to ignore course content. These programs require active participation such as listening, watching vignettes, and answering questions that are simple but do require the participant to pay attention. Parents *could* persuade someone else to complete the coursework for them, but those parents would probably not have complied with the face-to-face class requirement, or would have simply sat passively through it. It would also be possible for parents to lie about not having online access or about their language ability. Yet we believe that an educational mandate does not have to achieve 100 percent compliance in order to do considerable public good.<sup>51</sup> The fact that the state would require parents who are considering divorce to be educated about their options, including the possibility of getting help to reconcile and, if they do divorce, about how to co-parent effectively, sends a powerful public message about the public value of marriage and good parenting.

## **SIMPLE PRE-FILING ENFORCEMENT**

A universal pre-filing model also dramatically improves upon current practice. A major limitation of current parent education requirements is that they reach only a subset of parents who need them. In most states, busy judges must monitor whether parents have taken the required parenting class before finalizing a divorce. Parents often postpone taking the classes until just before the divorce decree, thereby mitigating its benefits. Or they skip the classes altogether. When judges with bulging case loads and packed schedules are confronted with such parents in their courtroom, they can, understandably, be reluctant to send them back to take the required class before the divorce can be finalized.

The result is that compliance with existing parenting class requirements is not nearly as high as it could be. For example, even in an urban county in Minnesota with frequently scheduled face-to-face classes, the current compliance rate for both parents taking the mandated classes is less than 30 percent.

By contrast, our proposed model statute, developed in cooperation with a judge and a group of divorce attorneys, makes implementation a straightforward matter. Simply put, a county clerk would not be permitted to accept the paperwork for filing a divorce unless the petitioning couple had also completed the required class and received a certificate to document this, or had a waiver affidavit for acceptable reasons such as language or online access barriers. Rather than expecting overworked court staff to track and notify non-complying couples, or asking judges to postpone the final divorce decree until couples have complied with the requirement, our pre-filing model relies on county clerks, who are accustomed to following state rules to the letter. If clerks are not permitted to accept a divorce filing without prescribed paperwork they will follow procedure in a way that judges and court staff might not.<sup>52</sup> And with the online option described above, classes are readily available and will not causing burdensome delays in filing for divorce.

Overall, even if there are waivers for parents who cannot take a timely face-to-face class, who cannot get online, or who cannot read one of the languages in which the education courses are offered, the steps we suggest could dramatically improve the outreach to parents considering divorce.

### **ESPECIALLY FOR HIGH-RISK COUPLES: TAX REBATES FOR MARRIAGE EDUCATION**

Most of our recommendations are relevant for all married parents who are actively considering divorce or are already in the divorce process. But we would also like to draw attention to a special category of couples. As discussed in the research portion of this report, some couples are at higher risk of divorce. They include couples in which one or both spouses grew up in divorced families, and couples who are remarrying (and who are typically bringing children into the new marriage). We believe that states would be wise to provide such couples with marriage education options that could help prevent divorce down the road.

Marriage education programs have been used for decades in the U.S. and have a demonstrated track record in helping to improve and save marriages. Marriage education aims to equip individuals and couples with the knowledge, attitudes, and skills necessary to succeed in marriage. Most marriage education occurs in classroom settings with trained instructors who are professionals or qualified lay volunteers. A key tenet in marriage education is that marital success depends neither on finding the “perfect match” nor on the notion that love conquers all, but on the belief that knowledge and competencies can be taught and learned. Knowledge includes an understanding of the benefits and advantages of marriage, the reasons to work hard for one’s marriage, and a roadmap of the predictable ups and downs along the way. Competencies include developing communication and conflict management skills and finding positive ways to connect in everyday life.<sup>53</sup>

Several of the more well-known marriage education programs have been evaluated and proved effective. A prominent evidence-based marriage education program called PREP has recently been found to lower divorce rates in a study of military couples.<sup>54</sup> In the faith community sector, the Retrouvaille program, which consists of a retreat weekend and follow-up group meetings for distressed couples, has a long track record of restoring hope to and rebuilding troubled marriages. A weekly drop-in group program called The Third Option, which has secular and faith-based versions, combines training in communication skills, group support, and mentoring by seasoned married couples.<sup>55</sup> Educational approaches such as these are skills-oriented and require less disclosure of personal problems than traditional marriage counseling, and thus are more acceptable to couples who are reluctant to go to therapy. Group programs also typically cost less than individual counseling sessions. Some, like Retrouvaille and The Third Option, ask only for good will offerings.<sup>56</sup>

State legislatures can promote these preventive educational programs for couples at risk for divorce by offering an incentive via a modest tax rebate to defray some of the costs.<sup>57</sup> As an example, couples would be eligible for a \$100 tax rebate. Given the high costs of divorce to states, including court costs, increased welfare payments, educational costs, and juvenile justice system costs for children and youth, a modest decrease of tax revenue that prevents even a small percentage of divorces would be in the public interest.<sup>58</sup> States like Minnesota, which currently has a financial incentive for obtaining premarital education, have seen success in increasing the rate of couples preparing for marriage.<sup>59</sup>

## CREATE CENTERS TO HELP PREVENT UNNECESSARY DIVORCE

The final piece of our proposal concerns the creation of centers of excellence to develop state capacity to help couples at risk for divorce. These centers would focus on providing public information and training professionals who work with couples considering divorce. They would access or develop innovative ways of working with such couples and improve the capacity of professionals and communities to implement these methods. The centers could also promote the best marriage therapy models and the best marriage education programs currently available.

State universities are logical places to house these centers, although a stable nonprofit agency would be an alternative if there is not adequate expertise or interest at the state university.

A recommended stable funding mechanism is a small surcharge, such as \$5 to \$10, on marriage license fees. Because nearly half of newly marrying couples are at risk for divorce, this surcharge can be thought of as a form of insurance to make sure that good help is available if they need it down the road.

In Minnesota, the legislature created the Minnesota Couples on the Brink Project in 2010 ([www.MNCouplesontheBrink.org](http://www.MNCouplesontheBrink.org) or [www.cehd.umn.edu/cbp](http://www.cehd.umn.edu/cbp)). Based at the University of Minnesota, the center's mission is to develop, evaluate, and disseminate best practices for helping married couples at high risk for divorce who are interested in considering reconciliation.

Some examples of what the Minnesota Couples on the Brink Project is doing include:

- Developing, with a group of attorneys, the Family Law Marital Reconciliation Option Project, which is gathering and disseminating best practices for lawyers on the frontline of the divorce process.
- Working with clergy who have agreed to develop and disseminate best practices for working with “crisis marriages” in religious communities. As we know, struggling couples often turn first to their religious community for help. Center professionals provide secular expertise and participating clergy determine how to integrate this expertise with their faith traditions.

- Innovating and offering “discernment counseling” for couples who have started or are seriously considering the divorce process, but one or both spouses are not sure divorce is the right path for them. The counselor helps individuals and couples decide whether to try to restore their marriage to health, to continue toward divorce, or to take a time out and decide later.

The key innovations in discernment counseling are that it does not ask couples to try to change their relationship or improve their marriage—it is not marriage counseling—and that the decision is framed as whether to continue towards divorce or agree to a six-month period of intensive work to restore the marriage. Thus, the focus is not on whether to stay married forever—something 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, keeping divorce off the table as an option during that period. At the end of the trial period, divorce can be placed back on the table if the marriage has not improved sufficiently for one or both parties. Discernment counseling is another new way to help couples pause, breathe, and reflect on their relationship and its prospects before moving forward in the divorce process.<sup>60</sup>

One aspect of discernment counseling designed specifically for the spouse who wants to save the marriage is “hopeful spouse counseling,”<sup>61</sup> based on the work of well-known marriage therapist Michele Weiner-Davis. Twenty years ago, she began pioneering ways to help hopeful spouses save their marriages by bringing their best selves to the crisis and acting in positive and respectful ways toward their spouses.<sup>62</sup>

State centers would also be clearinghouses for evaluation and validation of marriage education and pre-filing parent education programs made available in that state.

Together, these are all examples of the kinds of work that capacity developing centers could do in each state.



## DEVELOP THE SECOND CHANCES ACT

### RECOMMENDATIONS

- Establish a waiting period for divorce of at least one year, with a voluntary early notification letter individuals may use to let their spouses know their intentions without necessarily filing for divorce.
- Require pre-filing education for parents of minor children considering divorce, with a module on reconciliation and a module on a non-adversarial approach to divorce.
- Create a center for developing the state's capacity to prevent unnecessary divorces.
- Combine these interacting and mutually reinforcing reforms into one piece of state legislation called the Second Chances Act.

# 3. MODEL LEGISLATION FOR THE SECOND CHANCES ACT

## A BILL REQUIRING A MANDATORY ONE-YEAR WAITING PERIOD PRIOR TO MARRIAGE DISSOLUTION

The following language is based on a proposal by John Crouch, a divorce lawyer in Virginia:<sup>63</sup>

1. A court shall grant a divorce only after 365 days from the date of service on the respondent where the parties have children who are eighteen years of age or younger, except as provided in the following subsection:
  - When the respondent has been convicted, during the marriage, of a violent or sexual felony against the petitioner or a minor child; or
  - When a court has made a final, non-preliminary civil protection order against the divorce respondent, based on a final determination that the respondent committed or threatened physical violence against the divorce petitioner or a minor child of the divorce petitioner, where the respondent had advance notice and an opportunity to participate in an evidentiary hearing.
2. **TEMPORARY RELIEF.** Married persons living apart, whether or not they have asked a court for divorce, separation, annulment, or dissolution, may nonetheless ask for any of the following temporary relief, in a court that would have jurisdiction in a divorce case or other domestic relations case between the parties:
  - a. Parenting time (i.e., child custody, visitation, access, etc.), subject to state and federal laws on jurisdiction for such cases.

- b. Child support, subject to state and federal laws on jurisdiction for such cases.
  - c. Protection from domestic violence.
  - d. Spousal support; preservation of marital or community property, and fair, equitable access to marital or community property.
  - e. Preservation of evidence of the existence, character, and value of property, grounds of divorce, or any other issues in a future divorce or separation case.
  - f. Court-ordered marriage education, marriage counseling for the purpose of repairing the marriage, custody/parenting education, or mediation.
3. **MARITAL AGREEMENTS.** Married persons may enter into written agreements, which are legally binding, subject to the general rules of the law of contracts, even if they are not submitted to a court, and which may:
- a. Resolve issues that a court would otherwise decide in a divorce or separation case, including property, debt, child and spousal support, child custody and parenting time, subject to courts' ongoing authority to modify child-related arrangements when circumstances change;
  - b. Resolve other issues that a court could not resolve in a domestic relations case; and
  - c. State whether or not the agreement constitutes consent to a divorce.

## **A BILL ESTABLISHING A CENTER TO DEVELOP CAPACITY TO PREVENT UNNECESSARY DIVORCES**

The following is the statute that became Minnesota state law on July 1, 2010:

### **ESTABLISHMENT**

Within the limits of available appropriations, the Board of Regents of the University of Minnesota is requested to develop and implement a Minnesota Couples on the Brink Project, as provided for in this section. The regents may administer the project with federal grants, state appropriations, and in-kind services received for this purpose.

### **PURPOSE**

The purpose of the project is to develop, evaluate, and disseminate best practices for promoting successful reconciliation between married persons who are considering or have commenced a marriage dissolution proceeding and who choose to pursue reconciliation.

### **IMPLEMENTATION**

The regents shall enter into contracts or manage a grant process for implementation of the project; and develop and implement an evaluation component for the project.

### **APPROPRIATION**

Disposition of license fee. (a) Of the marriage license fee collected, the local registrar...must deposit \$5 in the special revenue fund which is appropriated to the Board of Regents of the University of Minnesota for the Minnesota Couples on the Brink Project under section 137.32.

# A BILL ON EDUCATION REQUIREMENTS FOR DIVORCING PARENTS

## SECTION ONE: PRE-FILING REQUIREMENT

**Application.** This section applies to marriage dissolution proceedings involving minor children.

### *Participation Requirements*

- a. Service of a petition, counterpetition, or answer in a marital dissolution or separation action is not complete unless the pleading is accompanied by an affidavit verifying that the serving party has completed a marriage dissolution education program under this section. A court administrator shall not accept for filing a petition, joint petition, or counterpetition, answer, marital termination agreement, or stipulated judgment and decree unless it is accompanied by an affidavit that the filing party has, or in the case of a joint petition, marital termination agreement, or stipulated judgment and decree, both parties have, completed a four-hour marriage dissolution education program.
- b. The affidavit verifying completion of the marriage dissolution education program shall use the following language: This certifies that (party's name) has successfully completed the course (course name), which has been approved by the Minnesota Couples on the Brink Project in accordance with Minnesota statute (#) for marriage dissolution education.
- c. The requirements of paragraph (a) are satisfied if a party includes an accompanying affidavit verifying that it is not reasonably possible for the party to complete the program and stating the reason in the following format:

I attest that it is not reasonably possible for me to complete the parent marriage dissolution education program for the following reason (check the box that applies):

- I cannot speak or read the languages in which qualifying programs are offered;
- I do not have access to a course in my geographical region or to a personal or library computer connected to the Internet; or

- I am experiencing an emergency that requires me to file before I complete the program. The emergency is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

### ***Program Requirements***

- a. Parent education programs can be face-to-face or online provided they meet the criteria in sections (b) and (c).
  
- b. To be eligible, the program must meet acceptable standards of scientific evidence for effectiveness in reducing co-parental conflict and improving children's adjustment in divorce situations. These standards can be met either by a listing on the National Registry of Evidence Based Programs and Practices or approval by the Minnesota Couples on the Brink Project. Approved programs must submit a new or past empirical study, using an experimental or quasi-experimental research design, demonstrating reduced co-parental conflict and improved children's adjustment. Parenting programs already approved for offering in Minnesota as of January 1, 2012, will be considered eligible for two years after the implementation date of this statute provided they cover the content described in section (c), after which they must meet the scientific criteria specified in this section (b).
  
- c. The program must provide:
  1. Information on constructive parenting in the dissolution process, including risk factors for families, how marriage dissolution affects children of different ages, and skills parents can learn to increase cooperation and diminish conflict, particularly conflict that involves children in loyalty binds. This component of the program must be aimed at increasing the parents' sensitivity to children's needs and at giving them skills to improve their own and the children's adjustment to the breakup of the family. There must be information to help parents assess whether they are involved in domestic violence, information on local domestic violence resources, and information on situations when cooperation in co-parenting may not be possible because of safety risks. This constructive parenting section of the program must be the primary emphasis of the course and must constitute at least 75 percent of the program time.

2. Information on the legal process of marriage dissolution, including an overview of the adversary litigation process; the nature and availability of alternative processes such as mediation, collaborative and cooperative law, restorative circles; and the advantages and disadvantages of alternative processes, including available research on the satisfaction levels, reduced conflict, and better parenting cooperation by parties who avoid adversary proceedings. This section of the program must constitute at least 5 percent of the program time.
3. Information on the option of reconciliation, including research on reconciliation interests among couples considering marriage dissolution, the potential benefits of avoiding marriage dissolution, resources to assist with reconciliation for interested couples, and information on when the risk of domestic violence should exclude present consideration of reconciliation. This section of the program must constitute at least 5 percent of the program time.

## **SECTION TWO: POST-FILING AND POST-DECREE EDUCATION**

Any judge or referee presiding over a divorce or post-decree proceeding involving minor children may order the parties to attend an education program currently certified by the Minnesota Couples on the Brink Project as effectively addressing high conflict divorces, children of divorcing parents, conflict that continues after the judgment and decree has been issued, parenting plan formation, blended and extended families, and other specific circumstances where education would reduce the risk to children from divorce and post-decree proceedings. Judges and referees may also order education in cases involving unmarried parents. The court shall not require the parties to attend the same face-to-face parent education sessions. The Minnesota Couples on the Brink Project must disseminate to judges and referees a list of the certified programs and a description of the programs.

## **SECTION THREE: COSTS**

Costs for taking a program under this section must be paid by each individual taking the program. Individuals making less than 200 percent of the federal poverty guidelines, or who are entitled to proceed in forma pauperis under section 563.01, are entitled to a waiver of the fee for the program. The

education program is responsible for determining if an individual is entitled to a fee waiver.

### **EFFECTIVE DATE**

This section is effective January 1, 2013, and applies to proceedings in which the initial pleading is served on or after that date.



# ABOUT THE PRINCIPAL INVESTIGATORS

**WILLIAM J. DOHERTY** is an educator, researcher, therapist, speaker, author, consultant, and community organizer. He is professor, past director of the Marriage and Family Therapy Program, and current director of the Citizen Professional Program and the Couples on the Brink Project in the Department of Family Social Science, College of Education and Human Development, at the University of Minnesota. He is also an adjunct professor in the Department of Family Medicine and Community Health.

Bill is past president of the National Council on Family Relations, the nation's oldest interdisciplinary family studies organization. His awards include the Significant Contribution to the Field of Marriage and Family Therapy Award, the Margaret E. Arcus Award for Outstanding Contribution to Family Life Education, and the Outstanding Community Service Award from the University of Minnesota.

He has authored or edited nine books for professionals, numerous articles in professional journals, and five books for lay audiences on the topics of family rituals, confident parenting, marriage, overscheduled kids, and the family dynamics of wedding planning.

A popular speaker to lay and professional audiences, Bill has won several teaching awards and is frequently interviewed on family issues by print, radio, and television media.

Since 1999, Bill has been developing and leading the Families and Democracy Project and the Citizen Health Care Project, a community organizing approach to working with families and promoting cultural change.

Bill is a licensed marriage and family therapist, psychologist, and clinical member, fellow, and approved supervisor for the American Association for Marriage and Family Therapy. He received his Ph.D. in family studies from the University of Connecticut in 1978 and served on the faculty of the Department of Family Medicine at the University of Iowa and the University of Oklahoma before coming to the University of Minnesota in 1986.

**JUSTICE LEAH WARD SEARS** was the youngest person and first woman to serve as a superior court judge in Fulton County, Georgia. When appointed to the Supreme Court of Georgia by Governor Zell Miller, she became the first woman and youngest person ever to serve on that court. In retaining her appointed position as a supreme court justice, Justice Sears also became the first woman to win a contested state-wide election in Georgia. In July 2005, she became the first woman to serve as chief justice of the Supreme Court of Georgia.

Justice Sears received her undergraduate degree from Cornell University in 1976 and her juris doctor from Emory University School of Law in 1980. She earned a master's degree in appellate judicial process from the University of Virginia in 1994 and has honorary doctor of laws degrees from Morehouse College, John Marshall University, Clark-Atlanta University, LaGrange College, and Piedmont College. She is also the recipient of the Emory Medal, Emory University's highest honor.

In 2009, Justice Sears retired from the Supreme Court of Georgia after twenty-seven years of service in the judiciary. After her retirement, she joined the Atlanta office of Schiff Hardin LLP, as a partner in the Litigation Group, where she currently practices general and appellate litigation, as well as handles corporate compliance issues. In addition to practicing law, Justice Sears works on issues affecting American families. She was a visiting professor on contemporary issues in family law at the University of Georgia School of Law for the 2009–2010 academic year, and currently serves as the William Thomas Sears Distinguished Fellow in Family Law at the Institute for American Values.

# ENDNOTES

1. Paul R. Amato and Bryndl Holmann-Marriott, "A Comparison of High- and Low-Distress Marriages that End in Divorce," *Journal of Marriage and Family* 69, no. 3 (August 2007); Alan Booth and Paul R. Amato, "Parental Predivorce Relations and Offspring Postdivorce Well-Being," *Journal of Marriage and Family* 63, no. 1 (February 2001): 197–212; Susan M. Jekielek, "Parental Conflict, Marital Disruption and Children's Emotional Well-Being," *Social Forces* 76, no. 3 (March 1998): 905–35.

2. Amato and Holmann-Marriott, "Comparison of High- and Low-Distress Marriages," 621.

3. Amato and Booth, "Parental Predivorce Relations," 211.

4. See Family Scholars, *Why Marriage Matters: Twenty-Six Conclusions from the Social Sciences*, 2nd ed. (New York: Institute for American Values, 2005).

5. Paul R. Amato, "The Impact of Family Formation Change on the Social, Cognitive, and Emotional Well-Being of the Next Generation," *The Future of Children* 15, no. 2 (Autumn 2005): 88–89.

6. See the review by Paul R. Amato, "Research on Divorce: Continuing Trends and Recent Developments," *Journal of Marriage and Family* 72, no. 3 (June 2010): 650–66.

7. Nicholas H. Wolfinger, *Understanding the Divorce Cycle: The Children of Divorce in Their Own Marriages* (Cambridge and New York: Cambridge University Press, 2005). An Australian study of twins found a 57 percent overall greater risk for divorce by age thirty-two for those whose parents had divorced. Genetic factors accounted for only one-third of the differences in risk for divorce. See Brian M. D'Onofrio et al., "A Genetically Informed Study of the Intergenerational Transmission of Marital Instability," *Journal of Marriage and Family* 69, no. 3 (August 2007): 793–809. See also Elizabeth Marquardt, "The New Stigma—Children of Divorce Are No Longer Stigmatized, Until They Start Dating," *Huffington Post*, November 16, 2010, [http://www.huffingtonpost.com/elizabeth-marquardt/the-new-stigmachildren-of\\_b\\_781149.html](http://www.huffingtonpost.com/elizabeth-marquardt/the-new-stigmachildren-of_b_781149.html).

8. The national average in 2007 was 3.6 divorces per 1,000 population. The Massachusetts divorce rate in 2007 was 2.3 and the Illinois rate was 2.6. Source: Division of Vital Statistics, National Center for Health Statistics, CDC, [http://www.cdc.gov/nchs/nvss/marriage\\_divorce\\_tables.htm](http://www.cdc.gov/nchs/nvss/marriage_divorce_tables.htm) and [http://www.cdc.gov/nchs/mardiv.htm#state\\_tables](http://www.cdc.gov/nchs/mardiv.htm#state_tables). The rate for Great Britain in 2007 was calculated for rates per 1,000 population from official government tables provided at <http://www.statistics.gov.uk/StatBase/Product.asp?vlnk=581>. The number of children avoiding experiencing a parental

divorce was determined by multiplying the percentage difference from the average by 1,100,000 children who go through a parental divorce each year. We are aware that social and economic differences among states contribute to different divorce rates. However, we see nothing inevitable about today's disproportionately high rates of divorce in some states. They may have to work harder because they have more couples at risk.

9. Benjamin Scafidi, principal investigator, *The Taxpayer Costs of Divorce and Unwed Childbearing: First-Ever Estimates for the Nation and All Fifty States*, co-published by the Georgia Family Council, Families Northwest, the Institute for Marriage and Public Policy, and the Institute for American Values (New York: Institute for American Values, 2008), <http://familyscholars.org/2008/04/15/the-taxpayer-costs-of-divorce-and-unwed-childbearing/>.

10. David G. Schramm, "Individual and Social Costs of Divorce in Utah," *Journal of Family and Consumer Issues* 27, no. 1 (April 2006): 133, 151. It is difficult to estimate the public costs of divorce precisely. Both Scafidi and Schramm attempted to err on the conservative estimate side.

11. See William J. Doherty, Brian J. Willoughby, and Bruce Peterson, "Interest in Marital Reconciliation among Divorcing Parents," *Family Court Review* 49, no. 2 (April 2011): 313–21.

12. Nestor C. Kohut, ed., *Therapeutic Family Law: A Complete Guide to Marital Reconciliations* (Chicago: Adams Press, 1968). See also, Jay Folberg, Ann L. Milne, and Peter Salem, "The Evolution of Divorce and Family Mediation: An Overview," in *Divorce and Family Mediation: Models, Techniques, and Applications*, ed. Jay Folberg, Ann L. Milne, and Peter Salem (New York: Guilford Press, 2004). For the history of the Association of Family and Conciliation Courts, see [www.afccnet.org/about/history.asp](http://www.afccnet.org/about/history.asp).

13. Association of Family and Conciliation Courts, About AFCC, "History," [www.afccnet.org/about/history.asp](http://www.afccnet.org/about/history.asp).

14. Two prominent textbooks in the field are Folberg, Milne, and Salem, *Divorce and Family Mediation*, and Pauline H. Tessler, *Collaborative Law* (Washington, DC: American Bar Association 2001). There have been individual practitioners with an interest in reconciliation, but until recently little systematic effort in the legal profession or among mediators.

15. Judge Peterson then invited University of Minnesota researchers William Doherty and Brian J. Willoughby to explore this issue with him, beginning with conversations with a group of interested divorce lawyers. Although fully committed to a constructive, non-adversarial divorce process, these lawyers believed that by the time couples entered the legal divorce process, they had abandoned hope for their marriage and would have no interest in reconciliation assistance. Even in the common scenario where one spouse wants to preserve the marriage, the other surely does

not, they believed. Rather than rely on expert opinion on either side of the question, Doherty, Willoughby, and Peterson decided to conduct empirical research to learn about divorcing couples' hopes for their marriages.

16. Doherty, Willoughby, and Peterson, "Interest in Marital Reconciliation."

17. These findings were consistent across most demographic and marital history factors.

18. Furthermore, the results provide evidence that the original finding of the degree of openness to alternatives to divorce was not dependent on the wording of the questions in the survey. It is possible that the study's results were inflated by the fact that the parents had just completed a course in parenting through divorce. Perhaps they were especially attuned to the problems their children faced and more likely to express ambivalence about the divorce. However, similar results have emerged from surveys mailed to newly filing couples, most of whom had not yet taken a parenting class.

19. A limitation of Professor Doherty and his colleagues' research is that it was a survey of interest in reconciliation at one point in time without any information about whether these couples could actually succeed in restoring their marriages to health. In fact, outside of clinical treatment studies and demographic studies of couples who separate, there has been little research on what happens to couples whose marriages are in trouble but decide to stay together. While there has been a lot of research on unhappy couples who go on to divorce, and some research on unhappy couples who stay together unhappily, there has been a gap in research on "marital turnarounds"—in other words, couples who were once unhappy and then become happy again.

20. The contact person for the Family Law Marital Reconciliation Option Project is attorney Louise Livesay (louisel@livesaylawoffice.com).

21. Jared R. Anderson, Mark J. Van Ryzin, and William J. Doherty, "Developmental Trajectories of Marital Happiness in Continuously Married Individuals: A Group Modeling Approach," *Journal of Family Psychology* 24, no. 5 (October 2010): 587–96.

22. Interestingly, this turnaround was confined to people who had earlier experienced a happy marriage; thus the turnaround can be seen as a recovery. For individuals who started with low levels of marital happiness, the chances of a turnaround were more limited. The researchers speculated that the experience of having had a happy marriage at an earlier point may create a shared goal during tough times. In contrast, couples whose marriages are initially not happy may be less able to envision being happy together, or they may simply lack the skills to negotiate the emotional challenges of marriage.

23. Colin Camerer et al., "Regulation for Conservatives: Behavioral Economics and the Case for 'Asymmetrical Paternalism,'" *University of Pennsylvania Law Review* 151, no. 3 (January 2003): 1211–54.

24. Frank F. Furstenberg, Jr., and Andrew J. Cherlin, *Divided Families: What Happens to Children When Parents Part* (Cambridge, MA: Harvard University Press, 1991), 21.

25. Diane Vaughn, *Uncoupling: Turning Points in Intimate Relationships* (Oxford and New York: Oxford University Press, 1986).

26. This point has been made by lawyers in the Family Law Marital Reconciliation Option Project.

27. John Crouch et al., “Divorce Rates and Laws: USA & Europe,” Divorce Reforms Page, Americans for Divorce Reform, <http://www.divorcereform.org/compare.html>. We computed the percentage difference in divorce rates from the table in this source. States with no waiting periods averaged 4.04 divorces per 1,000 population; those with waiting periods averaged 3.57 divorces per 1,000 population, a 12 percent difference.

28. Leora Friedberg, “Did Unilateral Divorce Raise Divorce Rates?: Evidence from Panel Data,” *American Economic Review* 88, no. 3 (June 1998): 608–27.

29. Thorsten Kneip and Gerritt Bauer, “Did Unilateral Divorce Laws Raise Divorce Rates in Western Europe?” *Journal of Marriage and Family* 71, no. 3 (August 2009): 592–607. The researchers found that *de factor* unilateral divorce, which they measured as changes in waiting periods that occurred in many countries before unilateral divorce was introduced into law, was the main factor increasing divorce, not the changes in law (*de jure*).

30. In addition, some studies lump together a variety of factors that inhibit divorce, such as fault proceedings, making it difficult to tease out the effects of waiting periods alone.

31. Robin Fretwell Wilson, “Evaluating Marriage: Does Marriage Matter to the Nurturing of Children?” *San Diego Law Review* 42, no. 3 (2005): 848–81.

32. For example, the results of a 2010 CBS News poll indicate that “a majority of Americans (53 percent) thinks getting a divorce is too easy and should be made more difficult to obtain than it is now, while one in four Americans thinks getting a divorce should be made easier. These numbers are similar to those found in polls conducted by the University of Chicago over the past 20 years.” CBS News, “Poll: 63% Know Spouse Who Cheated,” CBS News.com, January 8, 2010, <http://www.cbsnews.com/stories/2010/01/05/earlyshow/main6059795.shtml>.

33. Richard Crouch, “Transcript of Clinton on Divorce Waiting Periods & Counseling, Politics of Divorce Prevention,” *The Family Law News Blog*, March 18, 2010, [http://familylaw.typepad.com/family\\_law\\_news/2010/03/transcript-of-clinton-on-divorce-waiting-periods-counseling-politics-of-divorce-prevention.html](http://familylaw.typepad.com/family_law_news/2010/03/transcript-of-clinton-on-divorce-waiting-periods-counseling-politics-of-divorce-prevention.html).

34. Mike McManus, *How to Cut America's Divorce Rate in Half...A Strategy Every State Should Adopt* (Potomac, MD: Marriage Savers, Inc., 2008).

35. Linda J. Waite et al., *Does Divorce Make People Happy? Findings from a Study of Unhappy Marriages* (New York: Institute for American Values, 2002), <http://www.americanvalues.org/UnhappyMarriages.pdf>.

36. The first author of this report is a marriage and family therapist with decades of experience as a counselor, teacher, and trainer of marriage counselors. He believes that marriage counseling when done well can be a good, healing modality for marriages, but that too often it is not done well.

37. William J. Doherty, "How Therapists Harm Marriages and What We Can Do about It," *Journal of Couples & Relationship Therapy* 1, no. 2 (2002): 1–17. Licensed psychologists, counselors, psychiatrists, and clinical social workers have no required coursework or training in marriage counseling. Licensed marriage and family therapists have required coursework, but no clinical experience requirements in working with couples per se; state licensing requirements refer to working with "relational units," which can mean parents and children. Although in practice marriage and family therapists are more likely than other licensed professionals to have experience in marriage counseling, some have little experience.

38. John Wall et al., "The Ethics of Relationality: The Moral Views of Therapists Engaged in Marital and Family Therapy," *Family Relations* 48, no. 2 (April 1999): 139–49.

39. Poll conducted by random digit telephone techniques of 384 married Minnesotans in 2000.

40. For an alternative approach, see Michele Weiner-Davis, *The Divorce Remedy: The Proven 7-Step Program for Saving Your Marriage* (New York: Simon & Schuster, 2001); and William J. Doherty, "Couples on the Brink: Stopping the Marriage-Go-Round," *Psychotherapy Networker* (March/April 2006): 30–39, 70. Even among experienced marriage therapists who want to help couples reconcile if this can be done without risk for either spouse (a pro-commitment stance), many lack adequate ways to manage the familiar scenario when one spouse wants to save the marriage and the other is leaning towards divorce. They either hold back from helping the marriage because one spouse is resistant, or they side with the more committed spouse and alienate the ambivalent one. Even the major evidence-based models of couples therapy are not particularly useful in this situation, because they are based on studies that require both partners to be interested in working on the relationship.

41. An exception is pastoral counselors credentialed by the American Association of Pastoral Counselors, who have high levels of training, although not necessarily in marriage counseling per se.

42. Susan L. Pollet and Melissa Lombreglia, "A Nationwide Survey of Mandatory Parent Education," *Family Court Review* 46, no. 2 (April 2008): 375–94.

43. Indeed, co-parenting after divorce requires so much sensitivity and cooperation that it's tempting to suggest that people who have learned to do post-divorce parenting well would have been able to stay married well if they had gotten help soon enough.

44. The pre-filing class requirement could be combined with an additional face-to-face class required of parents who have custody and other shared parenting conflicts after filing cases. See the model bill in part three, which is nearly identical to one being considered by the Minnesota legislature.

45. We have devoted considerable space to the pre-filing parent education proposal because, like the mandatory waiting period, it would apply to the whole population of divorcing couples with minor children. It's a population intervention that could benefit even those parents who would not seek assistance on co-parenting and reconciliation on their own. Interestingly, the most common evaluation by divorcing parents who take the currently mandated post-filing classes is that they (a) would not have taken the class on their own accord, and (b) are glad they did and would recommend the classes to others. We expect the same response to the course requirement: few would voluntarily take it this soon (just as few people would seek financial counseling before filing for bankruptcy), and yet they will find the course surprisingly helpful to themselves, to their children, and in some cases, to their marriage.

46. Divorce Education Online, "Children in the Middle," <http://online.divorce-education.com/>.

47. In addition to reducing parent conflict and enhancing children's well-being, the face-to-face version of Children in the Middle has been found to reduce re-litigation rates, an issue of major concern to the courts.

48. Disclosure: William Doherty developed and delivers the reconciliation module for Children in the Middle Online, although without compensation and with the understanding that the module will be available separately, for free or at minimal cost for professionals and couples to access online.

49. Barry Wellman et al., *Networked Families* (Washington, DC: Pew Internet and American Life Project, 2008), [http://www.pewinternet.org/Reports/2008/Networked Families.aspx](http://www.pewinternet.org/Reports/2008/Networked_Families.aspx). The report discusses findings from a national survey of 2,252 adults in late 2000 and early 2008, which indicated that two-thirds of families had a broad band connection.

50. Because married couples with children have the highest educational and income levels of any group in the population, their Internet access in rural areas is no



doubt higher than the average reported across households in the 2009 Pew survey. John Horrigan, *Home Broadband Adoption* (Washington, DC: Pew Internet and American Life Project, 2009), <http://pewinternet.org/Reports/2009/10-Home-Broadband-Adoption-2009.aspx>.

51. Few state mandates are universally met but are nevertheless important; auto insurance is one example.

52. In fact, it was Judge Bruce Peterson of Minnesota who first noted the feasibility of having county clerks refrain from accepting filing papers without a certificate documenting that the spouses filing for divorce have completed the required parenting class or without an appropriate waiver affidavit.

53. Descriptions of the major marriage education programs can be found on the National Healthy Marriage Resource Center ([www.healthymarriageinfo.org](http://www.healthymarriageinfo.org)) and Smart Marriages: The Coalition for Marriage, Family, and Couples Education ([www.smartmarriages.com](http://www.smartmarriages.com)).

54. Scott M. Stanley et al., “Decreasing Divorce in Army Couples: Results from a Randomized Clinical Trial of PREP for Strong Bonds,” *Journal of Couple and Relationship Therapy* 9, no. 2 (April 2010): 149–60.

55. The “third option” refers to a different path than either divorcing or staying in a miserable marriage.

56. Retrouvaille, <http://www.retrouvaille.org>; The Third Option, <http://www.thethirdoption.com>.

57. Objectively identifiable risk would be important so that the state does not bear the responsibility and costs of having to evaluate more subjective risk factors.

58. See Scafidi, *Taxpayer Costs of Divorce*.

59. Minnesota has reduced marriage license fees for couples who obtain premarital education.

60. Unlike many traditional counselors, the discernment counselor is not “neutral” about whether the marriage survives or ends. Couples are told that the discernment counselor leans towards reconciliation if possible, but that successful discernment counseling can also end with a clearer and more confident decision to divorce. Preliminary analysis has shown that about half of the couples proceed to divorce at the end of discernment counseling, a third opt for the six-month reconciliation phase, and the remainder put the decision on hold. An article on discernment counseling will appear in the November-December issue of *Psychotherapy Networker* and will be available at [www.drbilldoherty.org](http://www.drbilldoherty.org).

61. More on “hopeful spouse counseling.” In most cases one spouse wants the divorce and the other, at least at the outset, wants to save the marriage. The “leaning out” spouse may not be willing to get any help at all, while the kind of counsel the hopeful spouse usually gets is some version of “you have no options here—your spouse wants to divorce you.” Divorce lawyers report that they typically tell their hopeful client that the laws of the state give just one party the right to end the marriage, so it’s best to accept the inevitable. Lawyers and judges also report that this advice is often not received well and that “hopeful” clients can be difficult in the divorce process. In everyday interaction with their spouse, the hopeful partner tends to act negatively by alternating between pleading with and scolding his or her partner, trying to leverage the children’s desire to keep the family together, and sometimes even threatening self-harm. None of these behaviors makes a spouse more appealing to a partner who is leaning out.

62. See Michele Weiner-Davis, [www.divorcebusting.com](http://www.divorcebusting.com), and *The Divorce Remedy*.

63. John Crouch et al., “An Early Warning/Prevention System for Divorce: The Divorce Early Warning and Prevention Act,” Americans for Divorce Reform, <http://www.divorcereform.org/CPAFull.html>.



## About the Institute for American Values

The Institute for American Values, founded in 1987, is a private, nonpartisan organization devoted to research, publication, and public education on issues of family well-being and civil society. By providing forums for scholarly inquiry and debate, the Institute seeks to bring fresh knowledge to bear on the challenges facing families and civil society. Through its publications and other educational activities, the Institute seeks to bridge the gap between scholarship and policy making, bringing new information to the attention of policy makers in the government, opinion makers in the media, and decision makers in the private sector.

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