DIVORCE AND DOMESTIC VIOLENCE IN THE UNITED STATES: A FOCUS ON NEW YORK STATE’S ADOPTION OF NO-FAULT LEGISLATION AND ITS IMPACT ON THE INCIDENCE OF DOMESTIC VIOLENCE

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INTRODUCTION

"'Till death do us part' is a phrase more often recited in ceremony than honored in reality in the United States.”¹  In the United States today, one out of every two marriages ends in divorce.² Simply speaking, the concept of a divorce can best be understood as the changing of one’s legal status from married to single. However, the official ‘undoing’ of a married couple’s legal status is the last step in a process that can

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² Id.
take months, or even years, to complete.\(^3\) Once an individual decides that he is no longer committed to his marriage, he must file for a divorce and claim grounds under which dissolution of their marriage will be deemed to be legally permissible.\(^4\)

Parts I and II of this Note addresses the development of marriage and divorce in the United States. Since its inception, matrimonial law in the United States has been ever changing to arrive at its current form. One of the most significant evolutions within American divorce law has been each state's adoption of no-fault divorce legislation. As of October 2010, all fifty states have adopted no-fault legislation as a viable ground for obtaining a divorce, with New York State being the last state to join the rest of the nation.\(^5\) Prior to 2010, married individuals "could not get a divorce in New York simply if one person – or even both – wanted to do so because of the irreconcilable differences between them, or because the marriage had irretrievably broken down."\(^6\) While this fact may be surprising, the proposal to adopt no-fault divorce legislation in New York was met with significant resistance by various legal entities and religious organizations.\(^7\) However, in 2010, "Governor David Paterson signed into law a legislative package that, among other things, eliminates the need to prove grounds for divorce"\(^8\), and on October 12, 2010, New York's version of no-fault went into effect.\(^9\) No-fault grounds permit individuals to sever their own marriage both unilaterally and relatively innocuously. That is, rather than requiring a finding of fault attributable to one or both parties, no-fault legislation permits divorce so long as one of the parties avers that the marriage has been irretrievably broken for a period of at least six months.\(^10\) Part II of this Note discusses the evolution of no-fault grounds, both nationally as well as in New York State. This Note also examines reasons why the proposed no-fault legislation was initially met with significant opposition.

\(^3\) Id.
\(^5\) Collins, supra note 1, at 273.
\(^6\) Collins, supra note 1, at 58.
\(^7\) David King, No-Fault Divorce Creates Strange Bedfellows, GOTHAM GAZETTE (May 20, 2010), http://www.gothamgazette.com/article/albany/20100520/204/3273.
\(^9\) Id.
\(^10\) N.Y. DOM. REL. LAW. § 170(7) (McKinney 2010).
Although the no-fault ground has its opponents, this author believes that the no-fault legislation has and will continue to advance, as well as equalize, the playing field among men and women involved in the battle of divorce.

Part III of this Note explores domestic violence in general as well as the consequences that domestic violence has on its victims and its perpetrators. Although the definition of domestic violence spans a broad spectrum of genders, cultures, and relationships, this Note focuses on domestic violence as it pertains to the victimization of a woman by an abuser with whom she currently has, or previously has had, an intimate or spousal relationship. Intimate partner violence is a nationwide problem that affects millions of Americans. Furthermore, the Centers for Disease Control announced in December 2011 that according to a recent study, domestic and sexual violence perpetrated against American women by an intimate partner is increasing at epidemic rates. There are many explanations as to why domestic violence is so pervasive in our society and, without certain remedial provisions, may continue to endure as a national issue.

Given the fact that a power imbalance typically exists between men and women in relationships where the latter is abused by the former, this author proposes that the no-fault divorce legislation will work to shift the balance in favor of women and equip female victims of intimate partner violence with the ability to escape their abusive situation more easily. Overall, no-fault divorce legislation will work to reduce the incidence of domestic violence in the future.

I. THE DEVELOPMENT OF MARRIAGE AND DIVORCE IN THE UNITED STATES

Unlike most other areas of U.S. law, many of the early colonies in the United States did not follow English law on marriage and divorce.15 “In England, marital controversies were judged by the ecclesiastical courts, and these courts applied canon law, under which a valid marriage was regarded as indissoluble.”16 Unless a marriage was regarded as null to begin with, a divorce was never granted.17 Furthermore, divorce was not generally available in England (except for a small number granted by Parliament to aristocratic families) until 1857, more than two centuries after some American colonies began granting divorces.18

By 1900, judicial divorce was recognized in almost all fifty states and divorces were permissible upon a showing by an innocent victim that his or her spouse had committed one of the “fault grounds” enumerated in the state statute.19 As state law governs marital disputes, statutory definitions regarding what constitutes “fault” vary from state to state.20 However, some of the most common fault grounds found in modern statutes across the fifty states include adultery, abandonment or desertion, and cruel and inhuman treatment.21 Prior to no-fault legislation, some states, including New York, crafted particularly stringent divorce statutes, which made it extremely difficult for some individuals to legally divorce their spouse.

II. THE EVOLUTION OF NO-FAULT GROUNDS IN THE UNITED STATES

A. Traditional, Pure Fault Grounds

Prior to the inception of no-fault grounds, individuals seeking a judgment of divorce were required to assign fault to one spouse to dissolve their marriage.22 As one can imagine, a law that requires an af-

16 Id. at 12.
17 Id.
18 Id. at 11.
21 1-4 Family Law and Practice § 4.03.
22 See Bort, supra note 8.
firmative designation of fault to one spouse to procure a divorce can raise substantial concerns for both the parties and their attorneys alike.

Suppose neither spouse had acted in a legally reprehensible manner during their marriage, but simply wished to no longer remain married to one another due to irreconcilable differences or an irretrievable breakdown of the marriage. Under the divorce laws that require a showing of fault, this couple would be denied a judgment of divorce and would thus be forced to remain as husband and wife. That is, "[t]he defendant had to be at fault; there had to be "grounds" for the divorce. Otherwise, divorce was legally impossible." Notably, the same result may prove to be true if both spouses could be found to be at fault for the dissolution of their marriage. "If both [husband and wife] are equally at fault, neither can clearly be said to be the innocent and injured spouse, and the law will leave them where they put themselves." Thus, to evade statutory requirements and obtain a divorce, couples would collude with one another to present evidence of fault. Furthermore, attorneys began to aid their clients in fashioning fabricated stories that would be sufficient to establish fault grounds. Once these "legal fictions" were concocted, the parties would have to swear to these stories, thereby perjuring themselves. Overall, the integrity of the court system can be seriously undermined when neither spouse is at fault for the dissolution of his or her marriage.

Another serious problem that can arise under a "pure fault" system is that to obtain a divorce, there must either be a trial to determine fault or, in the absence of a trial, one party will be forced to consent to the divorce by admitting his or her culpability on one of the fault grounds. In certain states, such as New York, this could prove to be seriously detrimental to the blameworthy spouse seeking a judgment of divorce. Prior to 1967, adultery was the only ground available for divorce in

23 AREEN, supra note 15, at 695.
24 Id. at 709.
25 Friedman, supra note 19, at 1507.
26 AREEN, supra note 15, at 717.
28 AREEN, supra note 15, at 717.
New York State.\textsuperscript{29} In addition to being the sole ground for divorce in New York, adultery was also considered to be a crime.\textsuperscript{30}

Upon settling in the American colonies, the Puritans continued the English tradition and made adultery a crime. It soon became a crime in almost every jurisdiction. It was not until 1955, when the Model Penal Code decriminalized adultery, that many states followed suit. Today, adultery remains a crime in twenty-three states and the District of Columbia. Adultery is also a military crime in the United States.\textsuperscript{31}

Therefore, an adulterous spouse was guilty of both breaking the marriage as well as the law. Furthermore, "forcing couples to accuse each other of wrongdoing, abuse, infidelity, neglect, can make a difficult process even worse — not only for the couple but for the children involved and also can lead to tremendous legal costs."\textsuperscript{32} The legal, financial, and emotional ramifications tied to a divorce on the ground of adultery might cause a couple to reconsider their divorce, particularly in cases where no actual fault truly existed but rather the parties sought to fabricate grounds just to get a divorce.

Prior to the enactment of the no-fault legislation, couples that were in agreement about getting a divorce but lacked grounds were deprived of a 'simple' way out of their marriage. Rather than being able to claim irreconcilable differences or an irretrievable breakdown of the marriage, couples were forced to file under one of the fault grounds.\textsuperscript{33} Thus, in instances where neither spouse was truly at fault, couples would have to fabricate grounds to obtain the divorce. Once the grounds were chosen, one party would have to volunteer to "take the blame." Sometimes an individual would adamantly contest having fault assigned to him or her as "the threat of a trial airing marital disputes or proving the allegations of fault might be used as a negotiating tactic paving the way for better settlement terms."\textsuperscript{34} Requiring a showing of fault on the part of one


\textsuperscript{31} AREEN, supra note 15, at 494.

\textsuperscript{32} King, supra note 7.

\textsuperscript{33} See Bort, supra note 8.

spouse can conjure strategic behaviors that may otherwise be avoided by providing couples with the option of the no-fault ground.

In an effort to game the system, couples who resided in states that contained particularly stringent divorce laws would flee to neighboring states that had a more extensive list of grounds as well as short residency requirements. These states became known as "divorce mills." Migratory divorces became a popular mechanism for escaping the harsh statutory requirements employed by certain states. The effect of these different strategies was to create a "dual system." That is, "the divorce laws in practice had almost nothing in common with the divorce laws on the books." Thus, the hurdles specifically created to halt the procurement of a divorce were becoming futile. The creative tactics used by couples desperate for a divorce began to undermine the purpose of certain state statutes, as well as the legal system in general, and thus may have been a driving force in pushing the legislatures to consider a reformation of the divorce laws. "Extensive collusion and the manufacturing of grounds by the spouses led many judges and lawyers to support divorce reforms in order to spare spouses and the judicial system from the indignities of false allegations." Specifically, in New York, "[t]wo of the chief evils the new divorce law was designed to eliminate [were] collusive or fraud-ridden divorce actions... and the continued pursuit of out-of-state divorces based upon spurious residence and baseless claims."

B. New York Domestic Relations Law §170: DRL §170(6) versus DRL §170(7)

Prior to New York's adoption of the true no-fault provision, DRL §170(7), DRL §170 provided for six grounds upon which couples could procure a divorce. The first four grounds incorporate some of the "traditional" fault grounds by requiring a showing of either (1) cruel and inhuman treatment, (2) abandonment, (3) adultery, or (4) imprisonment of three or more years by the other spouse. The fifth ground

35 Friedman, supra note 19, at 1503.
36 Id. at 1504.
40 N.Y. DOM. REL. LAW § 170.
allows for a separation, separate and apart from an action for divorce, that generally results in a judgment of separation, which in turn may result in a judgment of divorce in a year's time.\footnote{Id.}

Notably, the sixth ground most closely resembles the no-fault ground. DRL §170(6) permits divorce based on a written and filed separation agreement that the parties have lived pursuant to for at least one year.\footnote{Id. at § 170(6).} One year after signing the separation agreement, "either one can file papers for a divorce if they've been living apart under the Agreement and have lived up to its terms— and the divorce will happen whether the other wants it to or not. Nothing magical happens by itself after 365 days, however."\footnote{See Collins, supra note 2, at 58-59.}

C. The Introduction of the First True No-Fault Grounds

The California Family Law Act of 1969 worked to reform divorce law in California as the state became the first to pass true no-fault divorce legislation.\footnote{Sharilyn R. Payne, A Comparative Study of the Divorce Laws of California and the Mexican Federal District, 21 Hastings Int'l & Comp. L. Rev. 979 (1998).} The primary goals of introducing the no-fault ground were

[T] o remove from domestic relations litigation the issue of marital fault as a determining factor, to abolish the necessity of presenting sordid and ugly details of conduct by either party to obtain a dissolution of marriage, and to replace the concept of 'fault' by substituting marriage failure or 'irretrievable breakdown' as a basis for a decree dissolving a marriage.\footnote{24 AM. JUR. 2d Divorce and Separation § 2 (2013).}

With the advent of no-fault divorce grounds, many felt that "the hypocrisy and perjury that had resulted from the use of marital fault was a controlling consideration in divorce proceedings"\footnote{Herma Hill Kay, An Appraisal of California's No-Fault Divorce Law, 75 Calif. L. Rev. 291, 299 (1987).} would finally be erased. Since California's reformation, every state in the United States has followed suit and has crafted its own statutory provisions for no-fault grounds, with New York being the last state to do so.\footnote{Nicolas Confessore, N.Y. Moves Closer to No-Fault Divorce, N.Y. TIMES (June 15, 2010), http://www.nytimes.com/2010/06/16/nyregion/16divorce.html.}
no-fault divorce bill was approved by the New York Senate on June 15, 2010, and by the State Assembly on July 1, 2010 and was subsequently signed into law by Governor David Patterson on August 15, 2010. The effect of New York’s no-fault bill serves to expand the existing divorce statute, DRL §170, so as to include a seventh ground for obtaining a divorce. DRL §170(7) provides, in part, that parties may seek a judgment of divorce when “the relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has so stated under oath.”

D. Opponents of No-Fault Grounds

Efforts to reform New York’s Domestic Relations Law so as to incorporate a true no-fault provision were met with significant reluctance, angst, and hostility from a range of legal entities and religious organizations. For various reasons discussed infra, opponents of no-fault divorce legislation fought to keep New York State as the sole state that required an assignment of fault as a prerequisite to obtaining a divorce.

Opponents of the no-fault ground believe that, by relaxing the statutory requirements that must be met for individuals to dissolve their marriage, divorces will be easier to obtain and thus, divorce rates will skyrocket. Additionally, opponents believe that one of the major drawbacks of the no-fault legislation is that married couples will be less willing to try and save their marriage since there is an “easier way out.” In other words, when one spouse feels as though the marriage is over, he or she can unilaterally file for divorce for no other reason than claiming that there has been an irretrievable breakdown of the marriage for a period of at least six months.

Though the United States has a “higher rate of divorce than most other nations. . .we also have higher rates of marriage and remarriage.” While the increase in divorce rates is one major concern surrounding the institution of no-fault legislation, there is no definitive proof that the no-fault ground has substantially increased divorce rates. “After divorce laws became more lenient in the late 70s, divorce numbers peaked

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48 1-7A NEW YORK CIVIL PRACTICE: MATRIMONIAL ACTIONS § 7-A.01.
49 N.Y. DOM. REL. LAW § 170(7).
50 See Friedman, supra note 19.
52 N.Y. DOM. REL. LAW § 170(7).
53 AREEN, supra note 15, at 3.
around 1980 and began to level off,"54 a more current report from the U.S. Census Bureau has indicated that "divorce rates for most age groups have been dropping since 1996 by an average of about [five] percentage points."55 Thus, no-fault divorce legislation should not be seen as a catalyst for divorce. No-fault divorce legislation simply creates an easier method for couples to dissolve their marriage.

Economists Betsey Stevenson and Justin Wolfers maintain that their research shows that there is no permanent effect of no-fault divorce laws on divorce rates in the United States.56 Wolfers noted that a sharp increase in divorce rates occurred immediately after a state implemented no-fault grounds; however, this spike reversed itself within a decade of adopting the no-fault laws. Wolfers attributed the sudden increases in divorce rates across the states just after adopting no-fault divorce laws to pent-up demand for divorce.57 Furthermore, "in the years since no-fault divorce became well-nigh universal, the national divorce rate has fallen, from about 23 divorces per 1,000 married couples in 1979 to under 17 per 1,000 in 2005."58 Wolfers uses a labor market analogy to account for the non-existent effect that no-fault divorce has on divorce rates: "The main effect of right-to-strike is not that workers strike more; rather, they can now credibly threaten their employer with a strike, and this newfound bargaining power leads to higher wages but not that many more strikes."59 The same rationale applies to the threat to divorce one's spouse.

While there is some evidence to suggest that there has been an increase in divorce filings in New York since the no-fault ground went

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55 Id.
one reasonable explanation for such an increase is that attorneys who were well aware that the no-fault bill would pass simply waited to file their clients' divorce papers. Given the difficulties and complications that may arise in trying to obtaining a divorce on fault grounds, it is likely that attorneys found it prudent to wait until the no-fault legislation passed before commencing an action for divorce.

Amazingly, advocates for women's rights, including New York's National Organization for Women, New York State, Inc. (NOW-NYS, Inc.) have opposed the adoption of the no-fault ground into New York's Domestic Relations Law Statute. NOW-NYS, Inc. strongly opposes the no-fault divorce legislation that passed last year. The National Organization for Women (NOW) is "the largest organization of feminist activists in the United States" with 500,000 contributing members and 550 chapters in all 50 states and the District of Columbia. This author finds it surprising, and certainly worthy of exploration, that an organization whose aim is to secure equality for all women and whose services primarily aid women in the midst of severe matrimonial troubles would take issue with the adoption of no-fault divorce laws.

NOW-NYS, Inc. takes the position that women will suffer financially in a divorce predicated on no-fault grounds. That is, "no-fault divorce takes away their options, it allows the spouse with no grounds, batterer or not, to obtain a divorce over the objections of the less powerful spouse without negotiating a divorce settlement." Thus, on subjective level, proof of fault often may increase the amount of spousal support awarded to the party who initially filed for the divorce. Thus, the elimination of the requirement of stating fault grounds will effect the distribution and allocation of marital resources upon divorce. However, one issue that NOW-NYS fails to consider is that the likely effect of using fault as leverage in a divorce will only result in more acrimony between the spouses. The premise of their argument is that "adoption

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63 See Papas et al., supra note 61.

64 Id.
of true no-fault divorce would have the effect of harming women by allowing the generally wealthier husbands to obtain a divorce before all issues regarding economics and support for the dependent wife have been resolved. However, the latter half of DRL §170(7) provides that

no judgment of divorce shall be granted under this subdivision unless and until the economic issues of equitable distribution of marital property, the payment or waiver of spousal support, the payment of child support, the payment of counsel and experts' fees and expenses as well as the custody and visitation with the infant children of the marriage have been resolved by the parties, or determined by the court and incorporated into the judgment of divorce.

This specific provision works to alleviate concerns that a non-monied spouse may encounter financial hardships during the pendency of, as well as after, the litigation. Furthermore, the new legislation, which was enacted at approximately the same time as the no-fault ground, is designed to ensure that the non-monied spouse will be on equal footing with the monied spouse during the litigation as it addresses the issues of interim counsel fees and temporary maintenance during the pendency of the litigation. The language of the new provisions provide that there "shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse." Furthermore, in determining temporary maintenance awards as well as the amount and duration of post-divorce maintenance awards, the court shall consider acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law.

Thus, the statute provides a presumption that benefits those with less power and works to ameliorate the fear that a monied spouse may secure

66 N.Y. DOM. REL. LAW § 170(7).
67 N.Y. DOM. REL. LAW § 238.
68 N.Y. DOM. REL. LAW § 236.
freedom and then have no incentive to resolve the financial aspects of the marriage.

NOW-NYS, Inc. maintains that "this law will give judges permission to ignore 'cruel and inhuman treatment' as grounds for divorce." Consequently, such changes will ultimately leave women in a financially inferior position upon dissolution of their marriage. For example, in In re Koch, a domestic violence victim’s claim for maintenance was denied by the Court of Appeals, which held that under the state’s no-fault divorce statutory structure, fault could not be considered as a factor that should influence the division of marital property or awards of spousal support. Similarly, in In re Marriage of Cihak, the court held that the murder of the wife by the husband could not be considered and would have no effect whatsoever on the division of the parties’ marital property or any spousal support award because under ‘true’ no-fault divorce law a reward can only be based upon the financial needs of parties, regardless of fault.

NOW-NYS, Inc. argues that by enacting no-fault legislation that does not specifically address the role of fault in dividing marital property, New York State has placed women on an unequal playing field in the overall game of divorce.

While NOW-NYS, Inc. makes some viable arguments against the adoption of no-fault grounds, amendments to the law in conjunction with the provision of no-fault divorce dispel many concerns opponents may have. Although the general presumption in New York is that marital fault should not be considered in determining equitable distribution, the leading New York cases on when and how marital fault may be considered hold that N.Y. Dom. Rel. Law § 236(B)(5)(d), the statute listing the [thirteen] factors to be considered in awards of equitable distribution, provides that marital fault may be taken into consideration pursuant to the statute’s catchall provision, N.Y. Dom. Rel.

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70 Id.


73 N.Y. DOM. REL. LAW § 170(7).
Law § 236(B)(5)(d)(13), which allows consideration of 'any other factor' which may be 'just and proper.'

Additionally, grounds are merely one piece of the puzzle in a divorce. In other words, to obtain a divorce in New York, all of the ancillary issues, including, child custody, child support, and spousal support must first be resolved before one may procure a divorced status. "Because a resolution of all the major issues must be reached before a divorce judgment is granted, [no-fault] legislation safeguards the parties' rights and economic interests." While the cases cited supra may be illustrative of out-of-state practices, in New York, marital fault may be taken into consideration where "the marital misconduct is so egregious or uncivilized as to bespeak of a blatant disregard of the marital relationship—misconduct that 'shocks the conscience' of the court thereby compelling it to invoke its equitable power to do justice between the parties." Furthermore, New York State law requires that in any proceeding for custody or visitation where there have been allegations of domestic violence proven by a preponderance of the evidence, "the court must consider the effect of such domestic violence upon the best interests of the child." Overall, while no-fault grounds may sometimes have the effect of decreasing the amount of spousal support a wife receives, no-fault grounds still allow for the wife to allege misconduct and have that allegation impact the court's decision in other areas of her divorce.

Implicit in NOW-NYS, Inc.'s position is the presumption that not only is the woman the "weaker party" but also that men, not women, are typically at fault for the dissolution of a marriage. Today, more women hold jobs and are financially independent. In fact, in many households across the nation, husbands have taken on the "stay-at-home-dad" role. Thus, in a situation where the wife is both the primary earner and the spouse "at fault," she would be financially worse off under a fault-based system. Moreover, NOW-NYS, Inc.'s view of wo-

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76 In re Koch, 648 P.2d 406; In re Marriage of Cihak, 92 Ill. App. 3d 1123.
77 See Havel, 301 A.D.2d 339.
78 N.Y. DOM. REL. LAW § 240(1)(a).
79 See Katz, supra note 69.
men as victims of the new legislation has the effect of perpetuating the stereotype of women as an inferior gender. This arcane view is one that an organization such as NOW-NYS, Inc. should work to eliminate, not reinforce. As the “largest organization of feminist activists in the United States,” NOW-NYS, Inc. should work towards promoting the view that women are just as capable as men in every aspect, including the workplace. No-fault legislation, based upon the following analysis, actually may have the effect of eliminating this stereotype.

III. DIVORCE AND DOMESTIC VIOLENCE

A. Domestic Violence In General

Domestic violence is defined as “a pattern of gender-based intimate partner, dating, or family violence with a central dynamic of power and control.” Domestic violence can affect anyone regardless of gender, race, ethnicity, orientation, or socio-economic status. Although domestic violence can be experienced by both men and women, 85% of domestic violence victims in the United States are women and approximately one in four women in the United States will experience some form of domestic violence during her lifetime. Nationwide, an estimated three to four million women are subjected to intimate partner violence. In the United States, the battering of women by husbands, lovers, and exes is the leading cause of injury to women. Furthermore, every year, one in three women who is a victim of homicide has been murdered by her abuser. While abusive behaviors may occur outside the home, in more than 60% of reported incidents, intimate partner violence occurred at home. Lastly, “domestic violence occurs within

81 NAT'L ORGANIZATION FOR WOMEN, supra note 62.
82 SANCTUARY FOR FAMILIES, supra note 14.
87 Id.
88 See SAFE HORIZON, supra note 83.
89 See DOMESTIC VIOLENCE RESOURCE CENTER, supra note 84.
opposite-sex relationships as well as same-sex relationships, between intimate partners who are married, divorced, living together, dating or who were previously in a relationship.\textsuperscript{90} For the purposes of this note, this author will be focusing on domestic violence as experienced between married persons. Additionally, as mentioned above, although it must be recognized that either sex may find himself or herself to be the victim in an abusive relationship, this discussion will focus on intimate partner violence committed against women in particular.

Two important factors, race and economic status, must be examined when considering how domestic violence varies across different populations as “various groups experience domestic violence at disproportionate rates.”\textsuperscript{91} The National Violence Against Women Survey (NVAWS) found that “African-American and Native American/Alaskan Indian women and men reported higher rates of domestic violence than did women and men from other communities of color, while Asian/Pacific Islander women and men tended to report lower rates of intimate partner violence than did women and men from other minority backgrounds.”\textsuperscript{92} Moreover, “[b]lack females experienced intimate partner violence at a rate 35\% higher than that of white females, and about 2 1/2 times the rate of women of other races.”\textsuperscript{93} Regarding the correlation between race and economic class, a National Institute of Justice (NIJ) publication suggests that “African-Americans and whites with the same economic characteristics have similar rates of intimate violence, but African-Americans have a higher overall rate of intimate violence due in part to higher levels of economic distress and location in disadvantaged neighborhoods.”\textsuperscript{94} While race and economic class have an impact on the frequency of domestic violence, these statistics are skewed by outside variables and should not viewed as completely accurate.

When asked to think about the phrase “domestic violence,” one typically conjures up images of physical abuse. While physical violence


\textsuperscript{91} Id.

\textsuperscript{92} Id.


between partners certainly falls under the spectrum of abusive behavior, domestic violence can surface in many other forms. For example, abusive behaviors also include psychological, sexual, legal, and economic control. Abusers may employ strategic tactics including coercion, intimidation, isolation or emotional, sexual, or economic exploitation in order to control or change the behavior of their partners.

While each survivor of domestic violence has a unique story about the abuse he or she faced, the cycle of abuse experienced by the victims is often quite similar. To most individuals, incidents of domestic violence may seem like nothing more than sporadic and unpredictable outbursts of anger or revenge by the abuser. However, "domestic violence follows a typical pattern no matter when it occurs or who is involved." The dynamics of an abusive relationship can typically be broken down into three distinct, though consistent, phases: tension building, abusive and violent acts, and apology.

The cycle is usually set in motion when the abuser becomes angry, jealous, or suspicious of the victim and begins utilizing verbal threats and intimidation tactics in order to gain control over the victim. At the outset, the victim will avoid acknowledging his or her abuser's behavior while subsequently evading outsiders who may be attempting to intervene. As time goes on, the verbal abuse builds with frequency and intensity. The "tension building" phase culminates and the second stage of the cycle starts when the abuser perpetrates a severely abusive or violent act against the victim. The three-stage cycle of abuse finishes with the abuser begging the victim for forgiveness and promising to never hurt him or her again. However, the "apology" phase of the cycle slowly becomes non-existent the longer the relationship, as well as the abuse, endures. That is, abusers start to realize that they do not need to apologize to their victims in order to ensure that the victim does not end the relationship. Thus, the three-stage cycle of abuse becomes re-

95 See Sanctuary for Families, supra note 14.
99 Id.
100 Id.
101 Id.
duced to only tension building periods and acts of violence committed against the victim the longer the abusive relationship lasts.102 The three-stage cycle of domestic violence can occur countless times throughout the duration of an abusive relationship. Furthermore, “[e]ach stage lasts a different amount of time in a relationship. The total cycle can take anywhere from a few hours to a year or more to complete.”103 As mentioned above, sometimes the relationship will not follow the pattern of a typical three-stage cycle and thus, not every relationship fits the cycle exactly as I have described it.

There are laws that strictly define domestic violence, and every state as well as every U.S. territory has its own definition of domestic violence.104 In other words, although a woman may technically be a victim of domestic violence, the laws in her state may be written in such a way as to exclude her, by definition only, from being legally recognized as a victim of intimate partner violence.105 While there is a standard clinical definition of domestic violence, “[l]egal definitions across the States generally describe specific conduct or acts that are subject to civil and criminal actions, and the specific language used may vary depending on whether the definition is found in the civil or criminal sections of the State’s code.”106 Approximately 46 states, as well as the District of Columbia, define domestic violence in their civil statutes.107 These civil statutes are usually located in domestic relations laws, but they may also be found in family or social services laws.108 In New York State, under civil law, a victim of domestic violence is defined as

any person over age 16, any married person, or any parent accompa-
nied by his or her minor child or children in situations in which such person or such person’s child is a victim of an act that would constitute a violation of the penal law, including, but not limited to, acts constituting disorderly conduct, harassment, menacing, reckless en-
dangerment, kidnapping, assault, attempted assault, or attempted murder, and: such act or acts have resulted in actual physical or emo-

102 Id.
104 See DOMESTIC VIOLENCE RESOURCE CENTER, supra note 84.
105 Id.
107 Id.
108 Id.
tional injury or have created a substantial risk of physical or emotional harm to such person or such person’s child [or] such act or acts are or are alleged to have been committed by a family or household member.\(^\text{109}\)

Additionally, Soc. Serv. Law § 459-a defines who qualifies as a “family or household member.” Interestingly, New York State does not define domestic violence in its criminal or penal codes.\(^\text{110}\)

B. The Consequences of Domestic Violence

Accurate information regarding the extent of the economic, mental, and physical effects of domestic violence is difficult to ascertain as intimate partner abuse often goes unreported. The NVAWS found that among women over the age of eighteen, “[a]pproximately one-fifth of all rapes, one-quarter of all physical assaults, and one-half of all stalking perpetrated against female respondents by intimates were reported to the police.”\(^\text{111}\) Furthermore, “surveys may not capture homeless individuals or those living in institutional settings such as homeless shelters or battered women’s shelters.”\(^\text{112}\) With that said, some aspects of the problem are known despite the problem of underreporting. For example, as discussed previously, it is well known that “domestic violence is not confined to any one socioeconomic, ethnic, religious, racial or age group.”\(^\text{113}\) Also, domestic violence is not isolated to one geographic region but rather spans the nation.\(^\text{114}\) The lasting effects of domestic violence on individuals exposed to the abuse are far-reaching and nationally uniform. Such effects include, but are not limited to, economic, physical, and mental trauma.

The economic impact of domestic violence is exorbitant on both a nationwide, as well as an individual, scale. “Domestic violence costs more than $37 billion a year in law enforcement involvement, legal

\(^{109}\) N.Y. SOC. SERV. LAW § 459-a.


\(^{112}\) See VIOLENCE AGAINST WOMEN ONLINE RES., supra note 90.


\(^{114}\) Id.
work, medical and mental health treatment, and lost productivity at companies."\(^{115}\) Individual victims of domestic violence incur costs related to medical treatment, lost wages, and relocation. For example, research has shown that "[s]urvivors of family violence often experience difficulty in future relationships, which affects not only the stability of home and family, but also professional relationships in the course of employment."\(^{116}\) Fifteen to fifty percent of abused women report that their abusers actively attempt to interfere with their efforts to obtain employment, education, or specialized training.\(^{117}\) The CDC has reported that victims of domestic violence missed an average of 7.2 days from paid work.\(^{118}\) Overall, many women find it difficult to fully escape abusive partners and secure independent lives of their own.

The effects of domestic violence not only have an immediate impact on the victims, but also have the potential to plague them long after the abuse has ended. Women who are fortunate enough to have the strength, support, and resources to leave their batterers typically face financial difficulties once they leave their violent partner. Statistics show that "nearly 50% of homeless women and children are homeless because of domestic violence."\(^{119}\) When a woman leaves her abusive partner, chances are that she did not have control over the finances while she lived with her batterer. Furthermore, women who leave their violent environments may do so abruptly and without warning so as not to enrage their batterers.\(^{120}\) Thus, victims of domestic violence typically do not have a new home to go to once they have fled.

Aside from physical harm that one may experience as a result of domestic violence, victims of domestic violence are highly susceptible to emotional injury. "[D]omestic violence can lead to depression, anxiety, panic attacks, substance abuse and post-traumatic stress disorder. Abuse

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\(^{117}\) Alyce LaViolette & Ola W. Barnett, It can happen to anyone: Why battered women stay, 28 (Sage Publications, 2nd ed. 2000).


also might trigger suicide attempts or psychotic episodes." The long-term mental and emotional effects incurred by victims of domestic violence can also stay with an abused woman once she has exited the abusive household. For example, "[a]mong battered women living in shelters, 88% experience Post-Traumatic Stress Disorder because of domestic violence." Victims who are able to escape tend to have difficulty trusting their own perceptions, become passive in both romantic as well as platonic relationships, and "often become over-accommodating because they want to avoid conflict, even verbal disputes, at all costs." Battered women are more susceptible to feelings of depression, low self-esteem, helplessness, and are overall more susceptible to disease than non-abused women. "The stress of being in an abusive relationship often has a physiological impact, as well as the obvious physical and psychological impact: it often increases one's vulnerability to illness."

"The effect of domestic violence is like dropping a rock into a lake: the impact ripples outward, not only affecting the victim, but also children who witness domestic violence, other family members and community resources." Unfortunately, the abused victims are not the only individuals who suffer when there is intimate partner violence that occurs in the home. "Domestic violence not only affects those who are abused, but also has a substantial effect on family members, friends, coworkers, other witnesses and the community at large." According to a National Survey of Children's Exposure to Violence (NatSCEV), "6.6% of American children are exposed to a physical assault by one parent against the other each year, 5.7% were exposed to psychological and emotional maltreatment by one parent against the other and 1.3%
were exposed to severe physical assaults of a parent." This nationally representative survey concludes that "25% of children are exposed to some form of family violence over their entire childhood (0-17 years)."

Although one does not typically think of any other victims of domestic violence besides the woman who is abused, it is very common for children who live in the home where the violence occurs to become victims of the abuse as well. "Children in homes where domestic violence occurs may be witnesses to abuse, may themselves be abused, may suffer harm 'incidental' to the domestic abuse, and may be used by the batterer to manipulate or gain control over the victim." Children who witness acts of domestic violence perpetrated by their parents have the potential to be profoundly affected by the violence that occurs in their own home, both psychologically and physically. "Exposure to domestic violence is associated with a host of increased childhood problems, such as acting aggressively with others, depression and anxiety." It has also been found that children who are exposed to domestic violence have a higher tendency to allow history to repeat itself. That is, girls "who witness domestic violence are far more likely to become victims themselves" and "boys who witness domestic violence are also far more likely to become abusers, of both their spouses/partners and their children." A twenty-year study of 543 children revealed that exposure to domestic violence during childhood was a key statistical predictor of both perpetrating violence against an adult partner as well as receiving it from an adult partner. Furthermore, children who grow up in violent homes "continue to suffer the consequences as adults, where they are more likely to commit suicide, abuse drugs or alcohol, [and] be unemployed" than children who come from non-violent homes. Overall, domestic abuse has a profound impact on younger generations who are exposed to such violence and has the powerful ability to perpetuate its

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130 See VIOLENCE AGAINST WOMEN ONLINE RES., supra note 90.
131 Id.
133 See VIOLENCE AGAINST WOMEN ONLINE RES., supra note 90.
134 See id.
135 See id.
137 See CHILDREN'S DEFENSE FUND – OHIO, supra note 128.
own vicious cycle. Nine states\textsuperscript{138} consider witnessing domestic violence to be an issue that warrants legal action, however, New York does not happen to be one of them.\textsuperscript{139}

Children who observe family violence in their homes are also likely to be immediately affected, both mentally and physically, by the abuse. Research has shown that children react in both overt and subtle ways after witnessing intimate partner violence between adults in their home.\textsuperscript{140} “One-third of the children who witness the battering of their mothers demonstrate significant behavioral and/or emotional problems, including psychosomatic disorders, stuttering, anxiety and fears, sleep disruption, excessive crying and school problems.”\textsuperscript{141} Many children feel overwhelmed with guilt because they believe that they are the cause of the violence or because they are simply unable to help the victim, who is usually their mother. On the other hand, some children experience guilt because they love their father but also recognize that he is an abuser.\textsuperscript{142} Therefore, children can often times be put in a position where they feel as though they have to “choose a side” between two individuals whom they love and regard as their caretakers.

Children may be used as pawns by the abuser in their quest to gain power and control over their partner. For example, “[a] batterer may threaten to take custody of or kidnap the children if the victim reports the abuse; he may also threaten to harm or kill the children.”\textsuperscript{143} Sadly, children play an important role in the abuser’s attempt to manipulate his victim because most parents would do anything for the welfare of their children. In extreme cases, the abuser may even inflict direct harm to the child in order to gain control over the victim.

As mentioned above, children who witness domestic violence are likely to carry such abusive behaviors over into their own relationships. Though the mental and physical effects of living in a violent home may diminish as the child ages, witnesses of domestic violence may carry these effects with them well into adulthood. For example, it has been

\textsuperscript{138} These states are Arizona, Georgia, Hawaii, Louisiana, Montana, Nevada, Ohio, Oklahoma and Utah.

\textsuperscript{139} See CHILDREN’S DEFENSE FUND – OHIO, supra note 128.


\textsuperscript{141} Id.

\textsuperscript{142} See MINN. ADVOCATES FOR HUMAN RIGHTS, supra note 132.

\textsuperscript{143} Id.
shown that "[a]s adults, child witnesses may continue to suffer from depression and trauma-related symptoms." Overall, children who witness domestic violence can experience substantial short-term, as well as long-term, consequences.

Family violence is not always restricted to abuse perpetrated against a spouse. Unfortunately, domestic violence and child abuse are inextricably intertwined. "In a national survey of over 6,000 American families, 50% of the men who frequently assaulted their wives also frequently abused their children." Research has also shown that the rate of child abuse is six to fifteen times higher in families where the mother is abused. Furthermore, "children in homes where domestic violence occurs are physically abused or seriously neglected at a rate 1500% higher than the national average." Overall, it is evident that there is a strong correlation between domestic violence and child abuse. Domestic violence is detrimental not only to adults, but to children as well. The various forms of family violence "share many similar root causes, thus interventions directed at one may positively influence other forms of violence as well." Exposure to domestic abuse must cease in order to facilitate a move towards a violence-free future.

C. No-fault Grounds and Its Effect On Family Violence

Dennis Proust, a spokesman for the Catholic Conference of New York, justified his contention for disallowing no-fault legislation to pass in New York State by explaining that individuals "who are in abusive relationships have a quick way to get out and people who want to get divorced otherwise have to wait a little while, and that is not necessarily a bad thing." Although one of the fault grounds in New York State is designed to specifically target domestic violence and provide a legal remedy for a victim of marital abuse, Proust's view may be seen as both impractical as well as over-simplistic as there are several caveats that make pursuing a divorce on such fault based grounds unfavorable to abused men and women.

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144 Id.
146 See THE CLARK CNTY. PROSECUTING ATT'Y, supra note 140.
147 See MINN. ADVOCATES FOR HUMAN RIGHTS, supra note 132.
148 See Barnett, supra note 11.
149 See KING, supra note 7.
150 N.Y. DOM. REL. LAW § 170(4).
DRL §170(1) establishes that the cruel and inhumane treatment of the plaintiff by the defendant must be such that "the conduct of the defendant so endangers the physical or mental well-being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant." Unfortunately, this provision fails to define exactly what conduct will be sufficient to successfully claim these grounds. Where the court fails to define such conduct, neither victims nor their lawyers can predict with certainty what the outcome of a particular case will be. Furthermore, "[t]he reluctance of courts to recognize one-time violent conduct as sufficient grounds on the basis of cruelty meant that if one left an abusive spouse after a violent incident, [one was] risking a counterclaim of desertion or abandonment by their abuser." It is plausible to assume that many victims of domestic violence would be apprehensive to pursue a divorce against her batterer as an unfavorable judgment would send the victim back into the hands of her abuser (who is now angered by both the victim's allegations as well as her attempt to leave him).

As indicated above, many individuals, abused or not, may be wholly unaware of the various types of behaviors that constitute domestic violence. As a result, prior to the addition of no-fault grounds to New York State's Domestic Relations Law Statute, a victim of domestic violence may have had a more difficult time obtaining a divorce under the fault grounds of cruel and inhuman treatment than under some of the other fault grounds. For example, "physical violence may happen infrequently, but abusers use coercive behaviors every day which allow them to maintain control of the relationship." If a victim of domestic violence believes that only physical violence amounts to abuse, and that victim is not being physically harmed, the victim would never even think to file for divorce under cruel and inhuman treatment grounds simply because the victim would not know that they have the ability to do so. Thus, victims may believe that their situation falls short of cruel and inhuman treatment and therefore they are ineligible to file for divorce under such grounds.

151 N.Y. DOM. REL. LAW § 170(1).
152 AREEN, supra note 15, at 706.
In two landmark cases, Hessen v. Hessen and Brady v. Brady, the New York Court of Appeals held that there is a direct correlation between duration of the marriage and the burden of proof required for dissolution. In Hessen, the Court found that the determination of whether certain conduct qualifies as "cruel and inhuman treatment" under Dom. Rel. Law §170(1) would depend, in part, on the duration of the parties' marriage. The Court explained that what may constitute "substantial misconduct" in the context of a short-term marriage might only constitute "transient discord" in a marriage of long duration. Here, the Court of Appeals found that the denial of the husband's complaint of cruel and inhuman treatment under Dom. Rel. Law §170(1) by the courts below was proper. Given the absence of sufficient physical or mental injury or wanton conduct in conjunction with the duration of the marriage, the Court was permitted to deny the wife a divorce. Overall, as defined by both case law and statute, "the longer the marriage, the more allegations will be required, and the stronger they must be." To maintain such a high threshold for obtaining a divorce on grounds of cruel and inhuman treatment is cruel and inhuman in itself. The judiciary is essentially setting the bar for what types and degrees of abuse individuals will have to endure to divorce their spouses. Although attorneys may be able to plead alternate causes of action if the court does not grant their client's divorce under cruel and inhuman treatment grounds, many individuals will not have the time or the money to continually go to court to litigate whether their claims are sufficient to dissolve their marriage if their first attempt yields an unfavorable result. Thus, without the no-fault legislation, New York State would be making it much more difficult for women to abscond from their unhappy, and potentially abusive, marriages.

155 Brady v. Brady, 64 N.Y.2d 339 (1985) (reaffirming the holding in Hessen v. Hessen that whether a plaintiff has established a valid cause of action for divorce on grounds of cruel and inhuman treatment depends, in part, on the duration of the marriage).
157 See Brady, 64 N.Y.2d at 344.
Moreover, it does not seem to make sense that the longer an individual has been a victim of domestic violence, the harder it should be to legally emancipate them from their dangerous, and possibly lethal, environments. Usually, domestic violence incidents increase in both frequency and severity as an abusive relationship continues to exist.\textsuperscript{158} It is illogical to reason the legal system should grant a victim of domestic violence a divorce more readily than a victim who has suffered the same abuse but has taken longer to escape his or her relationship.

Statistics show that it typically takes a victim of domestic violence seven attempts to finally leave her abusive partner.\textsuperscript{159} "Often in the early stages, the victim may not even realize s/he is in an abusive relationship. By the time the victim does realize it, there are often many barriers to leaving."\textsuperscript{160} Outsiders, including judges and attorneys, may often be too quick to ask a victim of domestic violence why he or she did not "just leave" if the violence was so intolerable.

This author finds two basic faults with this question. First, asking a victim of domestic violence why she chose to stay in a relationship should have minimal, if any, bearing on the decision of whether a divorce should be granted. Second, there are several obstacles built into an abusive relationship that make it exceedingly difficult to "just leave." For example, feelings of guilt, shame, denial, hope or even love may interfere with a victim's decision to terminate the relationship. Additionally, more serious factors that may weigh heavily in a victim's decision to stay in the abusive relationship include her economic dependence on the abuser, concern that the abuser will find her and harm her or her loved ones, and, in some instances, fear of deportation.\textsuperscript{161} Women who live in certain communities that encounter various forms of disadvantage typically experience added difficulties in their attempt to leave their abusers, such as "language barriers, exclusion from their community. . .and a lack of culturally relevant services."\textsuperscript{162}

Women who are victims of domestic violence tend to be socially isolated, have low self-esteem, and have few social and financial re-

\textsuperscript{158} See Sanctuary for Families, supra note 14.

\textsuperscript{159} Information on Domestic Violence, Domestic Abuse Shelter of the Florida Keys, http://www.domesticabuseshelter.org/InfoDomesticViolence.htm#statistics (last visited Nov. 8, 2011).

\textsuperscript{160} See Sanctuary for Families, supra note 14.


\textsuperscript{162} See Violence Against Women Online Res., supra note 90.
sources. Take, for example, an immigrant who has recently moved to the United States with her husband. Unable to speak a word of English, she is told by her husband that she is not allowed to leave their apartment as such an act would result in her deportation. This type of isolation is certainly a form of domestic violence. However, this woman would not be likely to seek legal action against her husband for numerous reasons. This woman may be wholly unaware that her husband’s behavior is considered to be an act of domestic violence, or that the United States’ legal system will honor a divorce based on cruel and inhuman treatment grounds. Also, “many immigrant women face obstacles such as language barriers, a lack of understanding of the American legal system, and cultural customs when leaving violent relationships.” As this woman does not speak English, she will have a very difficult time obtaining counsel to represent her. This woman may also be too afraid to seek counsel as such actions may result in deportation rather than divorce (as this is what she has been told by her husband). “Abusers may threaten to have the victim deported (removed) by reporting their undocumented status to the Department of Homeland Security, to revoke his residency sponsorship of her, or refuse to file necessary immigration petitions that would provide the victim with lawful status in the U.S.” Lastly, even if this woman knew that she could attempt to obtain a divorce, she may not have the resources to retain a lawyer as her husband likely maintains control of the household’s finances.

Another pitfall inherent in DRL §170(1), the cruel and inhuman treatment ground, is that the violence perpetrated against the victim must be proven in court. Many victims of domestic violence are typically too afraid or embarrassed to make such accusations in a public setting and thus will never pursue legal action. On the other hand, bringing a batterer into the courtroom and accusing him of actions that carry both matrimonial and potentially criminal ramifications would undoubtedly enrage the defendant. If the court does not find the particular violence alleged to rise to the level of cruel and inhuman treatment sufficient to meet the statutory requirements for divorce, the spouse must remain married to the defendant. Statistics show that approximately 75% of women who are killed by their batterers are mur-
dered when they attempt to leave. Returning a victim of domestic violence to her abusive marriage after a failed trial would certainly pose a threat to her wellbeing, or even to her life.

**Conclusion**

Divorce laws throughout the United States have evolved greatly since their induction into the American legal system. One of the most recent additions made to New York’s Domestic Relations Law was that of the no-fault ground for divorce. New York’s no-fault divorce law provides that a party may be granted a judgment of divorce if the relationship between husband and wife has broken down irretrievably for a period of at least six months, provided that one party has stated so under oath. The overall effect of New York’s no-fault legislation is to make divorces less acrimonious and somewhat easier to obtain.

The introduction of no-fault grounds may arguably serve to drastically reduce the incidence of domestic violence as well as that of female suicide. Economists Betsey Stevenson and Justin Wolfers report that states that adopted no-fault divorce experienced “8–16 percent decline in female suicide, roughly a 30 percent decline in domestic violence for both men and women, and a 10 percent decline in females murdered by their partners.” The rationale behind these statistics is simple: no-fault divorce has equalized the power balance in relationships. No-fault grounds for divorce grants an individual the authority to dissolve his or her marriage without the consent of their spouse. Furthermore, no-fault allows women to avoid being victims by giving them a legal avenue they didn’t have before.

As mentioned above, prior to no-fault grounds, to obtain a divorce, except in cases where the parties live for one year pursuant to a separation agreement, one spouse either had to prove one of the fault grounds or obtain the consent of his or her spouse. In other words, since the no-fault ground grants women the ability to unilaterally sever their abusive relationships, the abuser must either behave or be on the receiving end of a summons for divorce. Either way, the rates of domestic violence and spousal homicide are lowered. Women who were once dominated, threatened, and intimidated by their male counterparts are now given an option for escape that was previously unavailable to them.

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166 See **Violence Against Women Online Res.**, supra note 90.
167 N.Y. Dom. REL. LAw § 170(7).
168 See supra note 36.
As there is a correlation between spousal abuse and child abuse,\textsuperscript{169} it is crucial for both mother and child to escape the violent environment. However, escape for mother and child may be easier said than done as laws that govern child abuse and child custody have the potential to leave the child with the abuser. “In the United States, for example, child abuse laws that determined custody according to the ‘best interests of the child’ often held that a women was an unfit parent because she did not protect her child from abuse—even though she was also abused. . .”\textsuperscript{170} Furthermore, laws that require teachers or social workers to report signs of child abuse have the potential to be detrimental to the mother. “Mandatory reporting without consideration of domestic violence issue[s] may force the woman into a lose-lose situation; when confronted with the signs of abuse, she either reveals the abuser’s responsibility and runs the risk of retaliation, or refuses to do so and potentially loses custody of her children.”\textsuperscript{171} In light of these issues, it becomes even more necessary that victims of domestic violence have a guaranteed, non-threatening way out of their marriage.

Statistics show that “women report to the police only 20% of all rapes, 25% of all physical assaults, and 50% of all stalkings perpetrated by intimate partners.”\textsuperscript{172} Moreover, “more than 85% of Americans indicated they could tell a physician if they had been a victim or perpetrator of family violence, slightly more than those who would tell their priest, pastor, or rabbi and considerably more than those who would tell a police officer.”\textsuperscript{173} While there are numerous explanations as to why victims of domestic violence are either unable to or are deterred from leaving their abusers, New York State has only made it easier for a victim to escape her dangerous situation by implementing the no-fault legislation. Although the Appellate Division has not ruled on the matter, courts in New York State have held that “a party is not entitled to challenge the other spouse’s allegation that the marriage has irretrievably broken down.”\textsuperscript{174} By permitting a party to obtain a divorce under no-fault grounds simply by making a sworn statement alleging that his or her marriage is irretrievably broken down for the requisite amount of

\textsuperscript{169} See Child Welfare Information Gateway, supra note 106.

\textsuperscript{170} See Violence Against Women Online Res., supra note 90.

\textsuperscript{171} Id.

\textsuperscript{172} See Sanctuary for Families, supra note 14.

\textsuperscript{173} Id.

time mandated by the statute, it is likely that victims of domestic violence will be less apprehensive to file for a divorce from their abusive husbands.

Although there was strong opposition to the no-fault divorce legislation, the advantages gained through its adoption in New York State positively serve women (both battered and not), the court system, and attorneys. The benefit gained by victims of domestic violence as a result of the institution of no-fault grounds is twofold. First, the no-fault legislation permits a victim to escape a dangerous situation without having to either prove fault or convince their spouse to grant them a divorce. Second, the no-fault legislation works to end violence in extant relationships because the abuser loses some of his control over his victim as the new legislation makes it easier for one spouse to terminate an unhealthy marriage that he or she believes has the potential to, or already has, become abusive.

No-fault legislation also benefits the judicial system as a whole. Prior to the adoption of no-fault grounds, much time was expended in litigation over the grounds of a divorce. Furthermore, this gave the monied spouse leverage in the proceedings as the monied spouse could afford to spend as much time and money negotiating the terms of his or her divorce. Many times, the non-monied spouse had no choice but to capitulate to the monied spouse's preferences. However, the no-fault ground extinguishes the need for an attorney to litigate fault grounds and thus eliminates certain legal fees that were once present in every divorce case. In addition, as discussed supra, the companion part to the legislation indicates that the non-monied spouse is now more likely to get interim counsel fees thus providing a greater safeguard to the less powerful spouse. Overall, with the no-fault ground in place, both judges and attorneys will be spared lengthy litigation over certain areas of the divorce, thus sparing the court's resources in turn.

Summarily, the determination of whether an individual’s desire to exit an abusive marriage is legitimate should not be left in the court's hands. To do so would “open the way to arbitrary decisions about what is or should be tolerable in a relationship, made by people who have no stake in the actual lives being lived.”175 With the incidence of domestic violence reaching one out of every three women,176 the no-fault ground

176 DOMESTIC ABUSE SHELTER OF THE FLORIDA KEYS, supra note 159.
for divorce is exceedingly important as a viable means of escape. Without the no-fault legislation, victims of domestic violence, as well as their children, will have a much more difficult experience in their attempts to leave their batterer. New York State’s no-fault legislation provides women with another tool to utilize in their effort to end abuse and thus serves to facilitate the termination of the perpetual cycle of domestic violence.