

REPEALING
NO-FAULT DIVORCE
— *Would Harm Survivors* —
of Domestic Violence in Texas

A White Paper prepared by

THE JUDGE ELMO B. HUNTER LEGAL CENTER
FOR VICTIMS OF CRIMES AGAINST WOMEN



SMU | DEDMAN
SCHOOL OF LAW

REPEALING NO-FAULT DIVORCE

Would Harm Survivors of Domestic Violence in Texas

Executive Summary

For the past two legislative sessions, the Texas Legislature has explored the repeal of no-fault divorce in the state.¹ This paper explains why such action would be detrimental to the more than five million survivors of domestic violence in Texas.² Briefly stated, requiring proof of fault in order to obtain a divorce imposes financial burdens that trap victims in abusive relationships and increases the risk of harm and lethality.

The economic impacts of repealing unilateral no-fault divorce will adversely affect not only victims of domestic violence but also the State of Texas itself. By its nature, fault-based divorce is significantly more expensive than no-fault divorce. The high costs associated with proving a fault ground will become a barrier to divorce for survivors of domestic violence, particularly the 94 to 99 percent of victims who experience economic abuse along with physical violence and therefore lack access to financial resources³. Furthermore, the under-resourced family court system will face mounting burdens as fault-based divorces alleging domestic violence are more likely to be contested. These contested fault-based divorces not only clog the dockets of judges but also impose significant demands on court personnel who must guide and advise *pro se* litigants (who comprise the majority of litigants in family court) through complex divorce proceedings. Lastly, if fault-based divorce is cost-

prohibitive for survivors and they are trapped in abusive relationships, the costs of domestic violence to the State of Texas – such as medical and mental healthcare and shelter stays – will increase as well.

Finally, the repeal of no-fault divorce will also increase the risk of lethality and psychological harm to domestic violence victims and their loved ones. In 2016, 40 percent of women murdered in Texas were attempting to leave their relationships.⁴ The data suggest that in a fault-only system, a victim may be deterred or prevented from getting a divorce, forcing her to remain in an abusive relationship due to a fear of retaliation coupled with the lack of sufficient evidence necessary to prove fault. Furthermore, the requirements of the fault-based system re-victimize survivors of domestic violence by compelling them to re-live their traumatic experiences in the courtroom and allowing their abuser to use the justice system to perpetuate a cycle of power and control. Finally, a fault-based regime that prevents women from escaping abuse also traps their children in hostile environments where they may be subjected to physical violence or develop health and behavioral issues due to the stress of living in an abusive home.

In consideration of the significant hardships to both victims of domestic abuse and the State of Texas that would result from a repeal of no-fault divorce, any bills proposing repeal should not be enacted into law.

Requiring proof of fault in order to obtain a divorce imposes financial burdens that trap victims in abusive relationships and increases the risk of harm and lethality.

Introduction

The repeal of no-fault divorce in Texas would have a detrimental impact on survivors of domestic violence. As this White Paper will explain, requiring proof of fault in order to obtain a divorce would trap victims in abusive relationships because of financial barriers and the increased risk of harm and lethality. Section I provides an introduction to domestic violence, explaining its prevalence, reasons for under-reporting, and the power and control dynamics that underlie intimate partner abuse. Section II addresses the adverse financial impact of repealing unilateral no-fault divorce on victims, the court system, and the State. Section III focuses on how a fault-based system would increase the risk of physical and psychological harm to domestic violence victims and their loved ones.

I. AN OVERVIEW OF DOMESTIC VIOLENCE

A. Domestic violence is an epidemic impacting women across Texas.

Domestic violence is costing the lives of Texas women. In 2015, nearly half of all female homicide victims in the state were killed by their male intimate partner.⁵ Across the nation, women are most often killed by their intimate partner or a family member;⁶ in fact, women are 16 times more likely to be killed by a male acquaintance than a male stranger.⁷ In 2015, across 53 Texas counties, 158 women were killed by a male intimate partner.⁸

The number of reported fatalities is deceptively low, as it does not reflect the collateral casualties of

children, family members, friends, and others who were also killed by the abuser in his continuing quest for power and control over his victim. In 2013, in Dallas County, there was a secondary victim killed for roughly every three direct victims of intimate partner violence.⁹

Intimate partner homicides have been steadily rising in recent years, with a 20 percent increase reported between 2014 and 2015, marking the highest rate of increase on record.¹⁰ Every 2.3 days in Texas during 2015, a man killed his current or former female intimate partner.¹¹ Even if the pattern of increasing rates ceases and the rate remains constant, that would equate to more than 60 Texas women losing their lives at the hands of their intimate partners during the course of the 86th Regular Session.

Intimate partner violence is devastating even if it does not have lethal consequences. One in three Texas women will experience domestic violence¹²

Every 2.3 days in Texas during 2015, a man killed his current or former female intimate partner.¹¹

at some point in her lifetime, totaling more than five million Texans.¹³ With nearly 200,000 total incidents reported in 2015 – up roughly five percent from 2014 – Texas law enforcement officers responded to an average of more than 500 incidents of family violence every single day.¹⁴

Domestic violence can impact anyone, regardless

of age, gender, race, socioeconomic status, or location. Although this paper uses female pronouns to describe the victims of domestic violence and male pronouns to describe the abusers,¹⁵ women can be perpetrators and domestic violence can occur in same-sex relationships as well as in opposite-sex relationships.

Domestic violence happens at all stages of life. In Texas in 2015, intimate partner murder victims' ages ranged from 16 to 93.¹⁶ While the majority of the victims were under 45, there has recently been a notable increase in the number of elderly victims, those over the age of 70.¹⁷ The 53 counties across Texas that saw intimate partner homicides included the most populous counties, like Dallas and Harris, as well as small or rural counties. While all socioeconomic classes face domestic violence, women living in poverty experience higher rates of abuse.¹⁸

Although domestic violence also occurs at all stages of a relationship, women whose divorces are finalized are the least likely to be killed by their intimate partner. Texas wives experienced the most violence in 2015, followed by girlfriends, ex-girlfriends, and finally ex-wives.¹⁹ In 2015, 37 percent of the women killed by their intimate partners had ended or taken steps to end their relationships; 19

A victim's ability to get through the divorce process in the most expeditious way possible may increase her chances of survival.

of these women were leaving or separated from their husbands when they were killed compared to five who had finalized divorces.²⁰ A victim's ability to get through the divorce process in the most expeditious way possible may therefore increase her chances of survival.

B. Reported cases only tell part of the story.

Nearly half of all incidents of domestic violence are not reported to the police.²¹ High levels of reporting are aspirational but ultimately unrealistic. A 2002 statewide poll by the Texas Council on Family Violence concluded that even though 75 percent of Texans reported that they would be "likely to call the police if they were to experience some form of domestic violence" only 20.3 percent indicated that they did in fact "call the police when they or a family member experienced domestic violence."²²

Numerous and varied reasons exist for under-reporting. A 2014 study by the Bureau of Justice Statistics revealed that the number one reason victims do not report domestic violence to the police is a "fear of reprisal or getting offender in trouble."²³ An abuser may threaten violence to discourage calls to law enforcement, leaving his victim to weigh the risk of reporting against that of increased violence or exacerbating an already volatile situation. A significant number of victims expressed reluctance to involve the state in what they considered to be a "personal matter."²⁴ Others cited a view that police either would not or could not help.²⁵ In fact, 61.5

percent of victims of physical assault did not think that the police would have believed them and nearly all assumed that the police could not do anything about their victimization.²⁶ The stories and statistics above thus support a finding that many women who experience domestic violence “do not consider the justice system a viable or appropriate intervention at the time of their victimization.”²⁷

C. Abusers’ need for power and control perpetuates the cycle of violence and escalates the danger of leaving an abusive relationship.

Domestic violence is about the abuser’s need to exercise power and control over his victim by whatever means necessary. Although public conception of domestic abuse often involves physical or sexual violence, abusers frequently utilize non-violent behaviors such as intimidation, emotional abuse, isolation, minimizing, denying, blaming, using children, economic abuse, male privilege, coercion, or threats to control their partners.²⁸ Even the legal system can be a significant tool of abuse. In interviews conducted with Texas family law attorneys who represent domestic violence victims, each attorney recounted numerous stories about clients whose abusers used the court system as a way of perpetuating the cycle of abuse. These attorneys told of abusers who otherwise did not have access to their former partners filing motion after motion in court, exhausting the victim’s resources and time and forcing their victims to face them repeatedly in court.

Leaving or trying to leave the relationship does

not always end abuse; in fact, attempted separation can often intensify the danger. When an abuser feels he is losing control over his victim, he may escalate harassing, threatening, or stalking behaviors in an attempt to reassert control.²⁹ While some protections exist, the reality is that ending an abusive relationship is an extremely dangerous and traumatic process, and any barrier that complicates leaving increases the risk of violence. The faster the uncoupling, the safer the victim, therefore the legislation that has been filed the past two sessions that would extend the waiting period for divorce from 60 to 180 days would further increase this risk of violence.³⁰ Under current law, a person can avoid the 60 day waiting period if there is a finding of family violence, but there is no such finding for the large numbers who are at risk but do not report the violence.

II. THE ECONOMIC IMPACTS OF REPEALING UNILATERAL NO-FAULT DIVORCE WILL ADVERSELY AFFECT BOTH VICTIMS OF DOMESTIC VIOLENCE AND THE STATE OF TEXAS.

The significant financial expense required to prove fault is a potential barrier to divorce for many victims of domestic violence and a burden on the State’s already under-resourced court system. As the law currently stands, survivors of domestic violence can avoid often prohibitive costs by seeking a no-fault divorce where divorce is granted due to insupportability of the marriage rather

than wrongdoing by either party. The proposal to eliminate the unilateral no-fault ground would remove the only financially feasible option for most abused spouses. By decreasing access to divorce for victims of domestic violence, repealing unilateral no-fault divorce perpetuates and exacerbates the costly problem of domestic violence.

A. The high costs associated with proving fault will become a barrier to divorce for the economically dependent spouse, who is almost always the abused spouse.

Fault-based divorce is expensive, significantly more so than no-fault divorce.³¹ Simply put, the more issues that are contested in a divorce proceeding, the higher the cost of divorce.³² Since a fault-based divorce, especially one alleging the cruelty ground, will almost always be contested, legal fees and litigation expenses will be higher than in a no-fault divorce process.³³ Almost all family law attorneys bill on an hourly basis, so the additional time required for a fault-based divorce will result in higher attorney fees.³⁴ Beyond attorneys' fees, the need to prove fault generates other expenses such as hiring a private investigator, reviewing bank accounts, hiring forensic accountants, paying for

psychiatric evaluations, drug testing, and deposing the spouse and other witnesses.³⁵

The financial costs of fault-based divorce will have a disproportionately adverse impact on survivors of domestic violence because abused spouses often do not have access to or control over household finances. In fact, 94 to 99 percent of victims of physical domestic violence are also victims of economic abuse.³⁶ Victims are often unable to leave an abuser, or return to an abuser they have previously left, because of economic dependency.³⁷ Therefore, a legal system where the only option is an expensive fault-based divorce creates a financial barrier to divorce for the vast majority of victims of domestic violence.

Although some free legal services exist to assist low-income litigants, these services are limited and difficult to access.³⁸ Due to insufficient resources, legal aid organizations that provide free legal representation to survivors of domestic violence can only assist 10 percent of low-income Texans.³⁹ A victim of domestic violence may also be ineligible for free legal services because of her immigration status or because her annual household income is above 125 percent of the federal poverty line, which was a mere \$25,200 for a household of three in 2016.⁴⁰

The financial costs of fault-based divorce will have a disproportionately adverse impact on survivors of domestic violence because abused spouses often do not have access to or control over household finances.

In other words, a victim with two children and an annual household income of \$26,000 is deemed too “rich” to qualify for free legal services, but her income is unquestionably too low to cover the expenses of fault-based divorce, especially if she does not have access to the household income.

Moreover, although free legal service providers or pro bono attorneys can waive attorney’s fees, as mentioned above, many other litigation expenses are incurred in a fault-based divorce proceeding. If neither the client nor a victims’ advocacy agency can cover these expenses, the case will proceed without this evidence, weakening it and placing more reliance on difficult and subjective oral testimony. Legal Aid attorneys report that it is very common to be forced to proceed without evidence from a private investigator or other tests and searches because these costs cannot be covered by the client, an agency, or Legal Aid.⁴¹ In fact, one Legal Aid office recalls being able to hire a private investigator for only one case in its 50-year history, despite having many cases that would have benefited from such a resource had it been financially feasible.⁴² Thus, due to financial constraints, victims of domestic violence are at a significant disadvantage in fault-based divorce litigation.

B. Most fault-based divorces alleging domestic violence will be contested, which will burden the already under-resourced family court system.

A divorce proceeding alleging domestic violence will almost always be a contested divorce.⁴³ This is especially true when a finding of domestic violence

could adversely impact an abuser’s child custody claims, immigration status, or require him to surrender his gun(s).⁴⁴ Contested fault-based divorces involve more hearings in family court, which fills up the dockets of judges and consumes court resources, including court reporters, interpreters, and other staff.

Texas family courts are already over-burdened. In Dallas County, for instance, trial dates for divorce litigants are currently being scheduled approximately six months from the pre-trial hearing.⁴⁵ An increase in fault-based divorce would cause the family court system to become even more backlogged, which impacts not only victims of domestic violence but any party interacting with the family court system, including parties pursuing divorce based on agreed insupportability or another ground.

The burden on the court system from contested divorces is of particular concern for family courts, where the majority of litigants are *pro se*.⁴⁶ In Tarrant County, for instance, 68 percent of litigants in the district’s six family courts proceed without an attorney.⁴⁷ Even in a system allowing for no-fault divorce, *pro se* litigants in Texas are often accused

An increase in fault-based divorce would cause the family court system to become even more backlogged, which impacts not only victims of domestic violence but any party interacting with the family court system

of “clogging up the system.”⁴⁸ Judges must walk unrepresented litigants through the process, correct forms and petitions, and provide alternative court dates for missed hearings.⁴⁹ If all *pro se* litigants were required to pursue a contested fault-based divorce, involving complex legal arguments and sophisticated presentation of evidence, the family court system would become even more burdened and hearings increasingly delayed.

Delays in adjudication of legal claims place victims of domestic violence in danger by forcing them to remain in contested litigation (which is one of the most dangerous times for victims of domestic violence) for a longer period of time.⁵⁰ Moreover, low-income victims will be acutely affected by repealing no-fault divorce, as this population is more likely to experience abuse and more likely to be self-represented, but less likely to have the education and experience to successfully pursue *pro se* litigation.

C. A fault-based divorce system traps victims in abusive relationships, thereby increasing the costs of domestic violence to the State of Texas.

By repealing the method of divorce that is the safest and most financially accessible option for victims of domestic abuse, the proposed legislation traps victims in abusive relationships, which in turn increases the costs of domestic violence to the State of Texas.

The costs of intimate partner violence in the U.S. are staggering, estimated at between \$5.8 billion and \$12.6 billion annually.⁵¹ These expenditures include

medical and mental health care expenses; resources for police, courts, shelters, and foster care; and costs related to absenteeism and non-productivity.⁵² For example, victims of domestic violence lose an average of 8 million work days per year (the equivalent of over 32,000 full time jobs),⁵³ costing employers an estimated \$100 million annually.⁵⁴

Texas already does not have sufficient resources to address the epidemic of domestic violence. In 2015 alone, 15,869 requests for shelter from domestic violence were declined due to lack of space.⁵⁵ Domestic violence also accounts for significant financial and safety concerns in the State, as evidenced by the 206 Texas law enforcement officers who were assaulted while responding to domestic violence calls in 2015.⁵⁶ Repealing unilateral no-fault divorce only exacerbates these problems by making it more difficult and dangerous for a victim of domestic violence to leave the relationship.

A system that facilitates the continuation of domestic violence also carries the costs of domestic violence into the next generation. Children who witness domestic violence are more likely to become abusers or victims of domestic violence as adults.⁵⁷ Boys who witness domestic violence are twice as likely to be abusive towards their own partners and children in adulthood, and one in two girls who grow up in an abusive home will be abused in their adult relationships.⁵⁸ Therefore, the financial costs of domestic violence to society are perpetuated from one generation to the next when children are trapped in abusive relationships along with their mothers.

III. THE ELIMINATION OF NO-FAULT DIVORCE WILL INCREASE THE RISK OF PHYSICAL AND PSYCHOLOGICAL HARM TO DOMESTIC VIOLENCE VICTIMS AND THEIR LOVED ONES.

No-fault divorce provides a victim of domestic violence with the opportunity to more easily regain control of her life and escape her abuser; this empowerment stands in stark contrast to fault-based divorce, which mandates fighting by requiring one party to place blame on the other. The elimination of no-fault divorce will therefore increase the risk of physical harm to domestic violence victims and their loved ones, trap victims in abusive relationships, and lead to re-victimization. Fault-based divorce also negatively impacts the children in an abusive household, affecting their physical and mental health and normalizing domestic violence for these children.

A. A fault-based system will increase the risk of lethality for domestic violence victims and their loved ones.

As previously discussed, the risk of harm to a survivor of domestic violence increases when she separates, or attempts to separate, from her abuser.⁵⁹ In fact, 37 percent of Texas women killed in 2015 had made attempts to end their relationship or were killed in the process of leaving.⁶⁰ A victim is 3.6 times more likely to be killed in the time immediately following separation because the abuser is enraged and incited by his perceived loss of power and control over her.⁶¹

In a fault-based system, the victim must prove the cruelty she has faced; in doing so, she is forced to place blame on her abuser. Such kind of an adversarial system would enrage abusers further and increase the risk of physical harm to the victim who the legal system would require to challenge the abuser's sense of control. An abuser will want to take back the lost power and control by any means necessary, including using potentially lethal physical force.⁶²

A fault-based divorce also increases interaction between an abuser and his victim, creating more opportunities for the abuser to assert control over, or inflict physical harm upon, her. For example, a family law attorney interviewed for this White Paper shared a story in which an abusive husband constantly asked for the divorce case to be re-scheduled because it was the only way he could maintain contact with and control over his victim.⁶³ In another tragic example, in 2016, a husband shot his wife at a busy intersection in Tarrant County following a mediation session for their impending divorce. The wife had filed a protective order, hired personal security, and even stayed at various hotels to elude her abusive husband. Yet, when she had to face him at mediation, he took advantage of the situation and killed her.⁶⁴

A fault-based system, which mandates blame-placing and finger-pointing, would lead to heightened anger and volatility, thus increasing the likelihood of violent incidents.

The risk of physical harm to the victim's loved ones also increases under a fault-based system. For example, in September 2017, a Plano man shot his estranged wife and seven other individuals, including some of his own friends, in a rampage that was linked to domestic abuse. His crime occurred on the eve of what would have been the couple's sixth anniversary and appeared to have been fueled by anger and isolation following their breakup.⁶⁵ A fault-based system, which mandates blame-placing and finger-pointing, would lead to heightened anger and volatility, thus increasing the likelihood of such violent incidents.

B. A fault-based system deters victims from divorce due to the fear of retaliation and traps them in abusive relationships because of the lack of sufficient evidence.

The adversarial nature of fault-based divorce would also deter victims from pursuing divorce in the first place. By requiring victims to prove that they have experienced abuse, the fault-based system creates “an arena for couples to portray one another in as negative a light as possible.”⁶⁶ Hostility would necessarily thrive in such a situation.⁶⁷ A survivor of domestic violence would likely remain in an abusive relationship rather than provoke the animosity of her abuser or face his retaliation.⁶⁸ Conversations with Legal Aid attorneys in the Dallas area and the experiences of the Hunter Center's own clients demonstrate that many victims of domestic violence, who could technically plead cruelty and have the evidence to make a successful claim, prefer no-fault

divorce to avoid antagonizing the abuser.

As described in detail in Section II above, expenses unique to fault-based divorce, such as the inability to retain counsel or pay for necessary expenses, create barriers that prevent a victim from collecting the evidence she needs to obtain a divorce. In addition, the low reporting rates of domestic violence mean that a victim may not have sufficient documentation of abuse to prove fault, as explained in Section I. These barriers, created by a fault-based system, may deter a victim from pursuing a divorce or lead to the denial of her request altogether.⁶⁹

C. Survivors of domestic violence will be re-victimized when trying to prove fault.

In most fault-based divorces, a survivor's testimony is essential; the case cannot proceed without it.⁷⁰ The only way to prove that abuse occurred may be to hear the survivor describe it, especially because (as explained in Section I) survivors often do not report the violence they have suffered to law enforcement. If a victim does not testify, due to fear of retaliation or re-victimization, she would not be able to prove the abuse required in a fault-based system and would not be granted the divorce she needs to permanently separate from her abuser.

Under a no-fault system, victims would not have to testify to abuse and as such would not be forced to re-live their traumatic experiences in the courtroom. Conversely, the fault-based system necessitates the re-victimization of domestic violence survivors by requiring them to publically recount the violence they have suffered, often in excruciating detail. Yet,

A fault-based system thus increases the likelihood of the child being negatively affected, for when a victim is unable to leave an abusive home she is unable to protect her children from the abuser and both the long- and short-term harm he may cause them.

trauma may prevent survivors from testifying to the violence they endured. For example, when a survivor in Dallas took the stand in the presence of her abuser, she blacked out and could not describe her abuse.⁷¹

A survivor who is asked to prove spousal abuse oftentimes “experiences guilt, fear, and uncertainty” which could prevent her from being able to adequately testify to all the facts needed to obtain a fault-based divorce.⁷² Furthermore, research has shown that in as many as half of all cases, the survivor is afraid of retaliation from the abuser and in 30 percent of the cases the batterer has actually assaulted their victim in the time between case filing and the trial date.⁷³ In such cases, fear of retaliation would deter the survivor from testifying fully about the history of abuse.

Even if the survivor was to testify, in most cases, she would have to face the abuser and answer all of his questions challenging her account of the cruelty and violence she endured. In 2016, 71,300 family law cases in Texas had a pro-se petitioner.⁷⁴ This

means that a significant number of survivors have to face their abusers, who are permitted to question and cross-examine them, directly in court. A fault-based system would therefore increase survivors’ fear of testifying and deter them from pursuing divorce, as the abuser would have direct access to re-victimize a survivor, especially during cross-examination.

D. A fault-based system will trap children in hostile environments, increasing their risk of physical and psychological harm.

Domestic violence has a negative impact on children. The Department of Justice reports that “nearly one in four intimate partner violence cases involves a child witness.”⁷⁵ Living in a violent home is damaging to a child’s mental and physical state. A national survey revealed that 50 percent of men who frequently assaulted their wives also regularly abused their children.⁷⁶ Even where children are not abused themselves, but instead live in a household where their mother is abused, the children are more likely

to have behavioral problems than other children.⁷⁷ A study showed that children had strong physical reactions such as stomach ulcers and chronic vomiting due to the hostile home environment created by domestic violence.⁷⁸ The same study also revealed that 50 percent of children found the pre-divorce stage to be the most stressful stage of the divorce process.⁷⁹

Additionally, children's cognitive skills suffer when they remain in homes with domestic violence. Studies have shown that such hostile environments have negative impacts on a child's school performance, basic skills, and verbal skills.⁸⁰ Children experiencing abuse at home tend to be more aggressive, antisocial, and show lower social competency to other children.⁸¹ They have also been found to show more anxiety, depression, anger, temperamental problems, and lower self-esteem.⁸²

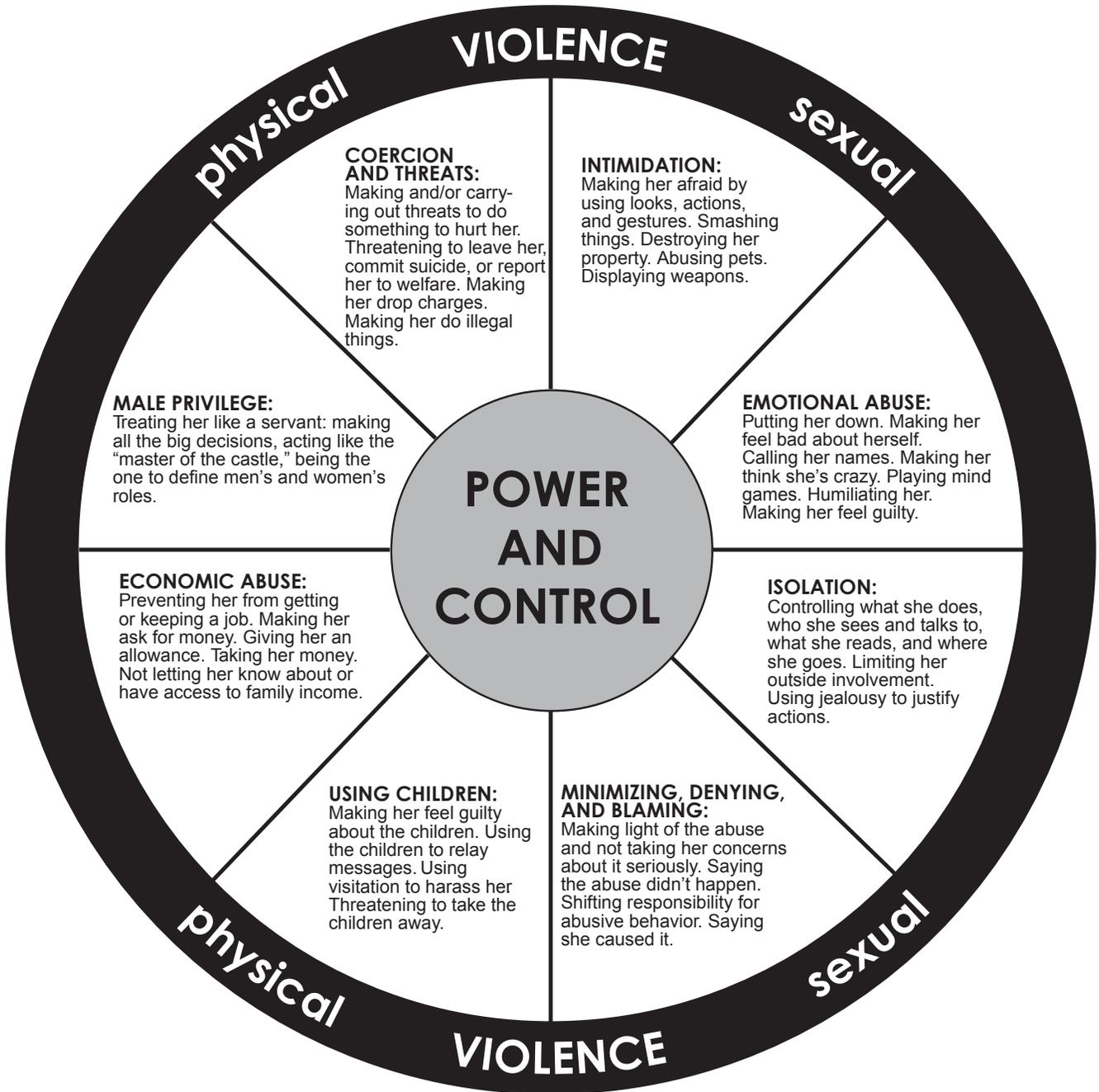
The elimination of no-fault divorce would only exacerbate these detrimental impacts on children. As explained above, fault-based divorce may trap a woman in an abusive relationship. When this occurs,

the children are also trapped in the hostile home environment. A fault-based system thus increases the likelihood of the child being negatively affected, for when a victim is unable to leave an abusive home she is unable to protect her children from the abuser and both the long- and short-term harm he may cause them.

Conclusion

Eliminating no-fault divorce would cause significant hardships to both victims of domestic abuse and the State of Texas. Taking the Texas family law system back half a century to an entirely fault-based system would perpetuate family violence by placing power and control back into the hands of abusers. To ensure the safety and well-being of domestic violence victims, including mitigating adverse economic impacts and the increased risks of both physical and mental harm, the current no-fault system should remain in place.

Taking the Texas family law system back half a century to an entirely fault-based system would perpetuate family violence by placing power and control back into the hands of abusers.



End Notes

- ¹ H.B. 93, 85th Leg., R.S. (2017); H.B. 4093, 84th Leg., R.S. (2015).
- ² *Learn the Facts*, TEXAS COUNCIL ON FAMILY VIOLENCE, <http://tcfv.org/resource-center/learn-the-facts/>. [hereinafter *Learn the Facts*].
- ³ *Facts about Domestic Violence and Economic Abuse*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE (2015), https://ncadv.org/assets/2497/domestic_violence_and_economic_abuse_ncadv.pdf. [hereinafter *Economic Abuse*].
- ⁴ *Honoring Texas Victims: Family Violence Fatalities in 2015*, TEXAS COUNCIL ON FAMILY VIOLENCE 4, http://2mg7g749lu2112sis323nkkn.wpengine.netdna-cdn.com/wp-content/uploads/2016/10/2015_HTV_Report_web.pdf. [hereinafter *Honoring Texas Victims 2015*].
- ⁵ *Id.*
- ⁶ Shannan Catalano et al., *Bureau of Justice Statistics Selected Findings: Female Victims of Violence*, U.S. DEPARTMENT OF JUSTICE: OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS 3, <http://www.bjs.gov/content/pub/pdf/fvv.pdf>.
- ⁷ *When Men Murder Women: An Analysis of 2010 Homicide Data: Females Murdered by Males in Single Victim/Single Offender Incidents*, VIOLENCE POLICY CENTER 3, <http://www.vpc.org/studies/wmmw2012.pdf>.
- ⁸ *Learn the Facts*, *supra* note 2.
- ⁹ *2009-2013 Case Review Report*, DALLAS COUNTY ADULT INTIMATE PARTNER VIOLENCE FATALITY REVIEW TEAM 8, <https://www.genesisshelter.org/wp-content/uploads/2016/08/Fatality-Review-Five-Year-Report-WEB.pdf>. For example, in Dallas County in 2011 Zina Bowser began divorce proceedings against her husband Erbie Bowser. When he threatened her and her three children, she obtained a protective order. Then, on August 7, 2013, Erbie shot and killed Zina in her home. He also shot and killed her daughter and injured her two sons. This attack took place hours after Erbie had killed his girlfriend Toya Smith and her daughter and injured her son and her daughter's friend. *Id.* at 39.
- ¹⁰ *Honoring Texas Victims 2015*, *supra* note 4, at 3.
- ¹¹ *Id.*
- ¹² Domestic violence is a pattern of intentional behaviors in any relationship “used by one partner to gain or maintain power and control over another intimate partner.” An isolated incident is insufficient, there must be a pattern of the abusive behavior whether it is physical, sexual, emotional, economic, or psychological abuse. Domestic violence, or intimate partner violence, is not limited to current spouses and partners but also includes former spouse and partners. *Domestic Violence*, U.S. DEPARTMENT OF JUSTICE, <https://www.justice.gov/ovw/domestic-violence>.
- ¹³ *Learn the Facts*, *supra* note 2.
- ¹⁴ *The Texas Uniform Crime Reporting Program*, TEXAS DEPARTMENT OF PUBLIC SAFETY 36, <https://www.txdps.state.tx.us/crimereports/15/citCh5.pdf> [hereinafter *Texas Uniform Crime Reporting*].
- ¹⁵ Nationally, from 2003 to 2012, 82 percent of intimate partner violence was committed against females compared to 18 percent committed against males. Jennifer L. Truman, Ph.D., and Rachel E. Morgan, Ph.D., *Nonfatal Domestic Violence, 2003-2012*, U.S. DEPARTMENT OF JUSTICE: OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS 6, <https://www.bjs.gov/content/pub/pdf/ndv0312.pdf> [hereinafter *Nonfatal Domestic Violence, 2003-2012*].
- ¹⁶ *Honoring Texas Victims 2015*, *supra* note 4, at 8.
- ¹⁷ *Id.*
- ¹⁸ Jody Raphael and Richard M. Tolman, Ph.D., *Trapped by Poverty, Trapped by Abuse: New Evidence Documenting the Relationship Between Domestic Violence and Welfare*, The Taylor Institute 5, <http://www.icadvinc.org/wp-content/uploads/2012/10/Trapped-By-Poverty-Trapped-By-Abuse.pdf>.
- ¹⁹ *Honoring Texas Victims 2015*, *supra* note 4, at 5.
- ²⁰ *Id.*
- ²¹ Under-reporting of intimate partner violence has been prevalent from the mid-1980s to the present day. The August 1986 Report on Violence Against Women revealed that 48 percent of intimate partner violence was not reported. Patrick A Langan, Ph.D., and Christopher A. Innes, Ph.D., *Preventing Domestic Violence Against Women*, U.S. DEPARTMENT OF JUSTICE: BUREAU OF JUSTICE STATISTICS 1, <https://www.bjs.gov/content/pub/pdf/pdvaw.pdf>. Between 1998 and 2002, roughly 60 percent of family violence victimizations were reported to police. Matthew R. Durose et al., *Family Violence Statistics: Including Statistics on Strangers and Acquaintances*, U.S. Department of Justice: Office of Justice Programs, Bureau of Justice Statistics 2, <https://www.bjs.gov/content/pub/pdf/fvs02.pdf>. From 2003 to 2012, only about 55 percent of domestic violence was reported to police. *Nonfatal Domestic Violence, 2003-2012*, *supra* note 15, at 9. The trend in decreased reporting of domestic violence has continued post-2013. Michael G. Planty, Ph.D., *Domestic Violence*, U.S. Department of Justice: Office of Justice Programs, Bureau of Justice Statistics 8, https://www.bjs.gov/content/pub/pdf/C-SPAN_DV2_oct2014_5.pdf.
- ²² *Family Violence Statistics in Texas*, TEXAS COUNCIL ON FAMILY VIOLENCE, http://tcfv.org/pdf/2003_fact_sheet.pdf. [hereinafter *Family Violence Statistics in Texas*].
- ²³ Planty, *supra* note 21, at 9.

End Notes (continued)

- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ Patricia Tjaden and Nancy Thoennes, *Extent, Nature, and Consequences of Intimate Partner Violence: Findings From the National Violence Against Women Survey*, U.S. DEPARTMENT OF JUSTICE: OFFICE OF JUSTICE PROGRAMS, NATIONAL INSTITUTE OF JUSTICE 51, <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.
- ²⁷ *Id.*
- ²⁸ *Power and Control Wheel*, NATIONAL CENTER ON DOMESTIC AND SEXUAL VIOLENCE, <http://www.ncdsv.org/images/PowerControlwheelNOSHADING.pdf>. The Power and Control Wheel is attached herein at Appendix A.
- ²⁹ *Learn More*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE, <https://ncadv.org/learn-more>.
- ³⁰ See H.B. 65, 85th Leg., R.S. (2017); H.B. 454, 84th Leg., R.S. (2015).
- ³¹ Robert M. Gordan, *The Limits of Limits on Divorce*, 107 YALE L.J. 1435, 1461 (1998); Joan B. Kelly, *Is Mediation Less Expensive? Comparison of Mediated and Adversarial Divorce Costs*, 8 Conflict Resol. Q. 15, 19 (1990).
- ³² Kelly, *supra* note 31, at 23-25.
- ³³ Interview with attorneys of Legal Aid of NorthWest Texas, Family Unit, Dallas, Tex. (Oct. 19, 2017) [hereinafter Legal Aid Interview].
- ³⁴ Kelly, *supra* note 31, at 25.
- ³⁵ Legal Aid Interview, *supra* note 33; Martindale-Nolo Research, *Divorce in Texas: How Much does it Cost? How Long will it Take?*, LAWYERS.COM, <https://www.lawyers.com/legal-info/family-law/divorce/divorce-in-texas.html>.
- ³⁶ Economic abuse is a strategy of abuse through which the abuser controls or limits access to shared or individual assets or the victim's earning potential. Economic Abuse, *supra* note 3.
- ³⁷ *Id.*
- ³⁸ Harry Reasoner, *Finding New Ways to Give Access to Justice to Those Who Cannot Afford Lawyers*, 79 Tex. B. J. 366, 366 (2016) (stating that those who "need legal representation the most and cannot afford it are often the least likely to obtain it").
- ³⁹ See *Documenting the Justice Gap in America: The Current Unmet Civil Legal Needs of Low-Income Americans*, LEGAL SERVICES CORPORATION 1, <https://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/JusticeGapInAmerica2009.authcheckdam.pdf>; Reasoner, *supra* note 38, at 366.
- ⁴⁰ See, e.g., *Eligibility Guidelines*, LEGAL AID OF NORTHWEST TEXAS, <https://internet.lanwt.org/gethelp/eligibility-guidelines> (last visited Oct. 28, 2017).
- ⁴¹ Legal Aid Interview, *supra* note 33.
- ⁴² *Id.*
- ⁴³ *Id.*; Interview with family law attorneys of Genesis Women's Shelter & Support, Dallas, Tex. (Oct. 10, 2017) [hereinafter Genesis Interview]. The attorneys interviewed, who all routinely or exclusively handle divorce proceedings where there has been domestic violence, repeatedly stated that an abuser will never agree to a divorce alleging domestic violence.
- ⁴⁴ Local Legal Aid attorneys stated that abusers who risk losing their guns or having their immigration record impacted by a finding of domestic violence argue most aggressively against the cruelty ground. Legal Aid Interview, *supra* note 33.
- ⁴⁵ Legal Aid Interview, *supra* note 33.
- ⁴⁶ The percentage of pro se litigants is likely to increase given Texas has one of the highest poverty rates in the nation. Reasoner, *supra* note 38, at 366.
- ⁴⁷ Christie Loveless, *Evaluating Pro Se Litigation at the Tarrant County Family Law Center*, INST. FOR CT. MGMT. 14, <http://www.ncsc.org/-/media/Files/PDF/Education%20and%20Careers/CEDP%20Papers/2012/Evaluating%20Pro%20Se%20Litigation.ashx>.
- ⁴⁸ Legal Aid Interview, *supra* note 33; Reeve Hamilton, *Going It Alone*, TEX. TRIB. (Apr. 13, 2010), <https://www.texastribune.org/2010/04/13/law-community-considers-help-for-pro-se-litigants/> (discussing how the increase in pro se litigants is viewed as "a problem that some say is going to shut down the court system").
- ⁴⁹ Legal Aid, *supra* note 33. Pro se litigants receive a pro se packet but are typically unable to complete it correctly on their own. Id. See also Reasoner, *supra* note 38, at 367; Loveless, *supra* note 47, at 38.
- ⁵⁰ *Honoring Texas Victims 2015*, *supra* note 4, at 5.
- ⁵¹ *Domestic Violence*, NATIONAL COALITION AGAINST DOMESTIC VIOLENCE 2, https://ncadv.org/assets/2497/domestic_violence.pdf.
- ⁵² Ileana Aria, Ph.D., et al., *Costs of Intimate Partner Violence Against Women in the United States*, DEPARTMENT OF HEALTH AND HUMAN SERVICES: CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR INJURY PREVENTION AND CONTROL 2, <https://www.cdc.gov/violenceprevention/pdf/IPVBook-a.pdf>.
- ⁵³ *Id.*; Economic Abuse, *supra* note 3, at 2.

- ⁵⁴ Maris A. Bondi, MPH et al., *Domestic Violence and the Workplace, PARTNERSHIP FOR PREVENTION 2*, <http://www.caepv.org/membercenter/files/Partnership%20For%20Prevention%20briefing%20%28confidential%20document%29.pdf>.
- ⁵⁵ *Family Violence Statistics in Texas*, *supra* note 22, at 4.
- ⁵⁶ *Texas Uniform Crime Reporting*, *supra* note 14, at 37.
- ⁵⁷ *Domestic Violence*, HOPE ALLIANCE CRISIS CENTER, <https://www.hopealliancex.org/domestic-violence-information/>.
- ⁵⁸ *Id.*
- ⁵⁹ Jennifer L. Hardesty, *Separation Assault in Context of Postdivorce Parenting*, 8 VIOLENCE AGAINST WOMEN 597, 600, <http://journals.sagepub.com/doi/pdf/10.1177/107780120200800505>.
- ⁶⁰ *Honoring Texas Victims 2015*, *supra* note 4, at 5.
- ⁶¹ *Id.*
- ⁶² *Id.*
- ⁶³ Genesis Interview, *supra* note 43.
- ⁶⁴ *Honoring Texas Victims: Their Stories*, TEXAS COUNCIL ON FAMILY VIOLENCE 28, http://2mg7g749lu2112sis323nkn.wpengine.netdna-cdn.com/wp-content/uploads/2017/10/2016_HTV_Narratives2.pdf.
- ⁶⁵ Claire Ballor et al., *Murder of 8 in Plano shows family violence extends beyond an abusive relationship*, Dallas Morning News (Sept. 16, 2017), <https://www.dallasnews.com/news/domestic-violence/2017/09/16/murder-8-plano-shows-family-violence-extends-beyond-abusive-relationship>.
- ⁶⁶ Martha Heller, *Should breaking-up be harder to do: The Ramifications a Returns to Fault-Based Divorce would have upon Violence*, 4 Va. J. Soc. Pol'y & L. 263, 273 (1996).
- ⁶⁷ *Id.*
- ⁶⁸ *Id.*
- ⁶⁹ Genesis Interview, *supra* note 43; Legal Aid Interview, *supra* note 33.
- ⁷⁰ Texas Office of Court Administration, *The Texas Family Violence Benchbook*, THE STATE OF TEXAS 391, <http://www.txcourts.gov/media/478288/domesticviolencebenchbook.pdf>, [hereinafter Texas Family Violence Benchbook]
- ⁷¹ Legal Aid Interview, *supra* note 33.
- ⁷² Heller, *supra* note 66, at 273.
- ⁷³ Tom Lininger, *Prosecuting Batterers After Crawford*, 91 Va. L. Rev. 747, 769 (2005).
- ⁷⁴ *Annual Statistical Report for the Texas Judiciary*, TEXAS OFFICE OF COURT ADMINISTRATION 12, <http://www.txcourts.gov/media/1436989/annual-statistical-report-for-the-texas-judiciary-fy-2016.pdf#page=26>.
- ⁷⁵ Sherry Hamby, David Finkelhor, Heather Turner, and Richard Ormord, Children's Exposure to Intimate Partner Violence and Other Family Violence, Department of Justice Juvenile Justice Bulletin 1, <https://www.ncjrs.gov/pdffiles1/ojdp/232272.pdf>.
- ⁷⁶ Texas Family Violence Benchbook, *supra* note 70, at 551.
- ⁷⁷ J. McFarlane et al., Behaviors of Children Who are Exposed and Not Exposed to Intimate Partner Violence, 112 Pediatrics 202 (2003).
- ⁷⁸ Deborah A Lupentiz, *Which Aspects of Divorce Affect Children?*, 28 FAM. COORDINATOR 79, 80, <http://www.jstor.org/stable/583272>.
- ⁷⁹ *Id.*
- ⁸⁰ Karestan C. Koenen, Terrie E. Moffitt, Avshalom Caspi, Alan Taylor, and Shaun Purcell, *Domestic violence is Associated with Environmental Suppression of IQ in Young Children*, 15 DEVELOPMENT AND PSYCHOPATHOLOGY 297, 298, <https://pdfs.semanticscholar.org/67a7/addec3bf22f13920eb73533581201e940ad4.pdf>.
- ⁸¹ Jeffery L. Edleson, *Problems Associated with Children's Witnessing of Domestic Violence*, National Online Resource Center on Violence Against Women 1, https://vawnet.org/sites/default/files/materials/files/2016-09/AR_Witness.pdf.
- ⁸² *Id.*

A White Paper prepared by
THE JUDGE ELMO B. HUNTER LEGAL CENTER
FOR VICTIMS OF CRIMES AGAINST WOMEN

