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LEGISLATION NOTES

DOMESTIC RELATIONS—A SURVEY OF MENTAL CRUELTY AS A GROUND FOR DIVORCE

The past two generations have clearly indicated that the United States is a world leader in many fields, including the subject of this note. With 414,000 divorces in 1961,¹ the U.S. leads the world by an unfortunately high margin. At that rate, over 1,100 marriages are dissolved each day, seven days a week. Per 100,000 population, the United States' state courts divorce two times as many couples as Denmark, Sweden, and Austria; three times as many as England, France, and Australia; and four times as many as Belgium.² From the beginning of this century, the divorce rate has multiplied more than three times, from 55,751, or .7 per thousand persons in 1900,³ to 414,000, or 2.3 per thousand in 1961.⁴

With such a tremendous growth in the divorce rate, and amidst questions and controversy placing the blame on a sundry of different causes, Representatives Leo F. O'Brien and Howard R. Slater introduced House Bill 1919 before the Seventy-fourth Illinois General Assembly on May 25, 1965. This bill proposed to make mental cruelty a ground for divorce. Within two weeks, H.B. 1919 was tabled by the Committee on Judiciary,⁵ thus again becoming a victim of the technique used to destroy an unwanted bill. Representative O'Brien indicated that the main concern and opposition to this type of legislation comes primarily from church groups and others who are opposed to divorce in general, and to broadening the grounds in particular, for fear of further increasing divorce rates.⁶ Whether these opponents have a valid argument remains a question which it is the purpose of this note to answer.

The divorce statutes of the fifty-one jurisdictions in the United States, as they concern cruelty, can be divided into four categories. First, there are the states that specifically include mental cruelty as a ground for divorce. Secondly, there are the states which provide for cruelty gener-

¹ BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES, 64 (85th ed. 1964).

² HAVERMANN, MEN, WOMEN AND MARRIAGE, 117 (1963).

³ JACOBSON, AMERICAN MARRIAGE AND DIVORCE, 90 (1959).

⁴ BUREAU OF THE CENSUS, *supra* note 1.

⁵ 74TH ILL. GEN. ASSY, H.R. DAILY JOUR. NO. 77 (June 9, 1965).

⁶ Letter from Leo F. O'Brien, Representative to the Illinois General Assembly, to Donald Schiller, August 24, 1965, on file with *DePaul Law Review*.

ally, and their courts interpret this to include mental as well physical cruelty. Next there are those states, of which Illinois is a prominent member, which have a general provision for cruelty, but whose courts interpret this to mean only physical cruelty. Finally, there are those states which have no provision for cruelty as a ground for divorce.

The forty jurisdictions having mental cruelty, whether expressly in their statute or by court interpretation of the word cruelty,⁷ have an average divorce rate of 3.11 per one thousand population,⁸ as opposed to the eleven states having no provision for mental cruelty,⁹ which have an average rate of 1.90 per one thousand population.¹⁰

At first glance, those fighting to contain the divorce rate seem to have a strong argument against mental cruelty. However, statistics may be quite misleading, which makes it necessary to study these states,¹¹ their statutes, and their divorce rates more carefully.

MENTAL CRUELTY JURISDICTIONS

At present, twenty-six jurisdictions have express provisions for mental cruelty, or a generally accepted comparable ground.¹² North Dakota's

⁷ ALASKA STAT. § 09.55.110 (1962), ARIZ. REV. STAT. ANN. § 25-312 (1956), ARK. STAT. ANN. § 34-1202 (1962), CAL. CIV. § 92, CONN. GEN. STAT. REV. § 46-13 (1958), COLO. REV. STAT. ANN. § 46-1-1 (1953), D.C. CODE ANN. § 16-403 (1961), FLA. STAT. ANN. § 65.04 (1941), GA. CODE ANN. § 30-102 (Supp. 1963), HAWAII REV. LAWS § 324-20 (supp. 1963), IDAHO CODE ANN. § 32-603.05 (1963), IND. ANN. STAT. § 3-1201 (1946), IOWA CODE §§ 598.8, 598.9 (Supp. 1964), KAN. GEN. STAT. ANN. § 60-1501 (Supp. 1961), KY. REV. STAT. § 403-020 (1962), LA. CIV. CODE ANN., arts. 138 & 139 (West 1952), ME. REV. STAT. ANN., ch. 19, § 691 (1964), MINN. STAT. ANN. § 518.06 (Supp. 1964), MISS. CODE ANN. § 2735 (1956), MO. ANN. STAT. § 452.010 (1949), MONT. REV. CODES ANN. § 21-103 (1947), NEB. REV. STAT. § 42-302 (1960), NEV. REV. STAT. § 125.010 (Supp. 1963), N.H. REV. STAT. ANN. § 458:7 (1955), N.J. STAT. ANN. § 22-2A-34-2 (1952); N.M. STAT. ANN. § 22-7-1 (1953), N.D. CENT. CODE § 14-05-031 (Supp. 1965), OHIO REV. CODE ANN. § 3105.01 (Page, 1953), OKLA. STAT. ANN. tit. 12, § 1271 (1951), ORE. REV. STAT. § 107.030 (1963), PA. STAT. ANN. tit. 23, § 10 (1955), R.I. GEN. LAWS ANN. § 15-5-2 (1956), S.D. CODE § 14-0703 (Supp. 1960), TEX. REV. CIV. STAT. ANN. art. 4629 (1925), UTAH CODE ANN. § 30-3-1 (Supp. 1965), VT. STAT. ANN. tit. 15, § 551 (1959), WASH. REV. CODE ANN. § 26.08.020 (1961), W. VA. CODE ANN. § 4704 (1961), WIS. STAT. § 247.07 (Supp. 1965), WYO. STAT. ANN. § 20-38 (1957).

⁸ Computed from STATISTICAL ABSTRACT OF U.S. 64, *supra* note 1.

⁹ ALA. CODE tit. 34, § 22 (1958), DEL. CODE ANN. tit. 13, § 1522 (1953), ILL. REV. STAT. ch. 40, § 1 (1963), MD. ANN. CODE art. 16, § 24 (1957), MASS. GEN. LAWS ch. 208, § 1 (1955), MICH. STAT. ANN. § 25.86 (1957), N.Y. DOM. REL. § 170, N.C. GEN. STAT. § 50-5 (1950), S.C. CODE ANN. § 20-101 (1962) and CONST. art. 17, § 3, TENN. CODE ANN. § 36-801 (1956), VA. CODE ANN. § 20-91 (Supp. 1964).

¹⁰ Computed from STATISTICAL ABSTRACT OF U.S. 64, *supra* note 1.

¹¹ Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Hawaii, Idaho, Kentucky, Louisiana, Maine, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Oklahoma, Oregon, Pennsylvania, South Dakota, Utah, Washington, West Virginia, Wisconsin, *supra* note 7.

¹² For example, Arkansas, Missouri, Pennsylvania, Washington, and Wisconsin express it as personal indignities, *supra* note 7. Various judicial interpretations seem to

statute is a representative example of an express cruelty jurisdiction:

Divorces may be granted for any of the following causes: . . . second, Extreme cruelty. Extreme cruelty is the infliction by one party to the marriage of a grievous bodily injury or grievous mental suffering upon the other.¹³

The divorce rate of this group of states is 2.75 divorces per one thousand population.¹⁴ This is nearly one half a point higher than the previously mentioned national rate of 2.3. However, included in this group is Idaho, with a divorce rate of 3.9 per one thousand population.¹⁵ Idaho has a residence requirement of only six weeks,¹⁶ and this obviously invites transient divorces from other states with strict divorce requirements. Hence, Idaho's divorce rate for actual residents is unrealistic. Furthermore, Alaska, New Mexico, and Oklahoma, whose average divorce rate is 3.92 per thousand population,¹⁷ have a ground peculiar only to these states—incompatibility.¹⁸ The Supreme Court of New Mexico, in *Hines vs. Hines*,¹⁹ has held that parties are incompatible where it was apparent “that by reason of a total variance in taste, disposition, ambitions, mental attitudes and ideas of husband and wife, that they were unable to live together in peace. . . .”²⁰ This added ground admittedly would have the effect of increasing the divorce rate of these jurisdictions. For the sake of a realistic comparison, it is necessary to eliminate the above four states from this group. Consequently, the remaining states having express mental cruelty statutes are more representative of the effect of such a provision, and they have an average divorce rate of 2.51 per one thousand population.²¹

Thirteen states²² and the District of Columbia²³ have a provision for “cruelty” in their statute, and their courts have construed it to include

merge indignities with cruelty as indicated in *Lockhort v. Lockhort*, 271 S.W.2d 208 (Mo. App. 1954), wherein the court stated that evidence as to numerous acts of marital dereliction was sufficient to establish mental cruelty and sustain judgment granting the husband a divorce on the ground of general indignities.

¹³ N.D. CENT. CODE, *supra* note 7.

¹⁴ Computed from STATISTICAL ABSTRACT OF U.S. 64, *supra* note 1.

¹⁵ *Ibid.* ¹⁶ IDAHO CODE ANN., *supra* note 7.

¹⁷ Computed from STATISTICAL ABSTRACT OF U.S. 64, *supra* note 1.

¹⁸ ALASKA CODE CIVIL PROCEED., N.M. STAT. ANN., OKLA. STAT. ANN., *supra* note 7.

¹⁹ 64 N.M. 377, 328 P.2d 944 (1958).

²⁰ *Id.* at 378, 328 P.2d at 946.

²¹ Computed from STATISTICAL ABSTRACT OF U. S. 64, *supra* note 1.

²² California, Connecticut, Indiana, Iowa, Kansas, Minnesota, Mississippi, Nevada, New Jersey, Ohio, Rhode Island, Texas, and Vermont, *supra* note 7.

²³ The District of Columbia and the state of Louisiana provide for cruelty only as a ground for limited divorce, but after a statutory period under the limited decree the innocent party may gain an absolute divorce, see D.C. CODE ANN. tit. 16, § 16-403 (1961) and LA. CIV. CODE, art. 138 & 139 (1952).

mental as well as physical cruelty.²⁴ The total divorce rate of this group is 3.72 per one thousand population,²⁵ which is nearly a point and a half above the national average. As in the express mental cruelty group, peculiarities which tend to distort the true meanings of the average must be eliminated. The state of Nevada is included in this group, and it alone has a rate of 25.9 per one thousand population.²⁶ However, Nevada has a six-week residence requirement for the purpose of filing for a divorce,²⁷ and due to a favorable climate and comfortable surroundings, Nevada is well known as the transient divorce capital of this country. For this reason this divorce rate does not express the true rate of divorce of actual residents in the state. This necessitates isolating Nevada from the rest of the group. With Nevada removed from this group of states, the average divorce rate is 2.02 per one thousand population, which is 0.28 below the national divorce average.²⁸

Hence, the average divorce rates of the two categories of states which allow mental cruelty as a ground for divorce is 2.32 divorces per one thousand population, which is 0.02 above the national average.

JURISDICTIONS WITHOUT MENTAL CRUELTY

As previously mentioned, there are eleven states which do not allow divorces grounded in mental cruelty.²⁹ With an average divorce rate of 1.90 per one thousand population, this group seems to justify the claim that mental cruelty has the effect of increasing divorce rates. However, a closer analysis reveals that there are two separable classifications within this group: those which interpret cruelty to mean only physical cruelty,³⁰ and those which contain no provision for divorce on grounds of cruelty.³¹

The average divorce rate for the former category is 2.32 per one thousand population.³² Surprisingly, this is the same rate as that computed

²⁴ Grievous bodily injury or grievous mental suffering are the ultimate facts from which the conclusion of law is to be drawn that extreme cruelty exists as a grounds for divorce, *Lucech v. Lucech* 172 P.2d 73, 75, Cal. App. 2d 890 (1946). While the Illinois statute, *infra* note 30, contains similar language, the courts have given a narrow meaning to the phrase "extreme cruelty."

²⁵ Computed from STATISTICAL ABSTRACT OF U.S. 64, *supra* note 1.

²⁶ *Ibid.*

²⁸ *Ibid.*

²⁷ *Ibid.*

²⁹ *Supra* note 9.

³⁰ ALA. CODE tit. 34, § 22 (1958), DEL. CODE ANN. tit. 13, § 1522 (1964), ILL. REV. STAT. ch. 40, § 1 (1963), MASS. GEN. LAWS ch. 208, § 1 (1963), S.C. CONST. art. 17, § 3; S.C. CODE ANN. § 20-101 (1962). The Supreme Court of South Carolina held physical cruelty, as used in divorce law, has been defined as actual physical violence, *Brown v. Brown*, 215 S.C. 502, 56 S.E.2d 330 (1949).

³¹ Maryland, Michigan, New York, North Carolina, Tennessee, and Virginia, *supra* note 9.

³² Computed from figures in STATISTICAL ABSTRACT OF U.S. 64, *supra* note 1.

for the states which allow divorces based on mental cruelty. Those states which do not have provisions for absolute divorce for physical cruelty have an average divorce rate of 1.67 divorces per one thousand population,³³ which is well below the national average. This low figure may partly be accounted for by the high rate of transient divorces in states like Nevada and Idaho. Thus, the lack of cruelty in divorce laws is not necessarily a deterrent to divorce.

CONCLUSION

Illinois House Bill 1919, as well as many other attempts to broaden Illinois' divorce statute to include mental cruelty, have failed mainly because of charges that it would encourage more divorces. Surveys and statistics, however, show that the rate of divorce is not really affected by the existence, or non-existence of mental cruelty as a ground for divorce. Statistics further demonstrate the best way to reduce divorce rates in Illinois is to abolish cruelty entirely. This would indeed lower the rate of divorce in Illinois, but it would not solve the problem. Illinois' wealthier residents would travel to other states to secure a divorce, and collusion and fraud would increasingly be perpetrated on Illinois courts. Collusion has been defined as a corrupt agreement between the parties to impose a case upon the court, either by the suppression or manufacture of evidence, or by an agreement that no defense shall be made.³⁴ Despite the continued recognition of the states' interest in marriage, there is little ferment today to provide efficient machinery to prevent collusive divorces.³⁵

Illinois, by providing for cruelty in its divorce statute, demonstrates a public policy in favor of granting the maritally innocent spouse a divorce when cruelty has been inflicted on him.³⁶ The standards used in finding cruelty, whether physical or mental, are generally the same.³⁷ Modern medical science has proven mental pain and suffering may be as great or greater than its physical counterpart.³⁸ The Supreme Court of Illinois has also affirmed this fact in its 1961 decision making mental distress a cause of action in tort, stating "[w]e conclude that peace of mind is an interest of sufficient importance to receive protection from the law, against in-

³³ *Ibid.*

³⁴ *Neu v. Neu*, 297 Mich. 654, 298 N.W. 318 (1941).

³⁵ RYAN AND GRANFIELD, DOMESTIC RELATIONS 311, *supra* note 5 (1963).

³⁶ ILL. REV. STAT. ch. 40, § 1 (1963).

³⁷ What constitutes extreme cruelty (physical or mental) depends on the temperament, the culture, and other attributes of the individual. What is extreme cruelty to a Christian might not be to a pagan. *Diem v. Diem* 141 Fla. 260 (1935), as cited in *Greisen v. Greisen* 146 Fla. 94, 200 So. 523 (1941).

³⁸ Interview with various psychiatrists in Chicago, Illinois Aug. 14, 1965.