

My name is Mark Ashton and my involvement with the draft legislation before you comes about through contacts from Ben Sunde in Representative Howard's office who was tasked to develop a modern and more practical approach to divorce in Pennsylvania. Mr. Sunde and Rep. Howard had reviewed title 23 and started down a road toward cleaning up some fairly antiquated pieces of the 1980 Divorce Reform Act which had been preserved through several sets of Amendments and re-codifications in the past 44 years. I was asked to review their mark up and offer comments and suggestions.

My background is 40 years of specialization in this field. I clerked for a family court judge in Montgomery County just after the 1980 Code was effective. I practiced law with a Philadelphia firm for 5 years, then moved to Chester County where my practice was focused from 1987 to 2022. I remain active in the field writing a blog on this subject and lecturing when asked. I last appeared before this body in 2016 as President of the Family Law Section of the Pa Bar Association. I have taught more than 70 courses on this area of practice and argued more than 50 cases in our appellate courts.

Although Pennsylvania was with Illinois, among the last two states to adopt a no fault divorce code in 1980 it approached the subject with lots of concerns about protecting people from divorce and retaining some very antiquated regulations. Some of them still exist today. Technically you can ask that a jury be empaneled to hear a divorce. You can seek a divorce based upon not just indignities but cruel and barbarous treatment. No one needs to answer a divorce complaint which means every judicial district has its own folkways of moving cases. Divorces commonly take three years and can take upwards of a decade. Contrast this with New Jersey where cases are subject to statewide regulations and litigants are pushed to get the conflict resolved in a year.

This costs a lot of money and many litigants who have taken that road report it to be emotionally exhausting. Then we have anomalies that are hard to explain. Two of our smallest counties, Cameron and Potter had 6500 new divorce filings last year. That's remarkable because those two counties have combined populations of 21,000 people. That's more divorce filings than Philadelphia, Allegheny and Dauphin County combined. People are filing there because they want quick, cheap divorces and those counties are set up to deliver. That statistic alone suggests that the system needs to be streamlined and reformed.

So, what have we drafted? A law that pushes parties through the system so they can move forward with their lives. Amendments where you cannot ignore a divorce complaint and where there is early intervention by the court to make certain that assets don't disappear, and the parties realize that the judicial system is in command of the process from the outset. Where there are contests, and there are plenty of issues where a contest is merited, the revised statute tries to flesh out the issue early in the process rather than allowing litigants to be surprised to learn about an issue 2-3 years into the litigation. We wrote a bill that allows parties to have convenience avoid

filings in Coudersport and Emporium. Instead, you file in your local county seat and when the 90 day cooling off period has elapsed you can go see your local district justice, who will supervise your completion of the forms for a no-fault no asset divorce. If there are no economic issues to contest, the consents can be taken and sent to the county seat where the Common Pleas court will issue a final decree.

The 1980 Code allowed merger of custody issues with support and divorce. The trend is against that because almost 40% of kids today are born outside wedlock and the enforcement and contract rules for these remedies are different. So, we took out any references we could that allowed support and custody to be decided in the context of the divorce docket. We also cleaned up a 40 year old battle over the meaning of merger or incorporation of the decree. In this instance the legislature clarified the issue in 1988 but courts have, at times, allowed this unnecessary distinction to linger.

Prenuptial agreements are becoming more common. Different states take different positions on whether a prenuptial must be signed so many days before the marriage. Pennsylvania has taken no position. We sought to resolve this by enacting a requirement that you file your prenuptial with the court when you come to get your marriage license. Objective time deadlines and a single place where the agreement is "on record" can help to eliminate "wedding aisle" agreements of dubious consent.

We today have marriage by people of the same sex in Pennsylvania. Meanwhile marital misconduct including adultery is retained as a "factor" in deciding alimony. This is one of the last vestiges of fault divorce in an otherwise no fault jurisdiction. The draft bill eliminates fault from alimony as well. Alimony remains a secondary remedy that is premised upon need. A person in "need" is no less needy because he or she has done something wrong in the marriage. On the other hand, a person who cohabitates is likely to be less needy because that person ought to be sharing expenses. So we have substituted cohabitation as an alimony factor and eliminated fault. The 1980 and current versions of the law have a lengthy section that allows one person to require a spouse to attend counseling. Today couples who want to reconcile know where to go and what to do if they want to try to repair their relationship. But rare is the instance where a person forced by court order to attend counseling responds well to "forced" counseling. This section was eliminated, trusting the adults know when and how to secure counseling if desired.

There are other "technical" changes abolishing fault defenses to divorce and addressing who and how a person should claim that property is outside the marital property divided in divorce. I am happy to respond to any questions related to these changes but my theory is that I can save your time and my energy by responding to any questions you may have. Thanks for the opportunity to speak on behalf of Representative Howard's bill.