

ACCOUNTABILITY IN CHILD SUPPORT

RESPONSIBLE CITIZEN SUMMARY

Background

- Since 1987, Utahns have been able to divorce without regard to innocence or culpability
- Current law actually creates incentives for a party unhappy in their marriage to seek a divorce knowing that they cannot be effectively opposed and may, in fact, be rewarded regardless of their conduct during the marriage

What's at stake?

- Families and society impacted by the no-fault divorce regime that allows unfaithful spouses to divorce innocent spouses, gain custody of children, and receive support payments – with no obligation to account for the use of those funds

What's next?

- The law should require custodial parents who receive child support to account for how they spend that money, and to honor their obligations as to visitation by the non-custodial parent

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It is time to consider a meaningful reform advocated by non-custodial parents: requiring custodial parents receiving child support to account for how they spend that money.

In his book, *The Superstition of Divorce*, G.K. Chesterton said, "Divorce is for us at best a failure, of which we are more concerned to find and cure the cause than to complete the effects; and we regard a system that produces many divorces as we do a system that drives men to drown and shoot themselves."

What would Chesterton have thought of Utah's current divorce laws which focus entirely on easing the process of ending a marriage at the request of one party, even to the extent of creating incentives for divorce?

Since the no-fault revolution in divorce law (a revolution that came to Utah in 1987), the courts have routinely ignored questions of innocence or culpability both in granting the divorce itself and in subsequently awarding custody of children involved and then establishing child support responsibilities for the non-custodial parent.

In doing so, the law actually creates incentives for a party unhappy in their marriage to seek a divorce knowing that they cannot be effectively opposed and may, in fact, be rewarded regardless of their conduct during the marriage. Specifically, the no-fault regime assigns no significance to bad behavior in a marriage so that a spouse

who commits adultery or abandons the other has as much of a chance of gaining custody as a spouse who has acted without major fault or even who may want to preserve the marriage.

If the spouse seeking a divorce gains custody of the children, they will also be the recipient of support payments from the non-custodial parent. Although meant to provide for children's needs, these payments can be, in the words of one legal scholar, a "windfall to the custodial parent." Indeed, when researchers report that a dollar paid in child support may translate into just twenty cents spent on the child, they tell us all too clearly how no-fault divorce settlements can become a tempting reward for a custodial parent, and an unjust burden for a non-custodial parent.

The custodial parent will also be the recipient of aggressive (sometimes draconian) government child support-enforcement efforts targeted not only at parents unwilling to support their children but also those unable to do so because of poverty or other reasons. In an era of no-fault divorce, many of those compelled to pay child support have not deserted their children but rather have suffered the heart-wrenching tragedy of having a faithless spouse take them away through a divorce they cannot contest.

It is hardly surprising that a growing number of custodial parents see this system as fundamentally unjust.

Given all this, perhaps it is time to consider a meaningful reform advocated for some years by non-custodial parents: requiring custodial parents receiving child support to account for how they spend that money. This

would not be necessary if the custodial parent has been victimized by their former spouse because that parent does not deserve further punishment.

If, however, a custodial parent has sought the divorce on no-fault grounds and is not the victim of abuse, it seems only fair to prevent them from being rewarded for their effort to break up the marriage by requiring them to account for the support payments received if requested by the non-custodial parent who pays the support. The custodial parent would only need to show that the money is being used to meet the children's needs.

It would also be fair to require the recipient of child support to honor their obligations as to visitation by the non-custodial parent. While the child support-enforcement bureaucracy exists to ensure payment, no similar mechanism ensures that a non-custodial parent will actually be able to exercise the visitation they have been granted.

The ideal for children is that they will be raised in a harmonious intact marriage. Married parents make contributions to and sacrifices for their children that really cannot adequately be approximated by a mandated payment or visitation schedule. Since the government now actively works to make the dissolution of marriage as easy as possible, at the very least it ought not to create incentives to divorce or reward those who cause marriages to end.

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