

Senate Judiciary Committee

Jennifer Horgan 271-7875

HB 142, relative to causes for divorce.

Hearing Date: May 3, 2021

Time Opened: 2:39 p.m.

Time Closed: 2:56 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill revises the fault-based grounds for divorce.

Sponsors:

Rep. DeSimone

Who supports the bill: Representative DeSimone; Jay Markell

Who opposes the bill: Honey Hastings; Ora Schwartzberg; Kathleen O'Donnell; Marissa Chase, NH Association for Justice

Summary of testimony presented in support:

Representative DeSimone

- This is a simple bill to update RSA 458:7 which is more a than 20 years old.
- The current statute does not reflect the changes in society in the sense of same gender marriages.
- This bill changes it to state that a fault divorce can be granted in the case of adultery of 'either party', rather than husband or wife.
- This is simply taking out the gender classification in the adultery and sexual misconduct sections of the statute.
- The current RSA states "when either party is a habitual drunkard and has been such for 2 years together".
- This bill amends that to say "when either party habitually abuses alcohol or drugs and has been doing so for 2 or more years."

Jay Markell (provided written testimony)

- Approximately 34 states recognize fault grounds for divorce.
- A high percentage of cases will plead irreconcilable differences and will plead fault grounds for varying descriptions.
- Whether a party prevails on the fault grounds or not, the law should allow the party to be heard.

- Blaisdell does expand the definitions, but this bill goes further.
- Not all offensive conduct in marriage has to be inappropriate contact, as that is a question for the parties to decide.
- If you say there are to be no fault grounds, then RSA 457-A needs to be examined as well, as it specifically precludes any mention of fault that doesn't affect the children coming into the case.
- The opioid and drug problem in NH is significant, and to restrict people to only grounds on chronic alcoholism completely ignores a relevant problem.
- Fault grounds are needed, as parties need to be able to plead relevant conduct that affects their marriage.
- MA has gross and confirmed intoxication by use of alcohol or drugs.
- This is simply updating the statute to something everybody knows.
- Imagine telling someone who is truly aggrieved that they have no cause of action.
- These are things a court should hear before it makes its decision on awarding property or alimony.

Summary of testimony presented in opposition:

Honey Hastings (provided written testimony)

- The overwhelming percentage of divorces/legal separations are based on no fault.
- Last year there were only 12 fault divorces: .37%.
- In a fault divorce, the court must find that fault existed, that it caused the breakdown of the marriage, and that it caused other injury to the innocent spouse.
- If fault is found, the court can reward more than half the assets to the innocent spouse.
- In her experience, the difference is not usually much; it might be 52%-55%
- It is not the case that someone gets 75%-80%.
- There are a lot of different factors that may justify an unequal split: age, health, socio economic status, occupation, vocational skills, employability, separate property, annulments, sources of income, and the needs and liabilities of each party.
- A recent NH Supreme Court case has eliminated the need for this bill.
- The Blanchflower case occurred in 2003 before same sex marriages were legal. In that case the Supreme Court found the definition of adultery only be applied to heterosexual couples.
- This essentially said that a same sex couple could not commit adultery under the law.
- On April 1, 2021 the NH Supreme Court overruled Blanchflower and said it no longer applies. The Court provided a definition for adultery for a fault found divorces.

- This bill creates a new definition for sexual bad behavior that would be equated with adultery.
- The new definition from the Supreme Court is a much better definition: ‘Adultery is defined as a voluntary sexual intercourse between a married person and someone other than that person’s spouse regardless of the sex or gender of either person.’
- If this bill passed it would increase divorce litigation as it greatly expands the definition to sexual misconduct.
- Senator French asked if it would be appropriate to amend the bill to repeal this section of the law given the new definition by the Supreme Court.
 - Yes.

jch

Date Hearing Report completed: May 7, 2021