



---

The Effective Dates of No-Fault Divorce Laws in the 50 States

Author(s): Denese Ashbaugh Vlosky and Pamela A. Monroe

Source: *Family Relations*, Vol. 51, No. 4, Families and the Law (Oct., 2002), pp. 317-324

Published by: National Council on Family Relations

Stable URL: <http://www.jstor.org/stable/3700329>

Accessed: 30/09/2009 16:12

---

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=ncfr>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit organization founded in 1995 to build trusted digital archives for scholarship. We work with the scholarly community to preserve their work and the materials they rely upon, and to build a common research platform that promotes the discovery and use of these resources. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).



National Council on Family Relations is collaborating with JSTOR to digitize, preserve and extend access to *Family Relations*.

<http://www.jstor.org>

# The Effective Dates of No-Fault Divorce Laws in the 50 States\*

Denese Ashbaugh Vlosky and Pamela A. Monroe\*\*

*We use prior research and state legislative histories to develop a set of decision rules for determining the dates for adoption of no-fault divorce laws in the 50 states. Social scientists have attempted to gauge the impact of no-fault divorce laws on the stability of the family and on the rate of divorce, but the adoption dates used by these researchers varied widely. Such divergences yield conflicting findings on issues related to the impact of no-fault divorce laws on family outcomes. We examine in detail the varying methods used in prior studies for determining no-fault dates, then suggest a method for resolving the conflicts. Precision in and standardization of the dates of no-fault divorce laws used in this body of research will minimize measurement error and improve confidence in the research.*

We propose decision rules for determining the dates of no-fault divorce laws in the 50 states and use the rules to recommend a standard set of dates for adoption of no-fault laws in each state. We argue that agreement among scholars on the dates is important to improve reliability and comparability of studies investigating the impact of no-fault divorce laws on American families and society in general and, specifically, on their impact on divorce rates in the 50 states since about the mid-1940s. To this end, we examine closely the early research on the impact of no-fault divorce laws on divorce rates in the 50 states, as well as recently published research. We describe in detail the varying methods used in these studies for determining a no-fault divorce law date for each state and the resulting discrepancies in the dates. We then present and use our rules to determine a no-fault divorce law date for each state, compare our dates to those selected by noted scholars, and resolve differences in conflicting dates. The result is a set of standardized no-fault divorce law dates for the 50 states.

During the last century all states changed the way that they allowed their citizens to divorce. In the 1970s alone, a “divorce law revolution” resulted in legislative amendments to or repeals of divorce laws in 37 out of the 50 states. Often coexisting with the old statutes, the new laws allow individuals to divorce under a “no-fault” system rather than under the previously restrictive and cumbersome fault-based system.

Generally, fault-based laws grant a divorce if one person is found guilty or “at fault,” and the other spouse is found “innocent.” Consent of the innocent party is required before a divorce is allowed (Weitzman, 1985). Finding a party guilty of one of the available and vague statutory grounds for divorce, such as adultery, abandonment, or a protracted separation period, often is difficult and expensive (Wright & Stetson, 1978). Social scientists criticized the fault-based system as contributing to the protracted acrimony between former partners who continued to be in contact through parenting their children. Officers of the court suspected that individuals who wished to divorce under fault-based laws often did so through perjury and the falsification

of evidence to get around strict statutory hurdles (Marvell, 1989; Rheinstein, 1971; Stanley & Berman, 1977).

No-fault divorce was conceived as a way to make divorce less acrimonious and restrictive, rendering the legal environment neutral and noncoercive. No-fault divorce laws do not require a finding of the innocence or guilt of either party. Claimants can file for divorce generally on the basis of the “irretrievable breakdown” of the marriage or the “incompatibility” of the parties without proving one spouse is at fault. Both individuals are potentially responsible for the care of their children, physically and monetarily, and spousal support and property can be awarded on the basis of the financial resources of each party, rather than on the basis of their guilt or innocence (Weitzman, 1985).

Some states eased their divorce laws through strategic amendments to existing fault-based laws, without enacting an explicit, no-fault statute. They did this by amending separation grounds to decrease the period of separation required before a divorce could be granted, in some cases to as little as 6 months. We suggest that for states with conservative divorce laws or a generally conservative populace, such a move was politically more palatable than enacting an explicit no-fault divorce law. It is possible also that these amendments were more expedient, perhaps requiring less time and political capital to enact than alternative statutory changes.

Early in this divorce law revolution—even before all states amended their statutes—social scientists attempted to gauge the impact of no-fault laws on the stability of the family and on the rate of divorce. Many of these studies (e.g., Marvell, 1989; Nakonezny, Shull, & Rodgers, 1995; Sepler, 1981; Stanley & Berman, 1977; Stetson & Wright, 1975; Wright & Stetson, 1978) use interrupted time series designs, with the adoption of no-fault divorce law by the state as the intervention (i.e., independent variable) hypothesized to have an impact upon state divorce rates. “Adoption of no-fault divorce law” is always indicated in these studies by a date (i.e., the year of adoption, enactment, or effective date). Clearly, precise indication of the intervention (i.e., measurement of the key independent variable) is important to minimize measurement error and to improve confidence in the results of such research. Unfortunately, in more than two decades of research, no single, no-fault date for each of the 50 states has emerged as definitive for the purposes of studying the effects of the legal changes on the family. In some cases, the dates used by researchers vary by 1–2 years (usually the difference in the enactment date and the effective date), but for some states the dates vary by as much as 6–26 years (for Nevada and Maryland, respectively).

The significance of consistent dates becomes more important when we consider that research on the effects of no-fault laws has, in fact, produced different findings. Some studies show that

\*This article is a portion of a paper presented at the 1998 annual meetings of the American Political Science Association in Boston, MA, coauthored with James C. Garand. We appreciate Dr. Garand's work on the larger research project from which this article is drawn. Approved for publication by the Director of the Louisiana Agricultural Experiment Station as manuscript 01–25–0645.

\*\*School of Human Ecology, Louisiana State University, Baton Rouge, LA 70803 (pmonroe@lsu.edu).

*Key Words:* divorce, family, law, no-fault divorce.

no-fault laws had a positive effect on state divorce rates (e.g., Garand, Monroe, & Myer, 1991; Garand, Monroe, & Vlosky, 1998; Nakonezny et al., 1995; Rodgers, Nakonezny, & Shull, 1997; Stetson & Wright, 1975). Other researchers did not find a significant or consistent relationship between the implementation of such laws and the rate of divorce in the states (e.g., Marvell, 1989; Sepler, 1981; Stanley & Berman, 1977; Wright & Stetson, 1978). Factors such as the timing of research studies and the choice of statistical techniques may have influenced the outcome of these studies. However, the existence of multiple or conflicting dates in similar research efforts contributes to the difficulty in comparing findings across studies.

Researchers conducting some of the early work on this topic (e.g., Sepler, 1981; Wright & Stetson, 1978) acknowledged the difficulty in determining meaningful, consistent no-fault dates. At least one scholar (Sepler) suggested that future research needed to standardize divorce law date listings in major reference materials. As of this writing, no one has proposed a method or rule to determine no-fault divorce law dates across all states.

Finding the effective dates of the adoption of no-fault divorce laws can be both time-consuming and confusing. Conflicting no-fault dates appear in the social and political science literature, depending on what sources the researchers consulted when measuring the variable. The determination of the no-fault date also may be confused by the fact that many states amended or repealed no-fault laws once or more in the last three decades. The enactment date for a state's no-fault law may be the only date listed in the literature and even in the annotated codes for each state. There may not be a notation of the date that the law actually went into effect and this often can be in the subsequent year.

The dates used by prominent researchers also diverge depending on the researcher's definition of what constitutes a "no-fault" divorce law. Determination of an appropriate date would be easier if all states adopted similar statutes or used similar language to signal a change in divorce laws but this did not happen. In some states, the no-fault revolution was swift, dramatic, clear, and easily tracked in the state statutes. In many states, this revolution played out more slowly, with a gradual evolution toward full divorce law reforms. In such cases, it is fair to ask: At what point or date did the state statutes include wording that allowed the state to be classified as a no-fault state? Answering this question also raises the issue of whether, in the determination of the appropriate date, the researcher clearly articulated the decision rules and definitions governing his or her categorization of states, as these choices may reveal important philosophical or theoretical underpinnings of the research project.

### *No-Fault Dates and Decision Rules Used in Previous Research*

We initiated our study of the impact of no-fault divorce laws on state divorce rates in 1998, using a full complement of variables in a pooled cross-sectional time series design (see Garand et al., 1998, for discussion of the full model and statistical testing). We considered the prior literature and intended to use the same no-fault dates selected by researchers whose work on the subject was recently published in a leading journal (Nakonezny et al., 1995). However, a comparison of their no-fault divorce legislation dates and the dates used by previous scholars revealed a disagreement in nearly half the states over which laws and,

consequently, which dates qualified as the definitive no-fault legislation dates (cf., Sepler, 1981; Wright & Stetson, 1978). The methods of these studies are reviewed below.

Wright and Stetson (1978) conducted a study on the impact of no-fault divorce reform on the states' divorce rates using a time series analysis. Using states that had adopted the no-fault principle of marital breakdown, either as the sole ground of divorce or as an addition to the fault-based grounds already contained in the statute, they classified 25 states as no-fault. Wright and Stetson appeared to base their dates on the date that the laws were enacted rather than the date that the laws went into effect. Most of the remaining fault-based states, which they considered as essentially comprising a control group, were compared to the post-reform states (i.e., no-fault states) for the same periods. The authors eliminated some states (e.g., New Mexico, Indiana, Louisiana) from their analysis because of missing data for yearly divorce rates. Other states (e.g., Nevada, Delaware) were eliminated because the divorce laws had changed too recently to gauge their impact. (See Wright and Stetson for a discussion of substantive findings; also see Stetson and Wright [1975].)

Sepler (1981) also examined the effects of no-fault laws on the divorce rate. Consistent with the approach taken by Wright and Stetson (1978), he analyzed only those states that were considered to be true no-fault states at the time of his study. Thus, his analysis included 37 states. He excluded 10 states as separation-only states, and 3 states as fault-based states. Sepler reported consulting 7 separate sources to determine the no-fault dates he used. When these sources disagreed, he resolved the conflict by consulting the legal digest for the state in question.

Using data from 1960–1985, Marvell (1989) included a total of 39 states. He excluded 9 states because of data-related issues and 2 states because their laws were enacted on or before 1965—too early, he reasoned, to discern the impact of the law. To obtain the effective dates of the no-fault legislation, he examined the legislative history of the states he used. He organized no-fault laws into five categories in descending order of "liberalness," apparently selecting the dates when the most liberal provision was passed for each state. Therefore, laws were categorized as follows: Laws providing for a divorce upon a finding of "incompatibility" were considered the most liberal; laws providing for a divorce based on the irretrievable breakdown of the marriage when tacked onto an earlier fault-based law were considered the second most liberal; laws providing for a divorce based on the irretrievable breakdown of a marriage as a replacement for an earlier fault-based law were slated third in the ranking; no-fault laws that required the mutual consent of both parties were considered less liberal; and laws providing for a divorce where the parties lived separate and apart for 2 years or less, or where the states reduced their living separately provision by at least half (from 2 to 1 year, for example) were considered the least liberal no-fault laws.

In more recent research on the subject, Nakonezny et al. (1995) expanded on prior studies by conducting an analysis that included all 50 states. By the early 1990s, all states had relaxed their divorce laws significantly, effectively enacting no-fault laws by either passing bona fide no-fault laws or by reducing the time that couples had to live separate and apart to acquire a divorce. Nakonezny et al. appear to rely heavily on previous scholarly opinions in their choices of no-fault dates, notably those of Wright and Stetson (1978), Sepler (1981) and Marvell (1989), as well as early 1990s code commissions for Arkansas, Louisiana, and Maryland. For states where two out of three sources

agreed on a date (e.g., Hawaii, Idaho, Iowa, Kansas), it appears that Nakonezny et al. relied on the date that the majority of sources chose. For states where two of these sources were silent (e.g., Alaska, Illinois, Nevada), they depended on the single remaining source. Where states were excluded from the analysis of all the other researchers cited (e.g., Arkansas, Louisiana, Maryland), Nakonezny et al. settled on dates found through the state code commissions. In some states where sources offered conflicting dates, they relied on the dates posited by Sepler rather than those posited by Marvell (e.g., Massachusetts, Mississippi, Rhode Island). However, in Delaware, Nakonezny et al. did the opposite, choosing the date offered by Marvell rather than Sepler. Nakonezny et al. did not offer an explanation into how or why they followed a particular logic for selecting dates in disputed states.

Several differences in the approaches used in these four studies impacted the states included in the studies and, thus, the data analyzed. One point of divergence has been whether to classify fault-based laws with “living separate and apart” provisions as no-fault laws. Although many of these provisions allow for a divorce without a showing of fault, the question is whether the waiting period renders the provision just another fault-based ground and, thereby, discourages its use. Considering that many states have lenient divorce laws based only on separation provisions (e.g., Arkansas, New York, New Jersey), the answer to this question and the use of decision rules has an impact on the research findings. The approach among authors has varied widely. Wright and Stetson (1978) and Sepler (1981) did not consider separation grounds to be true no-fault laws and, therefore, excluded from their analyses a number of states that had liberalized their divorce laws (e.g., Arkansas, Maryland, North Carolina). By contrast, Marvell (1989) and Nakonezny et al. (1995) considered these laws to be no-fault in character and included these states.

For those researchers that recognized separation only states as quasi no-fault states, for example Marvell (1989) and Nakonezny et al. (1995), there did not appear to be differences as to which dates were chosen among the many amendment dates possible. In other words, the separation-only law dates chosen by Nakonezny et al. and Marvell are the same. However, there are differences as to how clearly the decision rules or reasoning processes were articulated by the authors. Marvell included separation-only states as no-fault states. He clearly specified the circumstances under which the states were included as relating to the length of the waiting period in the law or to the circumstances surrounding the amendment of the law. Nakonezny et al. also considered these provisions to be no-fault laws, but they did not offer a detailed explanation of which laws were chosen or why. Instead, they appear to rely on dates selected by other sources.

Given that three of the four studies referenced here were completed long ago, some discrepancies arise because states were excluded from the analyses because of lack of data at the time of the study. When the authors excluded states for this reason but also failed to articulate decision rules governing variable measurement issues, contemporary researchers are unable to determine for certain how the authors would classify a state's law today. Therefore, even the fairly elaborate classification scheme used by Marvell does not provide clear guidance for choosing dates for more than 10 states.

Finally, data and results differed on the basis of whether enactment dates or effective dates were used. The date that a law is passed by the legislature is the enactment date. The date

a law goes into effect is the effective date. Effective dates can be as much as a year later than the date on which the law was enacted, rendering the enactment date less important. Determining the effective date can be more tedious than determining the enactment date, as the former requires reading through the session laws of each state, not just the references in the annotated statutes or other secondary materials. References in annotated statutes are subject to the editorial opinion of the code editor (a.k.a. annotator, reviser) who may or may not reference an enactment or effective date, or any date at all. References to dates in secondary materials are subject to errors in the sources that were consulted and the expertise of the editor. There are numerous no-fault divorce laws with different enactment and effective dates (e.g., Alaska, California, Colorado) where researchers chose varying dates and where the outcome of the analysis could be different on the basis of any one of the various dates chosen.

We summarize the no-fault divorce law dates for each state as reported in the four major research studies reviewed here; the left most column contains the dates we recommend and is offered in this table for ease of comparison only (see Table 1). Where all four studies specified a date for no-fault legislation, the dates differed in 10 states: California, Colorado, Hawaii, Idaho, Iowa, Kansas, Missouri, Montana, Oregon, and Texas. For example, in Oregon, three studies used 1971, whereas Sepler used 1973.

In the remaining states, not all researchers proposed a date because of various study limitations, such as data availability or limitations, decision rule applications, and exclusion of states with: (a) early or late passage dates, (b) separation only provisions, and (c) fault-based laws at the time. These states are: Alaska, Arizona, Arkansas, Delaware, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Mississippi, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming. Wright and Stetson (1978) and Marvell (1989) both excluded Alaska, for example, because it was considered a nonreform state, or because it did not fit the decision rule criteria, respectively. Wright and Stetson, Sepler (1981), and Marvell excluded Arkansas because it was categorized variously as a nonreform state, a separation-only state, or because of missing data. Clearly a method for resolving these differences is warranted.

## Methods

To encourage consistency in the effort to measure the impact of no-fault divorce laws, we developed a set of decision rules and then use these rules to determine the dates of no-fault divorce legislation in all 50 states. To do this, we (a) recorded the dates used by several researchers who are authorities in this field; (b) reviewed the legislative record in each state, including a review of the session laws and annotated statutes; (c) reviewed the history and intent surrounding no-fault divorce legislation; and (d) consulted the categorization scheme of no-fault laws presented in a leading family law journal (Elrod & Spector, 1998).

Specifically, the no-fault dates for the 50 states were scrutinized in this analysis. We examined the dates offered by the four other scholars cited (i.e., Marvell [1989], Nakonezny et al. [1995], Sepler [1981], and Wright & Stetson [1978]). We also examined the research and summary table by Elrod and Spector (1998) in the *Family Law Quarterly* (FLQ) as a way to assess

Table 1  
No-Fault Legislation Dates by State by Sources

State	Source				Decision Date (2002)
	Wright & Stetson (1978)	Sepler (1981)	Marvell (1989)	Nako-nezny (1995)	
Alabama	1971	1971 <sup>a</sup>	1971 <sup>a</sup>	1971	1971
Alaska	NRS <sup>b</sup>	1962	Excluded <sup>f</sup>	1962	1963
Arizona	1973	1973 <sup>a</sup>	Excluded <sup>c</sup>	1973	1973
Arkansas	NRS	Separation only	Excluded <sup>c</sup>	1979	1991
California	1969	1970 <sup>a</sup>	1970 <sup>a</sup>	1970	1970
Colorado	1972	1971 <sup>a</sup>	1972 <sup>a</sup>	1972	1972
Connecticut	1973	1973 <sup>a</sup>	1973 <sup>a</sup>	1973	1973
Delaware	Excluded <sup>d</sup>	1974 <sup>a</sup>	1968 <sup>a</sup>	1968	1968
Florida	1971	1971 <sup>a</sup>	1971 <sup>a</sup>	1971	1971
Georgia	1973	1973 <sup>a</sup>	1973 <sup>a</sup>	1973	1973
Hawaii	1972	1973 <sup>a</sup>	1972 <sup>a</sup>	1972	1972
Idaho	1972	1971 <sup>a</sup>	1971 <sup>a</sup>	1971	1971
Illinois	NRS	Fault	1984 <sup>e</sup>	1984	1984
Indiana	Excluded <sup>f</sup>	1973 <sup>a</sup>	Excluded <sup>c</sup>	1973	1973
Iowa	1973	1970 <sup>a</sup>	1970 <sup>a</sup>	1970	1970
Kansas	1970	1969 <sup>a</sup>	1969 <sup>a</sup>	1969	1969
Kentucky	1972	1972 <sup>a</sup>	Excluded <sup>c</sup>	1972	1972
Louisiana	Excluded <sup>f</sup>	Separation only	Excluded <sup>c</sup>	1975	1979
Maine	1973	1973 <sup>a</sup>	1973 <sup>a</sup>	1973	1973
Maryland	NRS	Separation only	Excluded <sup>f</sup>	1957	1983
Massachusetts	NRS	1975 <sup>a</sup>	1976 <sup>a,3</sup>	1975	1976
Michigan	1972	1972 <sup>a</sup>	1972 <sup>a</sup>	1972	1972
Minnesota	1974	1974 <sup>a</sup>	1974 <sup>a</sup>	1974	1974
Mississippi	NRS	1978 <sup>a</sup>	1976 <sup>c</sup>	1978	1976
Missouri	1973	1973 <sup>a</sup>	1974 <sup>c</sup>	1973	1974
Montana	1973	1975 <sup>a</sup>	1973 <sup>a</sup>	1973	1973
Nebraska	1972	1972 <sup>a</sup>	1972 <sup>a</sup>	1972	1972
Nevada	Excluded <sup>d</sup>	1973 <sup>a</sup>	Excluded <sup>b</sup>	1973	1967
New Hampshire	1971	1971 <sup>a</sup>	1971 <sup>a</sup>	1971	1971
New Jersey	Excluded <sup>f</sup>	Separation only	1971 <sup>j</sup>	1971	1971
New Mexico	Excluded <sup>f</sup>	1973 <sup>a</sup>	Excluded <sup>c</sup>	1973	1973
New York	Excluded <sup>f</sup>	Separation only	1967 <sup>j</sup>	1967	1967
North Carolina	NRS	Separation only	1965 <sup>j</sup>	1965	1965
North Dakota	1971	1971 <sup>a</sup>	1971 <sup>a</sup>	1971	1971
Ohio	1974	1974 <sup>c</sup>	Excluded <sup>c</sup>	1974	1982
Oklahoma	1973	1953 <sup>a</sup>	Excluded <sup>c</sup>	1953	1953
Oregon	1971	1973 <sup>a</sup>	1971 <sup>a</sup>	1971	1971
Pennsylvania	NRS	Fault	1980 <sup>e</sup>	1980	1980
Rhode Island	NRS	1976 <sup>a</sup>	1975 <sup>a</sup>	1976	1975
South Carolina	NRS	Separation only	1979 <sup>j</sup>	1979	1979
South Dakota	NRS	Fault	1985 <sup>a</sup>	1985	1985
Tennessee	NRS	1977 <sup>a</sup>	1977 <sup>c</sup>	1977	1977
Texas	1970	1974 <sup>a</sup>	1970 <sup>a</sup>	1970	1970
Utah	NRS	Separation only	1987 <sup>a</sup>	1987	1987
Vermont	NRS	Separation only	1972 <sup>j</sup>	1972	1972
Virginia	NRS	Separation only	1975 <sup>j</sup>	1975	1975
Washington	1973	1973 <sup>a</sup>	1973 <sup>a</sup>	1973	1973
West Virginia	NRS	1977 <sup>a</sup>	1977 <sup>c</sup>	1977	1977
Wisconsin	NRS	1977 <sup>a</sup>	1978 <sup>a</sup>	1977	1978
Wyoming	NRS	1977 <sup>a</sup>	1977 <sup>a</sup>	1977	1977

<sup>a</sup>Irretrievable breakdown and/or irreconcilable differences and/or incompatibility. <sup>b</sup>NRS = nonreform state. <sup>c</sup>Excluded due to missing data. <sup>d</sup>Excluded due to "late changes in the law." <sup>e</sup>Mutual consent or agreement. <sup>f</sup>Excluded due to incomplete statistics. <sup>g</sup>Excluded—unable to discern impact of law. <sup>h</sup>Excluded—considered a "divorce mill." <sup>i</sup>Excluded—liberalized laws but without a marital breakdown provision. <sup>j</sup>Living separate and apart. <sup>k</sup>Discord or conflict.

the reliability of our findings on the no-fault dates. The FLQ is the scholarly voice of the Family Law Section of the American Bar Association. The journal surveys recent legislative decisions in the area of divorce and other family related legislative issues for the practicing attorney. These sources of information thus acted as cross-coders and multiple reliability checks to validate our findings. We made an exhaustive review of the legislative

record (State Code Commissions) in all 50 states based on the dates that all other authors submitted, and we checked the legislative record based on Elrod and Spector's classification scheme.

## Results

The columns in Table 1 reveal the dates presented in the four studies highlighted here and, for ease of comparison, the dates we eventually settled on based on our decision rules. In about half the states we were in agreement with the other authors. For example, for Florida, Georgia, Kentucky, and New Jersey, there was agreement among the authors who offered dates; after checking the legislative record, we agreed as well. In all other cases, we had to examine the conflicting dates submitted by the other authors, determine what type of laws were passed, when the laws were enacted and effective, and finally, which date we determined to be the operative no-fault date.

We present a summary of our data from state legislative records, merged with information obtained from Elrod and Spector (1998) in Table 2. In so doing, we add another layer of evidence to the no-fault dates presented in Table 1. Elrod and Spector separate state divorce laws into four general categories of states that: (a) use no-fault laws as the sole grounds for divorce; (b) added no-fault laws to traditional grounds for divorce; (c) use incompatibility as the grounds for divorce; and (d) use living "separate and apart" as grounds for divorce. Reading across each row, an "X" in any given column(s) indicates Elrod and Spector's findings by state as of 1998. For example, reading across the first row, as of 1998 Alabama had divorce law options that included "no-fault added to traditional grounds" by virtue of language recognizing irretrievable breakdown of the marriage; "incompatibility"; and "living separate and apart" for 2 years. The information from Elrod and Spector is not focused on dates but on the grounds or type of divorce law option(s) available. Because dates are of interest to us, we noted the date or year of the legislation referenced by the particular categorization. Our comments on the notations appear as footnotes in the tables.

Taken together, the evidence presented in Tables 1 and 2 establishes that different no-fault law dates have been used by researchers and that multiple legal changes of various types have influenced researchers' decisions concerning such dates. The key question becomes, which dates should be used to designate a state's transition to a no-fault divorce state? Based on our extensive reading of the states' legislative records and prior social science research, we propose a set of decision rules to standardize the no-fault divorce dates for the 50 states.

The fundamental principle for our decision rules is that true no-fault laws are distinctly different from fault-based divorce laws and from legislative changes that simply modify or ease fault-based grounds. A new no-fault law, whether it fully replaced a fault-based law or was added to the body of divorce laws in a given state, represents a distinct break or shift in that body of law. Having said this, we recognize that some states opted to relax the time requirements in their fault-based laws for "living separate and apart" as a way of effectively creating a no-fault divorce law in a fault-based state. In fact, some states used this strategy more than once, passing or amending laws in successive legislative sessions to decrease the time required for "living separate and apart" to obtain a no-fault divorce. Our

decision rules allow for this policy strategy on the part of the states.

Next, many states shifted their divorce laws to reflect no-fault options within a relatively short period, creating a clear change in the policy culture. This brought about what researchers and social commentators called a “no-fault divorce revolution,” a period dating from about 1970 to about 1983. Mindful of the impact that a wave of policy shifts creates in the states, we gave preference to dates of changes in divorce law within this period as one of the criteria in our decision rules.

Finally, because we argue that timing is important, where there is an effective date noted in the legislative record, we used that date rather than the enactment date of the law. Legislators may postpone the effective date of a controversial new law to give themselves political cover or to allow time for popular opinion to catch-up with policy changes. Such strategies underscore the relative importance of the effective date over the enactment date in our judgment.

The decision rules follow. As used herein, the rules are applied in order of appearance because each rule becomes increasingly liberal. *Rule 1:* Where there is only a no-fault law, use the effective date of that law. *Rule 2:* Where a no-fault provision(s) was added to traditional fault-based divorce grounds, use the effective date of the added-on, no-fault law. *Rule 3:* Use the effective date for the law allowing a separation period that is the most liberal (e.g., for revision from 5 years separation requirement to 3 years separation requirement to 1 year separation requirement, use the effective date of the 1 year separation revision) and give preference to a date that falls within the “no-fault revolution period,” designated as 1970–1983. *Rule 4:* A law specifying explicit no-fault provisions supercedes a law using the more implicit no-fault “separate and apart” provisions. Choose the effective date of the explicit no-fault law. Based on these rules, we boldly present in Table 3 a concise summary of the no-fault dates we recommend be adopted by researchers.

When we applied these decision rules, dramatic changes resulted for 5 states: Arkansas (12 years), Louisiana (4 years), Maryland (26 years), Nevada (6 years) and Ohio (8 years). In other cases, including Alaska, California, and Kansas, our dates differed from those of some authors by only 1 year, likely attributable to a decision to use effective dates rather than enactment dates. We note a rather odd circumstance for Massachusetts; the effective date of the state’s no-fault law was December 30, 1975, making it virtually impossible for anyone to obtain a divorce in 1975 under the provisions of this law. Therefore, we use 1976 as the no-fault date for Massachusetts.

Even after considering the prior choices of seasoned scholars, our own research into session laws and code commissions and development and use of the decision rules outlined above, determining a final date for some states was difficult. Prior to our research, only Nakonezny et al. (1995) proffered a date for the state of Arkansas as 1979. They apparently garnered the date from a state code commission source; however, we could not independently locate any relevant divorce law activity around that date. Wright and Stetson (1978), Sepler (1981), and Marvell (1989) all excluded Arkansas because it was either considered a separation-only state or because of missing data. According to our rules, the date of the no-fault law passage was 1991, which was the date that the separation-only provision was amended from 3 years (a law passed in 1963) to 18 months (passed in 1991; cf. to row 4 of Table 2). Our decision rules specify that

when separation-only provisions are used, the date chosen should be the one that is the most liberal and should be the date that falls within the “no-fault revolution period” where possible. In Arkansas, there was no law passed in that period, so we chose the enactment date of a separation period that was the most liberal.

For Louisiana, only Nakonezny et al. (1995) proffered a date of the state’s no-fault passage. They used 1975 apparently because of information acquired from a code commission. Wright and Stetson (1978) and Marvell (1989) excluded the state in their analysis because of incomplete or missing data. Sepler (1981) excluded the state because it is a separation-only state. We used 1979 because the separation provisions in the statute were amended on that date, changing the separation period from 2 years (a law passed in 1960) to 1 year (in 1979). The statute also was amended in 1991, changing the waiting period from 1 year to 6 months. However, we opted for 1979 because under our decision rule, preference is given where possible to a law passed during the no-fault revolution period.

Three of the four earlier studies excluded Maryland because it was either a nonreform state (Wright & Stetson, 1978), a separation-only state (Sepler, 1981) or because of data restrictions (Marvell, 1989). Nakonezny et al. (1995) chose 1957 apparently on the basis of information they acquired from code commission sources. We chose 1983 because that was the year that the waiting period for separation-only provisions was amended from 18 months (a law passed in 1963) to 1 year with consent or 2 years without consent and because the 1983 law was passed within the no-fault revolution period.

For Nevada, Wright and Stetson (1978) and Sepler (1981) recognize a 1973 date, which Sepler recounted was the enactment date of a law based on the incompatibility of the parties. Marvell (1989) did not include Nevada in his analysis, as he believed the state’s divorce rate to be an obvious outlier. We offer 1967, as it was the earliest legislation date that we located in which a law was enacted based on the incompatibility of the parties. Also, on this date, a 1-year separation period was enacted.

The date we chose for Ohio, 1982, is offered as an exception to our general rules. In 1982, the legislature amended the separation-only provision from 2 years (passed in 1974) to 1 year. The 1982 law contained the more liberal provision, and it was passed during the no-fault revolution period. Wright and Stetson (1978), Sepler (1981), and Nakonezny et al. (1995) all selected 1974. Marvell (1989) excluded the state altogether because of missing data. Our selection of 1982 is an exception to our decision rules because there was an additional statute passed in 1989 that provides for a divorce based upon the “incompatibility of the parties, unless denied by either party.” This incompatibility language appears to confirm that statute as the classic no-fault law and, under our decision rules, 1989 could be selected. However, we did not use 1989 for two reasons: it was outside the no-fault revolution period and the law required the consent of the parties, a requirement that in many cases makes it more restrictive than the separation only provisions provided for in the 1982 law.

## Summary

Our purpose was to offer historical evidence and a reasoned set of rules for deciding the no-fault law dates in each of the 50 states. Inconsistent dates used by researchers undermine confi-

Table 2  
*Grounds for Divorce by State as of 1998<sup>a</sup>*

State	No-fault is the Sole Ground for Divorce	No-fault Provisions <sup>b</sup> Added to Traditional Grounds for Divorce	Incompatibility as Grounds for Divorce	Living Separate and Apart as Grounds for Divorce
Alabama		X (10/1/71)	X (8/71)	2 years (9/30/47)
Alaska		X	X (4/12/62, effective 1/1/63)	
Arizona	X (5/14/73)			
Arkansas		X <sup>c</sup>		18 months (2/91)
California	X (effective 1/70)			1963: 3 years separate
Colorado	X (effective 1/72)			
Connecticut		X (5/73)		18 months incompatible (5/73)
Delaware	X <sup>d</sup>		2 years incompatible (effective 1968)	
Florida	X (effective 7/71)			
Georgia		X (4/73)		
Hawaii	X (effective 4/72)			2 years
Idaho		X (2/71)		
Illinois		X (effective 1984; requires both living separate and apart and irreconcilable differences)		2 years
Indiana		X (effective 9/73)		
Iowa	X (3/20/70)		X (4/18/69)	
Kansas				
Kentucky	X (approved 3/72)			
Louisiana		X <sup>c</sup>		6 months (8/91) 1960: 2 years 1979: 1 year
Maine	X (effective 10/73)			
Maryland		X Separation only state <sup>h</sup>		2 years 1939: 5 years separate 1947: 3 years separate 1961: 18 months separate 1983: 1 year, mutual consent; 2 years otherwise
Massachusetts		X (effective 12/30/75) <sup>f</sup>		
Michigan	X (effective 1/72)			
Minnesota	X (approved 3/74)			
Mississippi		X (effective 5/76) <sup>g</sup>		
Missouri		X (effective 1/74)		1-2 years; did not find separate provision in statute or in sessions laws 192-49
Montana	X (effective 3/73; irreconcilable differences for 6 months prior to filing. 1975 statute allows for irretrievable breakdown upon finding of court, effective 1/76)		X (no such language located)	180 days (1975)
Nebraska	X (approved by governor, 4/72)			
Nevada			X (1967)	1 year (1967) 1931: 5 years 1939: 3 years
New Hampshire		X (1971)		2 years (1957) 1938: separation for 3 years (no 1938 session law; see code) 18 months (6/71)
New Jersey		X Separation only state <sup>h</sup>		
New Mexico		X	X (approved 4/73)	
New York		X Separation only state <sup>h</sup>		1 year (effective 9/67)
North Carolina				1 year (5/65) 1943: live separate & apart 2 years
North Dakota		X (approved 3/71)		
Ohio		X	X (1989: incompatibility unless denied by either party)	1 year (1982) 1974: 2 years separation
Oklahoma		X	X (5/53)	
Oregon	X (effective 10/71; clarified the 1971 law in 1973)			
Pennsylvania		X (1980; unclear whether irretrievably broken and living separate and apart conditions are both required)		2 years

Table 2  
Continued

State	No-fault is the <sup>b</sup> Sole Ground for Divorce	No-fault Provisions <sup>b</sup> Added to Traditional Grounds for Divorce	Incompatibility as Grounds for Divorce	Living Separate and Apart as Grounds for Divorce
Rhode Island		X (1975)		3 years <sup>b</sup>
South Carolina		X Separation only state? <sup>k</sup>		1 year (2/79)
South Dakota		X (1985)		
Tennessee		X (4/77)		2 years <sup>i</sup>
Texas		X (effective 1/70)		3 years (1970)
Utah		X (1987)		3 years (7/65)
Vermont		X Separation only state? <sup>k</sup>		6 months (4/72) 1971: 2 years separation
Virginia		X Separation only state? <sup>k</sup>		1 year (3/75) 1970: 2 years separation
Washington	X (approved by governor 4/73)			
West Virginia		X (1977)		1 year (1969)
Wisconsin	X (effective 2/78) <sup>j</sup>			
Wyoming	X (effective 5/77)		X	

<sup>a</sup>Unless otherwise noted, all dates of enactment of laws were found through the Session Laws for each state. Unless otherwise noted, all dates are the Act dates. When effective dates were available, they were noted and used. <sup>b</sup>No-fault provisions include language such as irretrievable breakdown of marriage or irreconcilable differences. <sup>c</sup>Arkansas may be a separation-only state; no no-fault law was found; 1997 law as to division of property was located; no 1979 law found. <sup>d</sup>Delaware had no 1974 legislative session; found a 1975 law, effective 5/20/76, a defense to divorce action contending marriage not irretrievably broken. <sup>e</sup>Louisiana may be a separation-only state; no 1975 reference in statute or session laws as to changes regarding separation. <sup>f</sup>Massachusetts allows for irretrievable breakdown with joint filing and finding by the Court; or irretrievable breakdown plus waiting period of 2 years plus finding by the Court if filing is by one party. <sup>g</sup>The 1978 Mississippi statute refers to jurisdiction and is not substantive. <sup>h</sup>Rhode Island originally allowed for 5 years abandonment or a shorter period of time at the discretion of the Court; the Reviser noted that the living separate and apart ground was shortened to 3 years by case law. <sup>i</sup>Could not find a provision allowing for divorce after living separate and apart for this period of time, only found "after separation agreement" language. <sup>j</sup>In 1978 Wisconsin allowed divorce or irretrievable breakdown with living separate and apart if one party is filing.

Table 3  
Effective Dates of No-Fault Laws in the 50 States

State	Effective Date	State	Effective Date
Alabama	1971	Montana	1973
Alaska	1963	Nebraska	1972
Arizona	1973	Nevada	1967
Arkansas	1991	New Hampshire	1971
California	1970	New Jersey	1971
Colorado	1972	New Mexico	1973
Connecticut	1973	New York	1967
Delaware	1968	North Carolina	1965
Florida	1971	North Dakota	1971
Georgia	1973	Ohio	1982
Hawaii	1972	Oklahoma	1953
Idaho	1971	Oregon	1971
Illinois	1984	Pennsylvania	1980
Indiana	1973	Rhode Island	1975
Iowa	1970	South Carolina	1979
Kansas	1969	South Dakota	1985
Kentucky	1972	Tennessee	1977
Louisiana	1979	Texas	1970
Maine	1973	Utah	1987
Maryland	1983	Vermont	1972
Massachusetts	1976	Virginia	1975
Michigan	1972	Washington	1973
Minnesota	1974	Wisconsin	1978
Mississippi	1976	Wyoming	1977
Missouri	1974		

dence in the accuracy and the comparability across studies. Some authors determined that fault-based laws with separation-only provisions were not true no-fault laws and, thus, excluded these states from their analyses. In some cases, researchers relied on enactment dates rather than effective dates of divorce legislation. More recently, authors seemed to rely heavily on dates chosen by other scholars. Some authors proposed specific decision rules

in determining which legislation should be the focus and other authors did not. We cannot determine the dates these authors would have chosen for states excluded from their analyses because the authors were not explicit about their decision rules.

To remedy these variations, we recommended standard dates for future research on the impact of no-fault divorce laws on changes in divorce rates over time in the 50 states. By using consistent dates, additional issues can be brought into focus. For example, scholars might want to focus on the laws that impacted behavior most and why. They could direct their emphasis toward the statistical techniques that might offer the most thorough or useful application in determining a law's impact. In addition, researchers might want to focus on which type of methodology, qualitative or quantitative, would be most useful in answering various questions regarding the impact of a particular law. Only by standardizing legislation dates and comparing their effects can we address important substantive questions that are of interest and importance to families.

## References

- Elrod, L. D., & Spector, R. G. (1998). A review of the year in family law: A search for definitions and policy. *Family Law Quarterly*, 31, 613-665.
- Garand, J. C., Monroe, P. A., & Meyer, G. (1991, November). *Does welfare spending increase divorce rates in the U.S.?* Paper presented at the annual meeting of the National Council on Family Relations, Denver, CO and the annual meeting of the Southern Political Science Association, Tampa, FL. [Available from second author upon request.]
- Garand, J. C., Monroe, P. A., & Vlosky, D. A. (1998, September). *Do no-fault divorce laws increase the divorce rate in the American states? A pooled test, 1945-1990.* Paper presented at the annual meetings of the American Political Science Association, Boston, MA. [Available from second author upon request.]
- Marvell, T. B. (1989). Divorce rates and the fault requirement. *Law and Society Review*, 23, 543-567.
- Nakonezny, P. A., Shull, R. D., & Rodgers, J. L. (1995). The effect of no-fault

- divorce on the divorce rate across the 50 states and its relation to income, education and religiosity. *Journal of Marriage and the Family*, 57, 477-488.
- Rheinstein, M. (1971). *Marriage, divorce, stability and the law*. Chicago: University of Chicago Press.
- Rodgers, J. L., Nakonezny, P. A., & Shull, R. D. (1997). The effect of no-fault divorce legislation on divorce rates: A response to a reconsideration. *Journal of Marriage and the Family*, 59, 1026-1030.
- Sepler, H. J. (1981). Measuring the effects of no-fault divorce laws across fifty states: Quantifying a zeitgeist. *Family Law Quarterly*, 15(1), 65-103.
- Stanley, S. F., & Berman, J. J. (1977). Changing from fault to no-fault divorce: An interrupted time series analysis. *Journal of Applied Social Psychology*, 7, 300-312.
- Stetson, D. M., & Wright, G. C. (1975). The effects of laws on divorce in American states. *Journal of Marriage and the Family*, 37, 537-547.
- Weitzman, L. J. (1985). *The divorce revolution*. New York: Free Press.
- Wright, C. G., & Stetson, D. M. (1978). The impact of no-fault divorce law reform on divorce in the American states. *Journal of Marriage and the Family*, 40, 575-580.