A COMPARATIVE SURVEY OF COVENANT MARRIAGE PROPOSALS IN THE UNITED STATES

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By legal friendship I mean such as is formed on stated conditions, whether it be absolutely commercial, demanding cash payments, or more liberal in respect of time but still requiring a certain covenanted quid pro quo.[1]

-Aristotle

Drafters of covenant marriage legislation have designed their proposed statutes to revive the significance of marriage in a no-fault divorce era.[2] Their goal is to reestablish a minimum *quid pro quo* in this most fundamental of human relationships.[3] Covenant marriage laws generally contain four major elements: 1) premarital counseling, 2) a written oath and declaration of intent, 3) pre-divorce counseling, and 4)

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[1] CARL E. SCHNEIDER & MARGARET F. BRINIG, AN INVITATION TO FAMILY LAW: PRINCIPLES, PROCESS AND PERSPECTIVES 314 (1996) (quoting Aristotle, *Nicomachean Ethics*) [hereinafter SCHNEIDER]. Aristotle's *quid pro quo* sets the standard for a minimal covenant agreement, which no longer exists in a pure no-fault divorce legal system, but remains the standard for any business agreement.

[2] Scholars and pundits alike seem to share agreement with this statement. "The achievement of the Covenant Marriage Act that has the greatest potential for improving the conditions of families in Louisiana is not its legal result with respect to divorce, but its call for a transformation of our approach to marriage." Jeanne Louise Carriere, *"It's Déjà vu All Over Again": The Covenant Marriage Act in Popular Cultural Perception and Legal Reality*, 72 TUL. L. REV. 1701, 1746 (1998). "All states have adopted some form of no-fault divorce. Currently, some 15 states recognize irreconcilable differences or irretrievable breakdown as the sole ground for divorce, while an additional 20 states list one of those grounds in addition to traditional fault-based grounds. The remaining states provide for a no-fault type divorce based on living separate and apart for a stated period of time, in addition to traditional fault-based grounds." JOHN DEWITT GREGORY ET AL., UNDERSTANDING FAMILY LAW 188 (1993) (citing Timothy Walker, *Family Law in the Fifty States: An Overview*, 25 FAM. L. Q. 417, 439-40 (1992)).

[3] *See supra* text accompanying note 1. No-fault divorce allows a unilateral dissolution with neither consequence to the petitioning spouse nor compensation to the victim spouse when one of the parties successfully asserts "serious marital discord." UNIF. MARRIAGE & DIVORCE ACT § 302 (amended 1973), 9A U.L.A. 200 (1987).

an extended no-fault waiting period.[4] This article will compare various covenant marriage proposals to each other using this four-point outline.[5]

This article summarizes the status and content of laws and proposed legislation regarding covenant marriage throughout the country. It begins with a brief history of covenant marriage concepts in Section I. Section II surveys covenant marriage legislation currently in force, and Section III looks at proposed legislation to show how foundational notions have formed new law affecting the most fundamental relationship of our civilization: marriage. History is still determining whether covenant marriage will remain a fad or develop into a national movement that sweeps through our state capitols. This article is designed to be a guide and a resource for those states considering such legislation.

I. A BRIEF HISTORY OF THE COVENANT MARRIAGE CONCEPT

A. Contract Theory in Relationships Led to the Covenant Concept in Marriage

Scholars who have studied marital agreements in the light of contract law principles have observed that even if such contracts are not legally enforceable, they might still be worth maintaining and encouraging. "Notwithstanding practical difficulties of securing legal

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[4] Each of the statutes that follow illustrate this four-element formula in some way. This formula is founded in the underlying philosophy of the Louisiana legislation, as one of its authors explains:

> "Covenant marriage" ensconces in the law the ideal that marriage is to be life-long and permits couples to choose a more binding commitment to their union—from the beginning of their marriage, by a declaration of intent, and throughout the duration of their marriage by agreeing to "take all necessary steps, including marriage counseling," if difficulties arise during the marriage. Covenant marriage adopts the notion of marriage as permanent, as a life-long commitment, yet from the beginning recognizes realistically that difficulties will arise and that the couple may need assistance in resolving them.

Katherine Shaw Spaht, *For the Sake of the Children: Recapturing the Meaning of Marriage*, 73 NOTRE DAME L. REV. 1547, 1568-69 (1998) [hereinafter Spaht, *For the Sake of the Children*]. Spaht characterizes this concept as a pragmatic realization of Mary Ann Glendon's juridical thought on marriage, family and community. *See id.* at 1566. *See generally* MARY ANN GLENDON, THE NEW FAMILY AND THE NEW PROPERTY (1981) [hereinafter GLENDON, THE NEW FAMILY], and MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW (1987) [hereinafter GLENDON, ABORTION AND DIVORCE].

[5] For an example of a comparison of current marriage law to covenant marriage proposals on the state level, see Covenant Marriage: Report of the Legislative Committee of the Family Law Section of the Virginia State Bar, Appendix D (December, 1998) (unpublished manuscript, on file with *Regent University Law Review*). For further comparison of the differences between current marriage law and covenant marriage, see Bruce C. Hafen, *Covenant Marriage*, (Oct. 5, 1996) <http://www.nielson.org/lds/9610conf/ef13k28j.htm>.

enforcement, . . . a contractual provision also has value simply as a communication of understanding between the parties as to their mutual rights and duties."[6] Others have said, "[t]he actionable nature of promises is not the main part of their function any more than law is encompassed by litigation or court decision. Rather, the primary function of contracts is the structuring of private exchange relationships projected over time."[7] These contract approaches have helped foster covenants that are stronger, more relationally based forms of contract, but still contracts (promises with binding consideration) nonetheless.

Still others have pursued this contract theory with family relations to achieve the advantages of commercial contracts without their disadvantages, to establish the terms of the relationship between the couple on one hand and the rest of society on the other.[8] These ideas have greatly contributed to the decided benefits of the covenant/contractual concept in marriage.

Authors like Elizabeth C. Scott at the University of Virginia who have discussed the role of family law in the context of the general theories of civil obligation have significantly influenced theories of marriage as a covenant.[9] These scholars have proposed adopting "covenant" as a theoretical framework for marriage as a legal institution to combat the lack of seriousness about marriage.[10] Other writers have proposed covenant-style marriages that are very stringent, thus underscoring the need for change to strengthen family obligations.[11] All of these writings generated a renewed interest in emphasizing personal responsibility in marriage in the 1990s. The most current scholarship on this aspect of family law focuses primarily on the welfare of the children of the marriage.[12]

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[6] Charles J. Goetz & Robert E. Scott, *Principles of Relational Contracts*, 67 VA. L. REV. 1089, 1117 (1981).

[7] Marjorie Maguire Schultz, *Contractual Ordering of Marriage: A New Model for State Policy*, 70 CAL. L. REV. 204, 306 (1982) (footnotes omitted).

[8] *See, e.g.*, Margaret F. Brinig & June Carbone, *The Reliance Interest in Marriage and Divorce*, 62 TUL. L. REV. 855 (1988) [hereinafter Brinig, *The Reliance Interest*].

[9] *See* Elizabeth C. Scott, *Rational Decision-making About Marriage and Divorce*, 76 VA. L. REV. 9 (1990).

[10] *See* Margaret F. Brinig, *Status, Contract and Covenant*, 79 CORNELL L. REV. 1573 (1994) (reviewing MILTON C. REGAN, JR., FAMILY LAW AND THE PURSUIT OF INTIMACY (1994)). Professor Brinig also has a book forthcoming from Harvard University Press entitled THE CONTRACT AND THE COVENANT.

[11] *E.g.*, Professor Amitai Etzioini suggested the possibility of "super-vows" in his article, *How to Make Marriage Matter*, TIME, Sept. 6, 1993, at 76. In *The Marriage of Your Choice*, Professor Christopher Wolfe proposed an even more binding "covenant marriage": one that could not be dissolved for any reason. FIRST THINGS, Feb. 1995, at 37.

[12] *See generally* Spaht, *For the Sake of the Children*, *supra* note 4 (examining why a stable life-long marriage between the parents of children insures the probability of their ultimate success and happiness); Katherine Shaw Spaht, *Louisiana's Covenant Marriage: Social Analysis and Legal Implications*, 59 LA. L. REV. 63 (1998) (introduction entitled "For

B. Following Florida's Example?

Florida became the first state to consider covenant marriage legislation when Representative Daniel Webster introduced the first "covenant marriage" bill in 1990. But, the Florida legislature never acted on it.[13] Webster's bill contained three of the four elements of the current covenant marriage formula: a declaration of intent,[14] a requirement of premarital counseling,[15] and a provision that permitted marital

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the Sake of the Children," focusing on what children gain, tangibly and intangibly, as third party beneficiaries of the marriage contract). In her previous works regarding covenant marriage, *Symposium: Family Law*, 44 LA. L. REV. 1545 (1984) [hereinafter Spaht, *Symposium*] and *Revision of the Law of Marriage: One Baby Step Forward*, 48 LA. L. REV. 1131 (1988) [hereinafter Spaht, *Revision of the Law of Marriage*], Spaht attributes her thinking to developments in Louisiana family case law (*see, e.g.*, Holliday v. Holliday, 358 So. 2d 618 (La. 1978) (proclaiming the imperative nature of the obligations incident to marriage); Stallings v. Stallings, 177 La. 488 (1933) (recognizing that marriage is more than an ordinary civil contract); Hurry v. Hurry, 144 La. 877 (1919) (describing the differences between marriage and other contracts)) and Mary Ann Glendon's works, *Abortion and Divorce* and *The New Family*.

[13] *See generally* Katherine Shaw Spaht, *Why Covenant Marriage? A Change in Culture for the Sake of the Children*, 46 La. B.J. 116, 119 (1998) (citing H.R. 1585, Reg. Sess. (Fla. 1990)).

[14] The declaration of intent is worth noting in its entirety with the introduction to the bill:

> 741.32. Covenant marriage. There is created in the state a union between man and woman to be known as "covenant marriage." In order to be eligible to enter into a covenant marriage, each party shall make a declaration of intent to do so upon application for a marriage license. The declaration of intent shall contain the following:
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> (1) Written permission of both parents of both parties, unless deceased at the time of the application, or unless extraordinary circumstances render written permission untenable.
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> (2) Presentation of proof that both parties have attended premarital counseling by a clergyman or marriage counselor, which premarital counseling included a discussion of the seriousness of covenant marriage.
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> (3) Signatures of both parties on notarized documents which state, "I,___, do hereby declare my intent to enter into Covenant Marriage. I do so with the full understanding that a Covenant Marriage may not be dissolved except by reason of adultery. I have attended premarital counseling in good faith and understand my responsibilities to the marriage. I promise to seek counsel in times of trouble. I believe that I have chosen my life-mate wisely and have disclosed to him or her all facts that may adversely affect his or her decision to enter into this covenant with me."
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> 61.31. Dissolution of covenant marriage. Notwithstanding any provision of this chapter to the contrary, a covenant marriage may not be dissolved except by reason of adultery. A divorce may be granted on grounds of adultery if the defendant has been guilty of adultery, but if it appears that the adultery complained of was occasioned by collusion of the parties with the intent to procure a divorce, or if it appears that both parties have been guilty of adultery, a divorce shall not be granted . . . .

H.R. 1585, Reg. Sess. (Fla. 1990).

[15] *See id.*

dissolution only when adultery had occurred.[16] This was a dramatic departure from then-current Florida divorce law, which allowed marital dissolution only under no-fault grounds of irretrievable breakdown.[17]

During the 1990s Florida passed very progressive legislation that required counseling in post-divorce situations, particularly when children were involved. Couples who divorced in Florida were required to get parenting education and pursue mediation alternatives, both for their benefit and the benefit of their minor children.[18]

Florida's latest legislation on marriage is purely a premarital counseling bill and was passed in 1998.[19] That bill, known as the Florida Marriage Preparation and Preservation Act, is optional in the sense that the state offers a fee reduction for a marriage license if the couple, together or separately, completes a premarital preparation course for a minimum of four hours.[20] The Act does not mandate course content, but it does suggest that the counseling include topics such as conflict management, communication skills, financial responsibilities, child-rearing and parenting responsibilities, and even "data compiled from available information relating to problems reported by married couples who seek marital or individual counseling."[21]

Clearly, this counseling bill is a significant retreat from the more comprehensive 1990 covenant marriage proposal, but marriage bills requiring counseling have found much wider acceptance in other states than covenant marriage proposals. For instance, Connecticut is considering a marriage counseling bill called An Act Concerning Marriage. This bill is designed to "give newlyweds better tools and information to make their marriages successful."[22] It requires ten hours of premarital counseling to receive a marriage license.[23] Kansas is considering a bill that requires counseling and a waiting period between marriage license application and the marriage ceremony.[24] Compliance is optional, but couples who obtain the required counseling pay only $50 for their marriage license while couples who do not pay $200.[25] Michigan's marital counseling bill requires that the parties must jointly

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16 *See id.*

17 *See* FLA. STAT. ch. 61.30 (1998).

18 *See id.* ch. 39.428 (establishing guidelines for family counseling services) (repealed 1996).

19 *See id.* ch. 741.0305.

20 *See id.*

21 *See id.* Subsection (3) includes a list of qualified counselors and requirements for each circuit to establish a roster of referral providers. *Id.* Subsections (4) and (5) provide for registration of providers and certification of completion respectively. *Id.*

22 H. 5404, Gen. Ass., Reg. Sess. (Conn. 1997).

23 *See id.*

24 *See* S. 320, 77th Leg., Reg. Sess. (Kan. 1997) (by Committee on Judiciary).

25 *See id.*

complete a program in premarital education or counseling. This bill contains course content requirements very similar to Florida's law.[26] Mississippi's counseling bill requires counseling before granting a marriage license and requires successful completion of counseling sessions, granting wide, discretionary, and ultimate approval to the counselor who must "determine[] that both parties understand the responsibilities and implications of entering into a contract of marriage."[27] California has two bills pending that address premarital counseling. One requires divorcing parents to get counseling and produce a joint parenting plan. The other would establish a pilot project in counseling that would measure the effectiveness of premarital counseling by tracking marriage duration.[28] Virginia has entertained a bill requiring counseling and production of a joint parenting plan in custody cases.[29]

Although these states have chosen to pursue only one element of the covenant marriage formula, the purpose in each case is to strengthen and stabilize at-risk marriages. Now, with these pieces of legislation, marital realities can be discussed at length prior to entering into the marital covenant. Louisiana legislators noted these developments in Florida and drafted a covenant marriage act of their own.

C. A Brief History of the Louisiana Covenant Marriage Act

In 1975, Louisiana established the Louisiana State Law Institute (LSLIC) as the official law revision commission and legal research agency of the state.[30] In the early 1980s, the LSLIC formed a committee called the Persons Committee and charged it with the task of revising the articles governing marriage in the Louisiana Civil Code. The early deliberations of this committee resulted in a Family Law Symposium that was later published by the Louisiana Law Review.[31] This symposium documented the early history of family law reform in Louisiana. The efforts of this committee ultimately led to the drafting and subsequent enactment of the Covenant Marriage Act.

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[26] *See* H. 4631, 89th Leg., Reg. Sess. (Mich. 1997-98).

[27] S. 2917, Reg. Sess. § 93-1-5(g) (Miss. 1998). It is worth noting that the counselors listed in this proposal are not required to be licensed to practice (or teach) law, though they are required to make certain that individuals understand marriage contracts, possibly placing that counselor in a position of giving legal advice, which could constitute the unauthorized practice of law. *See id.*

[28] *See supra* note 5.

[29] *See* examples of divorce counseling legislation contained within sources *supra* note 5; *see also* the discussion of Virginia's covenant marriage *infra* Part III.T.

[30] *See* LA. REV. STAT. ANN. § 24:201 (West 1989).

[31] 44 LA. L. REV. 1545 (1984).

The Persons Committee of the LSLIC was comprised of four Louisiana law professors, a Supreme Court Justice, a Family Court Judge, three practicing attorneys, an attorney with the Attorney General's Office, and a research associate of the LSLIC.[32] A key member of this committee was one of the four law professors, Katherine Spaht, who teaches family law at Louisiana State University (LSU) law school. Today she is one of the most influential figures in the current movement for restabilization of marriage through the covenant marriage concept.[33]

At first, the committee merely clarified and simplified civil code policies without making significant policy changes. For example, they suggested changing references in the code to marriage as a "civil contract" to "a relationship created by contract . . . but governed by special rules."[34] Later, it proposed significant revisions to the articles on capacity to marry. The revised statutes proscribed marriages between same sex couples and couples related within the fourth degree of consanguinity.[35] The revisions also pointed out elements of consent to marriage, change of surname not being necessary and being gender-neutral, and the effect to be given to contracts between unmarried cohabitants.[36] More significantly, the committee considered proposals regarding the termination of marriage. It endorsed the principle that all new legislation should encourage parties dissolving a marriage to be as amicable and non-adversarial as possible. This position reflected the committee's thinking that the law should promote reconciliation and seek to avoid the adverse effects on the judicial system caused by fault-based schemes.[37] The actual committee proposal, then, was to eliminate all fault-based grounds and substitute the filing of a petition and a six-month cooling off period. This was, essentially, no-fault divorce.[38]

The Persons committee spent the next six years drafting and redrafting Code revisions that would endorse the historical and jurisprudential model of a man and woman covenanting for life.[39]

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[32] *See* Spaht, *Symposium*, *supra* note 12, at 1545-46.

[33] *See* sources cited *supra* note 12.

[34] Spaht, *Symposium*, *supra* note 12, at 1545-46. There were other similar minor changes. *See id.* at 1546-48.

[35] *See id.* at 1547-52.

[36] *See id.*

[37] *See id.* Before the committee determined to go ahead with the covenant marriage concept, they leaned toward adopting a pure no-fault divorce law, intent on relieving the negative effects of divorce litigation on the courts. The more discussion, however, the more they determined that consequences to children were more critical than consequences to the judicial system, which would more easily be accomplished through covenant marriage legislation. Consequently, the committee proposed covenant marriage. *See id.*

[38] *See id.* at 1551-52.

[39] *See generally*, Spaht, *Revision of the Law of Marriage*, *supra* note 12. Spaht is one of the central drafters of the current Louisiana Covenant Marriage Act. She and others have been working through this process for the better part of two decades.

Additionally, the committee attempted to severely limit and discourage cohabiting outside of marriage, but a Senate amendment blocked that effort.[40] At this point the committee recognized that

> [a]t least another six years of work will be required to finish the task of family law revision. The law regulating interrelationships among family members and the relationship of whole families to the rest of society touches the lives of every citizen of this state. For that reason, the revision must proceed slowly and cautiously, and only after lengthy consideration and deliberation.[41]

During the years between the second revision and the proposal of the Covenant Marriage Act, some outside influences such as the Florida covenant marriage bill and the scholarship on marriage as contract affected Louisiana's arrival at the Covenant Marriage concept. These writings and events supplied Louisiana with the theoretical and statistical foundation on which to build a Covenant Marriage superstructure. The LSLIC committee drafted the Covenant Marriage Act that Louisiana adopted in 1997.[42] Most literature on the drafting indicates increasing numbers of policy makers are realizing that many of society's problems can be traced to broken and never-legally-formed families.[43] Spaht herself, a committee member and drafter of the Act, claims that Mary Ann Glendon's children-first principle was the underlying inspiration for the Louisiana Covenant Marriage Act.[44] This

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[40] *See id.* This article discusses the legislative meddling with marriage and family law during the divorce reform movement that brought about some form of no-fault divorce laws in every state. It additionally discusses the havoc wrought on family laws by activist judges restructuring laws affecting marital and non-marital relationships in cases litigating the now-blurred responsibilities between partners wanting to use marriage laws for their benefit. Spaht seems to lament the fact that it will take a long road backwards, so to speak, to recapture the original design for marriage: that of one man and one woman for a lifetime. Unwise judicial and legislative meddling has created the need for legislatively reinstituting the intended design for marriage. *See id.*

[41] *See id.* at 1160.

[42] *See* Spaht, *Symposium*, *supra* note 12, at 1547-52.

[43] *See* DAVID WAGNER, DIVORCE REFORM (1994), *reprinted in* NEW DIRECTIONS (Feb. 1998); *Review & Outlook, A Covenant for Couples*, WALL ST. J., Aug. 15, 1997, at A16.

[44] *See generally* Spaht, *For the Sake of the Children*, *supra* note 4, at 1548 (citing GLENDON, ABORTION AND DIVORCE, *supra* note 4, at 106, 108, and GLENDON, THE NEW FAMILY, *supra* note 4, at 7. For example, in *Abortion and Divorce*, Glendon wrote:

> In the United States, the "no-fault" idea blended readily with the psychological jargon that already has such a strong influence on how Americans think about their personal relationships. It began to carry the suggestion that no one is ever to blame when a marriage ends: marriages just break down sometimes, people grow apart, and when this happens even parents have a right to pursue their own happiness. The no-fault terminology fit neatly into an increasingly popular mode of discourse in which values are treated as a matter of taste, feelings of guilt are regarded as unhealthy, and an individual's primary responsibility is assumed to be to himself. Above all, one is not supposed to be "judgmental" about the behavior and opinions of others. As Bellah points out, the ideology of

new idea was not without opposition. Others involved in Louisiana's struggle to develop better marriage legislation disagree, claiming that a covenant marriage act will increase divorce lawsuit finances for litigants.[45] Another scholar who questioned whether the Act is constitutional came to the conclusion that it does not unduly restrict the fundamental liberties involved in marriage and the adjustment of that relationship.[46]

II. COMPARISON OF CURRENT COVENANT MARRIAGE ACTS

Only two states, Arizona[47] and Louisiana,[48] have passed covenant marriage laws. This section provides a summary of those two bills, which are very similar to each other. First is a summary of the main points of both statutes, followed by an overview of the (minor) differences between them.

A. Similarities

First, both statutes require couples who desire to enter into a covenant marriage to sign a declaration of intent.[49] This declaration states that:

a. the couple understand[s] that covenant marriage is a marriage for life;[50]

b. they have participated in pre-marital counseling; [51] and

c. they will take all reasonable efforts to preserve their marriage, including counseling.[52]

The declaration must be signed and witnessed.[53] The parties must also include an affidavit stating that they have received premarital counseling.[54] The counselor must provide a notarized affidavit indicating

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psychotherapy not only refuses to take a moral stand, it actively promotes distrust of "morality."

GLENDON, ABORTION AND DIVORCE, *supra* note 4, at 107-08 (footnotes omitted).

45 *See* Carriere, *supra* note 2, at 1703.

46 *See* Melissa Lawton, *The Constitutionality of Covenant Marriage*, 66 FORDHAM L. REV. 2471 (1998).

47 *See* ARIZ. REV. STAT. § 25-901 (1998).

48 *See* LA. REV. STAT. ANN. § 9:272 (West 1998).

49 *See* ARIZ. REV. STAT. § 25-901(B); LA. REV. STAT. ANN. § 9:272(B).

50 *See* ARIZ. REV. STAT. § 25-901(B)(1); LA. REV. STAT. ANN. § 9:273(A)(1).

51 *See* ARIZ. REV. STAT. § 25-901(B)(2); LA. REV. STAT. ANN. § 9:273(A)(2)(a) and (b). The Louisiana declaration actually contains two separate documents: the recitation and the affidavit. *See* LA. REV. STAT. ANN. § 9:272(B).

52 *See* ARIZ. REV. STAT. § 25-901(B)(2); LA. REV. STAT. ANN. § 9:273(A)(2)(a) and (b).

53 *See* ARIZ. REV. STAT. § 25-901(B)(3); LA. REV. STAT. ANN. § 9:272(B).

54 *See* ARIZ. REV. STAT. § 25-901(B)(3); LA. REV. STAT. ANN. § 9:272(B).

that the couple received the required counseling on issues such as the nature and purpose of the marriage and the grounds for termination.[55]

Second, both statutes allow couples married before the law took effect to convert their marriage into a covenant marriage.[56]

Third, dissolution or divorce may be obtained only upon proof of any of the following: adultery,[57] commission of a felony (and a sentence of death or imprisonment),[58] abandonment for one year accompanied by a refusal to return,[59] physical or sexual abuse of spouse or of a child of one of the parties,[60] or living separate and apart continuously for a period of two years, or for a period of one year subsequent to a bed and board divorce or legal separation.[61]

Finally, both states have made compliance with the covenant marriage act optional.[62]

B. Differences

In Louisiana, if the marriage produces children, the waiting period for the no-fault ground of divorce is one year and six months from separation from bed and board, unless the cause of the bed and board separation was abuse, in which case the period is one year.[63]

In Arizona, habitual intemperance is an additional ground for divorce.[64]

In Arizona, the mutual agreement is not included among the reasons for granting separation.[65]

In Louisiana, habitual intoxication, cruelty, or other outrageous circumstances may be grounds for divorce.[66]

In Louisiana, the statute limits situations in which one spouse may sue the other.[67]

The statutes in both jurisdictions, though quite similar, are tailored to accomplish slightly different legislative objectives. For example, Louisiana, in the process of overhauling its family law regulations, determined that neither pure fault nor pure no-fault would support the

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55 *See* ARIZ. REV. STAT. § 25-901(B)(3); LA. REV. STAT. ANN. § 9:272(B).
56 *See* ARIZ. REV. STAT. § 25-902; LA. REV. STAT. ANN. § 9:275 (West 1998).
57 *See* ARIZ. REV. STAT. § 25-903(1); LA. REV. STAT. ANN. § 9:307(A)(1) (West 1998).
58 *See* ARIZ. REV. STAT. § 25-903(2); LA. REV. STAT. ANN. § 9:307(A)(2) (West 1998).
59 *See* ARIZ. REV. STAT. § 25-903(3); LA. REV. STAT. ANN. § 9:307(A)(3) (West 1998).
60 *See* ARIZ. REV. STAT. § 25-903(4); LA. REV. STAT. ANN. § 9:307(A)(4) (West 1998).
61 *See* ARIZ. REV. STAT. § 25-903(5); LA. REV. STAT. ANN. § 9:307(A)(5) (West 1998).
62 *See generally* Spaht, *Syposium*, *supra* note 12.
63 *See* LA. REV. STAT. ANN. § 9:307(A)(5), (A)(6)(b), (B)(5) (West 1998).
64 *See* ARIZ. REV. STAT. § 25-903(7).
65 *See generally* ARIZ. REV. STAT. § 25-903(5).
66 *See* LA. REV. STAT. ANN. § 9:307(B)(6) (West 1998).
67 *See id.* § 9:308.

versatility that allows the now-flexible definition of family in the Louisiana Code.[68] Thus, Louisiana's covenant marriage law provides for a bilateral no-fault divorce when the parties agree to a divorce, while non-covenant marriage still allows unilateral no-fault divorce.[69]

The Louisiana law requires couples who are already married to follow the same steps as outlined above to obtain covenant marriage status.[70] Arizona permits couples who are already married to opt out of the counseling, requiring only that they sign the declaration of intent.[71] Arizona's bill followed a distinctly more difficult path to passage than Louisiana's. Arizona carried its bill over three times and substantially amended it before final passage.[72] Louisiana's legislation passed on the first submission without much ado.[73] An analysis of current covenant marriage laws in these two states provides a good background that demonstrates the content, methodology and evolution of a covenant marriage act. A profile and analysis of legislative proposals from other states considering some form of a covenant marriage act will show diverse ways in which these concepts can be organized into law.

III. STATES WITH BILLS PENDING ON COVENANT MARRIAGE

In addition to Arizona, Louisiana, and Florida, sixteen other states have introduced covenant marriage proposals. Some have been carried over; some have been reworked; and one was voted down. These proposals are similar to the Louisiana and Arizona laws. Each contains the four central elements outlined previously, but some have certain unique features as well. Following is an overview of these bills that includes the status of each bill and its unique features.[74]

A. Alabama

Under existing law, marriages in Alabama may be dissolved unilaterally by either party on the ground of incompatible temperament

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[68] *See* Spaht, *Symposium*, *supra* note 12, at 1545-46.

[69] *Compare* LA. REV. STAT. ANN. § 9:102 (West 1998), *with* LA. REV. STAT. ANN. § 9:307 (West 1998).

[70] *See* LA. REV. STAT. ANN. § 9:275(A), (B) and (C).

[71] *See* ARIZ. REV. STAT. § 25-902.

[72] *See* ARIZ. REV. STAT. § 25-903.

[73] *See* Terry Carter, *A Stealth Anti-Divorce Weapon: Louisiana's 'Covenant Marriage' Law Passes Without Much Notice*, A.B.A. J., Sept. 1997, at 28.

[74] There are also prospects for covenant marriage in Canada, as well as an Australian Covenant Marriage Bill. *See Covenant Marriage Links* (visited Dec. 17, 1998) <http://www.divorcereform.org/cov.html>. These comparisons will not include minor variations on subjects such as length of time of imprisonment required to get a divorce for commission of a felony but will include differences in waiting periods to get a divorce for living separate and apart. If a provision is very different or unique from other proposed legislation, boldface type is used.

or irretrievable breakdown. The fact that one party desires to continue the marriage does not prevent a judge from granting a divorce on these grounds. This bill would allow couples who desire stronger legal protection of their marriage bond to enter into a covenant marriage agreement that would eliminate the traditional no-fault grounds for divorce.[75] The Alabama statute also includes several grounds for divorce not included in Florida or Louisiana's bills. They are incapacity to marry,[76] commission of any crime against nature,[77] confinement to a mental institution for five years,[78] and pregnancy by someone other than a spouse at the time of the marriage.[79] Additionally, divorce can be granted after living separate and apart for two years[80] but only if neither of the parties has minor children,[81] both parties attend marriage counseling for at least 24 weeks,[82] and both parties consent to the divorce.[83] The Alabama covenant marriage legislation also limits suits between spouses.[84]

B. Alaska

A bill for "Charter Marriages" was introduced in February of 1998, which would require premarital counseling and pre-divorce counseling.[85]

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[75] *See* S. 606, Reg. Sess. (Ala. 1998). The text of the bill sets out some recitals that delve deeper into the metaphysical aspect of marriage as an institution:

> a. The Legislature of the State of Alabama recognizes as a self-evident truth that laws of nature and of nature's God have established the institution of marriage as a life-long covenant relationship between one man and one woman and that the institution of marriage was and is neither created nor defined by the government.
>
> b. That the government possesses no power to define or redefine marriage or to alter its inherent nature.
>
> c. That, as the Alabama Supreme Court has held, "marriage creates the most important relations in life, and has more to do with the morals and the civilization of a people than any other institution."
>
> d. That, given the importance of the institution of marriage to the maintenance of civil society, it is the role and the duty of the government to enact such legal protections and preferments for the institution as may be beneficial and practically workable.

Id.

[76] *See id.* § 8(a)(1).

[77] *See id.* § 8(a)(5).

[78] *See id.* § 8(a)(7).

[79] *See id.* § 8(a)(8).

[80] *See id.* § 8(a)(10).

[81] *See id.* § 8(a)(10)a.

[82] *See id.* § 8(a)(10)b, d.

[83] *See id.* § 8(a)(10)c.

[84] *See id.* § 9(a). Spouses may not sue each other in tort.

[85] Paul Queary, *Bill Wants New Marriage Pact*, ANCHORAGE DAILY NEWS, Feb. 12, 1998, at B1; *available in* 1998 WL 5452973.

The bill[86] would allow bilateral no-fault divorce after a two-year waiting period, as well as divorce for adultery, abandonment, and felony imprisonment for three years.[87] Abuse would be grounds for separation.[88]

C. Arkansas

The Arkansas statute defines a covenant marriage with some absoluteness, stating, "[o]nly when there has been a complete and total breach of the marital covenant commitment may the non-breaching party seek a declaration that the marriage is no longer legally recognized."[89] The Act requires that a judgment of divorce can be granted only upon proof of a traditional fault ground.[90] Exceptions include no-fault divorce after two years,[91] physical or sexual abuse of a child of one of the spouses,[92] a waiting period of one year after judicial separation if no children are born of the marriage, and a waiting period of a year and a half if there are minor children.[93]

D. California

The California covenant marriage proposal contains provisions that starkly differentiate it from current California divorce law. Covenant marriage in California would limit dissolution of a covenant marriage to grounds of adultery, conviction of a felony, physical abuse, desertion, incurable insanity, or judicial separation followed by non-cohabitation.[94] Additionally, the California proposal specifically states that the declaration of intent shall not be deemed a premarital agreement.[95]

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[86] *See* H. 390, 20th Leg., 2d Sess. (Alaska 1997); H. 318, 20th Leg., 2d Sess. (Alaska 1997). My appreciation is extended to Prof. Samuel Menefee for his research on the State of Alaska's covenant marriage initiatives.

[87] *See* Queary, *supra* note 85.

[88] *See id.*

[89] H. 2102, 82d Gen. Ass., Reg. Sess. § 9-11-803(a) (Ark. 1999).

[90] Traditional fault grounds generally include adultery, abandonment, cruelty, and imprisonment. *Id.* § 9-11-807. The grounds for judicial separation are similar and are listed at § 9-11-807(b) with the addition of habitual intemperance.

[91] *See id.* § 9-11-807(b)(5).

[92] *See id.* § 9-11-807(b)(4).

[93] *See id.* § 9-11-807(a)(6)(A) and (B).

[94] *See* S. 1377, Reg. Sess. (Ca. 1997-98). These changes are significant as California was the state that began the no-fault divorce reform trend in 1969 with the California Family Law Act, and those grounds are traced back to traditional grounds for divorce. In the Comment that follows the bill, the author of the legislation makes it clear that this bill is an effort to address the problem of family breakdown, seeking "to strengthen marriage rather than simply make divorce more difficult to obtain." *SB 1377 Senate Bill – Bill Analysis*, (visited Oct. 6, 1999) <http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1351-1400/sb_1377_cfa_19980415_133113_sen_comm.html>.

[95] *See* S. 1377, Reg. Sess. § 602(b) (Ca. 1997-98).

E. Colorado

A covenant marriage bill that was introduced by Rep. Mark Paschall was killed on the house floor.[96] HB 1199 would have allowed couples to contract for premarital counseling.[97] Further, it would have permitted a marital contract that required marital counseling, mediation and arbitration before suing for divorce.[98] "If only 5 percent of the population takes advantage of this, and only 25 percent of that 5 percent (sticks by their agreement), then we will be saving 400 marriages a year," Paschall said. Considering the children involved in these marriages, he added, "that means the legislation would positively affect 1,500 people a year."[99]

F. Georgia

The covenant marriage amendment in Georgia has been rejected once[100] and is expected to be reconsidered in the next legislative term.[101] The waiting period for no-fault divorce under the Georgia covenant marriage proposal is one year.[102] The new law makes no provision for abuse of alcohol or drugs,[103] a traditional fault ground that many divorce statutes include.

G. Indiana

Indiana's recently-introduced covenant marriage law creates two distinct classes of marriage, contract marriage and covenant marriage, and lists separate requirements for each.[104] Covenant marriage legislation allows divorce on the grounds of impotency, incurable

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[96] *See* Michelle Dally Johnston, *House Kills Bill*, DENVER POST, Mar. 2, 1999, at A-08.

[97] *See id. See also Under the Dome* (visited May 18, 1999) <http://www.denverpost.com/news/leg/leg0227b.htm>. My appreciation is extended to Prof. Samuel Menefee for his research on the State of Colorado's covenant marriage initiatives.

[98] *See id.*

[99] *Id.*

[100] *See* Kathey Pruitt, *'98 Georgia Legislature Contentious Issues Get Last-minute Resolutions*, THE ATLANTA CONSTITUTION, March 20, 1998, at F04, *available in* 1998 WL 3683506.

[101] *See* H. 1138, 145th Gen. Ass., Reg. Sess. (Ga. 1998) (previously submitted as H. 249, 144th Gen. Ass., Reg. Sess. (Ga. 1997)). S. 440, 145th Gen. Ass., Reg. Sess. (Ga. 1998), is the identical Senate bill.

[102] *See* H. 1138, 145th Gen. Ass., Reg. Sess. § 1(a) (Ga. 1998).

[103] *See* H. 1138, 145th Gen. Ass., Reg. Sess. (Ga. 1998); S. 440, 145th Gen. Ass., Reg. Sess. (Ga. 1998).

[104] *See* H. 1052, 110th Gen. Ass., 2d Reg. Sess. (Ind. 1998).

insanity, domestic violence, or adultery.[105] Courts may also use their equitable powers to grant a divorce if denial of a dissolution would be unconscionable.[106]

The bill requires marital partners to live separate and apart for two years before they can obtain a no-fault divorce.[107] No provision has been included for conversion of a regular marriage to a covenant marriage.[108]

H. Kansas

Kansas' covenant marriage proposal provides that "[o]nly when there has been a complete and total breach of the marital covenant commitment may the nonbreaching party seek a declaration that the marriage is no longer legally recognized."[109] It allows for no-fault divorce under two methods: 1) living separate and apart for two years,[110] or 2) one year from a separate maintenance judgment for childless couples, or one-and-one-half years if children are involved.[111] And, the Kansas proposal expands grounds for divorce to include habitual intemperance and ill treatment that renders "their living together insupportable."[112]

I. Maryland

Maryland saw submission of a covenant marriage bill this spring, sponsored by the democratic leaders of family law issues in the state.[113] The Maryland bill has all the traditional elements of the covenant marriage formula with minor qualifications in the case of desertion.[114] The bill allows for "voluntary separation" after one year[115] and adds insanity to the list of traditional fault grounds available for divorce.[116] Each provision generally requires that a divorce of a covenant marriage may be awarded only "if there is no reasonable expectation of reconciliation."[117]

J. Michigan

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105 *See id.* § 3(a).
106 *See id.* § 3(b)(5)(c).
107 *See id.* § 3(b)(5)(b).
108 *See id.* § 5.
109 H. 2839, 77th Leg., Reg. Sess. (Kan. 1998)
110 *See id.* § 60-1601(b)(5).
111 *See id.* § 60-1601(b)(6).
112 *Id.* § 60-1601(b)(6)(C)(6).
113 *See* H. 1076, Reg. Sess. § 7-103(a)(2) (Md. 1999).
114 *See id.*
115 *Id.* § 7-103(a)(3) (fails to mention "no-fault divorce").
116 *See id.* § 7-103(a)(6).
117 *See generally id.* § 7-103.

A covenant marriage bill was introduced to the House Committee on the Judiciary in July of 1998.[118] This bill provides for separate maintenance for covenant marriages.[119]

K. Minnesota

At five years, Minnesota has the longest waiting period for no-fault divorce. Partners must live separate and apart during this period.[120] Otherwise, a two-year waiting period is required for divorce after judicial separation,[121] and grounds for separation are expanded to include habitual intemperance.[122] Quite significantly, the Minnesota proposal allows no dissolution without at least sixty hours of counseling over at least a six-month period of time.[123] This is the second time a covenant marriage legislative proposal has been introduced in Minnesota. A similar piece of legislation preceded this current bill in the Minnesota House of Representatives.[124]

L. Mississippi

Several covenant marriage bills have crossed Mississippi legislators' desks.[125] The only ground for divorce under the Mississippi covenant marriage proposal is adultery.[126] Obviously, this is a quite restrictive basis for divorce. This provision also allows judges to consider harm to children as a factor in determining equitable property distribution[127] and adultery as a factor in determining spousal support.[128] It is noteworthy that the declaration of intent requires the consent of the parents of both parties,[129] almost as if to suggest that regardless of legal capacity, people

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[118] *See* H. 5991, 89th Leg., Reg. Sess. (Mich 1997-98); H. 5990, 89th Leg., Reg. Sess. (Mich. 1997-98). My appreciation is extended to Prof. Samuel Menefee for his research on the State of Michigan's covenant marriage initiatives.

[119] *See* H. 5991, 89th Leg., Reg. Sess. (Mich 1997-98); H. 5990, 89th Leg., Reg. Sess. (Mich. 1997-98).

[120] *See* S. 2935, 80th Reg. Sess. § 518.065.1(5) (Minn. 1998).

[121] *See id.* § 518.065.2(5).

[122] *See* S. 2935, 80th Reg. Sess. (Minn. 1998).

[123] *See id.*

[124] *See* H. 2760, 80th Leg. Sess. (Minn. 1997-98).

[125] *See, e.g.*, H. 1645, Reg. Sess. (Miss 1998); H. 1222, Reg. Sess. (Miss. 1998); H. 1201, Reg. Sess. (Miss. 1998); S. 2910, Reg. Sess. (Miss. 1998).

[126] *See* H. 1645, Reg. Sess. § 2 (Miss. 1998).

[127] *See id.* § 2(b) ("[i]n an action involving minor children, the court may defer the sale of the family home for one (1) year to minimize trauma to the children").

[128] *See id.* § 2(a). Recrimination as a bar to divorce in the case of adultery is revived in this statute as well. *See id.*

[129] *See id.* § 1(a). Parental consent is not required if parents of the marriage partners are deceased at the time of application, "or unless extraordinary circumstances render written permission untenable." *Id.*

considering marriage, particularly the covenant type, ought to discuss their plans with their parents.

M. Missouri

The Missouri covenant marriage proposal also limits suits in tort between spouses.[130] Most significantly, however, the Missouri proposal changes the waiting period for a no-fault divorce based on living separate and apart continuously to three years.[131] Divorce may be awarded one year after a judicial separation or a year and six months afterward if there are children of the marriage.[132] Finally, to achieve a divorce based on the fault ground of abandonment, the abandonment must be for three years.[133]

N. Nebraska

Nebraska's covenant marriage proposal requires a two-year time period for legal separation and divorce[134] but does not require a waiting period under fault grounds of abandonment.[135] Significantly, the proposed legislation calls for at least twenty-five hours of counseling over at least a six-month period of time to achieve divorce relief, but it also states that a refusal to do so will not be a bar to divorce.[136] This bill appears to be the only legislation of its kind among the states that has been rejected without resubmission.[137]

O. Ohio

Ohio expanded grounds for divorce in its covenant marriage proposal by adding cruelty to grounds for divorce.[138] Interestingly, the proposal recognizes divorces procured by one party outside of Ohio as binding on the non-breaching party.[139] The legislation also requires a two-year waiting period for no-fault divorce on the grounds of living

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130 *See* H. 1864, 89th Gen. Ass., Reg. Sess. (Mo. 1998).
131 *See id.* § 4.1(6).
132 *See id.*
133 *See id.* § 4.1(3).
134 *See* L.H. 1214, 95th Leg., 2d Reg. Sess. (Neb. 1998).
135 *See id.*
136 *See id.*
137 *See generally* Nancy Hicks et al., *In the Legislature*, OMAHA WORLD-HERALD, Feb. 27, 1998, at 15, *available in* 1998 WL 5496832.
138 *See* H. 567, 122d Gen. Ass., Reg. Sess. § 3105.012(B)(4) (Ohio 1997).
139 *See id.* § 3105.012(B)(6).

separate and apart.[140] This legislation has the approval of the legislature and is now awaiting the governor's signature to be passed into law.[141]

P. Oklahoma

Representative Jim Reese introduced the first bill, a covenant marriage proposal, in the 1999 Oklahoma legislature.[142] With 53 co-sponsors in the 101-member house, it had a clear majority. In light of this fact it is difficult to believe that this is a resubmission of the covenant marriage bill that was defeated last year.[143] It expands grounds for divorce to include fraud, adultery, abandonment and abuse.[144] It also states that the court may grant divorce after 18 months of living separate and apart.[145] Indeed, this bill was approved by the House on Monday, February 22, 1999 by a 92-7 margin.[146]

Q. South Carolina

This bill is a joint resolution that amends the grounds of divorce to allow traditional fault grounds.[147] It also allows no-fault divorce after one year of continuous separation. However, the bill does not extend the one year separation period to covenant marriages. In that situation, the no-fault grounds require continuous separation for a period of at least two years.[148]

R. Tennessee

Tennessee's covenant marriage bill extends the waiting period for no-fault divorce to two years.[149] It also limits suits between spouses.[150]

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[140] *See id.* § 3105.012(B)(7).

[141] *See Ohio Legislative Service Commission* (visited May 10, 1999) <http://198.234.151.5/coderev/houl22.nsf/4a>.

[142] *See* H. 1001, 47th Leg. Sess., 1st Sess. (Okla. 1999).

[143] *See* Mick Hinton, *Marriage Bill Introduced to House*, DAILY OKLAHOMAN, Nov. 24, 1998, at 12, *available in* 1998 WL 18608451.

[144] *See* H. 2208, 46th Leg. Sess., 2d Sess. (Okla. 1998); S. 1115, 46th Leg. Sess., 2d Sess. (Okla. 1997).

[145] *See* H. 2208, 46th Leg. Sess., 2d Sess. (Okla. 1998).

[146] *See* Mick Hinton, *House Approves Marriage Bill: Lawmaker Addresses Common-Law Unions*, DAILY OKLAHOMAN, Feb. 3, 1999, at 1.

[147] Traditional fault grounds include adultery, desertion and physical cruelty. S. 961, Gen. Ass., 112th Reg. Sess. (S.C. 1998).

[148] *See id.*

[149] *See* H. 2101, 100th Gen. Ass. § 5 (Tenn. 1998).

[150] *See id.* § 6(a).

Moreover, this legislation provides for separation from bed and board, as well as reconciliation afterward.[151]

S. Texas

In May 1999 the Texas Senate tentatively approved a covenant marriage bill introduced by Sen. Tom Haywood that would require premarital counseling and make divorce more difficult.[152] "You can't force two people to stay together. Nor can you eliminate divorce altogether," Mr. Haywood said. He further observed: "I believe the answer is not to bar divorce, but to strengthen marriage on the front end. You can make the act of getting married a much more deliberate process and the act of divorce a last option."[153]

T. Virginia

Virginia patterned its covenant marriage proposal after the Louisiana model, with an extended waiting period of two years under the no-fault provision for divorce.[154] The Family Law Section of the Virginia State Bar has prepared a report on the proposal at the request of the sponsoring delegate that encompasses the benefits and concerns of family law practitioners state-wide,[155] demonstrating that legislators in Virginia encouraged the active participation of the state bar in the dialogue on this bill. Changes were made to the bill based on this report to address the concerns of family law practitioners.[156]

U. Washington

The Washington covenant marriage proposal begins with a senate bill report that explains that the philosophical foundation for the state's motivation in passing a covenant marriage bill was to protect and assist "the nation's children."[157] This bill, also patterned directly after the Louisiana model, limits suits between spouses and extends the waiting

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[151] *See id.* § 7.

[152] *See News: Senate Tentatively OKs Covenant Marriage Bill*, DALLAS MORNING NEWS, May 12, 1999, at 29A, *available in* 1999 WL 4120272.

[153] *Id.*

[154] *See* H. 1159, Reg. Sess. (Va. 1998) (an identical bill was previously submitted as H. 1056, Reg. Sess. (Va.)).

[155] *See* Covenant Marriage: Report of the Legislative Committee of the Family Law Section of the Virginia State Bar (Dec. 1998) (on file with *Regent University Law Review*).

[156] *See* H. 1159, Reg. Sess. (Va. 1998).

[157] S. 6135, 55th Leg., Reg. Sess. (Wash. 1998). "Children of divorced parents are more likely to drop out of school, are more susceptible to delinquency, and more regularly become unwed parents." *Id.*

period for no-fault covenant marriage divorce to two years.[158] In the event of judicial separation, the waiting period is one year without children, and one and one-half years with children.[159]

Though not a covenant marriage bill, another piece of legislation has been proposed that provides for written marriage contracts that restrict no-fault divorce.[160] These contracts authorize "two persons of the opposite sex to enter into a written marriage contract providing the marital relationship will not be dissolved except upon a showing by a preponderance of the evidence by one party of the fault of the other party that constitutes grounds for dissolution."[161] This language is significant because it introduces two elements that consider other issues in marriage. The first is that marriage is limited to a legal relationship between a man and a woman. The second mandates a level of evidence required in a divorce proceeding. These express elements take out any judicial discretion in either of these matters.

V. West Virginia

West Virginia's covenant marriage proposal also follows the Louisiana model.[162] It limits suits between spouses, extends the time period for no-fault divorce after living separate and apart to two years, and makes divorce possible one year after judicial separation or after one and one-half years with children.[163]

W. Wisconsin

Finally, a covenant marriage bill proposed by Rep. Carol Owens would create a covenant marriage option for couples "who want to waive some of the escape clauses that our no-fault law has in it."[164] Clergy in Eau Claire and Fond Du Lac have adopted community marriage covenants based on the movement Marriage Savers, and a pamphlet promoting community marriage covenants is being distributed in Ottawa County to couples who obtain marriage licenses.[165]

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[158] *See id.*

[159] *See id.*

[160] *See* S. 5532, 55th Leg., Reg. Sess. (Wash. 1998).

[161] *Id.*

[162] *See* H. 4562, 73d Leg., 2d Reg. Sess. (W. Va. 1998).

[163] *See id.*

[164] Lori Holly, *County to Give Couples Marriage Tips. Those Who Obtain Licenses Will Get Pamphlet as Part of Effort to Reduce Divorce Rate*, MILWAUKEE JOURNAL SENTINEL, Jan. 29, 1999, at 1, *available at* 1999 WL 7656074.

[165] *See id. See also Capitol Update* (visited Oct. 6, 1999) <http://www.wisbar.org/capup>. Much appreciation to Prof. Samuel Menefee for his research in this regard.

IV. CONCLUSION

The most dramatic changes from current normative divorce law to covenant marriage law occured in California, where the law permits dissolution of covenant marriages only on fault grounds–unlike other marital arrangements which allow for no-fault divorce.[166] Mississippi would go a step further and permit dissolution of covenant marriage only when adultery is proven.[167] States with the lengthiest waiting periods for a no-fault divorce are Missouri[168] and Minnesota,[169] with three and five years respectively. The most stringent counseling requirements included in covenant marriage proposals occur in Alabama (24 weeks),[170] Minnesota (60 hours over six months)[171] and Nebraska (25 hours over six months).[172]

Covenant marriage legislation around the country is gaining political and cultural significance all its own. Undergoing several times of submission and amendments, or seeing passage or rejection outright, proposals continue to be offered for legislative review. The law often has much less effect on people's behavior than many individuals prefer to believe.[173] Attitudes change the law. Very seldom, however, does the law change attitudes. It is possible that covenant marriage will not become so much a legal movement as a cultural one, modeled and spread by those who choose the covenant option and discover positive long-term results. The number of states considering covenant marriage indicates that significant momentum is gathering for the concept itself. This evidence also suggests that such a wave of state legislation nationally may be the result of social request. Time will tell the impact of this inspiration, whether it be legislative, cultural, or both. Only then may it be determined if drafters of covenant marriage legislation accomplished their purpose—to revive the significance of marriage in the age of no-fault divorce.

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166 *See generally* S. 1377, Reg. Sess. (Ca. 1997-98).

167 *See* H. 1645, Reg. Sess. § 2 (Miss. 1998).

168 *See* H. 1864, 89th Gen. Ass., Reg. Sess. § 4.1(6) (Mo. 1998).

169 *See* S. 2935, 80th Reg. Sess. § 518.065.1(5) (Minn. 1998).

170 *See* S. 606, Reg. Sess. § 8(a)(10)b, d (Ala. 1998).

171 *See* S. 2935, 80th Reg. Sess. (Minn. 1998).

172 *See* L.H. 1214, 95th Leg., 2d Reg. Sess. (Neb. 1998).

173 Schneider and Brinig outline the influence of the law-and-society school of thought and call this fact that school's most striking accomplishment throughout their casebook. *See* SCHNEIDER, *supra* note 1. They cite a litany of scholarship on this area including ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (1991), ROBERT H. MNOOKIN ET AL., IN THE INTEREST OF CHILDREN: ADVOCACY, LAW REFORM, AND PUBLIC POLICY (1985), and Lynn A. Baker & Robert E. Emery, *When Every Relationship Is Above Average: Perceptions and Expectations of Divorce at the Time of Marriage*, 17 L. & HUMAN BEHAVIOR 439 (1993). *Id.* at 397-98.