

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE
Revised

House Bill 346

(Delegate Dumais, *et al.*)

Judiciary

Judicial Proceedings

Family Law - Grounds for Absolute Divorce

This bill adds to the grounds for absolute divorce the cruelty of treatment toward a minor child of the complaining party and excessively vicious conduct toward a minor child of the complaining party, if there is no reasonable expectation of reconciliation. The bill also provides that recrimination is not a bar to either party obtaining an absolute divorce on the grounds of: (1) insanity; (2) cruelty of treatment toward the complaining party or a minor child of the complaining party; or (3) excessively vicious conduct toward the complaining party or a minor child of the complaining party.

Fiscal Summary

State Effect: The bill's changes could be handled with existing resources.

Local Effect: The bill's changes could be handled with existing resources.

Small Business Effect: None.

Analysis

Current Law: A court may decree an absolute divorce on the following grounds:

- adultery;
- desertion, as specified;
- voluntary separation, as specified;

- conviction of a felony or misdemeanor in any state or federal court, if the defendant has been sentenced to serve at least three years, or an indeterminate sentence, and has served 12 months of the sentence;
- two-year separation, when the parties have lived separate and apart without cohabitation for two years before the filing of the divorce application;
- insanity, as specified;
- cruelty of treatment toward the complaining party, if there is no reasonable expectation of reconciliation; or
- excessively vicious conduct toward the complaining party, if there is no reasonable expectation of reconciliation.

“Cruelty of treatment” within the meaning of the divorce statute means any misconduct of a husband that endangers, or creates a reasonable apprehension that it will endanger, the wife’s safety or health to a degree that renders it physically or mentally impracticable for her to properly discharge the marital duties. *Das v. Das*, 133 Md. App. 1 (2000).

Ordinarily, a single act of violence does not constitute cruelty of treatment. However, if the single act of violence indicates an intention to do serious bodily harm or is of such a character as to threaten serious danger in the future, it may be a sufficient basis for a divorce on the ground of cruelty. *Scheinin v. Scheinin*, 200 Md. 282 (1952).

Psychological pain or injury may also constitute cruelty. Cruelty generally includes any conduct on the part of a spouse that is calculated to seriously impair the health or permanently destroy the happiness of the other spouse. *Id.* at 289.

Recrimination is not a bar to either party obtaining an absolute divorce on the grounds of: adultery, desertion, voluntary separation, conviction of a felony or misdemeanor, or two-year separation without cohabitation. However, recrimination is a factor to be considered in a case based on the ground of adultery.

Recrimination is generally defined as a rule or doctrine which precludes one spouse from obtaining a divorce from the other, where the spouse seeking a divorce has himself or herself been guilty of conduct which would entitle the opposite spouse to a divorce.

Background: While a spouse may currently file for a limited divorce on the basis of cruelty of treatment or excessively vicious conduct toward a minor child of the parties, the effect of a limited divorce is only to give the injured spouse the right to live separate and apart from the spouse at fault. Additionally, divorcing spouses have the benefit of property division under the Marital Property Act only in cases of absolute divorce.

A spouse may currently file for an absolute divorce on the basis of constructive desertion. However, the spouse must wait 12 months before filing for the absolute divorce.

Additional Information

Prior Introductions: None.

Cross File: SB 249 (Senator Grosfeld, *et al.*) – Judicial Proceedings.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Legislative Services

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