



FAMILY AND JUVENILE LAW SECTION COUNCIL TESTIMONY IN SUPPORT OF HOUSE BILL 80

Family Law – Grounds for Divorce

January 23, 2020

This testimony is submitted on behalf of the Family and Juvenile Law Section Council (“FJLSC”) of the Maryland State Bar Association (“MSBA”). The FJLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family and juvenile law and, at the same time, tries to bring together the members of the MSBA who are concerned with family and juvenile laws and in reforms and improvements in such laws through legislation or otherwise. The FJLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,200 attorney members.

On behalf of the MSBA Family and Juvenile Section Council, for the following reasons, we oppose HB80 and request an unfavorable report on HB80, and request that a work group be established to further consider what, if any, modifications should be made to Family Law Article § 7-103.

Currently there are eight (8) grounds for absolute divorce. Except for the grounds requiring the existence of fault, the grounds require a 12 month physical separation, which is often difficult for many Marylanders to achieve, primarily because they simply cannot afford a second residence. HB80 proposes to address this situation by eliminating the ground for 12-month separation, probably the most commonly used no fault ground for divorce, and replacing it with a 12-month separation of affection ground. The FJLSC agrees that consideration should be given to amending 7-103 to provide a ground for divorce that authorizes the granting of divorce without the need for a physical separation or the existence of a fault ground. However, HB80 is problematic for the following reasons:


- The proposed language is unclear as to what is meant by the term “sexual relations”. The term is not otherwise defined in the Family Law Article.
- The proposed language does not clearly state that the parties would not engage in sexual relations *with each other*. Arguably, if one of the parties is engaging in an extramarital affair they may not qualify for this new ground of divorce and only the purely abstinent party is rewarded with a divorce.
- There is an issue of substantive evidence in that proving the ground of 12-month separation of affection while residing under the same roof is much more difficult than proving physical separation, which could add an unexpected cost to the litigant and

require embarrassing testimony. If one party claims that the parties have not had sexual intercourse and the other, not wanting to be divorced or for leverage, claims that they have had sexual relations in the last 12 months, the trier of fact is left with little else in order to determine whether the ground is proven by a preponderance of evidence.

- Under the current ground 7-103 (4), third party or other corroboration is often available to prove whether or not cohabitation interrupted the 12 month separation. In the event that the separation of affection ground is contested, the evidence will often be only the testimony of the parties as to what occurred in the privacy of a shared home.
- Since sexual relations even one time during the 12 months would bar the divorce on the ground of separation of affection, HB80 creates an incentive for marital rape in the event that one party does not want to be divorced.
- The 12-month separation of affection ground may grant a divorce to an otherwise acceptable marriage where one party may not be able to perform sexually due to a medical condition. Should the husband with erectile dysfunction or the Wife with a condition that causes pain during sexual intercourse, such as endometriosis, be concerned that they now qualify for a divorce.

The FJLSC urges the House Judicial Proceedings, for the reasons stated above, to issue an unfavorable report on HB 80 and establish a work group to further consider, what, if any revisions should be made to Family Law Article § 7-103 regarding the grounds for divorce.

Respectfully submitted,


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MSBA