



WEBB
SOYPHER
MCGRATH

HOWARD B. SOYPHER
Attorney

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T: 301.298.8405
F: 301.298.8402
HSOYPHER@WSMFAMILY.COM

Members of the Senate Judicial Proceedings Committee

Re: **Senate Bill 36**
Family Law – Grounds for Divorce
Favorable

Dear Members of the Committee:

I write in support of the above-referenced Bill.

By way of background, I have been a practicing attorney in Maryland for over 26 years. My practice has been focused primarily in the area of family law for the past 23 of those years. Geographically, my practice is based in Montgomery County, Frederick County and Washington, D.C. I am a Fellow in both the American Academy of Matrimonial Lawyers and the American College of Trial Lawyers.

As a family law practitioner, a common occurrence is the scenario in which the parties are clearly no longer living as spouses but continue to physically live under the same roof because of either: (a) lack of financial resources for one party to leave the home and obtain new housing; and/or (b) a refusal/desire not to leave the house without an enforceable agreement as to when and how often the departing spouse will be able to see his/her children following the separation. Quite often, these scenarios are coupled with a refusal of one party to engage in negotiations to separate and address custody and/or financial matters. Usually, the party that wishes to leave does not have independent access to adequate financial resources to obtain her/his own residence (e.g., deposit, first and last month's rent and ongoing expenses). Under current Maryland law, unless that party has a good faith basis to allege one of the more limited grounds for divorce (e.g., adultery, cruelty or excessively vicious conduct), that party is unable to initiate a legal proceeding for divorce in the absence of their spouse voluntarily engaging in good faith negotiations.

I have observed over the past 25 years, this type of stalemate frequently leading to disastrous circumstances for both the parties and any children living in the home. One such circumstance is domestic violence. By having a legal framework that essentially does not allow parties residing under the same roof to have access to the family law courts, two parties who have had their share of arguments and acrimony are, in all practical terms, forced to continue to reside together. The likelihood of such hostilities escalating into domestic violence is high and places everyone in danger. If the parties were not residing together and constantly in each other's presence, there



would be far less of an opportunity for acrimony to lead to heat of the moment violence. A second problematic scenario that often arises in these circumstances, is the fabrication of allegations of domestic violence by one party against the other where no such threat or violence has actually occurred. If a party knows that he/she cannot force their spouse out of a jointly-titled home absent being removed pursuant to the issuance of a protective order, a desperate spouse may completely fabricate an allegation of domestic violence with the hope that it will cause their spouse to be removed from the home, create a separation and allow that spouse to commence an action for divorce (custody, support, etc.). Such false allegations of abuse cause unnecessary harm and pain to the parents and children involved.

In contrast to the laws of Maryland, the divorce laws in the District of Columbia contain provisions that greatly reduce the likelihood of the occurrence of the aforementioned scenarios. The District of Columbia divorce statute does not contain any fault-based grounds, with such grounds having been abolished statutorily many years ago. Essentially, the grounds for divorce in D.C. are a mutual and voluntary separation, without cohabitation, for a period of 6 months or a separation without cohabitation for a period of 12 months (irrespective of whether that separation was mutual and voluntary).¹ What is significant about the D.C. statute and of great relevance to SB 36, is the language contained in that statute that reads as follows:

“ . . . parties who have pursued separate lives, sharing neither bed nor board, shall be deemed to have lived separate and apart from one another even though: (1) they reside under the same roof; or (2) the separation is pursuant to an order of court.”

By allowing parties who technically reside under the same roof to be deemed to be living separate and apart, the D.C. statute provides a pathway to accessing judicial resources where the Maryland divorce statute currently does not. Accordingly, for a person living in D.C. who has essentially lived separately from his/her spouse, but continues to technically live under the same roof (often one spouse resides in the marital bedroom and the other lives in a guest room or basement), he/she is able to commence a divorce proceeding and access judicial remedies, including, seeking access to marital funds and/or the receipt of temporary support, that would provide the financial means to allow that person to move out of the home. For the person who has financial resources, but whose concern stems from not wanting to move from the home without securing custodial rights to spend time with minor children, that person has access to the judicial system to obtain a custody order (or at least a temporary custody order) allowing him/her to move out of the home and have an enforceable schedule as to when he/she will have time with the children and not be left to the whims of the parent who remained in the home with the children.

¹ District of Columbia Annotated Code, Section 16-904.



As practitioner whose office is located in Bethesda, the legal advice that I can provide my clients whose reside in Maryland is quite different than I can provide to those clients who are residents of the District of Columbia. The D.C. clients are able to access their family law-related rights under the judicial system much more readily those who reside in Maryland.

SB 36 would amend the Annotated Code of Maryland, Family Law Article, Section 7-103 by modifying the grounds for absolute divorce to include a 6-month period of living separate and apart without interruption and, most significantly, inclusion of the following language to a define the term of living “separate and apart”:

“Parties who have pursued separate lives shall be deemed to have lived separate and apart for purposes of subsection (A)(1) of this section even if:

- (1) the parties reside under the same roof; or**
- (2) the separation is in accordance with a court order.”**

The enactment of these statutory changes would provide Maryland residents with the same rights outlined above for D.C. residents. It would eliminate the scenario in which one is trapped in his/her marriage and as a virtual prisoner in his/her home because of a lack of technical statutory ground to file an action for divorce and access the rights afforded by our judicial system.

I also look favorably at SB 36 as, not only does it allow parties to be deemed as living separate and apart while residing under the same roof, but it also includes an additional, alternative proposed ground for granting an absolute divorce – **“irreconcilable differences based on the reasons stated by the complainant for the permanent termination of the marriage.”** Again, just like the additional amendments to the statute discussed above, this ground would allow one to gain access to the judicial system while still living under the same roof as their spouse, but under this scenario, without having to wait for a period of 6 months or other specified duration. The inclusion such language would create the desired benefit of allowing married persons access to the judicial system while they are effectively forced to remain in their homes with their spouse due to a lack of access to financial resources or out of concern of not being able to see their children if they move from the home.

Both of these proposed amendments to the statute will best serve Maryland families.



WEBB
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MCGRATH

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Thank you for your consideration.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'H. Soypher', written over the text 'Very truly yours,'.

Howard B. Soypher