

Analysis of House Bill 17-C  
(Dissolution of Marriage)

1. Procedure

The act retains the six months residency requirement for an action for dissolution. It changes the word "divorce" to "dissolution". The proceeding for dissolution is instituted by filing a petition, rather than complaint, styled In Re \_\_\_\_\_, husband, and \_\_\_\_\_, wife. The court is required to hold a hearing to determine if the basis for dissolution exists. The requirement of a corroborating witness as to grounds is eliminated, although the court may require such witnesses in its discretion. A corroborating witness is still required for the residency requirement.

2. Grounds

(a) The act provides that a judgment of dissolution shall be granted if the court finds that the marriage is irretrievably broken. If there are minor children or if one of the parties denies that the marriage is irretrievably broken, the court may:

(1) Direct the parties to consult with a counselor, psychologist or minister, etc., acceptable to both parties; or

(2) Continue the matter for a reasonable period of time not to exceed three (3) months; or

(3) Take such other action as may be in the best interest of the parties and the minor children of the marriage.

If the court finds that the marriage is not irretrievably broken, it shall deny the petition for dissolution of marriage. If, at any time, the court finds the marriage is irretrievably broken, it shall grant a judgment of dissolution of marriage.

(b) Mental incompetence for a three (3) year period is also a basis for dissolution. The "incurable insanity" language in the present law is eliminated. Alimony for the spouse who is incompetent may be awarded according to the general provisions for alimony. No specific provisions are made for care and maintenance of an incompetent spouse as exist under present law.

3. Disposition of property

Present law unchanged.

4. Alimony

The act provides:

61.08 Alimony.--

(1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature. In any award of alimony the court may order periodic payments or payments in lump sum or both. The court may consider the adultery of a spouse and the circumstances thereof in determining whether alimony shall be awarded to such spouse and the amount of alimony, if any, to be awarded to such spouse.

(2) In determining a proper award of alimony, the court may consider any factor necessary to do equity and justice between the parties.

5. Child support

Same as present law except that court may order either party to pay child support and the act also expressly spells out court's power to modify child support orders and to require report as to expenditure and other disposition of child support payments.

6. Child custody.

Same as present law except equal consideration is given to father in awarding child custody, after considering all relevant factors. (sec. 15)

7. Modification and enforcement

Same as present law, but proceeding for modification may be brought even if the party seeking the modification is in arrears. (sec. 16)

8. Attorney's fees

Same as present law except either party may be directed to pay attorney's fees and attorney's fees may be awarded in modification as well as other proceedings. (sec. 17)

9. Temporary relief.

Basically same as present law.

10. Nonsupport.

Provides an action for alimony and child support when party is not seeking a dissolution. (sec. 11)

11. Other provisions of Chapter 61 remain generally the same.

12. The act takes effect July 1, 1971. The act applies to all proceedings commenced after the effective date including modification proceedings. On the effective date of the act all pending actions will be deemed to have been commenced on the new grounds for dissolution provided by this act and evidence as to such grounds shall be in compliance with the act.

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