
SENATE BILL 5705

State of Washington 52nd Legislature 1991 Regular Session

By Senators Craswell, Stratton, Roach, Hayner and Rasmussen.

Read first time February 15, 1991. Referred to Committee on Law & Justice.

1 AN ACT Relating to dissolution of marriage; amending RCW 26.09.030,
2 26.09.080, 26.09.090, 26.09.100, and 26.09.140; and reenacting and
3 amending RCW 26.09.020.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 26.09.030 and 1973 1st ex.s. c 157 s 3 are each
6 amended to read as follows:

7 (1) When a party who is a resident of this state or who is a member
8 of the armed forces and is stationed in this state, petitions for a
9 dissolution of marriage, and ~~((alleges that the marriage is~~
10 ~~irretrievably broken and))~~ when ninety days have elapsed since the
11 petition was filed and from the date when service of summons was made
12 upon the respondent or the first publication of summons was made, the
13 court ~~((shall proceed as follows:~~

1 ~~(1) If the other party joins in the petition or does not deny that~~
2 ~~the marriage is irretrievably broken, the court shall enter a decree of~~
3 ~~dissolution.~~

4 (2)) may grant a dissolution of the marriage for one of the
5 following reasons:

6 (a) The consent to the marriage of the party filing the petition
7 for dissolution was obtained by force, duress, or fraud of the other
8 party and the petition is filed (i) within two years after the marriage
9 is solemnized if the force or duress has ceased or (ii) within two
10 years after the party filing the petition has knowledge of the fraud;

11 (b) The party filing the petition for dissolution was incapable of
12 consenting to the marriage because of physical or mental incompetence
13 and the petition is filed (i) within two years after the marriage is
14 solemnized if the person filing the petition is still incapable or (ii)
15 within two years after the party filing the petition has become
16 competent;

17 (c) The party filing the petition for dissolution was under the age
18 of seventeen years at the time the marriage was solemnized and the
19 petition is filed (i) within two years after the marriage is solemnized
20 or (ii) within two years after the party filing the petition reaches
21 the age of seventeen years;

22 (d) The petition for dissolution is filed within two years after
23 the party filing the petition has knowledge of an act of adultery by
24 the other party;

25 (e) The party filing the petition for dissolution did not know at
26 the time of marriage that the other party was or was likely to become
27 impotent, and the petition is filed within two years after the party
28 filing the petition has knowledge of the impotence of the other party;

29 (f) The party filing the petition for dissolution did not know at
30 the time of marriage that the other party was infected with a sexually

1 transmitted disease, including AIDS, syphilis, gonorrhea, herpes II,
2 chancroid, and other venereal diseases, and the other party did not
3 contract the disease from the filing party, or if the other party
4 became infected with the disease after the marriage the other party did
5 not contract the disease from the filing party, and the petition is
6 filed within two years after the party filing the petition has
7 knowledge of the infection of the other party;

8 (g) The party filing the petition for dissolution did not know at
9 the time of marriage that the other party was infected with a fatal
10 disease, a contagious, infectious, or communicable disease, or a
11 disease specifically named in chapters 248-100 and 248-101 WAC, the
12 other party did not contract the disease from the filing party, and the
13 petition is filed within two years after the party filing the petition
14 has knowledge of the infection of the other party;

15 (h) The other party has abandoned the relationship or has
16 disappeared for one or more years at the time the party who has been
17 abandoned or left alone files the petition for dissolution;

18 (i) The petition for dissolution is filed within two years after
19 the party filing the petition has knowledge of an habitual and ongoing
20 addiction to alcohol or drugs of the other party;

21 (j) The other party continually neglects or refuses to make
22 provision for the family and at the time the filing party files the
23 petition for dissolution there is no reasonable expectation that the
24 neglect or refusal will cease;

25 (k) The other party has been imprisoned in a state, federal, or
26 foreign prison for two or more years at the time the filing party files
27 the petition for dissolution and the petition is filed during the term
28 of imprisonment of the other party;

29 (l) The filing party or a minor natural, adopted, step, or foster
30 child residing in the home of a party has been subject to continual

1 physical abuse or extreme mental cruelty, or a child has been subject
2 to sexual abuse, and at the time the petition for dissolution or legal
3 separation is filed there is no reasonable expectation that the abuse
4 or cruelty will cease; and

5 (m) The petition for dissolution is filed within two years after
6 the party filing the petition has knowledge that the other party has
7 been determined to be legally insane.

8 (2) A dissolution may be granted, without regard to fault by either
9 party, to either or both parties in all cases where parties have lived
10 separate and apart from each other for two consecutive years before
11 filing the petition for dissolution.

12 (3) If the other party alleges that the petitioner was induced to
13 file the petition by fraud, or coercion, the court shall make a finding
14 as to that allegation and, if it so finds shall dismiss the petition.

15 ~~((3) If the other party denies that the marriage is irretrievably~~
16 ~~broken the court shall consider all relevant factors, including the~~
17 ~~circumstances that gave rise to the filing of the petition and the~~
18 ~~prospects for reconciliation and shall:~~

19 ~~(a) Make a finding that the marriage is irretrievably broken and~~
20 ~~enter a decree of dissolution of the marriage; or~~

21 ~~(b) At the request of either party or on its own motion, transfer~~
22 ~~the cause to the family court, refer them to another counseling service~~
23 ~~of their choice, and request a report back from the counseling service~~
24 ~~within sixty days, or continue the matter for not more than sixty days~~
25 ~~for hearing. If the cause is returned from the family court or at the~~
26 ~~adjourned hearing, the court shall:~~

27 ~~(i) Find that the parties have agreed to reconciliation and dismiss~~
28 ~~the petition; or~~

29 ~~(ii) Find that the parties have not been reconciled, and that~~
30 ~~either party continues to allege that the marriage is irretrievably~~

1 ~~broken. When such facts are found, the court shall enter a decree of~~
2 ~~dissolution of the marriage.))~~

3 (4) If the petitioner requests the court to decree legal separation
4 in lieu of dissolution, the court shall enter the decree in that form
5 unless the other party objects and petitions for a decree of
6 dissolution or declaration of invalidity.

7 **Sec. 2.** RCW 26.09.020 and 1989 1st ex.s. c 9 s 204 and 1989 c 375
8 s 3 are each reenacted and amended to read as follows:

9 (1) A petition in a proceeding for dissolution of marriage, legal
10 separation, or for a declaration concerning the validity of a marriage,
11 shall allege the following:

12 (a) The last known residence of each party;

13 (b) The date and place of the marriage;

14 (c) If the parties are separated the date on which the separation
15 occurred;

16 (d) The names, ages, and addresses of any child dependent upon
17 either or both spouses and whether the wife is pregnant;

18 (e) Any arrangements as to the residential schedule of, decision
19 making for, dispute resolution for, and support of the children and the
20 maintenance of a spouse;

21 (f) A statement specifying whether there is community or separate
22 property owned by the parties to be disposed of;

23 (g) The relief sought;

24 (h) The statutory ground upon which a dissolution is sought.

25 (2) Either or both parties to the marriage may initiate the
26 proceeding.

27 (3) The petitioner shall complete and file with the petition a
28 certificate under RCW 70.58.200 on the form provided by the department
29 of health.

1 **Sec. 3.** RCW 26.09.080 and 1989 c 375 s 5 are each amended to read
2 as follows:

3 In a proceeding for dissolution of the marriage, legal separation,
4 declaration of invalidity, or in a proceeding for disposition of
5 property following dissolution of the marriage by a court which lacked
6 personal jurisdiction over the absent spouse or lacked jurisdiction to
7 dispose of the property, the court shall(~~(, without regard to marital~~
8 ~~misconduct,~~)) make such disposition of the property and the liabilities
9 of the parties, either community or separate, as shall appear just and
10 equitable after considering all relevant factors including, but not
11 limited to:

12 (1) The nature and extent of the community property;

13 (2) The nature and extent of the separate property;

14 (3) The duration of the marriage; (~~and~~)

15 (4) The economic circumstances of each spouse at the time the
16 division of property is to become effective, including the desirability
17 of awarding the family home or the right to live therein for reasonable
18 periods to a spouse with whom the children reside the majority of the
19 time; and

20 (5) The nature and extent of marital misconduct.

21 **Sec. 4.** RCW 26.09.090 and 1989 c 375 s 6 are each amended to read
22 as follows:

23 (1) In a proceeding for dissolution of marriage, legal separation,
24 declaration of invalidity, or in a proceeding for maintenance following
25 dissolution of the marriage by a court which lacked personal
26 jurisdiction over the absent spouse, the court may grant a maintenance
27 order for either spouse. The maintenance order shall be in such
28 amounts and for such periods of time as the court deems just(~~(, without~~

1 ~~regard to marital misconduct,~~) after considering all relevant factors
2 including but not limited to:

3 (a) The financial resources of the party seeking maintenance,
4 including separate or community property apportioned to him, and his
5 ability to meet his needs independently, including the extent to which
6 a provision for support of a child living with the party includes a sum
7 for that party;

8 (b) The time necessary to acquire sufficient education or training
9 to enable the party seeking maintenance to find employment appropriate
10 to his skill, interests, style of life, and other attendant
11 circumstances;

12 (c) The standard of living established during the marriage;

13 (d) The duration of the marriage;

14 (e) The age, physical and emotional condition, and financial
15 obligations of the spouse seeking maintenance; ~~((and))~~

16 (f) The ability of the spouse from whom maintenance is sought to
17 meet his needs and financial obligations while meeting those of the
18 spouse seeking maintenance; and

19 (g) The nature and extent of marital misconduct.

20 **Sec. 5.** RCW 26.09.100 and 1990 1st ex.s. c 2 s 1 are each amended
21 to read as follows:

22 In a proceeding for dissolution of marriage, legal separation,
23 declaration of invalidity, maintenance, or child support, after
24 considering all relevant factors ~~((but without regard to marital
25 misconduct))~~, the court shall order either or both parents owing a duty
26 of support to any child of the marriage dependent upon either or both
27 spouses to pay an amount determined under chapter 26.19 RCW. The court
28 may require periodic adjustments of support. The adjustment provision
29 may be modified by the court due to economic hardship.

1 **Sec. 6.** RCW 26.09.140 and 1973 1st ex.s. c 157 s 14 are each
2 amended to read as follows:

3 The court from time to time after considering the financial
4 resources of both parties and the nature and extent of marital
5 misconduct may order a party to pay a reasonable amount for the cost to
6 the other party of maintaining or defending any proceeding under this
7 chapter and for reasonable attorney's fees or other professional fees
8 in connection therewith, including sums for legal services rendered and
9 costs incurred prior to the commencement of the proceeding or
10 enforcement or modification proceedings after entry of judgment.

11 Upon any appeal, the appellate court may, in its discretion, order
12 a party to pay for the cost to the other party of maintaining the
13 appeal and attorney's fees in addition to statutory costs.

14 The court may order that the attorney's fees be paid directly to
15 the attorney who may enforce the order in his name.