

§ 93-5-1 Causes for divorce

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Divorces from the bonds of matrimony may be decreed to the injured party for any one or more of the following twelve (12) causes:

First. Natural impotency.

Second. Adultery, unless it should appear that it was committed by collusion of the parties for the purpose of procuring a divorce, or unless the parties cohabited after a knowledge by complainant of the adultery.

Third. Being sentenced to any penitentiary, and not pardoned before being sent there.

Fourth. Willful, continued and obstinate desertion for the space of one (1) year.

Fifth. Habitual drunkenness.

Sixth. Habitual and excessive use of opium, morphine or other like drug.

Seventh. Habitual cruel and inhuman treatment, including spousal domestic abuse.

Spousal domestic abuse may be established through the reliable testimony of a single credible witness, who may be the injured party, and includes, but is not limited to:

That the injured party's spouse attempted to cause, or purposely, knowingly or recklessly caused bodily injury to the injured party, or that the injured party's spouse attempted by physical menace to put the injured party in fear of imminent serious bodily harm; or

That the injured party's spouse engaged in a pattern of behavior against the injured party of threats or intimidation, emotional or verbal abuse, forced isolation, sexual extortion or sexual abuse, or stalking or aggravated stalking as defined in Section 97-3-107, if the pattern of behavior rises above the level of unkindness or rudeness or incompatibility or want of affection.

Eighth. Having mental illness or an intellectual disability at the time of marriage, if the party complaining did not know of that infirmity.

Ninth. Marriage to some other person at the time of the pretended marriage between the parties.

Tenth. Pregnancy of the wife by another person at the time of the marriage, if the husband did not know of the pregnancy.

Eleventh. Either party may have a divorce if they are related to each other within the degrees of kindred between whom marriage is prohibited by law.

Twelfth. Incurable mental illness. However, no divorce shall be granted upon this ground unless the party with mental illness has been under regular treatment for mental illness and causes thereof, confined in an institution for persons with mental illness for a period of at least three (3) years immediately preceding the commencement of the action. However, transfer of a party with mental illness to his or her home for treatment or a trial visit on prescription or recommendation of a licensed physician, which treatment or trial visit proves unsuccessful after a bona fide effort by the complaining party to effect a cure, upon the reconfinement of the party with mental illness in an institution for persons with mental illness, shall be regular treatment for mental illness and causes thereof, and the period of time so consumed in seeking to effect a cure or while on a trial visit home shall be added to the period of actual confinement in an institution for persons with mental illness in computing the required period of three (3) years confinement immediately preceding the beginning of the action. No divorce shall be granted because of mental illness until after a thorough examination of the person with mental illness by two (2) physicians who are recognized authorities on mental diseases. One (1) of those physicians shall be either the superintendent of a state psychiatric hospital or institution or a veterans hospital for persons with mental illness in which the patient is confined, or a member of the medical staff of that hospital or institution who has had the patient in charge. Before incurable mental illness can be successfully proven as a ground for divorce, it shall be necessary that both of those physicians make affidavit that the patient is a person with mental illness at the time of the examination, and both affidavits shall be made a part of the permanent record of the divorce proceedings and shall create the prima facie presumption of incurable mental illness, such as would justify a divorce based on that ground. Service of process shall be made on the superintendent of the hospital or institution in which the defendant is a patient. If the patient is in a hospital or institution outside the state, process shall be served by publication, as in other cases of service by publication, together with the sending of a copy by registered mail to the superintendent of the hospital or institution. In addition, process shall be served upon the next blood relative and guardian, if any. If there is no legal guardian, the court shall appoint a guardian ad litem to represent the interest of the person with mental illness. The relative or guardian and superintendent of the hospital or institution shall be entitled to appear and be heard upon any and all issues. The status of the parties as to the support and maintenance of the person with mental illness shall not be altered in any way by the granting of the divorce.

However, in the discretion of the chancery court, and in those cases as the court may deem it necessary and proper, before any such decree is granted on the ground of incurable mental illness, the complainant, when ordered by the court, shall enter into bond, to be approved by the court, in such an amount as the court may think just and proper, conditioned for the care and keeping of the person with mental illness during the remainder of his or her natural life, unless the person with mental illness has a sufficient estate in his or her own right for that purpose.

HISTORY:

Codes, Hutchinson's 1848, ch. 34, art. 2 (3, 4, 6), art. 6 (1); 1857, ch. 40, arts. 11, 12, 13, 15; 1871, §§ 1767, 1768, 1770; 1880, §§ 1155, 1156, 1157; 1892, § 1562; 1906, § 1669; Hemingway's 1917, § 1411; 1930, § 1414; 1942, § 2735; Laws, 1932, ch. 275; Laws, 1938, ch. 264; Laws, 1956, ch. 248; Laws, 2008, ch. 442, § 25; Laws, 2010, ch. 476, § 79; Laws, 2017, ch. 427, § 6, eff from and after July 1, 2017.