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Sub. H.B. 233
(As reported by S. Judiciary Committee)

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Reps. Norris - Roberto - Galbraith - Pease - Cruze - L. Hughes - Smart -
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Sens. Gillmor - Corts - Woodland - Matia

- Permits judicial dissolution of marriage if both spouses have agreed in writing to matters specified by the statute.
- Sets forth factors to be considered in awarding alimony.
- Permits an award of alimony regardless of whether the parties are living together.
- Permits a subsequent judicial modification of a judgment entered in an action for alimony only.
- Reduces, from one year to six months, the period of residence required before a party may obtain a divorce or annulment.
- Authorizes the court to order a 90-day conciliation effort in domestic relation cases, before a conciliator named by the court.
- Requires prior marriage counseling before a marriage license may be issued to a minor under 18.
- For a divorce on the ground of separation without interruption, extends the period to four years, in the case of continuous confinement of one party in a mental institution.
- Abolishes the defenses of condonation and recrimination in divorce cases.
- Sets forth in detail provisions concerning child custody and support in actions for divorce, annulment or alimony.

CONTENT AND OPERATION

The bill permits a husband and wife to join in a petition for judicial dissolution of their marriage. They must sign a separation agreement providing for the division of all of their property; for child custody, support, and visitation; and for alimony. Each party must appear before the court to acknowledge under oath that he desires a dissolution of the marriage, that he has entered the agreement voluntarily, and that its terms are still satisfactory. If, at the hearing, either party is not satisfied with the terms of the agreement, the petition for dissolution must be denied. A decree ordering dissolution will have the same effect as a decree of divorce; and the court will retain jurisdiction to modify provisions relating to child custody, support, visitation, and periodic alimony.

Robertson

In any action for divorce, annulment, alimony, or dissolution, the court may, on its own motion or on the motion of a party, order the parties to undergo conciliation procedures for not more than 90 days with costs to the parties. Thereafter, the court may take further action only after the conciliator has reported to the court. Conciliation procedures and the conciliator are to be prescribed by the court. Personnel from public or private professional staffs involved with marital counseling may be utilized.

Plaintiffs must reside in the state for the six months immediately preceding the filing of a complaint for divorce or annulment. The present residence requirement is one year. In actions for judicial dissolution of a marriage pursuant to agreement of the parties, at least one of the parties must have been a resident of the state for six months. The statute, as it would be amended by the bill, would make no reference to a residency requirement for an action for alimony only. The present law expressly excludes such actions from residency requirements. Apparently this change in the manner of handling the subject would make no substantive change, leaving actions for alimony only with no residency requirement.

If either husband or wife has been continually confined in a mental institution, a divorce may be granted where there has been uninterrupted separation without cohabitation for a period of four years. Under existing law, living separate and apart uninterruptedly for two years without cohabitation is generally made a ground for divorce, without reference to the effect of confinement in a mental institution on this ground.

The bill also provides that a plea of condonation or recrimination is not a bar to a divorce.

A judgment for alimony only, granting real estate to one party, automatically bars the other party from any right of dower in such real estate. The bill also could authorize a court to bar each party from any rights of dower in property thereafter acquired by the other party.

The bill requires a court to consider all relevant factors when granting alimony, including earning abilities, ages, physical and emotional conditions, retirement benefits, expectancies and inheritances, duration of marriage, inappropriateness of the child's custodian working outside the home, standard of living during marriage, education, assets and liabilities, property brought to the marriage, and the contribution of a spouse as homemaker. It allows the court to order alimony even though the parties are not living separately. It also permits the court to modify a judgment for continuing alimony, previously entered in an action for alimony only, if circumstances change.

The bill requires the court to make an order for the disposition, care and maintenance of children where the proof substantiates a complaint for divorce, annulment or alimony; and permits the court to make such an order where the proof fails to substantiate the complaint.

In divorce, proceedings for dissolution of marriage, alimony, or child support, the court may order the parents to support a child without regard to parental misconduct. The court must consider all relevant factors in determining the amount necessary for child support, including the child's financial resources; the finances and needs of the custodial parent; the standard of living had the marriage continued;

the physical, emotional and educational needs of the child; the finances and needs of the noncustodial parent; and the educational opportunities available to the child had the marriage continued.

Before making an original award of custody, the court may order the parties and their minor children to submit to medical, psychological, and psychiatric examinations. Parties have the right to examine reports and cross-examine the investigator. Expenses of such examinations may be taxed as costs in the proceeding.

The bill restricts the power of the court to modify a decree granting custody of a minor child. A modification may be based only on new facts which have arisen since the original decree or on prior facts not known to the court at the time of the original decree. A change in custody may be granted only in three circumstances: (1) if the custodian agrees; (2) if the child has been integrated into the family of the person seeking custody; or (3) if the present environment so endangers the child's health or significantly impairs his emotional development that the harm likely to be caused by a change of custody is outweighed by the advantages of such a change.

In child custody cases, the court is required to consider all relevant factors including the wishes of parents, and of the child when eleven years of age or older; the child's relationships with the family and other significant persons; the child's adjustment to home, school, and community; and the mental and physical health of all involved persons.

If either applicant for a marriage license is under the age of 18, the probate court must require the applicants to state that they have received marriage counseling satisfactory to the court. The bill conforms the marriage license laws to the Juvenile Rules by requiring the Juvenile Court's consent to marriage of a pregnant minor female.

The bill removes the special statutory listing of the duties and powers of the senior judge of the Division of Domestic Relations of Summit County Court of Common Pleas.

In the Cuyahoga County Court of Common Pleas, the administrative judge is made administrator of the Domestic Relations Division.

The bill also makes references expressly conforming certain procedures in domestic relation cases to the Juvenile Rules and the Civil Rules.

COMMENT

The substitute bill reported by the Senate Judiciary Committee was printed omitting committee approved materials on conforming service of process to the Civil Rules and the teaching of a family life course in high schools. These will be reinserted in the bill by floor amendments.

Present wording of the bill may permit a minor male to marry a pregnant minor female but not a pregnant adult female.

HISTORY

| <u>ACTION</u> | <u>DATE</u> | <u>JOURNAL ENTRY</u> |
|------------------------|-------------|----------------------|
| Introduced | 2-15-73 | p. 6 |
| Reported, H. Judiciary | 7-27-73 | p. 93 |
| Passed House | 1-10-74 | p. 1771 |
| Reported, S. Judiciary | 3-14-74 | p. 1257 |