

**First Regular Session
Sixty-third General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 01-0872.01 Jennifer Gilroy

HOUSE BILL 01-1342

HOUSE SPONSORSHIP

Schultheis

SENATE SPONSORSHIP

(None)

House Committees
State, Veterans, & Military Affairs

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A REQUIREMENT THAT PARTIES WITH CHILDREN TO A**
102 **DOMESTIC RELATIONS PROCEEDING PARTICIPATE IN**
103 **COUNSELING PRIOR TO THE ENTRY OF THE DECREE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

As a condition precedent to the entry of a decree of legal separation or dissolution of marriage, requires parties with dependent children and parties who are expecting a child to have made a legitimate and substantial effort to participate in counseling that focuses on the impact of divorce on children for a minimum of one year. Makes an exception in those cases in which the court determines that there is demonstrated physical or serious psychological abuse and in those cases in which

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

service of process was satisfied by publication.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** Article 10 of title 14, Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW SECTION to read:

4 **14-10-120.1. Counseling for parties with children prior to entry**
5 **of decree - legislative declaration.** (1) (a) THE GENERAL ASSEMBLY
6 HEREBY FINDS THAT CHILDREN ARE THE INNOCENT VICTIMS OF LEGAL
7 SEPARATION AND DISSOLUTION OF MARRIAGE AND THAT, WHEN TWO
8 PARTIES SEPARATE OR DISSOLVE THEIR MARRIAGE, THERE IS A
9 DEVASTATING IMPACT ON THEIR CHILDREN WHO HAVE HAD NO VOICE IN
10 THE DECISION TO DISRUPT THE FAMILY. OFTENTIMES, THESE "CHILDREN OF
11 DIVORCE" ARE NEGATIVELY AFFECTED ACADEMICALLY, SOCIALLY,
12 EMOTIONALLY, AND PSYCHOLOGICALLY AS A RESULT OF THE STRESS AND
13 TRAUMA PLACED ON THE FAMILY BY THE SEPARATION OR DISSOLUTION
14 PROCESS AND BY THE ASSOCIATED DISCORD BETWEEN THEIR PARENTS
15 OCCASIONED BY THE PROCESS. THE GENERAL ASSEMBLY FINDS THAT
16 SEVERE EMOTIONAL TRAUMA TO THE CHILDREN CAN RESULT AND HAVE
17 SHORT-TERM AND LONG-TERM EFFECTS ON THOSE CHILDREN. THE
18 GENERAL ASSEMBLY FURTHER FINDS THAT PARENTS PURSUING LEGAL
19 SEPARATION OR DISSOLUTION OF MARRIAGE MAY BE OBLIVIOUS TO OR
20 ATTEMPT TO DENY THE HARM THEY CAUSE THEIR CHILDREN THROUGH THE
21 SEPARATION OR DISSOLUTION OF MARRIAGE PROCESS. THE GENERAL
22 ASSEMBLY HEREBY FINDS THAT COUNSELING MAY BENEFIT PARTIES
23 CONSIDERING LEGAL SEPARATION OR DISSOLUTION OF MARRIAGE, BY
24 EDUCATING THEM ABOUT THE SHORT-TERM AND LONG-TERM EFFECTS THAT
25 SUCH A DECISION MAY HAVE ON THEIR CHILDREN AND BY PROVIDING THEM

1 WITH THE TOOLS NECESSARY TO AVERT THE ULTIMATE DECISION TO
2 SEPARATE OR DIVORCE AND TO KEEP THE FAMILY INTACT.

3 (b) ACCORDINGLY, THE GENERAL ASSEMBLY HEREBY DETERMINES
4 AND DECLARES THAT IT IS IN THE BEST INTERESTS OF THE CHILDREN,
5 FAMILIES, AND CITIZENS OF THE STATE OF COLORADO TO REQUIRE THAT, IN
6 MOST CASES, PARTIES TO A LEGAL SEPARATION OR DISSOLUTION OF
7 MARRIAGE PROCEEDING FILED PURSUANT TO THIS ARTICLE WHO HAVE
8 CHILDREN PURSUE COUNSELING PRIOR TO THE COURT'S ENTRY OF A DECREE
9 AND THAT A MAJOR PORTION OF SUCH COUNSELING FOCUS ON THE CURRENT
10 AND FUTURE POTENTIAL HARM TO CHILDREN OF SEPARATION OR
11 DISSOLUTION.

12 (2) (a) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS
13 SUBSECTION (2), IN PROCEEDINGS PURSUANT TO THIS ARTICLE IN WHICH
14 THERE ARE DEPENDENT CHILDREN OF THE MARRIAGE OR IN WHICH THE WIFE
15 IS PREGNANT, THE COURT SHALL REFER THE PARTIES SEEKING THE
16 SEPARATION OR DISSOLUTION OF MARRIAGE TO COUNSELING OF THEIR
17 CHOICE, WHICH COUNSELING SHALL FOCUS SUBSTANTIALLY ON THE
18 POTENTIAL HARM TO THE CHILDREN OF SEPARATION OR DISSOLUTION OF
19 THE MARRIAGE, IF THE PARTIES HAVE NOT ALREADY COMMENCED SUCH
20 COUNSELING, UNTIL SUCH TIME AS THE PARTIES HAVE RECONCILED OR
21 MADE A LEGITIMATE AND SUBSTANTIAL EFFORT TOWARD COUNSELING FOR
22 A PERIOD OF ONE YEAR FOLLOWING THE FILING OF THE PETITION,
23 WHICHEVER OCCURS FIRST. IN THE EVENT THE PARTIES DO NOT RECONCILE,
24 THE COUNSELOR PROVIDING SUCH SERVICES SHALL FURNISH THE COURT
25 WITH DOCUMENTATION THAT THE PARTIES HAVE PARTICIPATED IN SUCH
26 COUNSELING, FOCUSED SUBSTANTIALLY ON THE POTENTIAL HARM TO THE
27 CHILDREN OF SEPARATION OR DISSOLUTION OF THE MARRIAGE, FOR A

1 PERIOD OF ONE YEAR OR MORE. UPON REVIEW OF THE COUNSELOR'S
2 REPORT, THE COURT SHALL PROCEED AS SPECIFIED IN SECTION 14-10-110.

3 (b) THE COURT SHALL NOT REQUIRE THE COUNSELING PRESCRIBED
4 IN PARAGRAPH (a) OF THIS SUBSECTION (2) WHERE:

5 (I) THE COURT DETERMINES THAT ONE OF THE PARTIES HAS
6 DEMONSTRATED PHYSICAL OR SERIOUS PSYCHOLOGICAL ABUSE BY THE
7 OTHER PARTY; OR

8 (II) SERVICE OF PROCESS WAS SATISFIED BY PUBLICATION
9 PURSUANT TO SECTION 14-10-107 (4).

10 **SECTION 2.** 14-10-106, Colorado Revised Statutes, is amended
11 to read:

12 **14-10-106. Dissolution of marriage - legal separation.**

13 (1) (a) The district court shall enter a decree of dissolution of marriage
14 when:

15 (I) The court finds that one of the parties has been domiciled in
16 this state for ninety days next preceding the commencement of the
17 proceeding;

18 (II) The court finds that the marriage is irretrievably broken; ~~and~~

19 (III) The court finds that ninety days or more have elapsed since
20 it acquired jurisdiction over the respondent either as the result of process
21 pursuant to rule 4 of the Colorado rules of civil procedure or as the result
22 of the act of the respondent in joining as copetitioner in the petition or in
23 entering an appearance in any other manner; AND

24 (IV) IF THERE ARE DEPENDENT CHILDREN OF THE MARRIAGE OR IF
25 THE WIFE IS PREGNANT, THE COURT FINDS THAT THE PARTIES HAVE MADE
26 A LEGITIMATE AND SUBSTANTIAL EFFORT TO PARTICIPATE IN COUNSELING
27 FOR A MINIMUM OF ONE YEAR FOLLOWING THE FILING OF THE PETITION, AS

1 PROVIDED IN SECTION 14-10-120.1.

2 (b) In connection with every decree of dissolution of marriage and
3 to the extent of its jurisdiction to do so, the court shall consider, approve,
4 or allocate parental responsibilities with respect to any child of the
5 marriage, the support of any child of the marriage who is entitled to
6 support, the maintenance of either spouse, and the disposition of property;
7 but the entry of a decree with respect to parental responsibilities, support,
8 maintenance, or disposition of property may be deferred by the court until
9 a time subsequent to the decree of dissolution of marriage upon a finding
10 that such deferral is necessary in the best interests of the parties.

11 (2) (a) If a party requests a decree of legal separation rather than
12 a decree of dissolution of marriage, the court shall grant the decree in that
13 form unless the other party objects.

14 (b) IN THOSE CIRCUMSTANCES IN WHICH THERE ARE DEPENDENT
15 CHILDREN OF THE MARRIAGE OR IN WHICH THE WIFE IS PREGNANT, THE
16 COURT SHALL NOT GRANT A DECREE OF LEGAL SEPARATION UNLESS IT
17 FINDS THAT THE PARTIES HAVE MADE A LEGITIMATE AND SUBSTANTIAL
18 EFFORT TO PARTICIPATE IN COUNSELING FOR A MINIMUM OF ONE YEAR
19 FOLLOWING THE FILING OF THE PETITION, AS PROVIDED IN SECTION
20 14-10-120.1.

21 **SECTION 3.** 14-10-110, Colorado Revised Statutes, is amended
22 to read:

23 **14-10-110. Irretrievable breakdown.** (1) If both of the parties
24 by petition or otherwise have stated under oath or affirmation that the
25 marriage is irretrievably broken or one of the parties has so stated and the
26 other has not denied it, there is a presumption of such fact, and, unless
27 controverted by evidence, the court shall, after hearing, make a finding

1 that the marriage is irretrievably broken.

2 (2) If one of the parties has denied under oath or affirmation that
3 the marriage is irretrievably broken, the court shall consider all relevant
4 factors, including, AMONG ITS UTMOST CONSIDERATIONS, THE BEST
5 INTERESTS OF ANY DEPENDENT CHILDREN OF THE MARRIAGE AND the
6 circumstances that gave rise to the filing of the petition and the prospect
7 of reconciliation, and shall:

8 (a) Make a finding whether the marriage is irretrievably broken
9 AND ENTER A DECREE PURSUANT TO SECTION 14-10-106; or

10 (b) Continue the matter for further hearing not less FEWER than
11 thirty days nor more than sixty days later, or as soon thereafter as the
12 matter may be reached on the court's calendar, and may suggest to the
13 parties that they seek counseling OR, IN THOSE CASES IN WHICH THE
14 PARTIES HAVE DEPENDENT CHILDREN OF THE MARRIAGE OR IN WHICH THE
15 WIFE IS PREGNANT, THAT THEY CONTINUE COUNSELING PURSUANT TO
16 SECTION 14-10-120.1. At the adjourned hearing, the court shall make a
17 finding whether the marriage is irretrievably broken.

18 **SECTION 4. Effective date - applicability.** This act shall take
19 effect July 1, 2001, and shall apply to petitions for dissolution of marriage
20 or legal separation filed on or after said date.

21 **SECTION 5. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.