

**23-2701. Grounds for divorce or separate maintenance.** (a) The district court shall grant a decree of divorce or separate maintenance for any of the following grounds: (1) Incompatibility; (2) failure to perform a material marital duty or obligation; or (3) incompatibility by reason of mental illness or mental incapacity of one or both spouses.

(b) The ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall require a finding of either: (1) Confinement of the spouse in an institution by reason of mental illness for a period of two years, which confinement need not be continuous; or (2) an adjudication of mental illness or mental incapacity of the spouse by a court of competent jurisdiction while the spouse is confined in an institution by reason of mental illness. In either case, there must be a finding by at least two of three physicians, appointed by the court before which the action is pending, that the mentally ill or mentally incapacitated spouse has a poor prognosis for recovery from the mental illness or mental incapacity, based upon general knowledge available at the time. A decree granted on the ground of incompatibility by reason of mental illness or mental incapacity of one or both spouses shall not relieve a party from contributing to the support and maintenance of the mentally ill or mentally incapacitated spouse. If both spouses are confined to institutions because of mental illness or mental incapacity, the guardian of either spouse may file a petition for divorce and the court may grant the divorce on the ground of incompatibility by reason of mental illness or mental incapacity.

**History:** L. 1963, ch. 303, 60-1601; L. 1965, ch. 354, § 14; L. 1967, ch. 327, § 1; L. 1969, ch. 286, § 1; L. 1982, ch. 152, § 1; Jan. 1, 1983.