

# MAINE STATE LEGISLATURE

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FOURTH REVISION.

THE  
REVISED STATUTES

OF THE

STATE OF MAINE,

PASSED AUGUST 29, 1883, AND TAKING EFFECT JANUARY 1, 1884.

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BY THE AUTHORITY OF THE LEGISLATURE.



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# TITLE FIVE.

## Domestic Relations.

- CHAP. 59. Marriage and its solemnization; record of marriages, births and deaths. Parents and children. Abused and neglected children.
60. Divorce and annulling of marriages.
  61. The rights of married women.
  62. Masters, apprentices and servants.

### CHAPTER 59.

#### MARRIAGE AND ITS SOLEMNIZATION; RECORD OF MARRIAGES, BIRTHS, AND DEATHS. PARENTS AND CHILDREN. ABUSED AND NEGLECTED CHILDREN.

##### MARRIAGE AND ITS SOLEMNIZATION.

- SEC. 1. Marriages prohibited within certain degrees of relationship.
2. Insane persons and idiots are incapable of contracting marriage.
3. Polygamy prohibited.
4. Notices of intention of marriage, when and where to be recorded; book of records how labelled; to be kept open to inspection.
5. Town clerk to give certificate to parties, to be presented to magistrate before marriage; but none to be given to minors without written consent of parents or guardians, or to paupers. Penalty.
6. Penalty for obtaining certificate by fraud, or marrying unlawfully.
7. Residents going out of state for purpose of marriage, to file certificate with town clerk on return. Penalty for neglect.
8. Caution, with reasons, may be filed with clerk when unlawful marriage is supposed to be intended. Clerk to withhold certificate and notify person filing caution. Two justices of the peace to decide on sufficiency of reasons, after notice to parties. Costs.
9. Marriage in another state, with intent to evade the preceding provisions, void in this state.
10. Marriages solemnized among Quakers or Friends in their meetings valid, and not affected by foregoing. Clerk of such meeting to deliver a list thereof to the clerk of his town once a year. Penalty for neglect.
11. Justices of the peace, and ordained ministers and licensed preachers commissioned by the governor and council for that purpose, may solemnize marriages within certain limits. Women may be authorized.
12. Ministers and preachers to hold office during the pleasure of the executive; commission is conclusive evidence of ministerial office.
13. Penalty for marrying persons in violation of the foregoing provisions.
14. Penalty for solemnizing marriages by persons not authorized.
15. Persons authorized to solemnize marriages, to keep record and make return to town clerk monthly. Penalty for neglect.
16. Attested copy to be received in all courts as evidence of marriage.

- SEC. 17. Marriages valid notwithstanding informalities or want of authority on the part of the person solemnizing same, if consummated in good faith by either of the persons married.
18. Penalty for giving false certificate of intention.
19. Town clerk to make annual return of marriages to clerk of court.

RECORD OF MARRIAGES, BIRTHS, AND DEATHS.

- SEC. 20. Town clerk to record marriages, births, and deaths, and make annual return to secretary of state, to be filed by him.
21. Assessors to ascertain births and deaths, and to return to town clerk; parents and others to notify him of births and deaths.
22. Penalty for violating any of the three preceding sections.

PARENTS AND CHILDREN.

- SEC. 23. Unmarried mother may bind illegitimate children; but her right to bind legitimate or illegitimate children, ceases at marriage.
24. Widowed mother has the same right as father to custody and earnings of minor children.

ABUSED AND NEGLECTED CHILDREN.

- SEC. 25. On written complaint of two citizens, town officers may give notice of hearing in case of alleged abuse or neglect of a child by its parents. Proceedings.
26. Municipal officers may complain to magistrate. Proceedings. Magistrate may order child to be placed in charitable institution, or with private person.
27. Magistrate shall require such person to give bond. May examine into condition of child and make further orders.
28. When town officers may take child into custody before hearing.
29. Parents may apply for restoration of child. Notice and hearing.
30. Expense of child's support may be recovered of parents.
31. Towns may provide for support of such children.

MARRIAGE AND ITS SOLEMNIZATION.

SEC. 1. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister; and no woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother.

Marriages prohibited within certain degrees. R.S., c. 59, § 1.

SEC. 2. No insane person or idiot is capable of contracting marriage.

Certain marriages void. 1883, c. 203. 46 Me., 510.

SEC. 3. Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

Polygamy prohibited. R.S., c. 59, § 3.

SEC. 4. Residents of the state intending to be joined in marriage, shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted; and if one only of the parties resides in the state, they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such party resides, at least five days before such certificate is granted; and the book in which such record is made, shall be labelled on the outside of its cover, "Record of intentions of marriage," and be kept open to public inspection in the

Marriage, notice of intentions of, to be recorded. 1875, c. 40.

—where one of the parties lives out of the state, intentions, how recorded.

**CHAP. 59.** office of the clerk; and if there is no such clerk in the place of their residence, the like entry shall be made with the clerk of an adjoining town.

Clerk to give certificate to parties, to be presented to magistrate before marriage begins; but none to be given to minors without written consent of parents, or to paupers.—penalty. R.S., c. 59, § 5.

Obtaining certificate by fraud, or marrying unlawfully. R.S., c. 59, § 6. Certificate of marriage out of the state, to be filed. R.S., c. 59, § 7.

—penalty for neglect.

Proceedings when marriage is forbidden. R.S., c. 59, § 8.

Marriage in another state in evasion of first three sections, void here. 1883, c. 227.

Marriage among quakers. R.S., c. 59, § 10.

Who may solemnize

**SEC. 5.** The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; and it shall be delivered to the minister or magistrate before he begins to solemnize the marriage; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents or guardians first presented, if they have any living in the state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk; and for an intentional violation of the foregoing prohibitions, or for falsely stating the residence of either party named in such certificate, such clerk forfeits twenty dollars.

**SEC. 6.** Whoever contracts a marriage, or makes false representations to procure such certificate or the solemnization of marriage contrary to this chapter, forfeits one hundred dollars.

**SEC. 7.** When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall file a certificate or declaration of their marriage with the clerk of the town in which each of them then lived, within seven days after their return, or forfeit ten dollars, half to the prosecutor and half to the town where the forfeiture is incurred.

**SEC. 8.** Any person, believing that parties are about to contract marriage when either of them cannot lawfully do so, may file a caution and the reasons therefor, in the office of the clerk where notice of their intentions should be filed. Then if either party applies to enter such notice, the clerk shall withhold the certificate, until a decision is made by two justices of the peace, approving the marriage, after due notice to, and hearing all concerned; *provided*, that the person filing the caution, shall, within seven days thereafter, procure the decision of such justices, unless they certify that further time is necessary for the purpose. In which case a certificate shall be withheld until the expiration of the certified time. He shall, finally, deliver or withhold the certificate in accordance with the final decision of said justices. If the decision is against the sufficiency, the justices shall enter judgment against the applicant for costs, and issue execution therefor.

**SEC. 9.** When residents of this state, with intent to evade the provisions of sections one, two and three of this chapter, or of chapter sixty, and to return and reside here, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, such marriage is void in this state.

**SEC. 10.** Marriages solemnized among Quakers or Friends, in the form heretofore practiced in their meeting, are valid, and not affected by the foregoing provisions; and the clerk or the keeper of the records of the meeting in which they are solemnized, shall once every year deliver a list thereof to the clerk of his town, or forfeit fifty dollars, half to the county, and half to the prosecutor.

**SEC. 11.** Every justice of the peace residing in the state, every

ordained minister of the gospel, and every person licensed to preach by an association of ministers, religious seminary, or ecclesiastical body, duly appointed and commissioned for that purpose by the governor, may solemnize marriages within the limits of his appointment. The governor, with the advice and consent of council, may appoint women, otherwise eligible under the constitution, to solemnize marriages.

SEC. 12. Such ordained or licensed minister holds his office during the pleasure of the executive; and said commission is conclusive evidence that he is an ordained or licensed minister.

SEC. 13. Whoever, commissioned as aforesaid, knowingly and wilfully joins persons in marriage contrary to this chapter, forfeits one hundred dollars, two thirds thereof to the county where the offence is committed, and one third to the prosecutor, to be recovered by the county treasurer or by the parent, guardian, or other person under whose immediate care and government either of the parties was at the time of such marriage; and such offender is forbidden to join any persons in marriage thereafter.

SEC. 14. If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any persons in marriage, he shall be confined to hard labor in the state prison for not more than five years, or fined not exceeding one thousand dollars.

SEC. 15. Every person, commissioned as aforesaid, shall keep a record of all marriages solemnized by him, and, by the fifteenth day of each month, make return thereof for the preceding month, to the clerk of the town where the marriage is solemnized, certifying the names of the parties, the places of their residence, and the date of the marriage; and for any neglect to do so, he forfeits fifty dollars, half to the county, and half to the prosecutor.

SEC. 16. A copy of a record so made and kept, attested or sworn to by a justice of the peace, commissioned minister, or town clerk, shall be received in all courts as evidence of the fact of marriage.

SEC. 17. No marriage, solemnized before any known inhabitant of the state professing to be a justice of the peace, or an ordained or licensed minister of the gospel duly appointed and commissioned, is void, nor is its validity affected by any want of jurisdiction or authority in the justice or minister, or by any omission or informality in entering the intention of marriage, if the marriage is in other respects lawful, and consummated with a full belief, on the part of either of the persons married, that they are lawfully married.

SEC. 18. A town clerk who makes out and delivers to any person a false certificate of the entry of the intention of marriage, knowing it to be false in any particular, shall be fined one hundred dollars or imprisoned six months.

SEC. 19. The clerk of every town shall return to the clerk of the judicial courts for his county, a transcript of all the records of marriages made upon his books during the year for which he was clerk; and said clerk of the courts shall record the same in a suitable book; and be allowed therefor from the county treasury at the rate of twelve cents a page.

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marriages.  
1876, c.110, § 2.  
18 Me., 310.  
42 Me., 288.  
72 Me., 548.  
—women,  
authorized.  
1875, c. 56.  
62 Me., 596.  
Tenure of  
ministers.  
R.S., c.59, § 12.  
42 Me., 288.

Penalty for  
joining  
persons in  
marriage in  
violation  
of these  
provisions.  
R.S., c.59, § 13.

Penalty for  
solemniza-  
tion of a  
marriage by  
a person not  
authorized.  
R.S., c.59, § 14.  
Return of  
marriages to  
be made to  
town clerk.  
1876, c.110, § 1.

—penalty for  
neglect.

Copies, legal  
evidence.  
R.S., c.59, § 16.  
19 Me., 158.

Marriage  
valid, if con-  
summated in  
good faith, by  
either party,  
although not  
solemnized in  
strict legal  
form.  
R.S., c.59, § 17.  
6 Me., 149.  
36 Me., 454.  
61 Me., 177.

Penalty for  
false  
certificate of  
intention.  
R.S., c.59, § 18.

Town clerk to  
make annual  
return of  
marriages to  
clerk of court.  
R.S., c.59, § 19.

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## RECORD OF MARRIAGES, BIRTHS, AND DEATHS.

Clerk to record marriages, births, and deaths, and make annual return to sec'y of state. R.S., c. 59, § 20.  
Assessors to ascertain births and deaths, and return to town clerk; and parents and others to notify him of births and deaths. R.S., c. 59, § 21.

Penalty for violating sections 19, 20 and 21. 1875, c. 29.

Mother may bind illegitimate child; but not at re-marriage. R.S., c. 59, § 24.  
Widowed mothers, rights touching minors. R.S., c. 59, § 25.

Municipal officers shall, on complaint, give notice of hearings on cases of alleged abuse of children by parents. 1881, c. 72, § 1.

—hearing.

—record of proceedings.

Municipal officers may

SEC. 20. The clerk of every town shall record in a suitable book the marriages, births, and deaths occurring therein; and by the second Monday of May, annually, shall make certified returns thereof to the secretary of state for the year ending on the last day of March; and said secretary shall receive and file them in his office.

SEC. 21. The assessors, while taking the inventory of the polls and estates, annually, shall ascertain by inquiry the births and deaths during the year ending on the last day of March, and make return thereof to the town clerk by the last day of April; and parents, householders, masters of work-houses, alms-houses, prisons, and vessels, shall give notice to the clerk of their town of the births and deaths which take place in their families, houses, or vessels, and the elder person next of kin shall give notice of the death of his kindred.

SEC. 22. Whoever neglects to perform the duties required of him in the three preceding sections, forfeits not exceeding ten dollars for each offence, to be recovered by complaint, half to the town and half to the prosecutor.

## PARENTS AND CHILDREN.

SEC. 23. The unmarried mother of an illegitimate child may bind him during minority; but her right to bind legitimate or illegitimate children ceases at her marriage, and cannot be exercised by her or her husband while it continues.

SEC. 24. Widowed mothers have the same right to the custody and earnings of minor children without guardians, as a father has.

## ABUSED AND NEGLECTED CHILDREN.

SEC. 25. When complaint in writing, signed by two or more citizens of any town or city alleging that any child therein is wilfully neglected or cruelly treated by its parents, or by the wilful fault of such parents is not provided with suitable food, clothing or privileges of education, or is kept at a house of ill-fame, or that such child is an orphan without means of support or kindred of sufficient ability who will furnish such support, is made to the municipal officers of such town or city, such officers shall give notice of a time and place of hearing by serving such notice, with a copy of such petition, upon such parents, at least two days before such hearing, or by publishing a copy of such petition and notice in some newspaper in the county where such child resides, at least seven days before such hearing. Said officers shall at the time and place mentioned in said notice, give a hearing to the parties and their witnesses, and if they find that the allegations in the petition are true, and that it is just and expedient to make further provision for the care, education and support of such child, they shall make a record thereof, signed by them or a majority of them, which shall be recorded by the clerk of said city or town in a suitable book.

SEC. 26. Upon making such record such municipal officers or some person appointed by them for that purpose, shall make complaint under

oath to a judge of a court or to any trial justice, which complaint shall contain, in substance, the allegations set forth in said petition, and a prayer that such provision may be made for the care, custody, support and education of the child named in said complaint as justice requires, and thereupon the magistrate, before whom such complaint is made, shall issue his warrant and cause such child to be brought before him, and if, upon notice and hearing, it appears that the allegations of the complaint are true, and that justice requires that such child shall be supported and educated away from its parents, he shall order it to such place or institution as is provided therefor by such town or city, or to such charitable institution or private person, as he deems suitable, *provided*, that such institution or person consents to receive, support and educate it; but such order shall not extend beyond the time when such child arrives at the age of twenty-one years, if a male, or at the age of eighteen years, if a female.

SEC. 27. Whenever the magistrate deems it suitable and conducive to the public welfare, that such child be placed under the control of a private person, he shall first take a bond from such person, running to the town where the child resides, in such sum and with such sureties as he approves, conditioned that such person shall humanely treat and properly support, clothe and educate the child, and in case of the non-performance of said bond, a suit may be commenced thereon, and the sum recovered upon such bond shall be paid into the treasury of the town to which the bond is given. Upon application to any magistrate, he shall examine into the condition and welfare of the children who have been provided for under this chapter, and may at any time make such further order in relation to their care, custody, support and education as justice demands.

SEC. 28. Whenever the municipal officers of a town or city have reason to believe that any child will be removed beyond the limits of the state before a hearing can be had, as provided in this chapter, they may at any time after filing the petition, take the child into their custody and keep it until the hearing before the magistrate, as hereinbefore provided.

SEC. 29. Whenever a child is in the custody of any public or charitable institution, the parents or either of them may make application in writing to any justice of the supreme judicial court to have its custody restored to them. Such notice of the application and the time and place of the hearing thereon as the court orders, shall be given to such institution and to the municipal officers of the town where the proceedings herein provided were commenced, and if, upon such hearing, it appears that the applicant is of sufficient ability and inclination suitably to provide for its support and education, and that justice requires that its custody be restored to such applicant, the judge shall so order, and the custody and control of said child shall thereupon be given to such applicant until the further order of court.

SEC. 30. Any town incurring expenses under the five preceding sections, through the fault of parents who are able properly to support and

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make complaint to court or trial justice. 1881, c. 72, § 2.

—proceedings before magistrate.

—magistrate may order child to be placed in charitable institution, or with private person.

Magistrate shall require such private person, to give bond. 1881, c. 72, § 3.

—magistrate may examine into condition of such children and make further order for their benefit.

When town officers may take temporary custody of child in certain cases. 1881, c. 72, § 4.

Parents of child in an institution may make application to have its custody restored to them. 1881, c. 72, § 5.

—notice, hearing, and order.

Expenses may be recovered



- CHAP. 59. educate their children, but wrongfully neglect and refuse to do so, may recover of them, in an action of debt, the amount so expended.
- of parents.  
1881, c. 72, § 6.  
Towns may provide for children.  
1881, c. 72, § 7.
- SEC. 31. Any town may make proper provision for the support of children mentioned in the six preceding sections, and such support shall not make such children or their parents, paupers.

## CHAPTER 60.

### DIVORCE AND ANNULING OF MARRIAGES.

#### WHAT MARRIAGES ARE VOID WITHOUT PROCESS.

- SEC. 1. Certain marriages void without process.

#### DIVORCE FROM BONDS OF MATRIMONY.

- SEC. 2. In what cases divorces may be granted; proviso: in case of collusion or of adultery by both divorce not to be decreed; either party is a witness.
3. Libel how filed and served. Court or justice may order notice in vacation.
4. Residence of libellee to be named, when ascertainable, and actual notice obtained. If residence cannot be ascertained, libellant shall so swear.
5. False swearing, penalty for.
6. Pending libel, court or justice may order husband to pay for wife's defence or prosecution thereof, and for her support. Care of minor children.
7. Court may free wife from restraint, pending a libel.
8. Case to be tried by a jury, when either party requests or court orders it.
9. Dower, alimony, and other provisions for wife, on divorce for husband's fault.
10. Provision for husband, in case of divorce for adultery of wife. Exceptions.
11. Decrees to be nisi at first; to become absolute, after six months.
12. Neither party shall marry again within two years, and libellee not at all, without permission of court.
13. Clerks, when to make return of applications and decrees to secretary of state.
14. New trial may be had within three years, except in certain cases. Alimony.
15. Divorce decreed out of the state, when void and when valid.
16. Issue not debarred by divorce, from inheriting.
17. Disposal of minor children, and compulsory powers of court.

#### ANNULING ILLEGAL MARRIAGES.

- SEC. 18. Illegal marriages, how annulled.
19. Issue, when legitimate and when not, after divorce.
20. Issue of second marriage, when legitimate.

#### WHAT MARRIAGES ARE VOID WITHOUT PROCESS.

Certain marriages void, without process.  
R.S., c. 60, § 1.  
31 Me., 491.  
32 Me., 589.

- SEC. 1. Marriages prohibited in sections one, two, and three, of chapter fifty-nine, if solemnized in this state, are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolves the bonds of matrimony, without legal process in either case.

#### DIVORCE FROM BONDS OF MATRIMONY.

In what cases divorce may be granted.  
1883, c. 212, § 1.

- SEC. 2. A divorce from the bonds of matrimony may be decreed by the supreme judicial court in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication, cruel and abusive treatment, or on the libel of the wife, where