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CHAPTER 1055

NEGLECT OF CHILDREN; CUSTODY

Sec.

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§ 3791. Investigation of cruel treatment; prosecutions

The department and its agents, so far as funds are available, shall investigate all cases of cruel or injurious treatment of children coming to their knowledge, and shall cause offenders against any law for the protection of children or prevention of cruelty to the same to be prosecuted. The costs of court proceedings under this section shall be taxed and paid in the same manner as in any criminal process. All fines imposed for the punishment of offenses under this chapter shall be paid over to the county treasurer of the county in which the offenses may have been committed.

R.S.1954, c. 25, § 248; 1959, c. 307, § 2.

§ 3792. Neglect; warrants, hearings and custody

When complaint in writing signed by an agent of the department, sheriff, police officer or by 3 or more citizens of any town or city is made under oath to the probate court of the county or the District Court having jurisdiction in said city or town, alleging that such child in such city or town is cruelly treated or willfully or grossly neglected by its parents or parent or other person having custody or control of such child or by the failure of such parents or parent or other person having custody or control of such child is not provided with suitable food, clothing or privileges of education, or is kept at or allowed to frequent any disorderly house, house of ill fame, gambling place or place where

intoxicating liquors are sold, or other places injurious to the health or morals, or that such child is an orphan, or is a child whose mother is an inmate of a state institution, without means of support or kindred of sufficient ability who will furnish such support, and praying that suitable and proper provision be made for the care, custody, support and education of the child named in such complaint, the court, in term time or vacation, may fix a time for hearing upon said complaint to be held in term time or vacation, and may issue a warrant causing the parents or parent or other persons having custody or control of such child and the child, if necessary, to be brought before said court forthwith in term time or vacation, or may order notice to be given to said parents or parent or said other persons in such manner or in such length of time as the court deems proper. The court shall order notice in writing to be given by mail or otherwise to the department and to the county attorney of the county where the child is residing at least 10 days before the date set for hearing. The department and the county attorney may waive such notice. It shall be the duty of the county attorney to represent the interests of the department at the hearing. If, after hearing, it appears that any material allegations of said complaint are true, the court may order said child committed into the custody of the department itself or into the custody of any suitable person or duly incorporated children's institution or child welfare organization, whose standards of care and maintenance are approved by the department, and who consent to receive said child, at their own expense, unless the payment of such expense by the State shall be approved by the department which approval and payment may at any time be withdrawn. The court shall cause a copy of the order of commitment and of any subsequent modifications thereof to be sent forthwith to the department. The court, in term time or vacation, may order said child, pending hearing upon said complaint, committed into the custody of the department or into the custody of any suitable person approved by the court, without regard to section 3794 as to bond, or into the custody of a duly incorporated children's institution or child welfare organization approved, and direct the department, person or organization to make such provision for its care as may be necessary pending hearing. The expense, if any, of such care shall be paid by the department, person or organization to whom the child is committed. When any child has been committed to the custody of the department, or into the custody of any suitable person or duly incorporated children's institution or child welfare organization under this section, the court may order the

parent of such child to contribute to the support of his minor child or children such sums payable weekly, monthly or quarterly as deemed reasonable and just, and may enforce obedience by appropriate decrees. Execution may issue for said sums, when payable, and for costs as in actions of tort. Whoever, being a parent of any child committed under this section, shall be found guilty of having without just and sufficient cause failed or neglected to support said child, shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months, or by both. It shall be the duty of the county attorneys in their respective counties to prosecute all violations of this section that are brought to their attention.

R.S.1954, c. 25, § 249; 1957, c. 82; 1959, c. 307, § 3; 1963, c. 171, §§ 1, 2; c. 402, § 36.

§ 3793. Parent's rights divested; support; alteration of decree; guardianship

Orders and decrees provided for in sections 3791 and 3792 shall have the same effect to divest the parent or parents of all legal rights in respect to said child as specified in Title 19, section 535, but shall not relieve the parent or parents of liability for the support of such child or from the penalties for failure to support which are provided in Title 19, sections 481 to 483 and 486. Such original orders shall not extend beyond the time when the child shall reach the age of 18 years, but upon application by the department, the court, for sufficient cause, may extend such orders to the time when the child shall reach the age of 21 years. The children's institution or organization or suitable person or department to which said child is committed shall have full custody and control over said child thereafter for said time and, if no other guardian is appointed, the department shall have all the powers as to the person, property, earnings and education of every child committed to its custody during the term of commitment which a guardian has as to a ward, and shall have authority to give the consent required in Title 19, section 532. An appeal may be taken to the Superior Court from the order or decree of any probate court or the District Court, determining the custody of the child under this chapter. The proceedings under such appeal shall follow the form prescribed for appeal from probate courts or from the District Court, as the case may be, but pending action upon any such appeal, the court may order the custody of the child to be retained by said suitable person, children's institution, child welfare organization or the department. Upon

application by the department, by a municipal board, by the parent or parents or guardian of any such child, or by the children's institution or child welfare organization or suitable person to which such child may have been committed, to the court making the commitment said court shall examine into the conditions and welfare of the said child and may at any time make such further order in relation to his care, custody, support and education as justice may demand and may discharge any child from custody or restore its custody to its parents, or either of them, if satisfied that the objects of commitment have been accomplished; this latter provision shall not apply to a child who was legally adopted subsequent to the date of commitment.

R.S.1954, c. 25, § 250; 1959, c. 317, § 9; 1963, c. 402, § 37.

§ 3794. Bond required for private custody; maintenance and education; children and relatives not paupers

Whenever the court deems it suitable and conducive to the public welfare that any such child be placed under the control of an individual, the court shall first take a bond from such person running to the State in such sum and with such sureties as the court approves, conditioned that such person shall humanely treat and properly support, clothe and educate the child, and in case of nonperformance of the conditions of said bond, a civil action may be commenced thereon and the sum so recovered shall be paid into the State Treasury for the joint benefit of the State and town of settlement, if any, of said child in proportion to the amount of expenses incurred by the State and said town because of the failure of said person so to treat, support, clothe and educate said child. The department shall provide for the maintenance and education in or by duly incorporated children's institutions and child welfare organizations, or in family homes, of any children committed to its custody under sections 3791 to 3793. Bills itemizing the expense of maintenance and education of children committed under this chapter, when approved by the department, shall be paid by the State as provided by law. At the request of the parents or next friend of any dependent child under 18 years of age who is without parent or grandparent of sufficient ability, or without other relatives able and willing to provide for its care, the department may make provision, without intervention of court, for the care of such child. No such child, nor the parents or grandparents of such child who are unable to provide for its care, shall be deemed paupers by reason of any care furnished to the child under this chapter. The settle-

ment of a child committed to custody other than that of a parent under this chapter shall not change during the period of such custody.

R.S.1954, c. 25, § 251; 1961, c. 417, § 67.

§ 3795. Religious faith of parents

Any child who shall come in any way under the inspection or supervision of the department or under this chapter shall, when placed in a family, be placed in a family of the same religious faith as that of the parents or surviving parent of such child, where a suitable family of such faith can be found willing to take such child. Any written promise made to either parent shall be faithfully carried out by the agent, institution or private person concerned. If such family cannot be found, then such child shall be placed in an institution maintained for children of such faith. In case no institution of such faith exists in this State or is able to take care of said child, then it may be placed in such family or institution as may be approved by the department until such a family has been secured. If the parents of such child are of different religious faiths, or the faith of its parents cannot for any reason be ascertained, then such child shall be placed in a family or institution of that religious faith in which such child has been reared and educated, but where no such family or institution can be found to take such child, then in some family or institution approved by said department until such family or institution can be found. No child when placed in any home or institution shall be denied the opportunity of attending the religious worship or exercising the religious belief of its parents or surviving parent or in which it was reared and educated.

R.S.1954, c. 25, § 252.

§ 3796. Placement in almshouses; limitations; notice

No child under 16 years of age shall be placed in any almshouse in this State or be suffered by the overseers of the poor to remain in such almshouse, except in cases of emergency, and then for a period not exceeding 60 days. Children under 2 years of age may be kept in almshouses when their mother is an inmate. With the consent of the department children when in need of medical or surgical treatment may be kept in hospitals or infirmaries connected with such almshouses for such length of time as they are in need of such treatment. When, upon a certificate of 2 licensed physicians, it shall be made to appear that

any child is a proper subject for the Pineland Hospital and Training Center, such child may, with the consent of and under such regulations as the department may determine, be kept in the almshouse until such time as it can, under Title 34, section 2152, be admitted to said school. Whenever any child or children under 16 years of age are placed or allowed by the overseers of the poor to remain in an almshouse, or in hospitals or infirmaries connected therewith, notice of that fact giving the name, parentage and such other facts as the department may require shall be sent by the overseers of the poor to said department within 48 hours of the entrance of such child into the almshouse, infirmary or hospital. A similar notice within the same time shall be sent by the overseers of the poor to the said department when the child is discharged from said almshouse, hospital or infirmary.

R.S.1954, c. 25, § 253; 1957, c. 21, § 2; 1963, c. 351, § 8.

§ 3797. Children's homes

1. Licensing. No person, firm, corporation or association shall conduct or maintain a boardinghouse or home for one or more children under 16 years of age, unattended by parents or guardian, excepting children related to such persons by blood or marriage, or who have been legally adopted by such persons, or engage in, or assist in conducting a business of placing out or finding homes or otherwise disposing of children under 16 years of age, without having in full force, subject to the rules and regulations of the department, a written license therefor from the department. No such license shall be issued until the applicant has furnished the department with a written statement signed by one of the officials designated in Title 25, section 2360, that the home and premises comply with said section 2360; or a written statement signed by one of the officials designated in Title 25, section 2392, that the home and premises comply with said section 2392 or the Insurance Commissioner shall, if requested, direct such inspection to be made in accordance with Title 25, section 2391. Said written statement shall be furnished annually thereafter in those cases where the home is licensed to board more than 2 children. The department shall establish and pay reasonable fees to the municipal official or the Insurance Commissioner for each such inspection. The term of such license shall be for one year and the license may be suspended or revoked for failure to comply with this subsection or the rules and regulations pertaining thereto. When the department believes a license should be suspended or revoked it shall file a statement

or complaint with the Administrative Hearing Commissioner designated in Title 5, chapters 301 to 307. A person aggrieved by the refusal of the department to issue a license may file a statement or complaint with said Administrative Hearing Commissioner. Whoever violates this subsection shall be punished by a fine of not more than \$500 or by imprisonment for not more than 11 months, or by both.

1961, c. 394, § 16; 1963, c. 412, § 23.

2. Definitions. "Boardinghouse for children" as used in subsection 1 shall be held to mean a house or other place conducted or maintained by anyone who advertises himself or holds himself out as conducting a boarding place for children under 16 years of age, or who receives illegitimate children under 16 years of age, or who has in his custody or control one or more children under 16 years of age unattended by parents or guardians, for the purpose of providing such children with food or lodging, excepting children related to him by blood or marriage or who have been legally adopted by him.

"Home for children" as used in subsection 1 shall be held to mean any children's home, orphanage or other institution, association, organization or individual engaged in receiving, caring for and finding homes for orphaned, dependent and neglected children.

Whoever advertises himself or holds himself out as placing or finding homes for, or otherwise disposing of children under 16 years of age, or whoever actually places or assists in placing in homes of persons other than relatives, or causes or assists in causing the adoption or disposal otherwise of one or more children under 16 years of age shall be deemed as engaged or assisting in conducting a business of placing out or finding homes for children within the meaning of said subsection.

R.S.1954, c. 25, §§ 254, 255; 1961, c. 394, § 16; 1963, c. 412, § 23.

§ 3798. Restoration of custody

Whenever a child is in the custody of any children's institution, or child's welfare organization, or suitable person or of the department, the parents or either of them may make application in writing to the Superior Court to have its custody restored to him or them, such notice on the application and the time and place of the hearing thereon as the court orders shall be given to such person, institution or organization, or to the department

and to the municipal board of the town where the proceedings therein were commenced. If, upon such hearing, it appears that the applicant is of sufficient ability and inclination suitably to provide for maintenance and education of said child, and that justice requires that its custody be restored to said applicant, the court shall so order, and the custody and control of said child shall thereafter be given to said applicant until the further order of the court.

R.S.1954, c. 25, § 256; 1961, c. 417, § 68.

§ 3799. Recovery of expenditures from parents

The State or any town or county incurring expenses under sections 3791 to 3794 and 3798 through the fault of parents who are able to support and educate their children but wrongfully neglect and refuse to do so, may recover of them or either of them, in a civil action, the amount so expended.

R.S.1954, c. 25, § 257; 1961, c. 317, § 38.

§ 3800. Failure to perform duties

Whoever violates any provision of section 3795, or willfully fails, neglects or refuses to perform any of the duties imposed upon him by this chapter shall be punished by a fine of not more than \$500 or by imprisonment for not more than 6 months.

R.S.1954, c. 25, § 258.