

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1374

H. P. 965

House of Representatives, March 4, 1971

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Mills of Eastport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Creating the Uniform Marriage and Divorce Act.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 19, c. 17, additional. Title 19 of the Revised Statutes is amended by adding a new chapter 17, to read as follows:

CHAPTER 17

UNIFORM MARRIAGE AND DIVORCE ACT

SUBCHAPTER I

GENERAL PROVISIONS

§ 1001. Short title

This Act may be cited as the "Uniform Marriage and Divorce Act."

§ 1002. Purposes; rules of construction

1. Construction. This Act shall be liberally construed and applied to promote its underlying purposes.

2. Purposes. Its underlying purposes are:

A. To strengthen and preserve the integrity of marriage and to safeguard meaningful family relationships;

B. To provide adequate procedures for the solemnization and registration of marriage;

C. To promote the amicable settlement of disputes that have arisen between parties to a marriage;

D. To mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage; and

E. To make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

§ 1003. Uniformity of application and construction

This Act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this Act among those states which enact it.

SUBCHAPTER II MARRIAGE

§ 1021. Formalities

A marriage between a man and a woman licensed, solemnized and registered as provided in this Act is valid in this State.

§ 1022. Marriage license and marriage certificate

1. Application. The Secretary of State shall prescribe the form for an application for a marriage license, which shall include the following information:

- A. Name, sex, address, social security number, date and place of birth of each party to the proposed marriage;
- B. If either party has previously been married, his married name, and the date, place and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;
- C. Name and address of the parents or guardian of each party;
- D. Whether the parties are related to each other and, if so, their relationship;

2. Forms. The Secretary of State shall prescribe the forms for the marriage license, the marriage certificate and the consent to marriage.

§1023. License to marry

When a marriage application has been completed and signed by both parties to a prospective marriage and at least one party has appeared before the clerk and has paid the marriage license fee of \$2, the clerk shall issue a license to marry upon being furnished:

1. Age. Satisfactory proof that each party to the marriage will have attained the age of 18 years at the time the marriage license becomes effective, or will have attained the age of 16 years and has either the consent to the marriage of both parents or guardian or judicial approval, or, if under the age of 16 years, has both the consent to the marriage of both parents or guardian and judicial approval;

2. Not prohibited. Satisfactory proof that the marriage is not prohibited; and

3. Medical certificate. A certificate of any medical examination required by the laws of this State.

§ 1024. License, effective date

A license to marry becomes effective throughout this State 3 days after the date of issuance and expires 180 days after it becomes effective, unless the Superior Court orders that the license is effective when issued.

§ 1025. Judicial approval

The Superior Court, after a reasonable effort has been made to notify the parents or guardian of each underaged party, may order the clerk to issue a marriage license and a marriage certificate form:

A. To a party aged 16 or 17 years who has no parent or guardian or has no parent capable of consenting to his marriage, or whose parent or guardian has not consented to his marriage; or

B. To a party under the age of 16 years who has the consent to his marriage of both parents, if capable of giving consent, or his guardian

only if the court finds that the underaged party is capable of assuming the responsibilities of marriage and the marriage would serve his best interests. Pregnancy alone does not establish that the best interests of the party would be served.

The Superior Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

§ 1026. Solemnization and registration

A marriage may be solemnized by a judge of a court of record, a public official whose powers include solemnization of marriages, or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk.

If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a 3rd person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the Superior Court for an order permitting the marriage to be solemnized by proxy.

Upon receipt of the marriage certificate, the clerk shall register the marriage.

§ 1027. Prohibited marriages

1. Prohibitions. The following marriages are prohibited:

- A. A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;
- B. A marriage between an ancestor and a descendant, or between a brother and a sister, whether the relationship is by the half or the whole blood or by adoption;
- C. A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationship is by the half or the whole blood, except as to marriages permitted by the established customs of aboriginal cultures.

Children born of a prohibited marriage are legitimate.

§ 1028. Declaration of invalidity

1. Decree. The Superior Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

- A. A party lacked capacity to consent to the marriage at the time the marriage was solemnized, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs or other incapacitating substances;
- B. A party lacks the physical capacity to consummate the marriage by sexual intercourse and the other party at the time the marriage was solemnized did not know of the incapacity;
- C. A party was under the age of 16 years and did not have the consent of his parents or guardian or judicial approval; or
- D. The marriage is prohibited.

2. Declaration. A declaration of invalidity under subsection 1, paragraphs A to C, may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage;

- A. For a reason set forth in subsection 1, paragraph A, by either party or by the legal representative of the party who lacked capacity to consent, no later than 90 days after the petitioner obtained knowledge of the described condition;
- B. For the reason set forth in subsection 1, paragraph B, by either party no later than one year after the petitioner obtained knowledge of the described condition;
- C. For the reason set forth in subsection 1, paragraph C, by the underaged party, his parent or guardian, prior to the time the underaged party reaches the age at which he could have married without satisfying the omitted requirement.

3. Who may seek. A declaration of invalidity for the reason set forth in subsection 1, paragraph D, may be sought by either party, by the legal spouse in case of bigamous marriages, by the Attorney General or by a child of either party at any time prior to the death of one of the parties.

4. Children legitimate. Children born of a marriage declared invalid are legitimate.

5. Invalidity. Unless the court finds, after a consideration of all relevant circumstances including the effect of a retroactive decree on 3rd parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this Act relating to property rights of the spouses, maintenance, support and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity.

§ 1029. Putative spouse

Any person who has cohabited with another to whom he is not legally married in the good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he is not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse, including the right to maintenance following termination of his status, whether or not the marriage is prohibited or declared invalid. If there is a legal spouse or other putative spouses, rights acquired by a putative spouse do not supersede the rights of the legal spouse or those acquired by other putative spouses, but the court shall apportion property, maintenance and support rights among the claimants as appropriate in the circumstances and in the interests of justice.

§ 1030. Application

All marriages contracted within this State prior to the effective date of this Act or outside this State that were valid at the time of the contract or subsequently validated by the laws of the place in which they were contracted or by the domicile of the parties are valid in this State.

§ 1031. Validity of common law marriage

Common law marriages are not invalidated by this Act.

SUBCHAPTER III
DISSOLUTION

§ 1041. Application of Rules of Civil Practice to proceedings under this Act

The Rules of Civil Practice apply to all proceedings under this Act, except as otherwise specifically provided in this Act.

A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled

“In re the Marriage of and”
A custody or support proceeding shall be entitled “In re the (Custody) (Support) of”

The initial pleading in all proceedings under this Act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this Act shall be denominated as provided in the Rules of Civil Practice.

In this Act, "decree" includes "judgment."

§ 1042. Dissolution of marriage; legal separation

1. Decree. The Superior Court shall enter a decree of dissolution of marriage if:

A. The court finds that one of the parties has been a resident of this State, or is a member of the armed services who has been stationed in this State, for 90 days next preceding the commencement of the proceeding or the entry of the decree;

B. The court finds that the marriage is irretrievably broken; and

C. To the extent it has jurisdiction to do so, the court has considered, approved or made provision for child custody, the support of any child of the marriage who is entitled to support, the maintenance of either spouse, and the disposition of property.

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

§ 1043. Commencement; pleadings; abolition of existing defenses

1. Proceedings. All proceedings under this Act are commenced in the manner provided by the Rules of Civil Practice.

2. Petition. The petition in a proceeding for dissolution of marriage or legal separation shall allege the marriage is irretrievably broken and shall set forth:

A. The residence of each party and the length of residence in this State;

B. The date of the marriage and the place at which it was registered;

C. The date on which the parties separated;

D. The names, ages and addresses of any living children of the marriage and whether the wife is pregnant;

E. Any arrangements as to the custody and support of the children and the maintenance of a spouse; and

F. The relief sought.

3. Initiation. Either party or both parties to the marriage may initiate the proceeding.

4. Service. If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Rules of Civil Practice and may within 30 days after the date of service file a verified response.

5. Defenses abolished. Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity and lapse of time, are abolished.

§ 1044. Temporary order or temporary injunction

1. Maintenance. In a proceeding for dissolution of marriage or legal separation or a proceeding for disposition of property, maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or for temporary support of children of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

2. Injunction. As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction:

A. Restraining any person from transferring, encumbering, concealing or in any way disposing of any property except in the usual course of business or for the necessities of life, and, if so restrained, requiring him to notify the moving party of any proposed extraordinary expenditures and to account to the court for all extraordinary expenditures made after the order is issued;

B. Enjoining a party from molesting or disturbing the peace of the other party or of any child;

C. Excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result.

3. Restraining order. The court may issue a temporary restraining order without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury would result to the moving party if an order is not issued until the time for responding has elapsed.

4. Response. A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

5. Amounts. On the basis of the showing made and in conformity with section 1043 on maintenance and section 1049 on support, the court may issue a temporary injunction and an order for temporary maintenance or support in such amounts and on such terms as are just and proper in the circumstances.

6. Terms. A temporary order or temporary injunction:

A. Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;

B. May be revoked or modified prior to final decree on a showing by affidavit of the facts necessary to revocation or modification of a final decree under section 1056; and

C. Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

§ 1045. Irretrievably broken

1. Findings. If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

2. Factors. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall:

A. Make a finding whether the marriage is irretrievably broken, or

B. Continue the matter for further hearing not less than 30 nor more than 60 days later, or as soon thereafter as the matter may be reached on the court's calendar and may suggest to the parties that they seek counseling. At the adjourned hearing, the court shall make a finding whether the marriage is irretrievably broken.

§ 1046. Separation agreement

1. Agreement. To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written separation agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the custody, support and visitation of their children.

2. —terms. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except terms providing for the custody, support and visitation of children, are binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the separation agreement is unconscionable.

3. —revised. If the court finds the separation agreement unconscionable, the court may request the parties to submit a revised separation agreement or the court may make orders for the disposition of property, support and maintenance.

4. —not unconscionable. If the court finds that the separation agreement is not unconscionable as to support, maintenance and property:

A. Unless the separation agreement provides to the contrary, its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or

B. If the separation agreement provides that its terms shall not be set forth in the decree, the decree shall identify the separation agreement and shall state that the court has found the terms not unconscionable.

5. Enforcement. Terms of the agreement set forth in the decree can

be enforced by all remedies available for the enforcement of a judgment, including contempt, but are no longer enforceable as contract terms.

6. —limitations. Except for terms concerning the support, custody or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides.

§ 1047. Disposition of property

1. Disposition. In a proceeding for dissolution of the marriage or for legal separation, or a proceeding for disposition of property following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of the property, the court shall set apart to each spouse his property and shall divide the marital property without regard to marital misconduct, in such proportions as the court deems just after considering all relevant factors including:

- A. The contribution of each spouse to the acquisition of the marital property, including the contribution of a spouse as homemaker;
- B. The value of the property set apart to each spouse; and
- C. The economic circumstances of each spouse at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to the spouse having custody of any children.

2. Definition. For purposes of this Act only, "marital property" means all property acquired by either spouse subsequent to the marriage except:

- A. Property acquired by gift, bequest, devise or descent;
- B. Property acquired in exchange for property acquired prior to the marriage or in exchange for property acquired by gift, bequest, devise or descent;
- C. Property acquired by a spouse after a decree of legal separation;
- D. Property excluded by valid agreement of the parties; and
- E. The increase in value of property acquired prior to the marriage.

3. Acquired subsequent to marriage. All property acquired by either spouse subsequent to the marriage and prior to a decree of legal separation is presumed to be marital property regardless of whether title is held individually or by the spouses in some form of co-ownership such as joint tenancy, tenancy in common, tenancy by the entirety, and community property. The presumption of marital property is overcome by a showing that the property was acquired by a method listed in subsection 2.

§ 1048. Maintenance

1. Maintenance. In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, the court

may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:

- A. Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs, and
- B. Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

2. Amounts. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

- A. The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party as custodian;
- B. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
- C. The standard of living established during the marriage;
- D. The duration of the marriage;
- E. The age, and the physical and emotional condition of the spouse seeking maintenance; and
- F. The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance.

§ 1049. Child support

In a proceeding for dissolution of marriage, legal separation, maintenance or child support, the court may order either or both parents owing a duty of support to a child of the marriage to pay an amount reasonable or necessary for his support, without regard to marital misconduct, after considering all relevant factors including: The financial resources of the child; the financial resources of the custodial parent; the standard of living the child would have enjoyed had the marriage not been dissolved; the physical and emotional condition of the child, and his educational needs; and the financial resources and needs of the noncustodial parent.

§1050. Representation of child

The court may appoint an attorney to represent the interests of a minor or dependent child with respect to his custody, support and visitation. The court shall enter an order for costs, fees and disbursements in favor of the child's attorney. The order shall be made against either or both parents, except that, if the responsible party is indigent, the costs, fees and disbursements shall be borne by the Department of Health and Welfare.

§ 1051. Payment of maintenance or support to court

1. **Payments.** Upon its own motion or upon motion of either party, the court at any time may order that maintenance or support payments be made to the clerk of courts as trustee for remittance to the person entitled to receive the payments.

2. **Records.** The clerk of courts shall maintain records listing the amount of payments, the date when payments are required to be made, and the names and addresses of the parties affected by the order.

3. **Change of address.** The parties affected by the order shall inform the clerk of courts of any change of address or of other conditions that may affect the administration of the order.

4. **Arrears.** If a party fails to make required payment, the clerk of courts shall send by registered or certified mail notice of the arrearage to the obligor. If payment of the sum due is not made to the clerk of courts within 10 days after sending notice, the clerk of courts shall certify the amount due to the county attorney. The county attorney shall promptly initiate contempt proceedings against the obligor.

5. **Duties of county attorney.** The county attorney shall assist the court on behalf of a person entitled to receive maintenance or support in all proceedings initiated under this section to enforce compliance with the order.

6. **Beyond jurisdiction.** If the person obligated to pay support has left or is beyond the jurisdiction of the court, the county attorney may institute any other proceeding available under the laws of this State for the enforcement of duties of support and maintenance.

§ 1052. Assignments

The court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on the employer, trustee or other payor of the funds 2 weeks after service upon him of notice that it has been made. The payor shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment and shall transmit the payment to the person specified in the order. The payor may deduct from each payment a sum not exceeding \$1 as reimbursement for costs. An employer shall not discharge or otherwise discipline an employee as a result of a wage or salary assignment authorized by this section.

§ 1053. Attorney's fees

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Act and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

§ 1054. Decree

1. Final. A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, so that either of the parties may remarry pending appeal.

2. Legal separation. No earlier than 6 months after entry of a decree of legal separation, on motion of either party the court shall convert the decree of legal separation to a decree of dissolution of marriage.

3. Notice. The clerk of courts shall give notice of the entry of a decree of legal separation or dissolution:

A. If the marriage is registered in this State, to the municipal clerk of the municipality where the marriage is registered and the clerk shall enter the fact of separation or dissolution in the Registry of Marriage;

B. If the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

§ 1055. Independence of provisions of decree or temporary order

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party to make payments for support or maintenance or to permit visitation is not suspended; but he may move the court to grant an appropriate order.

§ 1056. Modification and termination of provisions for maintenance, support and property disposition

Except as otherwise provided in section 1046, subsection 6, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing subsequent to the motion for modification and only upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this State.

Unless otherwise agreed in writing or expressly provided in the decree the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.

Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child but not by the death of a parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked or commuted to a lump sum payment, to the extent just and appropriate in the circumstances.

SUBCHAPTER IV

CUSTODY

§ 1061. Commencement of proceeding, jurisdiction

1. Commencement. A child custody proceeding is commenced in the Superior Court:

A. By a parent

(1) By filing a petition for dissolution or legal separation; or

(2) By filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found; or

B. By a person other than a parent, by filing a petition seeking custody of the child in the county where the child is permanently resident or where he is found, but only if the child is not in the physical custody of one of its parents.

2. Notice. Notice of a child custody proceeding shall be given to the child's parent, guardian and custodian, who may appear and be heard and may file a responsive pleading. The court may, upon a showing of good cause, permit the intervention of other interested parties.

§ 1062. Best interests of child

The court shall determine custody in accordance with the best interests of the child. The court shall consider all relevant factors including: The wishes of the child's parent or parents as to his custody; the wishes of the child as to his custodian; the interaction and interrelationship of the child with his parent or parents, his siblings, and any other person who may significantly affect the child's best interests; the child's adjustment to his home, school and community; and the mental and physical health of all individuals involved. The court shall not consider conduct of a proposed custodian that does not affect his relationship to the child.

§ 1063. Temporary orders

A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit. The court may award temporary custody after a hearing, or, if there is no objection, solely on the basis of the affidavits.

If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interests of the child require that a custody decree be issued.

If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

§ 1064. Interviews

The court may interview the child in chambers to ascertain the child's wishes as to his custodian. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to be made part of the record in the case.

The court may seek the advice of professional personnel whether or not they are employed on a regular basis by the court. The advice given shall be in writing and shall be made available by the court to counsel upon request. Counsel may call for cross-examination any professional personnel consulted by the court.

§ 1065. Investigations and reports

1. Investigation. In contested custody proceedings, and in other custody proceedings if a parent or the child's custodian so requests, the court may order an investigation and report concerning custodial arrangements for the child. The investigation and report may be made by the court or a private agency employed by the court for the purpose.

2. Consultation. In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of 16, unless the court finds that he lacks mental capacity to consent. If the requirements of subsection 3 are fulfilled, the investigator's report may be received in evidence at the hearing.

3. Report available. The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. The investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to subsection 2, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

§ 1066. Hearings

Custody proceedings shall receive priority in being set for hearing.

The court may tax as costs the payment of necessary travel and other expenses incurred by any person whose presence at the hearing the court deems necessary to determine the best interests of the child.

The court without a jury shall determine questions of law and fact. If it finds that a public hearing may be detrimental to the child's best interests, the court may exclude the public from a custody hearing, but may admit any

person who has a direct and legitimate interest in the particular case or a legitimate educational or research interest in the work of the court.

If the court finds it necessary to protect the child's welfare that the record of any interview, report, investigation or testimony in a custody proceeding be kept secret, the court may make an appropriate order sealing the record.

§ 1067. Visitation

A parent not granted custody of the child is entitled to reasonable visitation rights unless the court finds, after a hearing, that visitation would endanger the child's physical health or significantly impair his emotional development.

The court may modify an order granting or denying visitation rights whenever modification would serve the best interests of the child; but the court shall not restrict a parent's visitation rights unless it finds that the visitation would endanger the child's physical health or significantly impair his emotional development.

§ 1068. Judicial supervision

Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care and religious training, unless the court, after hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

If both parents or all contestants agree to the order, or if the court finds that in the absence of the order the child's physical health would be endangered or his emotional development significantly impaired, the court may order the Department of Health and Welfare to exercise continuing supervision over the case to assure that the custodial or visitation terms of the decree are carried out.

§ 1069. Modification

No motion to modify a custody decree may be made earlier than one year after the date of the initial decree. If a motion for modification has been filed, whether or not it was granted, no subsequent motion may be filed within 2 years after disposition of the prior motion, unless the court decides on the basis of affidavits that there is reason to believe that the child's present environment may endanger his physical health or significantly impair his emotional development.

The Superior Court shall not modify a prior custody decree unless it finds, upon the basis of facts that have arisen since the prior decree or that were unknown to the court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian and that the modification is necessary to serve the best interests of the child. In applying these standards the court shall retain the custodian established by the prior decree unless: The custodian agrees to the modification; the child has been inte-

grated into the family of the petitioner with the consent of the custodian; or the child's present environment endangers his physical health or significantly impairs his emotional development and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child.

§ 1070. Affidavit practice

A party seeking a temporary custody order or modification of a custody decree shall submit together with his moving papers an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit, to other parties to the proceeding, who may file opposing affidavits. The court shall deny the motion unless it finds that adequate cause for hearing the motion is established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

SUBCHAPTER V APPLICATION

§ 1081. Appilcation

This Act applies to all proceedings commenced on or after its effective date.

This Act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this Act shall be in compliance with this Act.

This Act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Act.

In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this Act, the law in effect at the time of the order sustaining the appeal or the new trial governs the appeal, the new trial and any subsequent trial or appeal.

Sec. 2. R. S., T. 19, cc. 1, 11, 13, repealed. Chapter J as amended, chapter 11 and chapter 13 as amended, all of Title 19 of the Revised Statutes, are repealed.

STATEMENT OF FACT

The purpose of this bill is to make uniform the divorce laws of the several states to provide for certain grounds for divorce and to protect children in cases of divorce.