

# MAINE STATE LEGISLATURE

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EIGHTY-FIRST LEGISLATURE

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HOUSE

NO. 216

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House of Representatives, February 28, 1923.

Five hundred copies ordered printed and recommitted to  
Committee on Legal Affairs.

CLYDE R. CHAPMAN, Clerk.

Presented by Mr. Oakes of Portland.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND TWENTY-THREE

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AN ACT with Reference to the Jurisdiction of the Courts in  
Certain Cases under Chapter One Hundred Twenty of the  
Revised Statutes, Relating to Desertion and Non-support of  
Families.

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

Section 1. Section thirty-eight of chapter one hundred  
2 twenty of the Revised Statutes is hereby amended to read  
3 as follows:

‘Sect. 38. Whoever shall without lawful excuse desert  
2 his wife when such wife is in destitute or necessitous cir-  
3 cumstances, or, being able by means of his property or labor  
4 to provide for the necessary support and maintenance of  
5 his wife shall without lawful excuse, wilfully, neglect or

6 refuse to provide such support and maintenance when such  
7 wife is in destitute or necessitous circumstances, or who-  
8 ever shall without lawful excuse desert his or her minor  
9 child or children under the age of sixteen years or being  
10 able by means of his or her property or labor to provide  
11 for the necessary support and maintenance of his or her  
12 minor child or children under said age, shall wilfully neg-  
13 lect or refuse to provide such support and maintenance  
14 when such child or children are in destitute or necessitous  
15 circumstances, when such offense is of a high and aggra-  
16 vated nature shall be termed guilty of felony and on con-  
17 viction thereof shall be punished by a fine of not more  
18 than five hundred dollars (\$500) or by imprisonment with  
19 or without hard labor for not more than two years or by  
20 both such fine and imprisonment. If a fine is imposed,  
21 the court may direct that it be paid in whole or in part to  
22 the wife or to the guardian or custodian of the minor child  
23 or children; provided that, before the trial, with the con-  
24 sent of the defendant, or after conviction, instead of im-  
25 posing the punishment hereinbefore provided, or in addi-  
26 tion thereto, the court in its discretion having regard to  
27 the circumstances and to the financial ability or earning  
28 capacity of the defendant, may make an order, which shall  
29 be subject to change by it from time to time as circum-  
30 stances may require, directing the defendant to pay a cer-  
31 tain sum weekly for the space of one year to the wife, or  
32 to the guardian or custodian of the minor child or children,

33 or to an organization or individual approved by the court,  
34 as trustee, and to release the defendant from custody on  
35 probation for the space of one year upon his or her enter-  
36 ing into a recognizance, with sureties, in such sum as the  
37 court may direct. The condition of the recognizance shall  
38 be such that if the defendant shall make his or her per-  
39 sonal appearance in court whenever ordered to do so within  
40 the year, and shall further comply with the terms of the  
41 order and of any subsequent modification thereof, then the  
42 recognizance shall be void, otherwise in full force and ef-  
43 fect.'

Sect. 2. Chapter one hundred twenty of the revised stat-  
2 utes is hereby amended by inserting therein a new section,  
3 as follows:

'Sect. 39. Whoever shall without lawful excuse desert  
2 his wife when such wife is in destitute or necessitous cir-  
3 cumstances, or, being able by means of his property or la-  
4 bor to provide for the necessary support and maintenance  
5 of his wife, shall without lawful excuse, wilfully, neglect  
6 or refuse to provide such support and maintenance when  
7 such wife is in destitute or necessitous circumstances, or  
8 whoever shall without lawful excuse desert his or her minor  
9 child or children under the age of sixteen years or being  
10 able by means of his or her property or labor to provide  
11 for the necessary support and maintenance of his or her  
12 minor child or children under said age, shall wilfully neg-  
13 lect or refuse to provide such support and maintenance

14 when such child or children are in destitute or necessitous  
15 circumstances, when such offense is not of a high and aggra-  
16 vated nature, shall be termed guilty of a misdemeanor and  
17 on conviction thereof shall be punished by a fine of not  
18 more than three hundred dollars (\$300) or by imprison-  
19 ment with or without hard labor for not more than one  
20 year or by both such fine and imprisonment. If a fine is  
21 imposed, the court may direct that it be paid in whole or  
22 in part to the wife or to the guardian or custodian of the  
23 minor child or children; provided that, before the trial,  
24 with the consent of the defendant, or after conviction, in-  
25 stead of imposing the punishment hereinbefore provided,  
26 or in addition thereto, the court in its discretion having  
27 regard to the circumstances and to the financial ability or  
28 earning capacity of the defendant, may make an order,  
29 which shall be subject to change by it from time to time  
30 as circumstances may require, directing the defendant to  
31 pay a certain sum weekly for the space of one year to the  
32 wife, or to the guardian or custodian of the minor child  
33 or children, or to an organization or individual approved  
34 by the court, as trustee, and to release the defendant from  
35 custody on probation for the space of one year upon his  
36 or her entering into a recognizance, with sureties, in such  
37 sum as the court may direct. The condition of the recog-  
38 nizance shall be such that if the defendant shall make his  
39 or her personal appearance in court whenever ordered to  
40 do so within the year, and shall further comply with the

41 terms of the order and of any subsequent modification  
42 thereof, then the recognizance shall be void, otherwise in  
43 full force and effect.'

Sect. 3. Section thirty-nine of chapter one hundred twenty  
2 of the revised statutes is hereby renumbered as section forty  
3 and amended so as to read as follows :

'Sect. 40. If the court shall be satisfied by information  
2 or evidence under oath, that at any time during the year  
3 the defendant has violated the terms of such order, it may  
4 forthwith proceed with the trial of the defendant under  
5 the original complaint or indictment, or sentence him under  
6 the original conviction, or enforce the original sentence, as  
7 the case may be. In case of forfeiture of a recognizance,  
8 and enforcement thereof by execution, the sum recovered  
9 may, in the discretion of the court, be paid in whole or in  
10 part to the wife or to the guardian or custodian of the minor  
11 child or children.'

Sect. 4. Section forty of chapter one hundred twenty of  
2 the revised statutes is hereby renumbered to become section  
3 forty-one.

Sect. 5. Section forty-one of chapter one hundred twenty  
2 of the revised statutes is hereby renumbered as section forty-  
3 two and amended to read as follows :

'Sect. 42. All fines or penalties provided for by the terms  
2 of the twelve preceding sections of this chapter may be  
3 recovered or enforced by complaint or indictment and in  
4 all prosecutions for misdemeanors under said sections,

5 judges of municipal and police courts and trial justices  
6 within their respective counties shall have original and con-  
7 current jurisdiction with the supreme judicial court and  
8 superior courts.'