

# MAINE STATE LEGISLATURE

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340-1  
S. 111

NEW DRAFT

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**EIGHTY-FIRST LEGISLATURE**

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**HOUSE**

**NO. 471**

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House of Representatives, March 26, 1923.

Reported by Mr. Oakes from Committee on Legal Affairs  
and ordered printed under joint rules.

CLYDE R. CHAPMAN, Clerk.

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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 by adding  
3 after the word "circumstances" in the eleventh line thereof  
4 the words 'when such offense is of a high and aggravated  
5 nature,' so that said section as amended shall read as fol-  
6 lows:

'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  
4 labor 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 for  
11 the necessary support and maintenance of his or her minor  
12 child or children under said age, shall wilfully neglect or  
13 refuse to provide such support and maintenance when such  
14 child or children are in destitute or necessitous circum-  
15 stances, when such offense is of a high and aggravated na-  
16 ture, shall be deemed guilty of a felony and on conviction  
17 thereof shall be punished by a fine of not more than five  
18 hundred dollars or by imprisonment with or without hard  
19 labor for not more than two years or by both such fine  
20 and imprisonment; and if a fine is imposed, the court may  
21 direct that it be paid in whole or in part to the wife or to  
22 the guardian or custodian of the minor child or children;  
23 provided that, before the trial, with the consent of the  
24 defendant, or after conviction, instead of imposing the  
25 punishment hereinbefore provided, or in addition thereto,  
26 the court in its discretion having regard to the circum-  
27 stances and to the financial ability or earning capacity of  
28 the defendant, may make an order, which shall be subject

29 to change by it from time to time as circumstances may  
30 require, directing the defendant to pay a certain sum weekly  
31 for the space of one year to the wife, or to the guardian or  
32 custodian of the minor child or children, or to an organiza-  
33 tion or individual approved by the court, as trustee, and to  
34 release the defendant from custody on probation for the  
35 space of one year upon his or her entering into a recogni-  
36 zance, with sureties, in such sum as the court may direct.  
37 The condition of the recognizance shall be such that if the  
38 defendant shall make his or her personal appearance in  
39 court whenever ordered to do so within the year, and shall  
40 further comply with the terms of the order and of any  
41 subsequent modification thereof, then the recognizance shall  
42 be void, otherwise in full force and effect.'

Sect. 2. Chapter one hundred twenty of the revised  
2 statutes is hereby amended by inserting therein a new sec-  
3 tion, 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 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 for

11 the necessary support and maintenance of his or her minor  
12 child or children under said age, shall wilfully neglect or  
13 refuse to provide such support and maintenance when such  
14 child or children are in destitute or necessitous circum-  
15 stances, when such offense is not of a high and aggravated  
16 nature, shall be termed guilty of a misdemeanor and on  
17 conviction thereof shall be punished by a fine of not more  
18 than three hundred dollars or by imprisonment with or  
19 without hard labor for not more than one year or by both  
20 such fine and imprisonment. If a fine is imposed, the  
21 court may direct that it be paid in whole or in part to the  
22 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  
29 shall be subject to change by it from time to time as cir-  
30 cumstances may require, directing the defendant to pay a  
31 certain sum weekly for the space of one year to the wife,  
32 or to the guardian or custodian of the minor child or  
33 children, or to an organization or individual approved by  
34 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  
2 twenty of the revised statutes is hereby renumbered as  
3 section forty and amended by adding after the word "origi-  
4 nal" in the fourth line thereof the words 'complaint or,'  
5 so that said section as amended shall 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  
11 minor 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  
2 twenty of the revised statutes is hereby renumbered as

3 section forty-two and amended by inserting after the word  
4 “the” in the second line thereof the word ‘twelve’ instead  
5 of eleven, and adding after the word “prosecutions” in the  
6 third line thereof the words ‘for misdemeanors,’ so that  
7 said section as amended shall 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  
7 concurrent jurisdiction with the supreme judicial court and  
8 superior courts.’