

MAINE STATE LEGISLATURE

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N I N E T Y - T H I R D L E G I S L A T U R E

Legislative Document

No. 1465

S. P. 541

In Senate, April 25, 1947

Reported by Senator McKusick of Piscataquis from the Committee on Welfare and printed under Joint Rules No. 10.

CHESTER T. WINSLOW, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
FORTY-SEVEN

AN ACT Relating to Neglected Children.

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

Sec. 1. R. S., c. 125, § 1, amended. Section 1 of chapter 125 of the revised statutes is hereby amended to read as follows:

'Sec. 1. Desertion of wife or children in destitute circumstances, or wilful non-support, when a felony; penalty; court may direct fine to be paid to wife; or may order respondent to make weekly payments; condition of recognizance. Whoever without lawful excuse deserts his wife when such wife is in destitute or necessitous circumstances, or, being able by means of his property or labor to provide for the necessary support and maintenance of his wife, without lawful excuse wilfully neglects or refuses to provide such support and maintenance when such wife is in destitute or necessitous circumstances, or whoever without lawful excuse deserts his or her minor child or children under the age of 16 years, **or under the age of 18 years if regularly attending school**, or being able by means of his or her property or labor to provide for the necessary support and maintenance of his or her minor child or children under said age, wilfully neglects or refuses to provide such support and maintenance when such child or children are in destitute or necessitous circumstances, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on convic-

tion thereof shall be punished by a fine of not more than \$500, or by imprisonment with or without hard labor for not more than 2 years, or by both such fine and imprisonment, and if a fine is imposed, the court may direct that it be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children; provided that before the trial, with the consent of the defendant, or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may make an order which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly ~~for the space of + year~~ **to the wife for such period as the court may determine, and when there are children until such child or children reach the age of 16 years or the age of 18 years if regularly attending schools to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court, as trustee, or to the department of health and welfare of the state of Maine for the use of such child or children,** and to release the defendant from custody on probation ~~for the space of + year~~ **for the period during which the aforesaid payments are ordered,** and may in its discretion order said defendant to enter into a recognizance with sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court whenever ordered to do so ~~within the year~~ **within said period,** and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise in full force and effect.

The furnishing of aid by any town or city within the state or by the department of health and welfare of the state to any such wife, child, or children shall be prima facie evidence that such wife, child, or children is in destitute or necessitous circumstances.'

Sec. 2. R. S., c. 125, § 2, amended. Section 2 of chapter 125 of the revised statutes is hereby amended to read as follows:

'Sec. 2. Desertion of wife or minor children in destitute circumstances and wilful non-support, when a misdemeanor; penalty. Whoever without lawful excuse deserts his wife when such wife is in destitute or necessitous circumstances, or, being able by means of his property or labor to provide for the necessary support and maintenance of his wife, without lawful excuse wilfully neglects or refuses to provide such support and maintenance when such wife is in destitute or necessitous circumstances, or whoever without lawful excuse deserts his or her minor child or children

under the age of 16 years, **or under the age of 18 years if regularly attending schools**, or, being able by means of his or her property or labor to provide for the necessary support and maintenance of his or her minor child or children under said age, wilfully neglects or refuses to provide such support and maintenance when such child or children are in destitute or necessitous circumstances, when such offense is not of a high and aggravated nature, shall be deemed guilty of a misdemeanor and on the conviction thereof shall be punished by a fine of not more than \$300, or by imprisonment with or without hard labor for not more than 11 months, or by both such fine and imprisonment. If a fine is imposed, the court may direct that it be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children; provided that before the trial, with the consent of the defendant, or after conviction, instead of imposing the punishment hereinbefore provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may make an order, which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly ~~for the space of + year~~ **to the wife for such period as the court may determine, and when there are children until such child or children reach the age of 16 years or the age of 18 years if regularly attending schools**, to the wife, or to the guardian or custodian of the minor child or children, or to an organization or individual approved by the court, as trustee, **or to the department of health and welfare of the state of Maine for the use of such child or children**, and to release the defendant from custody on probation ~~for the space of + year~~ **for the period during which the aforesaid payments are ordered**, upon his or her entering into a recognizance, with sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his or his personal appearance in court whenever ordered to do so within the year, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise in full force and effect.

The furnishing of aid by any town or city within the state or by the department of health and welfare of the state to any such wife, child, or children shall be prima facie evidence that such wife, child, or children is in destitute or necessitous circumstances.'

Sec. 3. R. S., c. 125, § 3, amended. Section 3 of chapter 125 of the revised statutes is hereby amended to read as follows:

'Sec. 3. On proof of violation of order, court may proceed under original indictment; amount recovered may be paid to wife or guardian. If the

court shall be satisfied by information or evidence under oath, that at any time during ~~the year~~ **the period in which the payments were ordered** the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original complaint or indictment, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of a recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the wife or to the guardian or custodian of the minor child or children, **or to the department of health and welfare of the state of Maine provided said department has furnished aid to said minor child or minor children.**'

Sec. 4. R. S., c. 153, § 24, amended. Section 24 of chapter 153 of the revised statutes is amended to read as follows:

'Sec. 24. Justice may issue a warrant, to file certified copies with towns and department of health and welfare of the state. The justice may issue his warrant for the apprehension of the accused, directed to the sheriff of any county in which the accused is supposed to reside, or to either of his deputies, or to a constable of any town in such county, accompanied by such accusation and examination. **Any such justice shall after issuing his warrant mail a certified copy thereof to the overseers of the poor of the town in which the complainant is residing and to the overseers of the town in which she has a legal settlement if known, and to the department of health and welfare of the state.'**

Sec. 5. R. S., c. 153, § 30, amended. Section 30 of chapter 153 of the revised statutes is hereby amended to read as follows:

'Sec. 30. Complainant not to settle with the father without assent of town and department of health and welfare of the state. No woman whose accusation and examination on oath has been taken by a justice of the peace at her request, shall make a settlement with the father, or give him any discharge to bar or affect such complaint ~~if objected to in writing by the overseers of the poor of the town interested in her support or the child's~~ **unless the overseers of the poor of the town interested in her support or the child's support and the department of health and welfare of the state assent thereto in writing.'**

Sec. 6. R. S., c. 153, §§ 69-A-69-C, additional. Chapter 153 of the revised statutes is hereby amended by adding thereto 3 new sections to be numbered 69-A, 69-B, 69-C, to read as follows:

'Sec. 69-A. Failure to comply with court order relative to support of

children, when a felony; penalty. Whoever without lawful excuse being able by means of his property or capacity for labor wilfully neglects or refuses to comply with any order of court made pursuant to the laws of this chapter pertaining to the support of a minor child or minor children and such neglect or refusal results in said child or children being in destitute or necessitous circumstances, when such offense is of a high and aggravated nature, shall be deemed guilty of a felony and on conviction thereof shall be punished by a fine of not more than \$500, or by imprisonment at hard labor for not more than 2 years, or by both such fine and imprisonment, and if a fine is imposed, the court may direct that it be paid in whole or in part to the mother or to the guardian or custodian of said minor child or children; provided that before the trial, with consent of the defendant, or after the conviction, instead of imposing the punishment whenever provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may make an order which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly until such child or children reach the age of 16 years or the age of 18 years if regularly attending schools to the mother or to the guardian or to the custodian of said minor child or children, or to any organization or individual approved by the court, as trustee, or to the department of health and welfare of the state of Maine for the use of such child or children, and to release the defendant from custody on probation for the period during which the aforesaid payments are ordered, and may in its discretion order said defendant to enter into a recognizance with sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his personal appearance in court whenever ordered to do so within said period, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise in full force and effect.

The furnishing of aid by any town or city within the state or by the department of health and welfare of the state to any such child or children shall be prima facie evidence that such child or children is in destitute or necessitous circumstances.

Sec. 69-B. Failure to comply with a court order relative to support of children, when a misdemeanor; penalty. Whoever without lawful excuse being able by means of his property or capacity for labor wilfully neglects or refuses to comply with any order of court made pursuant to the laws of this chapter pertaining to the support of a minor child or minor children

and such neglect or refusal results in said child or children being in destitute or necessitous circumstances, when such offense is not of a highly or aggravated nature, shall be deemed guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than \$300 or by imprisonment with or without hard labor for not more than 11 months, or by both such fine and imprisonment, and if a fine is imposed, the court may direct that it be paid in whole or in part to the mother or to the guardian or custodian of said minor child or children; provided that before the trial, with consent of the defendant, or after the conviction, instead of imposing the punishment whenever provided, or in addition thereto, the court in its discretion, having regard to the circumstances and to the financial ability or earning capacity of the defendant, may make an order which shall be subject to change by it from time to time as circumstances may require, directing the defendant to pay a certain sum weekly until such child or children reach the age of 16 years or the age of 18 years if regularly attending schools to the mother or to the guardian or to the custodian of said minor child or children, or to any organization or individual approved by the court, as trustee, or to the department of health and welfare of the state of Maine for the use of such child or children, and to release the defendant from custody on probation for the period during which the aforesaid payments are ordered, and may in its discretion order said defendant to enter into a recognizance with sureties, in such sum as the court may direct. The condition of the recognizance shall be such that if the defendant shall make his personal appearance in court whenever ordered to do so within said period, and shall further comply with the terms of the order and of any subsequent modification thereof, then the recognizance shall be void, otherwise in full force and effect.

The furnishing of aid by any town or city within the state or by the department of health and welfare of the state to any such child or children shall be prima facie evidence that such child or children is in destitute or necessitous circumstances.

Sec. 69-C. On proof of violation of order, court may proceed under original indictment; amount recovered may be paid to mother, guardian, or to department of health and welfare. If the court shall be satisfied by information or evidence under oath, that at any time during the period in which the payments were ordered pursuant to sections 69-A and 69-B of this chapter the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original complaint or indictment, or sentence him under the original conviction, or enforce the original sentence, as the case may be. In case of forfeiture of

recognizance and enforcement thereof by execution, the sum recovered may, in the discretion of the court, be paid in whole or in part to the mother or to the guardian or custodian of the minor child or children or to the department of health and welfare for the state of Maine when said department has furnished aid for said minor child or children.'