

MAINE STATE LEGISLATURE

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SIXTH REVISION

THE
REVISED STATUTES

OF THE

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TITLE FIVE.

Domestic Relations.

- CHAP. 64. Marriage and its solemnization. Registration of vital statistics. Parents and children. Protection of neglected children.
65. Divorce and the annulling of marriages.
66. The rights of married women.
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CHAPTER 64.

Marriage and its Solemnization. Registration of Vital Statistics. Parents and Children. Protection of Neglected Children.

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Marriage and its Solemnization.

Sec. 1. Marriages prohibited within certain degrees. R. S. c. 61, § 1. No man shall marry his mother, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, sister, brother's daughter, sister's daughter, father's sister, or mother's sister; and no woman shall marry her father, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother, brother's son, sister's son, father's brother, or mother's brother.

Sec. 2. Void marriages. R. S. c. 61, § 2. No insane person or idiot is capable of contracting marriage.

See c. 65, § 16; 46 Me. 510; 76 Me. 421, 595; 97 Me. 133.

Sec. 3. Polygamy. R. S. c. 61, § 3. Marriages, contracted while either of the parties has a former wife or husband not divorced, living, are void.

Sec. 4. Intentions of marriage to be recorded. R. S. c. 61, § 4. 1909, c. 75, § 1. 1913, c. 165. Residents of the state intending to be joined in marriage shall cause notice of their intentions to be recorded in the office of the clerk of the town in which each resides, at least five days before a certificate of such intentions is granted; and if one only of the parties resides in the state, they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such party resides, at least five days before such certificate is granted; and if there is no such clerk in the place of their residence, the like entry shall be made with the clerk

of an adjoining town; and if both parties reside out of the state they shall cause notice of their intentions to be recorded in the office of the clerk of the town in which such parties propose to have the marriage solemnized, at least five days before such certificate is granted; and the book in which such record is made, shall be labeled on the outside of its cover, "Record of intentions of marriage," and be kept open to public inspection in the office of the clerk.

Sec. 5. Clerk to give certificate to parties, but not to paupers, nor to minors without written consent of parents. R. S. c. 61, § 5. The clerk shall deliver to the parties a certificate specifying the time when such intentions were entered with him; and it shall be delivered to the minister or magistrate before he begins to solemnize the marriage; but no such certificate shall be issued to a male under twenty-one, or to a female under eighteen years of age, without the written consent of their parents or guardians first presented, if they have any living in the state; nor to a town pauper when the overseers of such town deposit a list of their paupers with the clerk; and for an intentional violation of the foregoing prohibitions, or for falsely stating the residence of either party named in such certificate, such clerk forfeits twenty dollars.

Sec. 6. Certificate of record of intentions of marriage, how printed. 1907, c. 65. All such certificates shall have conspicuously printed thereon the following words: "The laws of Maine provide for a fine not exceeding one thousand dollars or imprisonment not exceeding five years to be the punishment of any clergyman or other person, who shall solemnize a marriage within this state unless authorized to solemnize marriages therein." Following the above words, said certificate shall contain the blank form for the return to the clerk with a space for the entry of the date of the commission or license issued to the person solemnizing such marriage.

See § 14.

Sec. 7. Penalty for marrying unlawfully. R. S. c. 61, § 6. Whoever contracts a marriage, or makes false representations to procure such certificate or the solemnization of marriage contrary to this chapter, forfeits one hundred dollars.

Sec. 8. Certificate of marriage out of the state to be filed. R. S. c. 61, § 7. 1909, c. 75, § 2. When residents of this state go into another state for the purpose of marriage, and it is there solemnized, and they return to dwell here, they shall, on the blank prepared by the state registrar for that purpose, fill out and file a certificate of their marriage with the clerk of the town in which each of them lived, within seven days after their return. The clerk shall then record such marriage. Any person who fails to make the report of his marriage to the town clerk as is herein provided shall forfeit twenty dollars, half to the prosecutor, and half to the town where the forfeiture is incurred.

Sec. 9. Proceedings when marriage is forbidden. R. S. c. 61, § 8. Any person, believing that parties are about to contract marriage when either of them cannot lawfully do so, may file a caution and the reasons therefor, in the office of the clerk where notice of their intentions should be filed. Then if either party applies to enter such notice, the clerk shall withhold the certificate, until a decision is made by two justices of the peace, ap-

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proving the marriage, after due notice to, and hearing all concerned; provided, that the person filing the caution, shall, within seven days thereafter, procure the decision of such justices, unless they certify that further time is necessary for the purpose. In which case a certificate shall be withheld until the expiration of the certified time. He shall, finally, deliver or withhold the certificate in accordance with the final decision of said justices. If the decision is against the sufficiency, the justices shall enter judgment against the applicant for costs, and issue execution therefor.

88 Me. 252.

Sec. 10. Marriage in another state in evasion of law, void here. R. S. c. 61, § 9. When residents of this state, with intent to evade the provisions of sections one, two and three of this chapter, and to return and reside here, go into another state or country, and there have their marriage solemnized, and afterwards return and reside here, such marriage is void in this state.

Sec. 11. Marriage among Quakers. R. S. c. 61, § 10. Marriages solemnized among Quakers or Friends, in the form heretofore practiced in their meeting, are valid, and not affected by the foregoing provisions; and the clerk or the keeper of the records of the meeting in which they are solemnized, shall make return thereof as provided in section twenty.

Sec. 12. Persons authorized to solemnize marriages; secretary of state shall issue license; license or certified copy shall be received as evidence; revocation of license. R. S. c. 61, § 11. 1909, c. 161, § 1. 1911, c. 83. Every justice of the peace and every notary public residing in this state may solemnize marriages therein. The governor, with the advice and consent of the council, may appoint women, otherwise eligible under the constitution, to solemnize marriages, and women so appointed shall have the same rights and obligations in the solemnization of marriages as justices of the peace. Every ordained minister of the gospel, clergyman engaged in the service of the religious body to which he belongs, or person licensed to preach by an association of ministers, religious seminary or ecclesiastical body, whether a resident or non-resident of this state, and of either sex, may solemnize marriages therein after being licensed for that purpose, upon application duly filed with the secretary of state, as herein provided. Such application shall be made upon blanks furnished by the secretary of state which shall be signed by the applicant and set forth the necessary facts in the premises, which facts shall be certified to by the clerk, treasurer, or any of the municipal officers of the town wherein the applicant resides, or wherein the ceremony is to be performed. Upon receipt of such application the secretary of state shall issue to the applicant a license under the seal of the state to the effect that he is authorized to solemnize marriages in this state. Such license, or a certified copy thereof shall be received as evidence in all courts of his authority in the premises, and a copy of the record of any marriage solemnized by such licensee duly made and kept, attested or sworn to by the clerk of the town in which the marriage intention was recorded or in which the marriage was solemnized shall be received in all courts as evidence of the fact of marriage. Such license shall continue until revoked by the governor for cause, after notice and an opportunity to be heard thereon.

See c. 2, § 42; 18 Me. 310; 42 Me. 288; 62 Me. 596; 72 Me. 548.

Sec. 13. Penalty for joining persons in marriage in violation of law. R. S. c. 61, § 13. 1909, c. 161, § 2. Whoever knowingly and wilfully joins persons in marriage contrary to this chapter, shall be punished by a fine of one hundred dollars; and such offender is forbidden to join any persons in marriage thereafter.

Sec. 14. Penalty for unauthorized solemnization of marriage. R. S. c. 61, § 14. If any person thus forbidden, or any minister or other person not authorized to solemnize marriages, joins any persons in marriage, he shall be confined to hard labor in the state prison for not more than five years, or fined not exceeding one thousand dollars.

Sec. 15. Copy of record, legal evidence. R. S. c. 61, § 15. A copy of a record of marriage duly made and kept, attested or sworn to by a justice of the peace, commissioned minister, or town clerk, shall be received in all courts as evidence of the fact of marriage.

19 Me. 158.

Sec. 16. Marriage valid, if consummated in good faith by either party. R. S. c. 61, § 16. No marriage, solemnized before any known inhabitant of the state professing to be a justice of the peace, or an ordained or licensed minister of the gospel duly appointed and commissioned, is void, nor is its validity affected by any want of jurisdiction or authority in the justice or minister, or by any omission or informality in entering the intention of marriage, if the marriage is in other respects lawful, and consummated with a full belief, on the part of either of the persons married, that they are lawfully married.

6 Me. 149; 36 Me. 454; 61 Me. 177; 75 Me. 131.

Sec. 17. Penalty for false certificate of intention. R. S. c. 61, § 17. A town clerk who makes out and delivers to any person a false certificate of the entry of the intention of marriage, knowing it to be false in any particular, shall be fined one hundred dollars or imprisoned six months.

Registration of Vital Statistics.

Sec. 18. Registrar of vital statistics; shall furnish blanks for registration of births, marriages, deaths and divorces. R. S. c. 61, § 18. The secretary of the state board of health shall be the registrar of vital statistics for the state, and shall furnish to clergymen, and others authorized to marry, to sextons, to physicians, town clerks, clerks of the society of Friends, and clerks of courts, a copy of the provisions of this chapter relating to the registration of vital statistics, and suitable blanks for recording births, marriages, deaths and divorces, so printed, with appropriate headings, as readily to show the following facts and such others as may be deemed necessary to secure an accurate registration.

I. The record of birth shall state its date and place of occurrence, full christian and surname, if named, color and sex of child, whether living or still-born, and the full christian and surnames, color, occupation, residence and birthplace of parents.

II. The record of marriage shall state its date and place of occurrence, the name, residence, and official character of the person by whom solemnized, the full christian and surnames of the parties, the age, color, birth-

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place, occupation and residence of each, the condition, whether single or widowed, whether first, second or other marriage; and the full christian and surnames, residence, color, occupation and birthplace of their parents.

III. The record of death shall state its date, the full christian and surname of the deceased, the sex, color, condition, whether single or married, age, occupation, place of birth, place of death, the full christian and surnames and birthplaces of parents, and the disease or other cause of death, so far as known.

Sec. 19. Report of birth to town clerk. R. S. c. 61, § 19. The attending physician, accoucheur, midwife or other person in charge, who shall attend at the birth of any child, living or still-born, within the limits of any town or city in this state, shall report to the clerk of such town or city within six days thereafter, all the facts regarding such birth, as required in section eighteen.

Sec. 20. Copy of record of marriages, forwarded to town clerks. R. S. c. 61, § 20. Every person authorized to unite persons in marriage shall make a record of every marriage solemnized before him, in conformity with the requisitions prescribed for blank records of marriages in section eighteen, and shall within six days thereafter, deliver or forward to the clerk of each town in which the marriage intention was recorded, and to the clerk of the town in which the marriage was solemnized, a copy of such record of marriage.

Sec. 21. Physicians in attendance shall furnish certificate of name, age, disease and date of birth of deceased. R. S. c. 61, § 21. A physician who has attended a person during his last illness shall within twenty-four hours after the death of said person make a certificate stating, to the best of his knowledge and belief, the name of the deceased, his age, the disease of which he died, and the date of his death, and shall either deliver it to the person superintending the burial or leave it with the family of the deceased or at the said physician's office where it may be obtained when called for; and a physician or midwife who has attended at the birth of a child dying immediately thereafter, or at the birth of a still-born child, shall, when requested, forthwith furnish for registration a certificate, stating to the best of his knowledge and belief the fact that such child died after birth or was born dead. It shall be a misdemeanor for any person to make a false return in regard to any birth or death.

Sec. 22. Town clerk shall be furnished with record of any death in town; permit for burial. R. S. c. 61, § 22. Whenever any person shall die, or any still-born child be brought forth in this state, the undertaker, town clerk or other person superintending the burial of said deceased person, shall obtain from the physician attending such bringing forth or last sickness, a certificate, duly signed, setting forth as far as may be, the facts required by section twenty-one; and the undertaker or other person having charge of the burial of said deceased person, shall add to said certificate the other facts required by section eighteen; and having duly signed the same, shall forward it to the clerk of the town or city where said person died and obtain a permit for burial; and in case of any contagious or infectious disease, said certificate shall be made and forwarded immediately.

Sec. 23. Notice of death from tuberculosis. 1909, c. 75, § 9. When a town or city clerk receives a certificate of the death of any person who has died of tuberculosis in his town, he shall forthwith send a copy of said certificate to the health officer of his town or city, or where there is no health officer, to the secretary of the local board of health.

Sec. 24. If no attending physician in last sickness, clerk may issue certificate, upon such facts as can be obtained. R. S. c. 61, § 23. Whenever any deceased person did not have the attendance of a physician in his or her last sickness, the town clerk may issue and sign the certificate of death, upon presentation of such facts as may be obtained of relatives, persons in attendance upon said deceased person during said last sickness or present at the time of death, or from any other source, and the permit for burial shall be issued upon such information. Said certificate and permit shall not be required before burial in cases where it is impracticable to obtain the same within a reasonable time after death, but in all such cases said certificate shall be obtained as soon as practicable after death.

Sec. 25. Regulation of removal of bodies of persons dying of cholera, or other pestilential disease; certificate of cause of death; heart failure not deemed sufficient cause for burial permit; permit, when body is brought into this state for burial. R. S. c. 61, § 24. No body of a deceased person whose death was caused by cholera, yellow fever, diphtheria, scarlet fever, typhus fever, typhoid fever, smallpox or other pestilential disease, shall be removed from place to place in this state by any railroad, steamboat or other common carrier, unless there shall be attached to the outer case in which said body is enclosed, a certificate from the board of health where such person died, stating the disease causing such death, and that necessary precautions against infection satisfactory to said board have been observed. A certificate of death giving heart failure as the only cause of death shall not be deemed sufficient upon which to issue a burial permit, and such certificate must be returned to the physician who made it for the proper correction and definition. If the body of a deceased person is brought into this state from without for burial, and if it is accompanied by a permit issued by the legally constituted authorities of the state from which it was brought, such permit shall be received as sufficient authority upon which the clerk of the town in which said body is to be buried shall issue a permit for burial; but if it is not accompanied by such permit, then the person or persons in charge of it shall apply for a burial permit to the clerk of the town in which it is to be buried, and the clerk of the town shall issue such permit when furnished with satisfactory information.

Sec. 26. Reports to clerk of births and deaths. R. S. c. 61, § 25. 1909, c. 75, § 3. Within six days following such events, parents shall report to the clerk of their city or town the births or deaths of their children; householders shall report every birth or death happening in their houses; the eldest person, next of kin, shall report the death of his kindred; the keeper of a workhouse, house of correction, prison, hospital, almshouse, or other institution, and the master or other commanding officer of a ship, shall report every birth or death happening among the persons under his charge; and parents and other persons enumerated in this section shall not be absolved from the duty of reporting births until the names of the children

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have been given to the clerk of the city or town in which the births occur.

Sec. 27. Birth, marriage or death, in unincorporated place. R. S. c. 61, § 26. When a birth, marriage or death occurs in an unincorporated place, it shall be reported to the town clerk in the town which is nearest to the place at which the birth, marriage or death took place, and shall be recorded by the town clerk to whom the report is made; and all such reports and records shall be made and recorded and returned to the state registrar as is provided herein.

Sec. 28. Clerk shall make certified copy of record on first Monday of each month, and transmit to clerk of town where person, or parents of child, were resident at time of death. R. S. c. 61, § 27. The clerk of each town shall, on the first Monday of each month, make a certified copy of the record of all deaths and births recorded in the books of said town during the previous month, whenever the deceased person, or the parents of the child born were resident in any other town in this state at the time of said death or birth, or whenever they were recently resident in any other town, or whenever the remains of any deceased person have been carried to any other town for burial and shall transmit said certified copies to the clerk of the town in which said deceased person or parents were resident at or near the time of said birth or death, or to which the remains of such deceased person have been carried for burial, stating in addition the name of the street and the number of the house, if any, where such deceased person or parents so resided, whenever the same can be ascertained; and the clerk so receiving such certified copies shall record the same in the books kept for recording deaths or births. Such certified copies shall be made upon blanks to be furnished for that purpose by the registrar of vital statistics.

Sec. 29. No interment, or disinterment, shall be made without permit. R. S. c. 61, § 28. 1909, c. 75, § 4. Except as provided in section twenty-four, no interment or disinterment of the dead body of any human being, or disposition thereof in any tomb, vault or cemetery, shall be made without a permit as aforesaid, from the clerk of the town or city where said person died, or in case of disinterment, is buried, nor otherwise than in accordance with such permit. No undertaker or other person shall assist in, assent to, or allow any such interment or disinterment to be made, except as provided in section twenty-four, until such permit has been given as aforesaid; and every undertaker or other person having charge of any burial place as aforesaid, who shall receive such permit, shall preserve and return the same to the clerk of the town in which the death occurred within six days after the day of burial.

See c. 126, § 42.

Sec. 30. Sub-registrars may be appointed who may issue burial permits. R. S. c. 61, § 29. 1909, c. 75, § 5. The town or city clerk may appoint two suitable and proper persons, in each town or city, as sub-registrars, who shall be authorized to issue burial permits based upon a death certificate, as hereinbefore provided, in the same manner as is required of the town or city clerk; and the said death certificate upon which the permit is issued shall be forwarded to the town clerk within six days after receiving the same, and all permits by whomsoever issued shall be returned to the town

clerk as required by section twenty-nine. The appointment of sub-registrars shall be made with reference to locality, so as to best suit the convenience of the inhabitants of the town, and such appointment shall be in writing and recorded in the office of the town or city clerk; the sub-registrars in any town shall hold office at the pleasure of the town clerk.

Sec. 31. Clerks and sub-registrars may issue burial permits in contiguous towns. R. S. c. 61, § 30. Town clerks and sub-registrars may issue burial permits to persons in contiguous towns, when by so doing it would be more convenient for those seeking a permit, but in all cases the permit shall be made returnable to the town clerk of the town in which the death occurred.

Sec. 32. Assessors shall make return of all births. R. S. c. 61, § 31. The assessors shall, when taking the annual inventory, collect and return to the town clerk, before the first day of June, the births which have occurred within their respective jurisdictions during the year ending December thirty-first next preceding, together with the names of such children.

Sec. 33. Town clerks required to make returns to state registrar, monthly; copies shall be typewritten or in legible hand. R. S. c. 61, § 32. 1907, c. 56. 1909, c. 75, § 10. The clerk of every town shall keep a chronological record of all births, marriages and deaths reported to him, or known to him, and shall, between the tenth and the fifteenth of every month, transmit to the state registrar a copy of the record of all births, marriages, and deaths which have occurred within the month next preceding, together with the names, residences, and official stations of all persons who have neglected to make returns to him in relation to the subject matters of such records, which the law required them to make, all to be made upon blanks to be prepared and furnished by the state registrar; and if no births, marriages, or deaths have occurred in the aforementioned period of time or month, for which returns are to be made, the town clerk shall send the state registrar a statement to that effect. Whenever a birth, marriage, or death, required by law to be returned to such clerk, is reported to him, or he learns of it, too late for inclusion in his returns as provided hereunder to the state registrar, he shall, after it is reported to him, or after he has knowledge of it, make due returns thereof to the state registrar forthwith. The registrar of vital statistics shall require all copies which are transmitted under the provisions of this section to be typewritten or written with black durable ink in a fair or legible hand, and any city or town clerk who neglects or refuses to make or cause to be made typewritten or fair and legible copies as required shall forfeit not less than twenty dollars, nor more than one hundred dollars, to the use of the state.

Clerks of cities shall transmit to the board of registration list of male persons over twenty-one years of age deceased since the preceding election; c. 5, § 26.

Clerks of cities and towns shall report to treasurer of state names of persons dying, and next of kin, c. 69, § 27.

Sec. 34. Clerks of courts required to make return of divorces, annually. R. S. c. 61, § 33. The clerks of courts for the several counties shall, annually, during the month of February, make returns to the registrar of vital statistics relating to libels for divorce in their respective counties for the calendar year next preceding. Such returns shall specify the following details; the number of divorces granted; and the names of the parties in-

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cluding the maiden name and any other former name of female, if any, when ascertainable.

Sec. 35. Duty of state registrar. R. S. c. 61, § 34. 1915, c. 318, § 1. The state registrar shall cause the returns made to him in pursuance of the two preceding sections to be arranged alphabetically for convenient reference, and carefully preserved in his office. He shall annually make and publish a general abstract and report of the returns of the preceding year in such form as will render them of practical utility, not more than two thousand copies of which shall be printed and bound in cloth, one copy of which shall be forwarded to every town, one copy to each senator and representative, one copy to each state and territory in the union, and the remainder to such departments, libraries and persons as the state registrar shall direct.

Sec. 36. Appropriation. R. S. c. 61, § 35. 1909, c. 75, § 6. The sum of three thousand dollars a year, is hereby appropriated for printing and binding the circulars and blanks, for postage and expressage, and to defray the expenses of clerical work and the necessary traveling expenses of the state registrar in carrying out the provisions of this chapter relating to the registration of vital statistics.

Sec. 37. Clerk's record or certified copy, prima facie evidence. R. S. c. 61, § 36. The town clerk's record of any birth, marriage or death, or a duly certified copy thereof, shall be prima facie evidence of such birth, marriage or death, in any judicial proceeding.

Sec. 38. Defective and erroneous records, how perfected. 1913, c. 157. If the record relating to a birth, marriage or death does not contain all the required facts, or if it is alleged that the facts are not correctly stated therein, the town clerk shall receive an affidavit containing the facts required for record, if made by a person who was required by law to furnish information for the original record, or, at the discretion of the town clerk, by one or more credible persons having knowledge of the case. The town clerk shall file such affidavit and record it in a separate book to be kept for that purpose, with the name and residence of any deponent and the date of such record, and shall thereupon draw a line through the incorrect statements in the original record without erasing them, and shall then enter the facts required to amend the record; and forthwith, if a copy of the record has been sent to the state registrar of vital statistics, shall forward to the registrar a certified copy of the corrected record upon blanks to be provided by said registrar; and the registrar shall thereupon amend the record in his office and state in the margin thereof his authority therefor. Reference to the record of the affidavit shall be made by the clerk on the margin of the original record. If the clerk furnishes a copy of such record, he shall certify to the facts contained therein as amended, and shall state in addition that the certificate is issued under the provisions of this section, a copy of which shall be printed on every such certificate. Such affidavit, or a certified copy of the record of any other city or town or of a written statement made at the time by any person since deceased who was required by law to furnish evidence thereof, may, at the discretion of the clerk, be made the basis for the record of a birth, marriage or death not previously recorded, and such copy of a record may also be made the basis for com-

pleting the record of a birth, marriage, or death which does not contain all the required facts. Any oath which is required by the provisions of this section may be administered by the clerk or deputy clerk of a city or town; they shall receive no fee therefor.

Sec. 39. Penalty for neglect of duty; state registrar shall enforce this section. R. S. c. 61, § 37. If any person shall wilfully neglect or refuse to perform any duty imposed upon him by the provisions of section eleven or of the twenty-one last preceding sections, it shall be a misdemeanor, and he shall be fined not more than one hundred dollars for each offense, for the use of the town in which the offense occurred, and the state registrar shall enforce this section as far as comes within his power; when the state registrar knows, or has good reason to believe, that any penalty or forfeiture hereunder has been incurred, he shall forthwith give notice thereof, in writing to the county attorney of the county in which said penalty or forfeiture has occurred, which notice shall state as near as may be, the time of such neglect, the name of the person or persons incurring the penalty or forfeiture, and such other facts relating to the default of duty as said state registrar may have been able to learn, and upon receipt of such notice the county attorney shall prosecute the defaulting person or persons.

Sec. 40. Duties of clerks; fees for returns to town clerk of births, marriages and deaths. R. S. c. 61, § 38. 1909, c. 26; c. 75, § 7. The clerk of each city or town shall enforce, so far as comes within his power, sections eleven, nineteen, twenty, twenty-one, twenty-two, twenty-six, twenty-nine and thirty-two of this chapter, and when he knows of any birth, marriage or death, which is not reported to his office in accordance with the provisions of this chapter, he shall collect so far as he is able to do so, the facts called for in the blank certificates of birth, of marriage, or of death, as furnished by the state registrar, and shall record them as is herein prescribed; for each birth or death or marriage duly reported to the town clerk, physicians or persons solemnizing marriages shall receive twenty-five cents from the town in which the birth or death or marriage has occurred.

Sec. 41. Duty of state registrar of vital statistics, when provisions of law as to registration of vital statistics are not complied with. 1909, c. 75, § 8. When the state registrar of vital statistics believes that, in any place in this state, the records of births, marriages, or deaths are not made as is provided by law, or that any person neglects or fails to perform any duty required in the law relating to the registration of vital statistics, the said registrar may visit such places and make such investigations as he may deem necessary, and all records, blanks and papers of town clerks relating to births, marriages or deaths shall be open to his examination; any person who refuses to permit such examination or hinders such investigation shall be punished by fine of not less than five, nor more than twenty dollars. All actual traveling and other necessary expenses thus incurred by the state registrar, or incurred in attending the prosecution of cases brought by county attorneys, under the provision of section thirty-nine, shall be paid by the state from the appropriation provided in section thirty-six, but not more than two hundred dollars shall thus be paid to the state registrar for such expenses in one year.

Publication of Ancient Vital Statistics.

Sec. 42. Publication of ancient records of vital statistics; state aid. 1903, c. 203, § 1. 1915, c. 117. Whenever the record of the births, marriages, and deaths of any town in the state, previous to the year eighteen hundred ninety-two, beginning at the very earliest date, shall be collected from church records, church registers, records of clergymen, family bibles, public records and other available sources, and shall be printed and verified in the manner required by the standing committee of the Maine Historical Society, under the editorship of some person selected by said committee, whose services shall be rendered free and without any compensation, and the work shall appear to them to have been prepared with accuracy, the secretary of state shall purchase five hundred copies of such record at a price not exceeding one cent per page; provided, that the written copies of the town records shall become the property of the state, and shall be deposited in the office of the registrar of vital statistics; and provided, further, that not more than one thousand dollars shall be expended by authority of this section in any one year.

Sec. 43. Distribution of volumes. 1903, c. 203, § 2. The volumes purchased, as aforesaid shall be distributed by the state registrar as follows: one copy to the office of secretary of state; one copy to the state library; one copy to the free public library of each town and city of the state; one copy to each state and territorial library in the United States; one copy to the library of congress; one copy to each incorporated historical society in the state; one copy to the library of each college in the state; and one copy to each registry of deeds. The remainder shall be placed in the state library for the purpose of exchange.

Parents and Children.

Sec. 44. Care and custody of children. R. S. c. 61, § 39. Fathers and mothers shall jointly have the care and custody of the person of their minor children.

Liability of parent for injury by minor to schoolhouse and school furnishings, c. 16, § 150; 90 Me. 312; 94 Me. 471.

Sec. 45. When parents live apart, judge of probate may decree as to care and custody; appeals. R. S. c. 61, § 40. If the father and mother of a minor child are living apart from each other, the judge of probate in the county where either resides, on petition of either, and after such notice to the other as he may order, may decree which parent shall have the care and custody of the person of such minor as the good of the child may require; which decree shall be in force until further order of the judge of probate. An appeal shall lie from such decree to the supreme court of probate, which appeal shall be heard and determined by the justice presiding, but the decree of the judge of probate shall be in force until reversed.

See c. 72, § 3; 94 Me. 471.

Sec. 46. Courts not deprived of jurisdiction under c. 65. R. S. c. 61, § 41. The two preceding sections shall not be construed to deprive the supreme judicial court or superior courts of their jurisdiction over the care and custody of minor children, under the provisions of sections six and fourteen of chapter sixty-five relating to divorce proceedings.

94 Me. 471.

Sec. 47. Widowed mothers, rights touching minors. R. S. c. 61, § 43. Widowed mothers have the same right to the custody and earnings of minor children without guardians, as a father has.

Sec. 48. Administrators, etc., may pay funds to a minor not having a guardian in certain cases; limitation on amount; when payment may be made to either parent. 1913, c. 161. 1915, c. 268. Whenever, under any decree or order of the supreme judicial court of this state, or of any justice thereof, in term time or in vacation, or of any judge of any probate court in this state, any receiver, master, executor, administrator, trustee, guardian, or other person acting under authority of either of said courts, or any justice or judge thereof, shall have in his hands any funds not exceeding two hundred dollars to be distributed or paid to any person under the age of twenty-one years, not having a guardian legally appointed in this state, payment may be made directly to such minor, if such minor be ten years of age and such minor's receipt therefor shall be a sufficient voucher for such payment in the settlement in court of any account by the party who makes such payment, and shall discharge and release him from any and all further liability on account of the same. When said minor is under ten years of age the payment may be made to either parent at the discretion of said person paying said money; provided, however, that where the money is paid directly to said minor the person paying the same may, in his discretion, require on such receipt the counter signature of one or both of the parents of such minor, and when the minor is under ten years of age the person paying the same shall receive the receipt of either or both parents, or if neither parent is living may withhold payment until further order of court, or until the appointment of a guardian.

Protection of Neglected Children.

Sec. 49. Appointment of agent for protection of children. 1905, c. 123, § 1. 1907, c. 43, § 1. 1915, c. 320, § 1. Upon application by the mayor and aldermen of any city, the selectmen of any town or the county commissioners of any county to the governor and council recommending any person as an "agent for the protection of children," the governor shall cause the qualifications and experience of said person to be investigated by the state board of charities and corrections, and a report thereon to be made to him; if from such report it shall appear that the person so recommended possesses the necessary qualifications and experience for the office, the governor and council shall issue a badge and a commission to the person designated in said application, appointing such person an "agent for the protection of children," to serve within and for the county for which he or she shall be appointed and within which he or she shall reside, authorizing such agent to arrest persons charged with violating any law concerning the protection of children, or prevention of cruelty to the same, and to serve any process, civil or criminal, provided for by the terms of said laws or required for the enforcement of the same, in the same manner and with the same powers in the premises as any sheriff, deputy sheriff, police officer or constable, and to perform such other duties as may be required by the following sections of this chapter; provided that

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the powers and duties of such agent shall be confined to the limits of the county for which he or she is appointed, and provided further, that there shall not be more than two commissions which have been issued under the provisions of this section in force for any county at one and the same time.

Sec. 50. Appointment when no recommendation is made. 1915, c. 320, § 3. If any vacancy occurs in the office of agent for the protection of children in any county, and the mayor and aldermen of any city, the selectmen of any town or the county commissioners fail, for more than thirty days thereafter, to recommend a suitable person for the office, such appointment may be made by the governor and council upon the recommendation of the state board of charities and corrections in the same manner as though the recommendation had been made in the first instance by the mayor and aldermen, or selectmen, or county commissioners.

Sec. 51. Agents and officers shall investigate cases of cruel or injurious treatment of children; their compensation and the payment thereof. 1905, c. 123, § 2. 1907, c. 43, § 2. 1915, c. 320, § 4. Any agent for the protection of children appointed as aforesaid and all sheriffs, deputy sheriffs, police officers and constables shall investigate all cases of cruel or injurious treatment of children coming to their knowledge, and shall cause offenders against any law concerning the protection of children or prevention of cruelty to the same to be prosecuted. Said agents shall be ex officio agents of the state board of charities and corrections, and the said board shall advise and instruct them in the performance of their duties; said agents shall file with the board such reports of cases investigated and children taken into custody by or through their efforts as the board may require. For their services in conducting investigations, making inspections and performing such other duties as are required by the last twelve sections of this chapter, said agents and officers shall be paid by the county in which such services are rendered, their actual expenses and compensation at the rate of two dollars a day, for every day, and at the same ratio for every part of a day, in which they are actually engaged in making such investigations and inspections or performing such other duties; and for the service of any process, civil or criminal, which they may be authorized to serve by the terms of this section, they shall be allowed the same fees as are now allowed officers by law for the service of any similar process; provided, however, that all claims of such agents or officers for such travel and services, expenses and fees, shall first be audited by the state board of charities and corrections before they are approved by the county commissioners of the county liable to pay the same. All fines imposed for the punishment of such offenses shall be paid over to the county treasurer for the county in which the offense may have been committed.

Sec. 52. Authority of agent and officers; punishment for obstructing officer. 1905, c. 123, § 3. 1907, c. 43, § 3. Any agent so appointed as aforesaid may arrest and bring before any court or magistrate having jurisdiction, any person offending against any law concerning the protection of children or the prevention of cruelty to the same. Such agent, or any sheriff, deputy sheriff, police officer or constable, may lawfully

interfere to prevent the perpetration in his presence of any such offense or act prohibited by any law concerning the protection of children or the prevention of cruelty to the same, and whoever interferes with or obstructs such agent or any sheriff, deputy sheriff, police officer or constable in the discharge of his duty, is guilty of a misdemeanor, and shall be punished by fine not exceeding five hundred dollars or by imprisonment not exceeding six months.

See c. 124, § 23.

Sec. 53. Complaint and hearing on cases of alleged abuse of children; order of court. R. S. c. 61, § 45. 1905, c. 123, § 4. 1907, c. 43, § 4. 1909, c. 79; c. 109. 1915, c. 320, § 5. When complaint in writing, signed by any such agent so appointed, or any officer or agent of any society for the protection of children or the prevention of cruelty to the same, or by three or more citizens of any town or city, is made under oath to the judge of any municipal or police court, the probate court or any trial justice in the county in which said town or city is located, alleging that any child in said town or city is cruelly treated or wilfully neglected by its parents or parent, or by the wilful failure of such parents or parent, is not provided with suitable food, clothing or the 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 place injurious to health or morals, or that such child is an orphan without means of support or kindred of sufficient ability who will furnish such support, and praying that suitable and proper provision may be made for the care, custody, support and education of the child named in such complaint, the magistrate or judge to whom such complaint is made shall issue his warrant and cause such child to be brought before him, and notice to be given to its parents or parent, if any, for such length of time as the judge or magistrate may see fit, either by service in hand or publication in such manner as the judge or magistrate may direct; the judge or magistrate may, if he deems it necessary, in his discretion, continue the case for hearing. If upon hearing it appears that the allegations of said complaint are true, and that it is suitable and proper that such child shall be supported and educated away from its parents or parent, he shall order it into the care and custody of such place or institution as is provided therefor by such town or city, or to such charitable institution or private person as he deems suitable, provided that such institution or person consents to receive, support and educate said child; but such order shall not extend beyond the time when such child arrives at the age of twenty-one years, if a male, or at the age of eighteen years, if a female; and pending any such continuance of the case before hearing and after hearing and until such institution or person can be found, the magistrate or judge may in his discretion if the circumstances appear to require it, order said child temporarily into the custody of any such agent so appointed, or of any such institution or suitable person consenting to receive said child, and the expense of the support of said child during such period until permanent provision can be made therefor, in the manner above specified, shall be paid by the town in which said child resides, and said town may recover the amount thereof from the parents or parent of said child, if any, as provided in section sixty of this chapter,

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or from the town where the child has legal settlement, if any, or if the child is without settlement in any town, then from the state.

Sec. 54. Petition by institution. R. S. c. 61, § 46. 1905, c. 123, § 4. 1907, c. 43, § 5. Upon petition of the superintendent of any such public or charitable institution asking for the care and custody of any such child, an order to the same effect, as provided for in the preceding section may be made by the judge of the probate court in any county where either of the parents or the parent of such child resides, if written consent be given as provided in section thirty-six of chapter seventy-two. Such orders and decrees provided for in this and the preceding section shall have the same effect to divest the parents or parent of all legal rights in respect to such child as specified in section thirty-eight of said chapter seventy-two and said institution shall have full custody and control over said child thereafter for said time, and have authority alone to give the consent required in said section thirty-six.

Sec. 55. Magistrate shall require such private person to give bond; magistrate may examine into condition of such children. R. S. c. 61, § 47. Whenever the magistrate deems it suitable and conducive to the public welfare, that such child be placed under the control of a private person, he shall first take a bond from such person, running to the town where the child resides, in such sum and with such sureties as he approves, conditioned that such person shall humanely treat and properly support, clothe and educate the child, and in case of the non-performance of said bond, a suit may be commenced thereon, and the sum recovered upon such bond shall be paid into the treasury of the town to which the bond is given. Upon application to any magistrate, he shall examine into the condition and welfare of the children who have been provided for under this chapter, and may at any time make such further order in relation to their care, custody, support and education as justice demands.

Sec. 56. Agent shall place child in family or institution of same religious faith as that of the parents; child shall not be denied attendance on religious worship or exercising religious belief of parents. 1913, c. 196, § 5. 1915, c. 320, § 6. Any child who shall come in any way under the inspection or supervision of the state board of charities and corrections, or under the provisions of the last twelve sections of 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 in such manner shall be faithfully carried out by the agent. 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 said child, then it may be placed in such family or institution as may be approved by the state board of charities and corrections until such a family has been secured; provided, however, that 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 insti-

tution approved by said board 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.

See c. 142, § 65.

Sec. 57. No child under sixteen shall be placed in almshouse; exception. 1915, c. 320, § 7. No child under sixteen 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 sixty days, provided that children under two years of age may be kept in almshouses when their mother is also an inmate. Whenever any children under sixteen years of age are placed or allowed by the overseers of the poor to remain in almshouses, notice of that fact, giving the name, parentage and such other facts as the state board of charities and corrections may require, shall be sent by the overseers of the poor to the said board within forty-eight hours of the entrance of such child into the almshouse.

Sec. 58. Persons maintaining homes or maternity hospitals shall have license. 1915, c. 320, § 8. No person, firm, corporation or association shall conduct or maintain a maternity hospital, or conduct or maintain a boarding-house or home for three or more children under sixteen years of age, unattended by parents or guardians, excepting children related to such person by blood or marriage, or who have been legally adopted by such person, or engage in, or assist in conducting a business of placing out or finding homes or otherwise disposing of children under sixteen years of age, without having in full force a written license therefor from the state board of charities and corrections; provided, that nothing in this section shall apply to any institution, which on the third day of July, nineteen hundred and fifteen, was under the supervision of the state board of charities and corrections by the provisions of chapter one hundred and forty-seven.

Sec. 59. Parents may make application to have custody restored to them; notice, hearing and order. R. S. c. 61, § 49. Whenever a child is in the custody of any public or charitable institution, the parents or either of them may make application in writing to any justice of the supreme judicial court to have its custody restored to them. Such notice of the application and the time and place of the hearing thereon as the court orders, shall be given to such institution and to the municipal officers of the town where the proceedings herein provided were commenced; and if, upon such hearing, it appears that the applicant is of sufficient ability and inclination suitably to provide for the support and education of said child, and that justice requires that its custody be restored to such applicant, the judge shall so order, and the custody and control of said child shall thereupon be given to such applicant until the further order of the court.

Sec. 60. Expenses may be recovered of parents. R. S. c. 61, § 50. 1915, c. 320, § 9. Any town or county incurring expenses under sections fifty-one, fifty-three, fifty-four, fifty-five and fifty-nine of this chapter, through the fault of parents who are able properly to support and educate their

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children, but wrongfully neglect and refuse to do so, may recover of them, in an action of debt, the amount so expended.

Sec. 61. Towns may provide for children. R. S. c. 61, § 51. Any town may make proper provision for the support of children mentioned in sections fifty-three, fifty-four, fifty-five, fifty-nine and sixty, and such support shall not make such children or their parents, paupers.

Sec. 62. Penalty for failure to perform duty. 1915, c. 320, § 10. Whoever violates any provision of section fifty-six of this chapter, or wilfully fails, neglects or refuses to perform any of the duties imposed upon him by the provisions of the eleven preceding sections, shall be fined not more than five hundred dollars, or be imprisoned for not more than six months.

Note. Crimes against children, c. 120, §§ 27-37.
Criminal proceedings for desertion of families, c. 120, §§ 38-41.
Proceedings when child under age of sixteen years is arrested and charged with crime, c. 137, §§ 15-21.

CHAPTER 65.

Divorce and Annuling Illegal Marriages.

Sec. 1. Certain marriages void, without process. R. S. c. 62, § 1. Marriages prohibited in sections one, two and three, of chapter sixty-four, if solemnized in this state, are absolutely void; and the sentence of either party to imprisonment for life and confinement under it, dissolves the bonds of matrimony, without legal process in either case.

31 Me. 491; 32 Me. 589; 76 Me. 421; 97 Me. 133.

Divorce from Bonds of Matrimony.

Sec. 2. Causes for which divorce may be granted. R. S. c. 62, § 2. 1907, c. 148. 1913, c. 8. A divorce from the bonds of matrimony may be decreed in the county where either party resides at the commencement of proceedings, for causes of adultery, impotence, extreme cruelty, utter desertion continued for three consecutive years next prior to the filing of the libel, gross and confirmed habits of intoxication from the use of intoxicating liquors, opium or other drugs, cruel and abusive treatment, or on the libel of the wife, where the husband being of sufficient ability or being able to labor and provide for her, grossly or wantonly and cruelly refuses or neglects to provide suitable maintenance for her; provided, that the parties were married in this state or cohabited here after marriage, or if the libellant resided here when the cause of divorce accrued, or had resided here in good faith for one year prior to the commencement of proceedings, or if the libelee is a resident of this state. But when both parties have been guilty of adultery, or there is collusion between them to procure a divorce, it shall not be granted. Either party may be a witness. The supreme judicial court has jurisdiction of libels for divorce in all counties except the county of Cumberland.

32 Me. 338; 43 Me. 261; 45 Me. 379; 51 Me. 481; 54 Me. 366; 58 Me. 162, 514; 60 Me. 452; 61 Me. 377, 397; 69 Me. 535; 78 Me. 409; 88 Me. 120; 111 Me. 406.