

MAINE STATE LEGISLATURE

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Chapter 138.

Crimes against Marital or Family Status and Children.

Sections 1- 5. Desertion and Nonsupport.

Sections 6-15. Crimes against Children.

Desertion and Nonsupport.

Sec. 1. Desertion of wife or children in destitute circumstances or willful nonsupport, when a felony; court may direct fine 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 willfully 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, willfully 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 conviction 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 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 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 or her 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 to any such wife, child or children shall be prima facie evidence that such wife, child or children is in destitute or necessitous circumstances. (R. S. c. 125, § 1. 1947, c. 369, § 1.)

The "child or children" contemplated by the provisions of this section means legitimate children, and does not include illegitimate children. State v. McCurdy, 116 Me. 359, 102 A. 72.

Penalty authorized determines infamous character of offense.—A crime punishable by imprisonment in the state prison or penitentiary, whether the accused is or is not sentenced to hard labor, is an infa-

mous crime; and, in determining this, the question is, whether it is one for which the statute authorizes the court to impose an infamous punishment, and not whether the punishment actually imposed is an infamous one. *State v. Vashon*, 123 Me. 412, 123 A. 511.

The offense in aggravated form is a felony and must be charged by indictment.—This section declares the offense, when of a high and aggravated nature, to be a felony. A felony is punishable by imprisonment in the state prison. A defend-

ant being charged with a felony would be subject to such imprisonment. Such imprisonment is infamous. The constitution of Maine requires the charging of an infamous offense by indictment of a grand jury. Therefore such an offense must be charged by indictment. *State v. Arris*, 121 Me. 94, 115 A. 648; *State v. Vashon*, 123 Me. 412, 123 A. 511.

Cited in *Drouin v. Ellis C. Snodgrass Co.*, 138 Me. 145, 23 A. (2d) 631, overruled in *Robitaille's Case*, 140 Me. 121, 34 A. (2d) 473.

Sec. 2. Desertion of wife or minor children in destitute circumstances and wilful nonsupport, when a misdemeanor.—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 willfully 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, willfully 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 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 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, 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 her 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 to any such wife, child or children shall be prima facie evidence that such wife, child or children is in destitute or necessitous circumstances. (R. S. c. 125, § 2. 1947, c. 369, § 2.)

Cited in *Drouin v. Ellis C. Snodgrass in Robitaille's Case*, 140 Me. 121, 34 A. Co., 138 Me. 145, 23 A. (2d) 631, overruled (2d) 473.

Sec. 3. On proof of violation of order, court may proceed under original indictment; amount recovered paid to wife, guardian, etc.—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 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 provided said department has furnished aid to said minor child or minor children. (R. S. c. 125, § 3. 1947, c. 369, § 3.)

Sec. 4. Earnings of persons sentenced.—When any person is sentenced to hard labor and actually employed in such labor in a county jail or any other county correctional institution or reformatory on account of any sentence imposed under the provisions of the 3 preceding sections, the keeper of said jail or other institution or reformatory shall certify at the end of each week to the county commissioners the number of days during which such person shall have been actually employed in said jail as aforesaid, and the county commissioners shall thereupon draw their order upon the county treasurer for a sum equal to 50¢ for each day's hard labor so performed by such person, and the same shall thereupon be paid forthwith by the county treasurer to the wife of such person or to the guardian or custodian of his or her minor child or children, or to any organization or individual as trustee which shall be approved by the court imposing such sentence. (R. S. c. 125, § 4.)

On appeal defendant may have trial by jury.—The proceeding under the provisions of this chapter being a criminal one, the accused, convicted by a municipal court, has necessarily the same right of appeal that he would have if convicted of any other offense, and having such right of appeal, he is therefore not deprived of the right of trial by jury. *Sprague v. Androscoggin County*, 104 Me. 352, 71 A. 1090.

Section is constitutional.—To enact that a husband who, without lawful excuse, deserts his wife or neglects to support her when in need, may be fined and imprisoned, and that the proceeds of his labor while in jail, estimated as provided in this section, shall be paid to his wife, does not transcend in any respect our conception of constitutional legislative power. *Sprague v. Androscoggin County*, 104 Me. 352, 71 A. 1090.

Sec. 5. Abandonment of child under 6 years.—If the father or mother of a child under the age of 6 years, or a person to whom such child is entrusted, exposes it in any place with intent wholly to abandon it, he shall be punished by a fine of not more than \$500 or by imprisonment for not more than 5 years. (R. S. c. 125, § 5.)

Crimes against Children.

Sec. 6. Cruelty to children.—Any parent, guardian or other person having the care and custody of any child, who cruelly treats such child by abuse, neglect, overwork or extreme punishment, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 11 months. (R. S. c. 125, § 6.)

Sec. 7. Permitting children in disorderly house, etc.—Whoever admits or allows to remain in any disorderly house, house of ill fame, gambling place or place where intoxicating liquors are sold, or other place injurious to health or morals, owned, kept, maintained, managed or controlled by him in whole or in part, any child under the age of 16 years, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days. Provided, however, that a child or children under the age of 16 years may enter places where intoxicating liquor is sold when accompanied by a parent, guardian

or other adult person in charge of such child or children, with the consent of the parent or guardian of such child or children. (R. S. c. 125, § 7.)

Sec. 8. Exhibiting children under 16 years of age or permitting begging. — No person shall employ or cause to be employed, exhibit, use or have in custody, or train for use, employment or exhibition any child under 16 years of age, and no parent, guardian or other person having care, custody and control of such child shall procure or permit the training, use, employment or exhibition of any such child, in begging or soliciting or receiving alms in any manner or under any pretense, or in any illegal, indecent or immoral exhibition or practice, or in any exhibition of any such child when insane or idiotic, or when possessing any deformity and unnatural physical formation, or in any practice, exhibition or place dangerous or injurious to the life, limb, health or morals of such child. Whoever violates the provisions of this section shall be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days. (R. S. c. 125, § 8.)

Sec. 9. Selling firearms or ammunition or dangerous weapons to children. —Whoever gives, furnishes or sells to any child under the age of 16 years any dangerous weapon or firearm or ammunition, except in cases where the parents, guardians, teachers or instructors of children may furnish them with such weapons for hunting or target shooting outside the thickly settled portions of any town or city, or where such weapons may be used in any licensed shooting gallery, shall be deemed guilty of encouraging, causing or contributing to the delinquency or distress of such child and, upon conviction, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days. (R. S. c. 125, § 9. 1953, c. 234.)

See § 14, re required evidence: c. 144, § 13, re record of firearms sold, etc.

Sec. 10. Selling or giving air rifles to children under 14 years. — Whoever sells or gives away an air rifle to any child under the age of 14 years shall be punished by a fine of not less than \$5 nor more than \$20. (R. S. c. 125, § 10.)

See § 14, re required evidence.

Sec. 11. Sale of cigarettes to persons under 16 years. — Whoever by himself, clerk, servant or agent directly or indirectly sells, offers for sale, has in his possession with intent to sell or gives away to, or in any way obtains for any person under the age of 16 years, any cigarette, cigarette paper, so called, or tobacco, such as is used for making any cigarette, shall be punished by a fine of not more than \$50 or by imprisonment for not more than 30 days. (R. S. c. 125, § 11.)

See § 14, re required evidence.

Sec. 12. Selling or giving intoxicating liquor to any child under 16 years.—Whoever sells or gives to any child under the age of 16 years, or furnishes any such child with intoxicating liquor or encourages such child to use the same, unless prescribed by a physician or otherwise used in case of sickness, shall be deemed guilty of encouraging, causing or contributing to the delinquency or distress of such child and, upon conviction, shall be punished by a fine of not more than \$100 or by imprisonment for not more than 60 days. (R. S. c. 125, § 12. 1953, c. 300, § 1.)

See § 14, re required evidence.

Sec. 13. Selling narcotic drugs to children. — Whoever sells, gives, administers or dispenses or conspires to sell, give, administer or dispense marijuana or any substance defined as a narcotic drug under laws of this state, un-

less prescribed by a physician or otherwise used in case of sickness, to any person under the age of 18, shall be punished by imprisonment for not more than 20 years and in addition by a fine of not more than \$1,000. (1953, c. 300, § 2.)

Sec. 14. Violation of §§ 9, 12.—In order to find any person guilty of violating the provisions of sections 9 and 12, it shall not be necessary to prove that the child is actually in delinquency or distress, provided it appears from the evidence that through any act or neglect or omission of duty or by any improper act or conduct on the part of the accused the distress or delinquency of any child may have been caused or merely encouraged. (R. S. c. 125, § 13.)

See c. 149, §§ 29-35, re proceedings when child under 17 years of age is arrested and charged with crime.

Sec. 15. Jurisdiction.—In all prosecutions for misdemeanors under the provisions of this chapter, trial justices within their respective counties shall have original and concurrent jurisdiction with municipal courts and the superior court. (R. S. c. 125, § 14.)