

Domestic Relations and Children

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The 98th General Assembly directed the Bureau of Code Revision¹ "to make an analysis of the effect and operation of the laws and court decisions pertaining to the subject of marriage and divorce, and the custody, support and adoption of children, and draft and submit legislation reflecting necessary changes in the laws of Ohio dealing therewith."² The Bureau of Code Revision working in close cooperation with juvenile, probate and common pleas judges, state and local bar associations and other interested agencies, drafted and presented a bill³ to the 99th General Assembly revising and amending sections of the General Code pertaining to these subjects.⁴ This bill with few amendments was enacted by the legislature and became effective August 28, 1951. Its importance comes not only from the substantive amendments to the laws on domestic relations but also from the fact that it is the first major legislation revising, rearranging and renumbering these sections in accordance with the proposed plan of the Bureau of Code Revision for the revision of the entire General Code.⁵

The plan divides the Code into titles, chapters, and sections, employing a decimal numbering system to identify title, chapter and section, e.g., 1.0101 will be the first section of the first chapter of the first title. While the numbering of the new law conforms to the present system, it nevertheless arranges subject matter into chapters and sections under the title of "Domestic Relations and Children" so that similar subject matter can be identified by reference to section numbers.

The Act is divided into six chapters covering sections of law presently scattered throughout the Code. They will comprise the first six chapters of the title. In order, they are Marriage, Husband and Wife, Divorce and Alimony, Adoption, Infants and Bastardy.⁶

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¹ Created in 1945 to codify the laws of the state, to prepare a plan for the order, classification and arrangement of the General Code and to recommend legislation for the consolidation, revision and other matters relating thereto. OHIO GEN. CODE §§ 76-1 to 76-8, inclusive.

² S.J.R. No. 32, 98th General Assembly, 123 Ohio Laws 956.

³ Senate Bill No. 65, enacted as Amended Senate Bill No. 65.

⁴ REPORT, BUREAU OF CODE REVISION TO SENATE AND HOUSE OF REPRESENTATIVES, STATE OF OHIO, 1951, p. 27.

⁵ For a discussion of the plan see Campbell, *Continuous Code Revision in Ohio*, 11 OHIO ST. L. J. 533 (1950).

⁶ The chapters are numbered consecutively, 8001 through 8006. Section numbers follow separated by a dash. For reference, the former section number appears in parenthesis following the new number. Thus Section 8001-1 is the first section of the chapter on marriage, 8006-1 the first section on Bastardy.

In the main, the amendments do not affect substantive rights and liabilities. The great majority are only changes in form. They serve as an example of the plan of revision for the entire Code under which the Bureau of Code Revision is undertaking to create uniformity in arrangement of sections, paragraphing and punctuation, to simplify language and eliminate ambiguous expressions and duplications. Each reenacted section bears the mark of the revisioners. However, with the possibility of one exception, it nowhere appears that substance has been unintentionally sacrificed for the sake of formal change.

No attempt is made to point out these changes in detail. Rather the discussion which follows is primarily confined to singling out the substantive changes within each of the chapters.

MARRIAGE

Ohio was one of two or three states permitting the publication of banns as a substitute for a license. This privilege has been revoked by the repeal of Section 11186 of the General Code. Section 8001-9 provides that "no marriage shall be solemnized without the issuance of a license." The amendment is not particularly significant, however, for it is believed that it was the practice, among persons whose religious faith requires the publishing of banns, to procure a license. A related section, 11197 of the General Code, requiring the person solemnizing the marriage upon publication of banns to obtain proof of the consent of parents or guardian to the marriage of a minor, has also been repealed.

Five other sections were repealed.⁷ Three were penalty sections, one of which, for example, required the probate judge to forfeit and pay not more than \$1000.00 to the aggrieved party for the issuance of a license in any manner not provided by law. The others treated, respectively, the obtaining of a license by a probate judge⁸ and the validation of marriage licenses issued to United States soldiers by commanding officers of military camps located in Ohio after the declaration of war against Germany.

Section 8001-5 (former Section 11188) requires each party in the application for license to include, if previously married, in addition to vital statistics presently required, the names of the parties to any such marriage, any minor children, and if divorced, the jurisdiction, date and case number of the decree. An additional requirement respecting the examination and test for syphilis has been added. The section provides that the physician's statement to the probate court must be accompanied by a statement by the applicant

⁷ OHIO GEN. CODE §§ 11193, 11194, 11198, 11198-1, 12921.

⁸ Presently covered by Ohio General Code Section 10501-9, providing for the administration and determination of matters in which the probate judge is interested.

concerning his age signed in the presence of the physician. This section also incorporates that part of former Section 11186 requiring the applicants to obtain a license in the county where the female resides except that persons in military service may apply in the county where they are stationed regardless of the residence of the female.

Municipal judges are added to the list of persons authorized to solemnize marriages.⁹ There are no other substantive changes. Section 8001-16 is designated as a new section, but it only includes the penalties applicable to the prohibited acts in the chapter without change from former sections.

HUSBAND AND WIFE

This chapter originally enacted as the Married Woman's Act of 1887 has relatively few changes. Former Sections 7997, 8003 and 8004 dealing with the primary duty of the husband to support his wife and minor children and his liability to third persons for necessities furnished his wife have been combined in one section. Section 8002-3 provides that any other person who supplies necessities in good faith to the wife may recover from the husband if he neglects to support her unless she abandon him without cause. No substantive change was intended by this amendment.¹⁰ Nevertheless, former Section 8004 relieved the husband of the duty to support his wife where she had abandoned him without cause until she offered to return. Query, whether the omission of this language would prevent the wife from reviving the duty to support by an offer in good faith to return to her husband.

DIVORCE AND ALIMONY

The principal amendments here deal with the grounds of divorce, alimony and the jurisdiction of the court.

Wilful absence as a ground for divorce has been reduced from three years to one year. Habitual drunkenness is now a ground for divorce without time qualification, the three year requirement having been removed.¹¹

Prior to the adoption of the Act, alimony, i. e. support as distinguished from a property settlement, could be awarded only to the party who was not at fault. No distinction is made between alimony and property settlement under the new law and the right thereto is not dependent upon the guilt or absence thereof of the party to whom the award is made. The matter of deciding to whom alimony should be awarded is left entirely to the discretion of the court. In determining the amount the court is required to consider

⁹ OHIO GEN. CODE § 8001-8 (11182).

¹⁰ Report, Bureau of Code Revision, *supra* Note 4, pp. 28-29.

¹¹ OHIO GEN. CODE § 8003-1 (11979).

earning capacity in addition to the value of the property which came to either by marriage and the value of their estates.¹² The action for alimony only, formerly available to the wife alone is now available to either.¹³

The jurisdictional requirement of residence in the county where the action for divorce is brought has been increased from thirty to ninety days.¹⁴ A new provision in Section 8003-21 gives the court of common pleas full equity powers and jurisdiction in all domestic relation matters. The supreme court has held repeatedly that the court's power is purely statutory in matters of divorce and alimony and allowed collateral attack upon decrees particularly with respect to alimony and property settlements.¹⁵ Henceforth the litigant in most instances will have to seek relief through direct appeal.

There can be no doubt now that the party to a divorce action has a right of appeal. Former Section 12002 denying the right of appeal with certain exceptions has been repealed. This Section has been held to be in conflict with Article IV, Section 6 of the Ohio Constitution as amended in 1912 which defines the jurisdiction of the Court of Appeals, but it has been made the basis of a defense as late as April of this year.¹⁶

Other amendments include the right to service by publication upon a resident of Ohio in the event personal service cannot be obtained and service on a foreign defendant by registered mail addressed to a consular representative of the foreign nation anywhere in the United States.¹⁷ Section 8003-9 makes the investigation which the court is permitted to make in any action for divorce or alimony mandatory where there are children under fourteen years of age. Alimony pendente lite for the support of dependents has been limited to minor children of the marriage by birth or adoption instead of any children dependent upon either party to the marriage.¹⁸

Three additional sections were repealed. As a result petitions in divorce actions must be verified in accordance with general provisions of law and change of venue may not be obtained in divorce or alimony cases.¹⁹ The third, Section 11999, providing that the divorce judgment shall restore the wife to all her real property be-

¹² OHIO GEN. CODE § 8003-17 (11990). Former Sections 11990 and 11992 on alimony were repealed.

¹³ OHIO GEN. CODE § 8003-18 (11997).

¹⁴ OHIO GEN. CODE § 8003-3 (11980).

¹⁵ See *Miller v. Miller*, 154 Ohio St. 531, decided February 14, 1951.

¹⁶ See *Jelm v. Jelm*, 155 Ohio St. 226, decided April 18, 1951.

¹⁷ OHIO GEN. CODE §§ 8003-7 (publication) and 8003-8 (foreign defendant).

¹⁸ OHIO GEN. CODE § 8003-15 (11994).

¹⁹ OHIO GEN. CODE §§ 12003 (verification) and 12000 (change of venue).

came inoperative by the enactment of the Married Woman's Act of 1887.²⁰

ADOPTION

The right of inheritance of an adopted child has been substantially altered. The amendments to Section 8004-13, formerly 10512-13, cut off the right of intestate succession to, through, and from the natural parents. They appear also to deny such a child the right to take by will executed prior to the adoption since it is expressly provided that an adopted child may take under a will of its natural parent "identifying such child by its adopted name, or later acquired name." The right to inherit to, through, and from the adopted parent remains unchanged.

In the matter of adoption procedure the requirement that notice be given to a stepparent of the child has been deleted. The words "if available" have been added to the requirement in Section 8004-2 that a certified copy of the birth certificate be filed with the petition.

Former Section 10512-18 permitted the probate court to dispense with the interlocutory order of adoption if one of three conditions existed. The first two²¹ have not been changed. The third dispensed with such order if the child resided in the home for six months and had either been legally placed there or its placement therein found to be beneficial by the proper court. The word "and" has been substituted for "or" in this Section, 8004-9(c) so that both factors must be present.

INFANTS

There are two significant amendments. One allows the court where it finds with respect to children under eighteen that neither parent is suitable to have custody, to place the child with one of its relatives. The other permits the court to certify such cases to the juvenile court for determination without first obtaining that court's consent. Consent of the juvenile court is still required in all cases where the court having jurisdiction has not found the parents unfit or where the parent awarded custody has died.²²

BASTARDY

The amendments in this chapter, among others, eliminate the requirement that the examination before the justice of the peace

²⁰ See *Huff v. Huff*, 79 Ohio App. 514, motion to certify overruled, November 27, 1946.

²¹ Where the child, legally by birth or adoption, is the child of spouse of the petitioner or where the child was placed in the home of petitioner by an approved agency and has lived in the home for a continuous period of six months.

²² OHIO GEN. CODE §§ 8005-4 (8033) and 8005-6 (8034-1).

shall be given in evidence at the trial for the complainant.²³ Former Section 12124 (8006-18) dealing with insolvent defendants has been entirely rewritten. It provides that the defendant, having been confined in jail for three months, upon three days' notice to the complainant or her attorney may apply to the trial judge for release. If unable to pay the defendant may be released on condition that he pay a weekly sum on expenses and costs.

²³ OHIO GEN. CODE § 8006-15 (12122).