

# MASON'S MINNESOTA STATUTES

1927

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AND 1927

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1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE  
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CITER-DIGEST COMPANY

WILLIAM H. MASON,  
Editor in Chief.

MARTIN S. CHANDLER,  
RICHARD O. MASON,  
Assistant Editors.

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CHAPTER 17

ILLEGITIMATE CHILDREN—BASTARDS

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**3261. Complaint—Where filed—Warrant—**On complaint being made to a justice of the peace or municipal court by any woman who is delivered of an illegitimate child, or pregnant with a child which, if born alive, might be illegitimate, accusing any person of being the father of such child, the justice or clerk of the court shall take the complaint in writing, under her oath, and thereupon shall issue a warrant, directed to the sheriff or any constable of the county commanding him forthwith to bring such accused person before such justice or court to answer such complaint; which warrant may be executed anywhere within the state. Such complaint shall be filed and further proceedings had either in the county where the woman resides or in the county where the alleged father of the child resides or in the county where the child is found, if it is likely to become a public charge upon such county. (R. L. '05 § 1567; G. S. '13 § 3214, amended '17 c. 210; '21 c. 489 § 1)

Requisites of complaint (29-132, 12+347; 47-475, 50+605; 81-501, 84+340). Requisites of warrant (46-343, 49+54). Nature and object of act and proceedings thereunder (23-1; 29-132, 12+347; 35-238, 28+501; 41-196, 42+933; 72-415, 75+725; 94-177, 102+204; 135-65, 160+189; 138-78, 163+797; 141-141, 169+529; 192+498). 166-497, 207+631.

The evidence, in an action charging the defendant with being the father of an illegitimate child, examined, and held sufficient to sustain the verdict. In such proceeding, a conviction may be had on a fair preponderance of the evidence. It may be sustained on the uncorroborated testimony of the complaint. 159-292, 198+815.

There was no error in permitting the amendment, at the trial, of the complaint in a bastardy proceeding, by adding a formal allegation that the child in question was illegitimate. 161-28, 200+746.

Evidence. 167-523, 209+313.

**Explanatory note—**This chapter (17 of G. S. 1913, §§ 3214 to 3226 G. S. '05, §§ 1567 to 1579) was amended and re-enacted by Laws 1917, c. 210, constituting a revision of the chapter. This amendment was made by reference to the sections of G. S. 1913, but without regard to the subject matter contained in such sections. The subject matter contained in G. S. 1913 is no longer to be found in said section as amended by said Laws 1917, c. 210, and said § 3216 as amended by Laws 1917, c. 210, contains the subject matter of the original § 3217; section 3217, as amended, contains the subject matter of the original § 3218; section 3218, as amended, contains a part of the subject matter of the original §§ 3219, 3220; section 3219, as amended, is a new section; section 3220, as amended, contains the subject matter of the original section 3221; section 3221, as amended contains the subject matter of the original section 3222; section 3222, as amended, contains the subject matter of the original section 3224; section 3223, as amended, contains the subject matter of the original section 3225; section 3224, as amended, contains the subject matter of the original section 3226; section 3225, as amended contains new matter. Said amendatory act also changed the chapter heading from "Bastards" to "Illegitimate Children."

**3262. Action how entered—Proceedings—**The justice shall enter an action in his docket, or the clerk of

court in his register of actions, in which the state shall be plaintiff and the accused defendant, and shall make such other entries as are required in criminal actions. On the return of the warrant with the accused, the justice or judge shall examine under oath the complainant, and such other witnesses as may be produced by the parties, respecting the complaint, and shall reduce such examination to writing. He may at his discretion, and at the request of either party shall, exclude the general public from attendance at such examination. (R. L. '05 § 1568; G. S. '13 § 3215, amended '17 c. 210)

See note under § 3261.  
Scope of proceedings (42-32, 43+571). Failure to make docket entries held immaterial (29-132, 12+347).  
Where defendant testified without objection to complainant's absence, he waived her examination, and the justice had jurisdiction (101-535, 111+733).

**3263. Defendant to give bond—May plead guilty—**If there is probable cause to believe the defendant guilty as charged in the complaint, the justice or judge shall require him to enter into a recognizance, with approved sureties, in the sum of not less than three hundred dollars nor more than one thousand dollars, to appear before the district court of the proper county at the next term thereof, or if such court is then sitting in the county, at a date fixed by the justice or judge, and answer said complaint and abide the order of such court thereon. If he fails to give such recognizance, the justice or judge shall commit him to the county jail, there to be held to answer such complaint at the next term of such court, or at the date so fixed; provided, however, that said accused may appear before the court at any time and enter a plea of guilty to such complaint. Thereupon the justice or judge shall certify the examination, and return the same and all process and papers in the case of the clerk of such court. (R. L. '05 § 1569, amended '09 c. 275; '13 c. 71 § 1; '17 c. 210; '21 c. 489 § 1) [3216]

See note to § 3261, herein.  
Exclusive mode of settlement. Release by mother not a bar (47-436, 50+475). Discharge by one justice not a bar to fresh proceedings before another justice (42-32, 43+571). Cited (35-238, 28+501; 72-415, 417, 75+725; 94-177, 102+204).

**3264. Continuance—**At the next term of said court, or at the date fixed by the justice or judge, if the complainant has not been delivered or is not able to attend, or for any other sufficient reason, the court may continue the cause, and such continuance shall renew the recognizance, which shall remain in force until final judgment. If the sureties shall at any term of court surrender the defendant and ask to be discharged, or if the court shall at any time deem it proper, it may order a new recognizance to be taken, and commit the defendant until it is given. (R. L. '05 § 1570; G. S. '13 § 3217, amended '17 c. 210; '21 c. 489 § 1)

See note under § 3261.  
Return held sufficient (29-132, 12+347).

**3265. Trial—Exclusion of public—Reading preliminary examination—Adjudication of paternity—Judgment—Default—Commitment to jail—Duties of State Board of Control—Bond for payment of support, etc.—**Upon the trial in district court the judge may at his discretion exclude the general public from attendance at such trial and shall do so at the request of either party. The examination taken before the justice or judge of the municipal court shall in all cases be read to the

3265  
221nw 719

3265  
175m 484  
179m 80  
179m 436  
228nw 335  
229nw 564

3265  
248nw 658

jury when demanded by the defendant. If he is found guilty, or admits the truth of the accusation, he shall be adjudged to be the father of such child and thenceforth shall be subject to all the obligations for the care, maintenance and education of such child, and to all the penalties for failure to perform the same, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity. Judgment shall also be entered against him for all expenses incurred by the county for the lying-in and support of and attendance upon the mother during her sickness, and for the care and support of such child prior to said judgment of paternity, the amount of which expenses, if any, shall also be found by the judge, together with the costs of prosecution. If the defendant fails to pay the amount of such money judgment forthwith, or during such stay of execution as may be granted by the court, he shall be committed to the county jail, there to remain until he pays the same or is discharged according to law; provided, however, that no stay shall be granted unless the defendant shall give a bond to the county, in such sum and with such sureties as shall be approved by the court, for the payment of such money judgment on or before the expiration of such stay. Upon due notice to the State Board of Control or the duly appointed guardian of the child, the judge of the district court before whom the proceedings are pending shall make and enter an order, directing and requiring the father of such child to pay to the state board of control or the county child welfare board, if there be one, or the duly appointed guardian of such child such sum of money or its equivalent, as may be proper and adequate for the care, maintenance, and education of such child. Or such order may provide for the payment, in the manner heretofore provided, of a specific sum each month, or at other stated intervals, for the purpose hereinbefore specified, and may further require the father of such child to furnish such bond or other security for the performance of said order as may be proper and necessary. The court shall further fix the amount, and order the defendant to pay all expenses necessarily incurred by, or in behalf of, the mother of such child, in connection with her confinement and the care and maintenance of the child prior to judgment. If the defendant fails to comply with any order of the court, hereinbefore provided for, he may be summarily dealt with as for contempt of court, and shall likewise be subject to all the penalties for failure to care for and support such child, which are or shall be imposed by law upon the father of a legitimate child of like age and capacity, and in case of such failure to abide any order of the court, the defendant shall be fully liable for the support of such child without reference to such order. (R. L. '05, § 1571; G. S. '13, § 3218; amended '17, c. 210; '21, c. 489, § 1; '25, c. 354, § 1)

The evidence was sufficient to support the verdict of the jury that the defendant was the father of the illegitimate child of the complaining witness. 167-374, 196+483.

Defendant was not prejudiced by the court's refusal to receive in evidence letters written by another man to the complaining witness, she having admitted that she had no affection for the defendant, and that she had a love affair with the writer of the letters. 157-374, 196+483.

The evidence sustains a verdict finding the defendant guilty of bastardy. 159-62, 197+964.

The accused may be convicted upon the sole testimony of the mother. 167-263, 209+4.

The general reputation of the mother as to chastity and morality is inadmissible affecting her credibility.

The defendant may prove that the prosecutrix had had sexual intercourse with persons other than the accused to determine the paternity of the child. 167-263, 209+4.

**Explanatory note**—See note to § 3261, herein.

**3266. Father to pay all expenses**—In the event of judgment of paternity as provided in section 3218 the mother shall be entitled to recover of the father in a civil action all expense necessarily incurred by her in connection with her confinement, including her suitable maintenance for not more than eight weeks next prior thereto and not more than eight weeks thereafter; and for the burial of the child if the same shall have been still born, or shall have died after birth, and all necessary expenses and doctor's bills in connection with her or said child's sickness. The provisions of this section shall apply only to such expense or portion thereof as is not otherwise provided for by order of the Court. (R. L. '05 § 1572; G. S. 13 § 3219, amended '17 c. 210; '21 c. 489 § 1)

Section 3218 is now § 3265, herein.

Evidence (23-528; 29-132, 12+347; 35-240, 28+503; 46-343, 49+54; 47-475, 50+605; 73-101, 75+893; 78-218, 80+962). Corroboration of complainant unnecessary (29-357, 13+153; 41-196, 42+933). Burden of proof on issue of marriage (23-528). Proof beyond reasonable doubt unnecessary. Fair preponderance of evidence sufficient (29-357, 13+153; 35-240, 28+503; 41-196, 42+933). Evidence held sufficient to sustain conviction (29-132, 12+347; 46-343, 49+54; 80-221, 83+141; 81-501, 84+340). Evidence held insufficient (102-419, 113+1059). Marriage as a defense (23-528). Release by mother not a bar (47-436, 50+475). County attorney may comment on failure of defendant to take stand (29-132, 12+347), but not on resemblance of child to defendant (81-501, 84+340). Oath to jury as in civil cases (23-528). Instructions to jury (35-240, 28+503; 61-415, 63+1085; 72-415, 75+725; 78-218, 80+962). Judgment for maintenance, etc. (35-238, 28+501; 35-240, 28+503, 47-436, 50+475; 72-415, 75+725; 94-177, 102+204). Judgment binding though mother deserts child (23-301). Judgment not admissible against defendant in subsequent prosecution for seduction (41-196, 42+933). Effect of bankruptcy (89-383, 95+223). Appeal (46-343, 49+54; 63-228, 65+639).

In a bastardy proceeding, the record examined, and held that the evidence sustains the verdict of the jury. 162-39, 201+938.

**Explanatory note**—See note to § 3261, herein.

**3267. Application for discharge from imprisonment**—Any person who has been imprisoned ninety days for failure to pay any such money judgment for expenses incurred by the County as hereinbefore set forth, may apply to said court, by petition setting forth his inability to pay the same, and praying to be discharged from imprisonment, and shall attach to such petition a verified statement of all his property, money and effects whether exempt from execution or otherwise. Thereupon the court shall appoint a time and place for hearing said application, of which the petitioner shall give at least ten days' notice to the county attorney. (R. L. '05 § 1573; G. S. '13 § 3220, amended '17 c. 210; '21 c. 489 § 1)

See note to § 3261, herein.

**3268. Hearing—Judgment**—At the hearing the defendant shall be examined on oath in reference to the facts set forth in such petition and his ability to pay such money judgment, and any other legal evidence in reference to such matters may be produced by any of the parties interested. If it appears that the defendant is unable to pay such judgment, the court may direct his discharge from custody, upon his making affidavit that he has not in his own name any property, real or personal, and has no such property conveyed or concealed, or in any manner disposed of with design to secure the same to his own use or to avoid in any manner payment of such judgment. The court, as a condition of such discharge may require the defendant to pay such judgment in monthly or other installments, as the earning capacity of the defendant may justify. If upon such hearing it appears that the defendant has property; but not sufficient to pay such judgment, the court may make such order concerning the same in connection with such discharge as justice

3268  
181m 374  
232nw 624  
See 3270

may require. The defendant's discharge as aforesaid shall not affect the right of the county to collect upon execution any portion of such judgment remaining at any time unsatisfied, subject to all the provisions of law relating to judgments for the payment of money; or the right of the court to recommit the defendant if at any time it shall appear to the court that the defendant is possessed of means to pay said judgment but will not do so. (R. L. '05 § 1574, amended '13 c. 494 § 1; '17 c. 210; '21 c. 489 § 1) [3221]

78-377, 81+9; 79-27, 81+636.

The defendant was not prejudiced by the admission in evidence of such a declaration when, before the trial ended, the court struck it out and directed the jury to disregard it.

The exact date when the child was begotten was not so material as to require the court to exclude testimony in rebuttal by the complainant, that the child was begotten on a certain occasion definitely shown; the witnesses differing only as to the date.

Defendant was not prejudiced by questions put to one of the witnesses for the state to show ill will on the part of the witnesses towards the complainant.

Defendant's request for an instruction that the child was fully developed at birth, and could not have been begotten after a certain date, was properly refused. 158-351, 197+669.

The declaration of a woman in travail that the defendant was the father of her child is not admissible in support of a prosecution. 158-351, 197+669.

Instruction that to find defendant was father of illegitimate child jury must find as fact that he had sexual intercourse with prosecutrix, and that child was begotten as result thereof, and that, if jury was unable to determine whether defendant was father of child, he could not be found guilty, held sufficient without instructing that, if prosecutrix had sexual intercourse with another man at or about time child was begotten, jury could not say who was father of child. 209+887.

It was proper for counsel for defendant in bastardy proceeding to argue to jury that, if complaining witness had sexual intercourse with another man at or about time child was begotten, then neither she nor jury could say who was father of the child. 209+887.

In bastardy proceeding, that mother of child, in response to request of jurors, held child up so that some of them could see it held not ground for complaint, where there was no request for a cautionary instruction. 209+887.

**Explanatory note**—See note to § 3261, herein.

**3269. Who may make complaint**—If a woman is delivered of an illegitimate child, or is pregnant with a child likely to be illegitimate when born, the county board of the county where she resides, or any member thereof, or the state board of control, or any person duly appointed to perform in said county any of the duties of said board relating to the welfare of children, may apply by complaint to a justice of the peace of the county or to a municipal court to inquire into the facts and circumstances of the case. Such complaint shall be filed and further proceedings had, either in the county where such mother resides, or in the county of the residence of the alleged father of such child, or in the county where such child may be found, if it is likely to become a public charge therein. (R. L. '05 § 1575; G. S. '13 § 3222, amended '17 c. 210; '21 c. 489 § 1)

**3270. Procedure—Warrant**—Such justice or the judge of the municipal court may summon the woman to appear before him, and may examine her on oath respecting the father of such child, the time when and place where it was begotten, and any other facts he deems necessary for the discovery of the truth, and thereupon shall issue his warrant to apprehend the putative father. Thereafter the proceedings shall be the same as if the complaint had been made by such woman under the provisions of this chapter, and with like effect, and in all cases the complainant and the accused may require the attendance of such woman as a witness. (R. L. '05 § 1576; G. S. '13 § 3223, amended '17 c. 210 § 1)

See note to § 3261, herein.

35-238, 28+501; 72-415, 417, 75+725; 94-177, 102+204.

**3271. Compromise by board**—The county board, either before or after judgment, may make such compromise and settlement with the putative father of any illegitimate child, as they deem equitable and just, for expenses incurred by the county for which judgment may be or shall have been entered pursuant to section 3218. (R. L. '05 § 1577; G. S. '13 § 3224, amended '17 c. 210 § 1)

See note to § 3261, herein.

Section 3218 is § 3265, herein.

94-177, 102+204.

**3272. (a) State board of control or guardian may make settlement**—The state board of control or the duly appointed guardian of the person of an illegitimate child shall have authority to accept from the acknowledged father of the child such sum as shall be approved by the court having jurisdiction of proceedings to establish the paternity of the child, in full settlement of all obligations for the care, maintenance and education of such child; and shall hold or dispose of the same as ordered by said court. Such settlement shall discharge the father of all further liability, civil and criminal, on account of such child; provided that such settlement shall not affect any liability of the father under section 3219; and provided that this section shall not apply to any case where a judgment of paternity has been entered pursuant to the provisions of this statute.

3272 (a)  
243nw 658

**(b) Clerk to report name of adjudged father**—Upon the entry of a judgment determining the paternity of an illegitimate child the clerk of the district court shall notify in writing the state registrar of vital statistics of the name of the person against whom such judgment has been entered, together with such other facts disclosed by his records as may assist in identifying the record of the birth of the child as the same may appear in the office of said registrar. If such judgment shall thereafter be vacated that fact shall be reported by the clerk in like manner.

**(c) Physician may testify**—In any proceeding under this chapter a licensed physician or surgeon may testify concerning the fact and probable date of inception of the pregnancy of his patient without her consent, and shall so testify when duly called as a witness.

**(d) Purpose of act**—This chapter shall be liberally construed with a view to affecting its purpose, which is primarily to safeguard the interests of illegitimate children and secure for them the nearest possible approximation to the care, support and education that they would be entitled to receive if born of lawful marriage, which purpose is hereby acknowledged and declared to be the duty of the state; and also to secure from the fathers of such children repayment of public moneys necessarily expended in connection with their birth.

3272 (d)  
243nw 658

**(e) Records private**—All records of court proceedings in cases of alleged illegitimacy shall be withheld from inspection by, and copies thereof shall not be furnished to, persons other than the parties in interest and their attorneys, except upon order of the court. (R. L. '05 § 1578, G. S. '13 § 3225, amended '17 c. 210 § 1; '21 c. 489 § 1)

See note to § 3261, herein.

Section 3219, is § 3266, herein.

**3273. Scope of act**—The provisions of this act are severable one from another and in their application to the persons and interests affected thereby. The judicial declaration of the invalidity of any provision, or the application thereof, shall not affect the validity of any other provision, or the application thereof. ('17, c. 210, § 2)

See note to § 3261, herein.