

130278

# 1941 Supplement

To

# Mason's Minnesota Statutes

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(Supplementing Mason's 1940 Supplement)

Containing the text of the acts of the 1941 Session of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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## CHAPTER 73A

## Dependent, Neglected and Delinquent Children

**8636. Definitions.**

Child born to prisoner at Women's State Reformatory may not be placed in a private charity or boarding home by director of public institution or superintendent of reformatory, but case should be referred to director of social welfare, who should institute a proceeding in juvenile court for commitment if child is a dependent. Op. Atty. Gen. (840a-6), July 13, 1940.

**8637. Jurisdiction of District Court—Jurisdiction of Probate Court.**—The District Court in counties now or hereafter having a population of more than 45,000 inhabitants except in such counties of the Seventh Judicial District shall have original and exclusive jurisdiction in all cases coming within the terms of this act. In all trials in the district court under this act, except as hereinafter provided, any person interested therein may demand a jury, or a judge of his own motion may order a jury to try the case. In counties now or hereafter having a population of not more than 45,000 inhabitants and in all counties of the Seventh Judicial District the probate court shall have jurisdiction over the appointment of guardians of dependent, neglected or delinquent children for the purpose of this act. The jurisdiction of both the district and probate courts over cases of dependency, neglect and delinquency arising under this act shall extend to all persons resident or found within the territorial limits of the court, although the evidentiary facts showing such dependency, neglect or delinquency may have occurred outside such territorial limits.

This act shall apply to children under the age of eighteen years, except as hereinafter provided.

When jurisdiction shall have been obtained by the court in the case of any child, such child shall continue for the purposes of this act under the jurisdiction of the court until he becomes twenty-one years of age, unless discharged prior thereto by the court. (As amended Apr. 1, 1941, c. 110, §1.)

Jurisdiction of court is not affected by federal census until certified copies of official census are filed with secretary of state. Op. Atty. Gen. (56-a), July 26, 1940.

**8638. Judges of juvenile court.**—In counties having more than 45,000 except the Fourth Judicial District, and the counties in the Seventh Judicial District the judges of the district court shall at such times as they shall determine designate one of their number whose duty it shall be to hear all cases arising under this act, unless absent or disabled, in which case another judge shall be temporarily assigned for said purposes; and such designation shall be for the period of one year unless otherwise ordered. The judge of the juvenile court so designated shall devote his first service and all necessary time to the business of the juvenile court, and this work shall have precedence over all his other court work. When deemed advisable the district judges may designate two judges for the purposes and subject to the provisions specified in this section. A special court room, to be designated as the juvenile court room, shall be provided for the hearing of such cases, and the findings of the court shall be entered in a book or books to be kept for that purpose, and known as the "juvenile record," and the court may for convenience be called the juvenile court of the appropriate county. The title of proceedings in the juvenile court, excepting prosecutions under Sections 27 and 28 of this act, shall be substantially as follows:

Juvenile Court, County of .....

In the matter of ..... as a dependent (or neglected or delinquent, as the case may be) child. (As amended Apr. 1, 1941, c. 110, §2.)

**8641. Probate court as juvenile court—Record—Appeal.**—In counties of not more than 45,000 population and in all counties in the Seventh Judicial

District, the judge of probate shall provide himself with a suitable book, at the expense of the county, in which he shall enter minutes of all proceedings of the court in each case; he need not record any evidence taken except as it shall seem to him proper and necessary and he shall record therein all orders, decrees and judgments made by this court except non-appealable orders. The reasons for appointing a guardian shall be entered therein and any parent or the attorney for any child may appeal, from the final disposition of the guardianship matter by complying with the law regulating appeals from probate courts. When acting under the provisions of this act the probate court may for convenience be called the juvenile court of the appropriate county. (As amended Apr. 1, 1941, c. 110, §3.)

**8643-1. Setting petition for hearing—Summons—Service—Guardian ad litem—Warrant—Hearing—Custody of child.**—Upon the presentation of the petition if it appears that a child may be dependent, neglected or delinquent and that it is for the best interests of the child that the matter be heard in said county, the petition shall be filed and a date set for hearing thereon. A summons may be issued by the judge or clerk of the court requiring the person having custody or control of the child, or with whom the child may be, to appear with the child at a place and time stated in the summons, which time shall not be less than 24 hours after service. Such place may be in the county seat of the county, or in any other city or village in the county, at the discretion of the court. It shall be sufficient to confer jurisdiction if service is made at any time before the day fixed in the summons for the return thereof; but in such case the court if so requested shall not proceed with the hearing earlier than the second day after the service. The summons shall be served as provided by law for the service of summons in civil actions, and may be served by a probation officer. The parents of the child, if living, and their residence is known, or its legal guardian, if one there be, or if there be neither parent or guardian, or if his residence is not known, then some relative, if there be one and his residence is known, shall be notified of the proceedings, and in any case the judge may appoint some suitable person to act in behalf of the child. Except in counties containing a city of the first class if the petition presented is made by a person other than a representative of the division of social welfare or county welfare board, notice as provided by the court shall be given to the county welfare board. Where the person to be notified, other than a member of the county welfare board or its staff, resides within the county, service of notice shall be the same as service of the summons, but in any other case service of notice shall be made in such manner as the court may direct. If the person summoned as herein provided shall fail without reasonable cause to appear and abide the order of the court or bring the child, he may be proceeded against as in case of contempt of court. In case the summons cannot be served or the party served fails to obey the same, and in any case when it shall be made to appear to the court that such commons will be ineffectual, or that the welfare of the child requires that he shall be brought forthwith into the custody of the court, a warrant may be issued by the court, either against the parent or guardian or the person having custody of the child or with whom the child may be, or against the child himself. On the date set for the hearing and on the return of the summons if any has been issued or other process, or on the appearance of the child with or without sum-

mons or other process in person before the court, and on the return of the service of notice, if there be any person to be notified, or a personal appearance or written consent to the proceedings of the person or persons, if any to be notified, or as soon thereafter as may be, the court shall proceed to hear the case, and may proceed in a summary manner. The county attorney or an assistant designated by him shall assist in the presentation of cases when directed by the judge of the juvenile court. The child shall have the right to appear and be represented by counsel at all hearings in said court.

Except as hereinafter in this act provided, whenever any officer takes a child into custody he may accept the promise of the parent, guardian or custodian to be responsible for the presence of the child in the court at the time fixed. Thereupon such child may be released in the custody of the parent, guardian or custodian, or in the custody of a probation officer or other person designated by the court. If not so released, such child shall be taken immediately to a place of detention designated by the court, at the expense of the county, and the officer taking him shall immediately notify the court and shall file a petition when directed to do so by the court. (As amended Apr. 9, 1941, c. 158, §1.)

**8645. Expert assistance in certain cases.**—In any county of more than 150,000 population the court may establish a department of the juvenile probation system of such county for the physical and mental diagnosis of cases of children who are believed to be physically or mentally diseased or defective, and may appoint as special probation officers a competent nurse and a duly qualified physician, whose salaries shall be fixed by the judge with the approval of the county board. Provided, that in any county under 150,000 population when the juvenile court has obtained jurisdiction of a dependent, neglected or delinquent child the court may require that a physical or mental examination, or both, be made of such child by a duly qualified physician or mental examiner. (As amended Apr. 9, 1941, c. 158, §7.)

**8646-1. Commitment to state board of control or state public school or association—Hospital and medical care—Consent of parents—Continuance—Final commitment, notice.**—When any child shall be found to be dependent or neglected within the meaning of this act the court may make an order committing the child to the care of the director of social welfare or of the state public school or some other suitable state institution, or to the care of some reputable citizens of good moral character, or to the care of some association willing to receive it, embracing in its objects the purpose of caring for or obtaining homes for dependent or neglected children, which association shall have been accredited as provided by law. In appropriate cases the child may be left with the parents subject to such remedial supervision as the court may direct. The court may continue the hearing from time to time without making an order of final commitment as above provided for and may make an order placing the child in the temporary care or custody of the county welfare board or an association accredited as provided by law. The court may, when the health or condition of the child shall require it, authorize the county welfare board to provide special medical or remedial care or treatment of the child, including care in a public or private hospital, if necessary, at the expense of the county. In no case shall a dependent child be taken from its parents without their consent unless, after diligent effort has been made to avoid such separation, the same shall be found needful in order to prevent serious detriment to the welfare of such child. Before making an order of final commitment to the director of social welfare or the state public school for dependent children at Owatonna, provided for by this section, the court shall consider such evidence, report or recommendation as the county welfare board

may make concerning the case. Upon making an order of commitment to the director of social welfare, the judge or clerk shall mail or deliver a copy thereof to the director of social welfare and the child shall be delivered by order of the court to the county welfare board, as the representative of the director of social welfare, to be cared for as directed by the director of social welfare. If the child is committed to the guardianship of an association, accredited by law to receive children for care and place them in private homes, the child shall be transported at the expense of the county by order of the court to the place designated by such association for the care of the child. (As amended Apr. 9, 1941, c. 158, §2.)

Probate court has power to commit a blind boy to state school for blind at Faribault, or may commit him to guardianship of division of social security, which will place boy in proper school. Op. Atty. Gen., (482a), Dec. 28, 1939.

**8647. Guardianship—Adoption.**—In any case where the court shall award a dependent or neglected child to the care of the director of social welfare, or of any association or individual in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the director of social welfare or of the association or individual to whose care he is committed; but such guardianship shall not include the guardianship of any estate of the child, except as provided in Section 17 of this act, Mason's Minnesota Statutes of 1927, Section 8652. The director of social welfare, association or individual shall have authority to place such child in a family home and may be made a party to any proceedings for the legal adoption of the child, and may by his or its attorney or representative appear in any court where such proceedings are pending and consent to such adoption. (As amended Apr. 9, 1941, c. 158, §3.)

**8648. Hearing — Continuance — Commitment by court; etc.**

Powers and duties respecting children committed to state training school for boys and Minnesota home school for girls vested in state director of public institutions, state board of parole, director of social welfare, or any other state agency are transferred to the director of public institutions. Laws 1941, c. 356. See §§3199-106a and 3199-106b.

**8652. Property of child.**—If any child placed under guardianship by a juvenile court pursuant to the provisions of this act has any property, the income thereof shall, unless more than is necessary, be applied to the education of such child; and upon cause shown to the court having jurisdiction of the estate of such child the principal or any part thereof may be used for the same purpose. (As amended Apr. 9, 1941, c. 158, §8.)

**8662. Responsibility of parents, guardians, etc.**

Before a prosecution will lie under this section there must be a formal adjudication by proper juvenile court that child is neglected or delinquent. Op. Atty. Gen., (840a-5), March 19, 1940.

Municipal liquor store may not sell intoxicating liquor to father of a minor child, such liquor to be consumed by such minor upon the premises. Op. Atty. Gen. (218J-12), Sept. 5, 1940.

**8664-1. Expenses payable by county.**—The expenses in probate courts acting as juvenile court for the proceedings of dependent, neglected, and delinquent children including the care of children when in the custody of the court and during continuance when not with the parents, medical and hospital care that may be necessary at the hearing or while the child is in the custody of the court, the fees and necessary mileage, not to exceed five cents per mile, of witnesses and of officers serving notices and subpoenas ordered by the court, the expenses for travel and board incurred by the probate judge when holding court in places other than the county seat, and 15 cents for each folio for all records in said matters additional to his salary, shall be paid by the county upon the certificate of the probate judge. (As amended Apr. 9, 1941, c. 158, §4.)

**8664-2. Same—Findings—Certification.**—In any proceeding relating to a dependent, neglected or delinquent child, if it appears that the child has a legal settlement in another county, the court may continue the case and forward to the clerk of the juvenile court of the county in which it appears the child has a legal settlement a certified copy of all papers filed together with an order of transfer of the case to the county of legal settlement. Whenever the judge of the juvenile court of the county to which the case has been transferred denies that such child has a legal settlement in his county, he shall send such order of transfer with his statement of facts as to settlement of the child to the director of social welfare who shall immediately investigate and determine the question of legal settlement and certify his findings to the juvenile judge of each of said counties. Such decision shall be final and complied with unless within 30 days thereafter action is taken in the district court as provided in Mason's Minnesota Statutes of 1927, Sections 3161-1 and 3161-2 as amended.

When the legal settlement of the child has been determined the judge of the juvenile court of the county of legal settlement shall proceed to hear and determine the disposition of the case. The judge may accept the findings of the juvenile court where the petition was filed or he may in his discretion direct the filing of a new petition and hear the case de novo. (As amended Apr. 9, 1941, c. 158, §5.)

**8664-3. Same—Certification of rejection of claim by county auditor—Determination by state board of control.**—When it has been determined that the legal settlement of such child is in another county by the admission of the juvenile court judge of such county or by the director of social welfare or the district court, the necessary costs and expenses of such proceedings together with the cost of caring for such child during continuances when not with the parents, shall be certified by the court to the auditor of the county in which the proceedings are held who shall certify the same to the county auditor of the county where the child is found to have a legal settlement and shall be paid as other claims against said county. (As amended Apr. 9, 1941, c. 158, §6.)

#### AID TO DEPENDENT CHILDREN

##### **8688-3. Definitions.**

(c). Death of mother does not qualify for aid unless child is thereby deprived of support or care. Op. Atty. Gen. (840-a-6), July 19, 1940.

(d). If father of children pays in full amount of alimony ordered by court, children are eligible for aid in an amount to cover deficiency between amount paid by father and sum required for children's support, if it clearly appears that father has not the financial ability to supply more money. Op. Atty. Gen., (840a-6), Dec. 20, 1939.

Where father is a drunkard and an adulterer and has failed to make any regular contributions in support of his children for more than 5 years, and has not lived with his family for several years, and he is convicted of abandonment under §10135 and is given a suspended sentence upon condition that he contribute \$25 per month to support of his family and does contribute such amount to keep out of the penitentiary and there is a family budget requirement of \$100 per month, a grant of aid to the dependent children would be warranted. Op. Atty. Gen. (840a-6), Sept. 26, 1940.

Homesteads up to \$4,000 through and full value are exempt from 3 tax levy items imposed by Laws 1939, cc. 238, 245 and 436, relating to old age assistance, aid to dependent children, and relief. Op. Atty. Gen. (519), Nov. 22, 1940.

##### **8688-6. Who shall receive assistance.**

Settlement is determined by residence of a child, but right to custody as between natural parents and other person is a question of fact that should be raised in a habeas corpus proceedings. Op. Atty. Gen. (840a-6), Feb. 14, 1940.

##### (a).

Alien children are eligible to receive aid. Op. Atty. Gen. (540a), Nov. 22, 1940.

##### **8689-1 to 8689-5. [Repealed.]**

Repealed. Laws 1941, c. 159.

**8689-6. Guardianship and care of dependent children—Delinquency—Adoption.**—The director of social welfare shall have powers of legal guardianship over the persons of all children who may be committed by courts of competent jurisdiction to his care, or to institutions under state management. After commitment to his guardianship he may make such provision for and disposition of the child as necessity and the best interests of the child may from time to time require. Provided, however, that no child shall be placed in an institution maintained for the care of delinquents who has not been duly adjudged to be delinquent; and provided further, that the director shall not be authorized to consent to the adoption of a child who is committed to his guardianship on account of delinquency. (Act Apr. 9, 1941, c. 159, §1.)

**8689-7. Duties of director of social welfare.**—Thereafter it shall be the duty of the director of social welfare through the bureau of child welfare and county welfare boards to arrange for such tests, examinations, and investigations as are necessary for the proper diagnosis, classification, treatment, care and disposition of the child as necessity and the best interests of the child shall from time to time require. When it appears that a dependent or neglected child is sound of mind, free from disease, and suitable for placement in a foster home for care or adoption, the director may so place him or delegate such duties to a child-placing agency accredited as provided by law, or authorize his care in the county by and under the supervision of the county welfare board. (Act Apr. 9, 1941, c. 159, §2.)

**8689-8. Children mentally or physically handicapped.**—Whenever the director of social welfare shall find that a child committed to his guardianship as a dependent or neglected child is handicapped physically or whose mentality has not been satisfactorily determined or who is affected by habits, ailments or handicaps that produce erratic and unstable conduct, and is not suitable or desirable for placement in a home for permanent care or adoption, the director of social welfare shall make special provision for his care and treatment designed to fit him, if possible, for such placement or to become self-supporting. The facilities of the division of social welfare and all state institutions, the Minnesota General Hospital and the child guidance clinic of its psychopathic department, as well as the facilities available through reputable clinics, private child-caring agencies, and foster boarding homes, accredited as provided by law, may be used as the particular needs of the child may demand. Whenever it appears that the child is suitable for permanent placement or adoption, the director of social welfare shall cause him to be placed as provided in Section 2 hereof. Provided if the director of social welfare is satisfied that the child is feeble-minded he may bring him before the probate court of the county where he is found or the county of his legal settlement for examination and commitment as provided by law. (Act Apr. 9, 1941, c. 159, §3.)

**8689-9. Child reaching majority—Guardianship of child 14 years of age.**—When a child is no longer a minor, as provided by law, the guardianship of the director of social welfare shall cease. If he is not self-supporting he shall be returned to the county of his legal settlement for care by the authorities charged with poor relief. Provided that a child, of the age of 14 years, not adopted but placed in a satisfactory foster home, may with the foster parents' consent, join with the director of social welfare in a petition to the court having jurisdiction of such child, praying that such foster parents be appointed guardian of such child and for the discharge of the director of social welfare as such guardian. (Act Apr. 9, 1941, c. 159, §4.)

**8689-10. Costs and disbursements—Reimbursement.**—In addition to the usual care and services given by public and private agencies, the necessary cost incurred by the director of social welfare in providing care for such child except such children as may have been committed to the state public school, shall be paid by the county committing such child which, subject to uniform regulations established by the di-

rector of social welfare, may receive a reimbursement not exceeding one-half of such costs from funds made available for this purpose by the legislature. (Act Apr. 9, 1941, c. 159, §5.)

**8689-11. Repealer.**—Mason's Minnesota Statutes of 1927, Sections 4454, 8689-2, 8689-3, 8689-4, and 8689-5 and Mason's Supplement 1940, Section 8689-1, are hereby repealed. (Act Apr. 9, 1941, c. 159, §6.)