

No. 523, S.]
Corrected Copy]

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CHAPTER 505

AN ACT to repeal 245.02 (3), 252.17 (28) and 307.01 (24th unnumbered paragraph) ; to renumber 245.002 and 245.04 (2) ; to amend 49.19 (4) (d), 57.04 (1), 59.42 (2) (b), 245.02 (1), 245.08, 245.09, 245.17, 247.061 (intro. par.) (1) (a) and (c), 247.081 (1), 247.125, 247.13 (2), 247.14, 247.18 (2), 247.23, 247.24, 247.29 (1), 247.37 (1) (a) and 252.14 (2) ; to repeal and recreate 245.10; and to create 245.002 (2) and (3), 245.04 (2), 245.30 (1) (e) and (f), 247.13 (4), 247.145 and 247.29 (3) of the statutes, relating to corrections in the family code.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 49.19 (4) (d) of the statutes is amended to read:

49.19 (4) (d) The period of aid must be likely to continue for at least 3 months except as hereinafter provided with respect to the wife of a husband committed to the department pursuant to s. 959.15. Aid may not be granted to the mother or stepmother of a dependent child unless such mother or stepmother is without a husband, or is the wife of a husband who is incapacitated for gainful work by mental or physical disability, likely to continue for at least 3 months in the opinion of a competent physician, or is the wife of a husband who has been sentenced to a penal institution for a period of at least 3 months, or is the wife of a husband who has been committed to the department pursuant to s. 959.15 irrespective of the probable period of such commitment, or is the wife of a husband who has continuously abandoned or failed to support her for at least 3 months, if the husband has been legally charged with abandonment under s. 52.05 or with failure to support under s. 52.055 or in proceedings commenced under s. 52.10 (1) to (31), or if the mother or stepmother has been divorced or legally separated from her husband for a period of at least 3 months, dating either from * * * any temporary order under s. 247.23, or in the absence thereof, then from the granting of the judgment in court, and unable through use of the provisions of law to compel her former husband to support the child for whom aid is sought, or if proceedings have been instituted under s. 247.08 to compel support and a determination has been made by the court requiring the payment of a certain sum which is either insufficient to adequately meet the needs of the child or is unenforceable to the extent of adequately meeting the needs of the child.

SECTION 2. 57.04 (1) of the statutes is amended to read:

57.04 (1) When a person is convicted of a misdemeanor or of a violation of s. 52.05 or 52.055 the court having jurisdiction (whether a court of record or otherwise) may, by order, withhold sentence or impose sentence and stay its execution and in either case place him on probation for a period not less than one year nor more than 2 years (except that in counties having a population of over 500,000 a shorter minimum period of probation may be ordered) and may, as a condition of such order or continuing it, require him to pay the costs of prosecution, to pay a fine and costs, to make restitution, or any combination, as the court determines, and the court may authorize the probation officer to accept payments in instalments. The court may also require that the probationer be confined in the county jail between the hours or periods of his employment during such portion of his term of probation as the court * * * specifies, not to exceed the maximum time for which he might have been sentenced. The court may also require the pay-

ment of support by persons convicted under s. 52.05 or 52.055, and may require a recognizance, as provided in s. 52.05 (4). The period of probation may be made consecutive to a sentence of imprisonment on a different charge, whether imposed at the same time or previously. Consecutive periods of probation may be imposed. In case the conditions of probation are violated, the current probation and all subsequent consecutive probations shall be revoked.

SECTION 3. 59.42 (2) (b) of the statutes is amended to read:

59.42 (2) (b) All special proceedings independent of an action taken at the instance and for the benefit of one party without notice to or contest by any person adversely interested; and any proceeding under s. 245.10 for court permission to marry, but notwithstanding s. 271.21 no state suit tax shall be collected on any such matter

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SECTION 4. 245.002 of the statutes is renumbered 245.002 (1).

SECTION 5. 245.002 (2) and (3) of the statutes are created to read:

245.002 (2) In this chapter "church under his ministry" includes any congregation, parish or place of worship at which any clergyman is located or assigned and also any administrative, missionary, welfare or educational agency, institution or organization affiliated with any religious denomination or society in this state.

(3) In this title "void" means null and void and not voidable.

SECTION 6. 245.02 (1) of the statutes is amended to read:

245.02 (1) Every male person who has attained the full age of 18 years * * * and every female person who has attained the full age of 16 years shall be capable in law of contracting marriage if otherwise competent.

SECTION 7. 245.02 (3) of the statutes is repealed.

SECTION 8. 245.04 (2) of the statutes is renumbered 245.04 (3).

SECTION 9. 245.04 (2) of the statutes is created to read:

245.04 (2) Proof that a person contracting a marriage in another jurisdiction was (a) domiciled in this state within 12 months prior to the marriage, and resumed residence in this state within 18 months after the date of his departure therefrom, or (b) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that at the time such marriage was contracted the person resided and intended to continue to reside in this state.

SECTION 10. 245.08 and 245.09 of the statutes are amended to read:

245.08 Application for a marriage license shall be made at least 5 days before a license shall be issued except as otherwise provided in this section. Any judge of a court of record, upon application of the parent or guardian (Wisconsin residents) of either of the parties, or upon application of either of the parties to a proposed marriage and upon satisfactory documentary evidence being presented to him that either of said parties is dangerously ill, such illness being likely to result in death; or that the female is pregnant with child; or that either party is in military service; * * * or upon such other circumstances as in his opinion warrant special dispensation; may by order authorize the license to be issued at any time before the expiration of said 5 days. The person applying for such order or dispensation

shall have been a resident of this state for at least 30 days *immediately* prior to making such application. *The applicant shall retain residence in one county until he has established residence in another for 30 days.* Such order shall be delivered, and the county treasurer's receipt for the charge therefor, shall be exhibited to the person issuing the license, and the order by him retained as prima facie evidence of his authority to so issue the marriage license. The judge making such order shall not receive any compensation therefor from the county, but the person applying for such order shall be charged a fee of \$5, which shall be paid into the county treasury for the use of the county. In case of such illness, pregnancy, or military service, the fee may be waived by the judge with the reason therefor stated in the order.

245.09 No application for a marriage license shall be made by persons lawfully married to each other and no marriage license shall be issued to such persons; nor shall a marriage license be issued unless the application therefor is subscribed by the parties intending to intermarry and is filed with the clerk who issues the license. *The county clerk may issue licenses to persons previously married with the judge's consent, and the judge may then make the determination whether the previous marriage was legal or not.* Each party shall present satisfactory, documentary proof of identification and residence and shall swear (or affirm) to the application before the clerk who is to issue the license or the * * * *person authorized to accept such applications in the county and state* * * * where the party resides. The application shall contain a statement under oath (or such affirmation) that the contemplated marriage will be lawful, and give the date the marriage is intended to take place, the names of the parties, their relationship, the place and date and year of birth, nationality, race, residence and occupation, names of their parents and guardians, prior marriages of either party and the place, dates and manner of the dissolution thereof with the names of former spouses, and the names, ages and residence of any minor children of such prior marriage. Each applicant *under 30 years of age* shall exhibit to the clerk a birth certificate, and *all applicants shall submit* a copy of all judgments and death certificates affecting the marital status. If such certificate or judgment is unobtainable, other satisfactory documentary proof of the requisite facts therein may be presented in lieu thereof. Whenever said clerk is not satisfied with the documentary proof presented, he shall submit the same, for an opinion as to the sufficiency thereof, to a judge of a court of record in the county of application.

SECTION 11. 245.10 of the statutes is repealed and recreated to read:

245.10 PERMISSION OF COURT REQUIRED FOR CERTAIN MARRIAGES. When either applicant has minor issue of a prior marriage not in his custody and which he is under obligation to support by court order or judgment, no license shall be issued without the order of a court having divorce jurisdiction in the county of application. The court, within 5 days after such permission is sought by verified petition in a special proceeding, shall either grant such order or direct a court hearing to be held in the matter to allow said applicant to submit proof of his compliance with such prior court obligation. No such order shall be granted, or hearing held, unless both applicants for such license appear, and unless the person, agency, institution, welfare department or other entity having the legal or actual custody of such minor issue is given notice of such proceeding by personal service of a copy of such petition at least 5 days prior to the court order or hearing, unless such appearance or notice has been waived by the court upon good cause shown. Upon the hearing, if said applicant submits such proof and makes a showing that such children are not and are not likely to become public charges, the court shall grant such order, a copy of which shall be filed in any prior divorce action of such applicant in this

state affected thereby; otherwise permission for a license shall be withheld until such proof is submitted and such showing is made, but any court order withholding such permission is an appealable order. Any marriage contracted without compliance with this section, where such compliance is required, shall be void, whether entered into in this state or elsewhere.

SECTION 12. 245.17 of the statutes is amended to read:

245.17 Before any clergyman, licentiate or appointee named in s. 245.16 is authorized to solemnize a marriage, he shall file credentials of ordination, license or appointment, or other proof of such official character, with the clerk of the circuit court of * * * *some county* in this state in which is located a church under his ministry, who shall record the same and give a certificate thereof, *but any such clergyman, licentiate or appointee who is not a resident of this state is likewise authorized to solemnize marriages in this state upon filing such credentials or proof, together with a letter of sponsorship from a clergyman of the same religious denomination or society who has a church in this state under his ministry, with the clerk of the circuit court of the county in which any such marriage is to be performed, and said clerk shall record the same and give a certificate thereof.* The place where such credentials are recorded shall be indorsed upon each certificate of marriage by the officiating clergyman, licentiate or appointee and recorded with the same.

SECTION 13. 245.30 (1) (e) and (f) of the statutes are created to read:

245.30 (1) (e) *Penalty for marriage outside the state to circumvent the laws.* Any person residing and intending to continue to reside in this state who goes outside the state and there contracts a marriage prohibited or declared void under the laws of this state.

(f) *Penalty for marriage contracted without required permission of court.* Any person who obtains a marriage license contrary to or in violation of s. 245.10, whether such license is obtained by misrepresentation or otherwise, or whether such marriage is entered into in this state or elsewhere.

SECTION 13a. 247.061 (intro. par.) and (1) (a) and (c) of the statutes are amended to read:

247.061 (intro. par.) When the defendant can with reasonable diligence be served personally within the state *pursuant to s. 247.06 (1) (a)* or at his usual place of abode therein pursuant to s. 247.06 (1) (b), actions under ss. 247.05 and 247.055 shall be commenced by such service * * * ; within 10 days thereafter *a copy of the summons shall be * * * served upon the family court commissioner; and after such copy has been served, the summons must be filed with the clerk of court before any proceeding or hearing prior to trial is held by either the court or the family court commissioner, or in the absence thereof as soon as the action is noticed or scheduled for trial.* Service and filing of the complaint shall be as follows:

(1) (a) In every action for divorce or legal separation there shall be a waiting period of 60 days after service of the summons upon the defendant before the complaint may be served upon * * * *him or filed in court* unless the court, upon good cause shown that such waiting period will be injurious to the health or safety of either of the parties or any child of the marriage or that some other emergency exists, and upon the recommendation of the family court commissioner, issues an order waiving such waiting period. *If the complaint cannot with reasonable diligence be served personally upon the defendant either within or without the state or at his usual place of abode, it may be served upon the defendant's attorney of record in the action; or served upon the defendant by sending a copy thereof by certified or registered mail to his last known post-office address and by filing*

the original complaint in court with both a postal sender's receipt and either a completed return receipt or an affidavit of mailing attached thereto. Such affidavit shall set forth the name and address of the defendant and state that the complaint was mailed thereto, giving the date of mailing.

(c) Within * * * 20 days following the service of a copy of the complaint upon the defendant * * * a copy thereof shall also be served upon the family court commissioner, and then the complaint shall be filed promptly in court.

SECTION 14. 247.081 (1) of the statutes is amended to read:

247.081 (1) In every action for divorce or legal separation the family court commissioner shall cause an effort to be made to effect a reconciliation between the parties, *either by his own efforts and the efforts of a family court conciliation department if it exists or by referring such parties to and having them voluntarily consult the director of the town, village, city or county public welfare department, a county mental health or guidance clinic, a clergyman, or a child welfare agency licensed under ss. 48.66 to 48.73, or by other suitable means. The person so consulted shall not disclose any statement made to him by either party without the consent of such party.*

SECTION 16. 247.125 of the statutes is amended to read:

247.125 ORDER FOR APPEARANCE OF LITIGANTS. Unless non-residence in the state is shown by competent evidence, or unless the court shall for other good cause otherwise order, * * * *both parties* in actions * * * *affecting marriage* shall be required to appear upon the trial. * * * *An order * * * of the court or family court commissioner to that effect shall accordingly be procured by the party seeking the judgment, and shall be served upon * * * the opposite party personally before the trial.*

SECTION 17. 247.13 (2) of the statutes is amended to read:

247.13 (2) In counties having a population of 500,000 or more, there is created in the classified civil service the office of family court commissioner and such additional assistant family court commissioners as the county board shall determine and authorize, who shall be appointed from the membership of the bar residing in such county by the judges of the circuit court of such county, pursuant to ss. 63.01 to 63.17. Before entering upon the performance of their duties, such family court commissioner and assistant family court commissioners shall take and file the official oath. Such family court commissioner and assistant family court commissioners * * * *shall, by virtue of their respective positions and to the extent required for the performance of their duties, each have the powers of a court commissioner.* They shall receive such salary as may be fixed by the county board, shall perform their duties under the direction of the circuit judges of such county and shall be furnished with quarters and necessary office furnishing and supplies. The county board shall provide them their necessary stenographic and investigational service. When the family court commissioner is unavailable, any assistant family court commissioner shall perform all the duties and have all the powers of the family court commissioner as directed by the latter or by a judge of the family court branch. In addition to the duties of such family court commissioner as defined in ch. 247, he shall perform such other duties as the circuit court of such county may direct.

SECTION 18. 247.13 (4) of the statutes is created to read:

247.13 (4) In any county one or more retired or former judges may be appointed as temporary or temporary assistant family court commissioners by a majority of the judges presiding over a family court branch in such county. Such temporary or temporary assistant family court com-

missioners shall be compensated by the county for their services at the rate of \$25 per half day, but shall be considered officers of the court or courts appointing them and not employes of the county.

SECTION 19. 247.14 of the statutes is amended to read:

247.14 In any action * * * *affecting* marriage, * * * the plaintiff and defendant shall, *either* within * * * 20 days after making service on the opposite party of any pleading *or before filing such pleading in court*, serve a copy of the same upon the family court commissioner of the county in which the action is begun, whether such action is contested or not. No judgment in any such action shall be granted unless this section is complied with, or unless the parties have responded to the family court commissioner's inquiries under s. 247.15 except when otherwise ordered by the court. Such commissioner shall appear in the action when the defendant fails to answer or withdraws his answer before trial; also, when the defendant interposes a counterclaim and the plaintiff thereupon neither supports his complaint nor opposes the counterclaim by proof; and when otherwise requested by the court.

SECTION 19m. 247.145 of the statutes is created to read:

247.145 ENLARGEMENT OF TIME. After the expiration of the period specified by the statute, the court may in its discretion, upon petition and without notice, extend the time within which service shall be made upon the family court commissioner. Extension of time under any other circumstances will be governed by s. 269.45.

SECTION 20. 247.18 (2) of the statutes is amended to read:

247.18 (2) No judgment of annulment, divorce or legal separation shall be granted on the testimony of the party, unless the grounds therefor and required residence are corroborated * * * by * * * *evidence* other than * * * the *testimony of the parties*, except the *ground of* cruel and inhuman treatment when no corroborating evidence is available. No stipulation by the parties shall satisfy the requirements of this subsection.

SECTION 21. 247.23 of the statutes is amended to read:

247.23 TEMPORARY ORDERS FOR SUPPORT OF WIFE AND CHILDREN; SUIT MONEY. (1) In every action * * * *affecting* marriage * * *, the court or family court commissioner may, during the pendency thereof, make such *temporary* orders concerning the care, custody and suitable maintenance of the minor children, requiring the husband to pay such sums for the support of the wife and the minor children in her custody and enabling her to carry on or defend the action, and in relation to the persons or property of the parties as in its discretion shall be deemed just and reasonable and may prohibit either spouse from imposing any restraint on the personal liberty of the other. *Any such order may be based upon the written stipulation of the parties, subject to the approval of the family court commissioner or the court.*

(2) Notice of motion for an order under sub. (1) may be served at the time the action is commenced or at any time thereafter. If the action is commenced by service of a summons without the complaint * * *, the relief sought shall be based upon an affidavit of the party seeking the relief * * * ; the affidavit shall not set forth any of the grounds for divorce * * * or any details which form the basis for such grounds, but shall state only that it is necessary and for the best interests of the affiant and any minor children of the parties that the relief specified in the affidavit be granted.

SECTION 22. 247.24 of the statutes is amended to read:

247.24 In rendering a judgment of annulment, divorce or legal separation, the court may make such further provisions therein as it deems just

and reasonable concerning the care, custody, maintenance and education of the minor children of the parties, and give the care and custody of the children of such marriage to one of the parties to the action, or may, if the interest of any such child * * * *demands* it, and if the court finds *either* that * * * the parents * * * *are unable to adequately care for any such child or are not fit and proper* * * * *persons* to have the care and custody * * * *thereof*, may declare such child a dependent and give the care and custody of such child to a relative (as defined in ch. 48) of the child, a county agency specified in s. 48.56 (1), a licensed child welfare agency, or the state department of public welfare. The charges for such care shall be pursuant to the procedure under s. 48.27. Whenever the welfare of any such child will be promoted thereby, the court granting such judgment shall always have the power to change the care and custody of any such child, either by giving it to or taking it from such parent, relative or agency, provided that no order changing the custody of any child shall be entered until after notice of such application * * * *has* been given the parents of such child, if they can be found, and also to the relative or agency that then has the custody of such child.

SECTION 23. 247.29 (1) of the statutes is amended to read:

247.29 (1) All orders or judgments providing for temporary or permanent alimony or support of children shall direct the payment of all such sums to the clerk of the court for the use of the person for whom the same has been awarded. A party securing an order for temporary alimony or support money shall forthwith file said order, together with all pleadings in the action, with the clerk of the court. Said clerk shall disburse the money so received pursuant to said judgment or order and take receipts therefor. All moneys received or disbursed under this section shall be entered in a record book kept by said clerk, which shall be open to * * * inspection * * * *by* the parties to the action * * * , their attorneys, *and the family court commissioner*. If the alimony or support money adjudged or ordered to be paid shall not be paid to the clerk at the time provided in said judgment or order, the clerk * * * *or* the family court commissioner of said county shall take such proceedings * * * *as either of them deems advisable* to secure the payment of such sum *including enforcement by contempt proceedings under s. 295.03 or by other means*. Copies of any order issued to compel such payment shall be mailed to counsel who represented each party when such alimony or support money was awarded. In case any fees of officers in any of said proceedings including the compensation of the family court commissioner at the rate of \$50 per day unless such commissioner is on a salaried basis, be not collected from the person proceeded against, the same shall be paid out of the county treasury upon the order of the presiding judge and the certificate of the clerk of the court.

SECTION 24. 247.29 (3) of the statutes is created to read:

247.29 (3) If alimony or support money, or both, is ordered to be paid for the benefit of any person, who is committed by court order to an institution or is in confinement, or whose legal custody is vested by court order under ch. 48 in an agency, department or relative, the court or family court commissioner may order such alimony or support money to be paid to the relative or agency, institution, welfare department or other entity having the legal or actual custody of said person, and to be used for the latter's care and maintenance, without the appointment of a guardian under ch. 319.

SECTION 25. 247.37 (1) (a) of the statutes is amended to read:

247.37 (1) (a) When a judgment of divorce is granted it shall not be effective so far as it affects the marital status of the parties until the expiration of one year from the date of the granting of such judgment, except

that it shall immediately bar the parties from cohabitation together and except that it may be reviewed on appeal during said period. But in case either party dies within said period, such judgment, unless vacated or reversed, shall be deemed to have entirely severed the marriage relation immediately before such death. The written judgment shall include the substance of the preceding language; and if the court orders alimony or other allowances for the wife or children or retains jurisdiction in such matters, the written judgment shall include a provision that disobedience of the court order with respect to the same is punishable under s. 295.03 by commitment to the county jail or house of correction until such judgment is complied with and the costs and expenses of the proceedings are paid or until the party committed is otherwise discharged, according to law. The findings of fact and conclusions of law and the written judgment shall be drafted by the attorney for the prevailing party, and shall be submitted to the court and filed with the clerk of the court within 30 days after judgment is granted; but if the action has been uncontested, they shall first be submitted to opposing counsel, if any, and * * * *if the family court commissioner * * * has appeared in the action, such original papers, together with copies thereof, shall also be sent to him for examination before submission of the same to the court.*

SECTION 26. 252.14 (2) of the statutes is amended to read:

252.14 (2) * * * In all counties, retired circuit judges appointed to act as conciliators pursuant to s. 269.70 may be appointed court commissioners, in addition to those appointed under sub. (1). * * * The term of court commissioners appointed to act as conciliators under s. 269.70 shall continue until a successor is appointed and qualifies.

SECTION 27. 252.17 (28) of the statutes is repealed.

SECTION 28. 307.01 (24th unnumbered paragraph) of the statutes, reading as follows: "Marrying and making return, \$3 and such other sum as may be donated." is repealed.

Approved September 18, 1961.
