



PennState
Dickinson Law

DICKINSON LAW REVIEW
PUBLISHED SINCE 1897

Volume 55
Issue 2 *Dickinson Law Review* - Volume 55,
1950-1951

1-1-1951

The Need for Codification and Revision of Pennsylvania's Marriage License Laws

Daniel B. Winters

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Daniel B. Winters, *The Need for Codification and Revision of Pennsylvania's Marriage License Laws*, 55
DICK. L. REV. 158 (1951).

Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol55/iss2/9>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

THE NEED FOR CODIFICATION AND REVISION OF PENNSYLVANIA'S MARRIAGE LICENSE LAWS

Clarification through codification and revision of Pennsylvania's marriage license laws is needed today. As far back as 1941 the state legislature recognized this need by passing a bill concerned in part with our marriage license laws, entitled "An act relating to marriage, and amending, revising, consolidating and changing the law relating thereto."¹ This bill was vetoed by the Governor.² The Governor did not base his objection on the proposal to revise and codify the marriage license laws, but upon another phase of the marriage law which was contained in the same bill.

Why do we need codification and revision? This question can be readily answered by surveying the different procedures used in applying for a marriage license throughout the Commonwealth.

A questionnaire was sent by the writer to the Clerks of the Orphans' Courts of Pennsylvania's sixty-seven counties to determine the extent of variance in application procedures. Fifty-eight questionnaires were returned, the results of which will be discussed.

One of the questions asked was, "In your county, may applicants for a marriage license apply separately for the license instead of both applying at the same time?" Thirty-two of the counties reporting answered in the affirmative, twenty-five in the negative, and one county failed to answer the question. Several counties permitting separate application do so only under certain circumstances. These circumstances include cases where an emergency³ exists or when applicants could not appear together because of working conditions.

In answer to the question "May one applicant only apply?", fifty-four counties did not permit this procedure, one county sanctioned such practice, and three counties did not reply.

The present law is not clear on these matters. The Act of May 1, 1893,⁴ amending the Act of June 23, 1885,⁵ provides "that one or both of the applicants shall be identified to the satisfaction of the clerk applied to for such license." This act was interpreted by the Superior Court of Pennsylvania to mean that one party only, if identified, need make application.⁶ Another part of our marriage license law states that "The clerk of court shall inquire of the parties

¹ House Bill, Number 404, 1941, printer's number 1059.

² Veto 36, 1941.

³ The types of emergencies which are needed were not specified.

⁴ Act of May 1, 1893, P.L. 27, 48 P.S. 1.

⁵ Act of June 23, 1885, P.L. 146, 48 P.S. 1.

⁶ Miller's Estate, 34 Pa. Super. 385 (1907).

applying, either separately or together, for marriage license."⁷ The implication here is that both parties must apply.⁸ It is therefore understandable why the counties differ in their requirements as to how the parties must apply.

"No license to marry shall be issued until there shall be in possession of the Clerk of the Orphans' Court a statement that each applicant within thirty days of the issuance of the marriage license has submitted to an examination to determine the existence or non-existence of syphilis—— —— ——."⁹ The results of the examination are recorded on a form¹⁰ popularly referred to as a premarital form. Thirty-six counties require the premarital forms to be filed at the time the license is issued,¹¹ thirteen counties require the premarital forms to be filed when application for a license is made, and nine counties permit the forms to be filed at either time.

Our present law does not specify the time that the premarital forms should be filed, but from the language of the statute, *supra*, requiring the examination to be made within thirty days of the issuance of the license it may be inferred that the forms may be filed at the time of application or when the license is issued. However, this provision is confusing.

A good suggestion in favor of having the premarital forms filed at the time of application has been advanced,¹² the advantage being that when premarital forms are filed upon application and either of the applicants does not physically qualify, the intention to marry is never filed. Under our present interpretation applicants may apply, then later discover that they do not qualify, making it necessary to disregard the application already filed but not complete for want of the applicant's physical requirements. Revising the Act of May 16, 1945, *supra*, to "No application for a marriage license shall be filed until —— —— —— each applicant —— —— —— has submitted to an examination —— —— ——" would require the premarital forms to be filed at the time application is filed with the Clerk of the Orphans' Court. It would also result in a more uniform procedure.

Forty-nine counties will file in their office an application which has been acknowledged before a notary public. Nine counties will not file such applications. There are two conflicting laws in effect which are probably responsible for the difference in procedure among the counties. In 1905, notary publics were given the power to acknowledge applications made before them for marriage

⁷ Act of May 23, 1887, P.L. 170, amending the Act of June 23, 1885, P.L. 146, 48 P.S. 5.

⁸ In *Moore v. McClelland*, 1 Pa. C. C. 555 (1885), it was decided that both parties must appear and answer the interrogatories under the Act of June 23, 1885, P.L. 146.

⁹ Act of May 16, 1945, P.L. 577, repealing the Act of May 17, 1939, P.L. 148, 35 P.S. 587.6.

¹⁰ *Ibid.*

¹¹ The date of issuance is three days from the day of making application. Act of May 7, 1935, P.L. 152, amending the Act of July 24, 1913, P.L. 1013, these acts were subsequently amended by the Act of June 10, 1947, P.L. 492, 48 P.S. 13.

¹² Letter to the author.

licenses.¹³ Later, the Act of July 24, 1913¹⁴ provided that "No license to marry shall be issued except upon written and verified application to the Clerk of the Orphans' Court," and it states further that any act or parts of acts conflicting are repealed. The question is whether the Act of 1913 is in conflict with the power given to notary publics to acknowledge applications. Clarification is needed here.

Many of these existing differences of interpretation of the law, as shown by the questionnaire's results, originate from the confusion caused by the maze of amendments and acts which regulate our marriage license law. Professor Freedman, in his book on marriage and divorce in Pennsylvania, states: "In Pennsylvania the present marriage license law is the Act of June 23, 1885, which has been frequently amended, supplemented and modified, in some instances without reference to the existence of intervening amendments or even of the Act of 1885 itself."¹⁵ From this situation it is understandable why there is a wide variance of interpretation of the statutes. Codification, therefore, would be a great aid in clarifying and remedying this confusion by assembling these acts and amendments into a complete system of positive law. One Clerk of the Orphans' Court who failed to return the writer's questionnaire sent a letter to the writer claiming in part, "While the acts are numerous, there is nothing indefinite or ambiguous." However, forty-six Clerks of the Orphans' Court disagreed, as they were in favor of clarification of the marriage license laws of Pennsylvania through codification. Seven counties were not in favor of codification and five of the fifty-eight questionnaires were returned without an answer to the question. The above results reveal that codification is desired by Pennsylvania's Clerks of the Orphans' Courts, and in my opinion should be given definite consideration and attention at the Register of Wills and Clerk of the Orphans' Court state convention in 1951.

To the question, "In your county, may applicants for a marriage license make application outside of your county and file the application with you for a license?" twenty-nine of the counties replying reported applications outside of their county could be made and twenty-nine counties refused to allow this procedure.

Several counties require that their application forms be used if application is to be made outside of their county. One county will permit application to be made in another county of the Commonwealth, but will not accept applica-

¹³ Act of Mar. 24, 1905, P.L. 58, amending the Act of Mar. 27, 1903, P.L. 80, Act of May 23, 1887, P.L. 170, Act of June 23, 1885, P.L. 146. These acts were subsequently amended by the Act of May 28, 1915 P.L. 636, 48 P.S. 5.

¹⁴ Act of July 24, 1913, P.L. 1013, amended by the Act of May 9, 1935, P.L. 152. These acts were subsequently amended by the Act of June 10, 1947, P.L. 492, 48 P.S. 13.

tion made outside of Pennsylvania. The Act of 1913¹⁶ partly provided that the Clerk of the Orphans' Court shall not issue a marriage license except upon written and verified application. From this act it may be found that if an application is written and verified and the applicants otherwise qualify, the application may be filed with the Clerk of the Orphans' Court regardless of the county or state in which application was made. In 1938, application was made for a license in Ohio and acknowledged before a notary public in that state with a certificate of commission attached certifying his authority, then mailed to the Marriage License Office of Allegheny County, Pennsylvania. This situation was called to the attention of the Orphans' Court which sustained the procedure¹⁷ as a matter of practice predicated upon the Act of 1913¹⁸ as amended by the Act of 1935.¹⁹ Many of the counties refusing to accept applications made outside of their counties probably do so because there is no express provision sanctioning this procedure, or because there is a question of the authority given by the Act of 1913, *supra*. Another influential factor may be that parties may appear before certain public officers of the county wherein either of the parties reside and in the county where the license is desired.²⁰ Although this provision is limited to certain public officers, one county interprets the provision as denying the counties the right to accept applications from other counties. Whatever the reason may be for the differences among the counties, revision of our marriage license laws is necessary to bring about a uniform procedure.

Several questionnaires contained remarks as to the parental consent required if one or both of the parties applying for a marriage license are under twenty-one years of age. The law is "If any of the persons intending to marry by virtue of such license shall be under twenty-one years of age, the consent of their parents or guardians shall be personally given — — — under the hand of such parent or guardian."²¹ The language used in this Act can be interpreted to mean that both parents of the minor applicant must consent or that one parent only of the minor need consent. The consent of both parents is required in two of the counties raising the question, of which one county will make an exception and accept the consent of one parent when the parents are divorced or unusual circumstances exist. Another county requires that the father only need consent and still another county will accept the consent of either parent. A recent county court decision interpreted the law as requiring the consent of the

¹⁵ Freedman, *LAW OF MARRIAGE AND DIVORCE*, vol. 1, p. 68, Riverside Press (1939).

¹⁶ Act of July 24, 1913, P.L. 1013, amended by Act of May 9, 1935, P.L. 152, Act of June 10, 1947, P.L. 492, 48 P.S. 13.

¹⁷ In the form of a directive letter from the late Hon. Thomas P. Trimble, President Judge of Orphans' Court, Allegheny County.

¹⁸ Act of July 24, 1913, P.L. 1013, 48 P.S. 13.

¹⁹ Act of May 9, 1935, P.L. 152, 48 P.S. 13.

²⁰ See note 14.

²¹ Act of June 23, 1885, P.L. 146, amended by the Act of May 23, 1887, P.L. 170, 48 P.S. 5.

father unless certain enumerated circumstances existed.²² Revision of our statutes will correct this diversity of interpretation.

Throughout this article, we have seen the variety of procedures employed by the counties of Pennsylvania in interpreting our marriage license laws. In some instances these differences are caused by lack of clarity and in other instances conflicting provisions make understanding difficult. As noted earlier, the majority of the Clerks of the Orphans' Courts are in favor of codification of the marriage license laws which would provide a ready reference in one act and make for clarification. Revision also is needed to erase the divers interpretations given and ambiguities existing today in our marriage license laws. The legislature should act on this matter as soon as possible.

Daniel B. Winters

²² *In re Minor's Application for Marriage License*, 59 D. & C. 355 (1948).