



1954

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Recommended Citation

Murphy, John W. Jr. (1954) "Uniform Support Legislation," *Kentucky Law Journal*: Vol. 43 : Iss. 1 , Article 9.

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Uniform Support Legislation

By JOHN W. MURPHY, JR.*

Family desertion and non-support is a serious social and legal problem. Whenever a husband or father leaves his home and fails to discharge the fundamental duty of supporting his wife and children, a whole family unit is disrupted and the duty of support is transferred to friends, relatives or to the welfare agencies of the state and federal government. Wives are often unable to support themselves and must look to the welfare agencies for assistance and guidance. Children abandoned by parents are frequently committed to orphanages.¹ The number of persons receiving aid from public welfare because of the delinquency of persons responsible for their support is astounding.² The number of dependent children in receipt of public aid in the United States has increased by over one-half million since 1941 and payments have increased nearly four hundred million dollars.³ For the period January 1951, to September 1953, an average monthly total of nearly 55,000 dependent children received a total of nearly \$36,000,000 from the Public Welfare Fund of the state of Kentucky alone.⁴ These appalling figures, coupled with the fact that they do not include the numerous cases of non-support which are not recorded because dependents do not apply for public assistance, indicate that the problem of deserting fathers and husbands is indeed oppressive.

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¹ It was estimated by the National Desertion Bureau that over 25% of the children in orphanages in the United States as public charges were not orphans, but deserted children. Zuner, *Family Desertion: Some International Aspects of the Problem*, 6 Soc. SERVICE REV. 2 (1932).

² The Social Security Administration in a study made in sixteen states has estimated that among families assisted under the program for aid to dependent children, the number of fathers deserting or separated without court decree increased by 25% between the years of 1942 and 1948. It was shown also that the father's absence from home outranked death and incapacity as the reason for the children's need for public assistance. *Aid to Dependent Children in a Postwar Year*, PUBLIC ASSISTANCE REPORT No. 17, Federal Security Agency (1949).

³ The exact figures show an increase of from 941,000 in 1941 to 1,523,000 in 1951 and an increase in payments of from \$153,000,000 in 1941 to \$553,000,000 in 1951. Federal Security Agency, SOCIAL SECURITY BULLETIN (Sept., 1952). The statistics of the Fed. Security Agency show an annual increase of 20% in payments to dependent wives and children. ANNUAL REPORT OF FEDERAL SECURITY AGENCY, Social Security Admin. for 1947, 1948, 1949.

⁴ A recent survey indicates that approximately 10.3% of the children are dependent due to the father's desertion. Figures were supplied by Gerald B. Johnson, Jr., Attorney for Department of Economic Security at Frankfort, Ky. in answer to a request by this writer.

It was in the light of this burden on taxpayers, caused by runaway husbands and fathers, who had made members of their families public charges by refusing to support them, that the National Conference of Commissioners on Uniform State Laws promulgated the Uniform Desertion and Non-Support Act and the Uniform Reciprocal Enforcement of Support Act for the purpose of impeding the increase of desertion and non-support. The New York Legislature promulgated the Uniform Support of Dependents Act for the same reason. These Uniform Acts are in effect in forty-six states and four territories. The purpose of this article is to evaluate the effect of each of these Acts on the problem of desertion and non-support. The three Uniform Acts are discussed in chronological sequence.

I. *Uniform Desertion and Non-Support Act*⁵

In 1910, the National Conference of Commissioners on Uniform State Laws approved the Uniform Desertion and Non-Support Act and recommended it for adoption as a uniform law in all the states and territories. The National Conference credits the Act with adoption in twenty-four states and territories.⁶ However, a cursory examination of these state statutes indicates a conspicuous lack of uniformity, due to the fact that no state adopted the Act exactly as proposed and many states made changes by subsequent amendments. The Act has been adopted with many modifications and some improvements, some states creating many new duties unknown at common law.

Constitutionality. The Act was first held constitutional by the Kansas Supreme Court against the contention that the maximum penalty of imprisonment at hard labor for two years violated the constitutional prohibition against cruel and inhuman punishment,⁷ and later by the Massachusetts Supreme Judicial Court, upholding a conviction under the Act as not in violation of the provision against slavery and involuntary servitude.⁸ Although some of the provisions of the Act may be held invalid, this does not affect its other provisions nor render it unconstitutional in its entirety.⁹ It has been held in some jurisdictions that a former act was repealed by adoption of the Uniform Act although it was not technically inconsistent therewith. The Vermont Supreme Court in so holding said:

⁵ 10 U. L. A. (1922).

⁶ 10 U. L. A. (1952 Supp.).

⁷ *State v. Gillmore*, 88 Kan. 835, 129 Pac. 1123 (1913).

⁸ *Com. v. Pouliot*, 292 Mass. 229, 198 N. E. 256 (1935). See also: *Furlow v. State*, 78 Tex. Crim. 544, 182 S. W. 308 (1916); *Fisher v. Sommerville*, 83 W. Va. 160, 98 S. E. 67 (1919).

⁹ *State v. Blackwell*, 16 Ala. App. 500, 79 So. 198 (1918).

We may take judicial notice that the Act of 1915 was one prepared and recommended by the national conference of commissioners on uniform state laws, and that at the time of its adoption by the Legislature of this state it had already been adopted by several of the other states. . . . It would do violence to the expressed intention of the Legislature to promote uniformity of law on the subject to presume that they intended to defeat that purpose by retaining a statute which would create dissimilarity.¹⁰

On the other hand, it has been asserted, notwithstanding the objective of the Commissioners to promote uniformity that an earlier act was not repealed by implication.¹¹

Although the Act is not retroactive to include offenses committed before its adoption, a party affected may be convicted for non-support if the offense continues after the passage of the Act.¹²

Criminal Sanctions and Penalties. The Uniform Act provides in Section 1 that any person who wilfully deserts or neglects to provide for the support of a wife or child under sixteen years of age, leaving the dependent in destitute circumstances, shall be punishable by fine or imprisonment or both.¹³ The section is carefully drafted and requires the presence of many elements for conviction. Only one state adopted Section 1 without change. Many of the states reworded the language to comply with their existing support laws and other states added provisions enlarging its scope.

It will be noted that the Act makes it a crime for a husband or parent to wilfully desert his wife or children but is silent as to whether the offense is a felony or a misdemeanor.¹⁴

Since the offense is a crime under the statute, the guilt of the accused must be proved beyond a reasonable doubt,¹⁵ but one court in affirming a conviction under weak evidence said:

It ought not require much evidence to support a judgment which does not punish the defendant for any found past delinquency, but only requires him, an able-bodied man 30 years of age, to pay in the future \$5.00 a week to his wife and child, for their support and maintenance,

¹⁰ Ex parte Turner, 92 Vt. 210, 216, 102 Atl. 943, 946 (1918). See also: People v. Ankrum, 286 Ill. 319, 121 N. E. 579 (1919).

¹¹ State v. Garris, 98 N. J. L. 608, 121 Atl. 292 (1923).

¹² Wynn v. State, 18 Ala. App. 397, 92 So. 520 (1922).

¹³ 10 U. L. A. sec. 1 (1922).

¹⁴ Of the twenty-four jurisdictions which have adopted the Act, fourteen declare it to be a misdemeanor, two a felony, and eight have merely adopted the Act as it was promulgated, declaring the offense to be a "crime." 10 U. L. A. 1-10 (1922) and (1952 Supp.). Those two states which have declared the offense to be a felony have been careful to include all the elements necessary for the commission of a felony so that the Act will not be rendered unconstitutional for failure to do so. The Mississippi Act was held invalid in that it made the offense of desertion and non-support a felony and permitted prosecution other than by indictment. State v. Sansome, 133 Miss. 428, 97 So. 753 (1923).

¹⁵ State v. Heath, 224 Iowa 483, 276 N. W. 35 (1938); People v. Parks, 216 Ill. App. 529 (1920).

and who, for the period alleged in the information, more than a year, had, as shown by the evidence, contributed but \$15.00 towards their support.¹⁶

Defenses and Justifications. A desertion must be "without just cause" or "wilful" and failure to support children must be "without lawful excuse" or "wilful." While these phrases may seem to be vague, the courts have had little trouble in determining whether or not the offense is one that is punishable under the Act. The word "wilful" has been held to mean not only with evil intent and malice but also with a set purpose and design. Before the accused can be justified in deserting his wife he must have had a lawful reason.¹⁷ Actual desertion is not necessary, since the offense of desertion and non-support are two separate offenses, and even though the husband may continue to live with his wife he may be guilty of violating the Act if he neglects or refuses to provide for her support.¹⁸ The fact that the wife deserted her husband without just cause has been held to be a good defense to a prosecution under the Act,¹⁹ and if she refuses to follow him to a new abode or to another community where he goes to seek employment or higher wages, there is no wilful desertion.²⁰ If a wife leaves the matrimonial domicile because of the husband's cruel treatment, her leaving does not constitute just cause for his failure to support her.²¹

As to failure to provide for the support of a child, it is no defense that the wife who has custody of the child, refused to live with the husband.²² However, where the wife without good reason refuses to live with the husband at the residence established by him, he is not liable for the support of his children. As the Virginia Supreme Court said:

His duty to support them is based largely upon his right to their custody and control. To say the least of it, he has the right at common law to maintain them in his own home, and he cannot be compelled against his will to do so elsewhere, unless he has refused or failed to provide for them where he lives. . . .

The statute under which this prosecution was instituted was not intended to change the common law, with respect to the duty

¹⁶ State v. Smith, 45 Utah 381, 146 Pac. 286 (1915).

¹⁷ Mercado v. State, 86 Tex. Crim. 559, 218 S. W. 491 (1920).

¹⁸ Bobo v. State, 90 Tex. Crim. 397, 235 S. W. 878 (1921).

¹⁹ People v. Parks, 216 Ill. App. 529 (1920); Verse v. State, 81 Tex. Crim. 48, 193 S. W. 303 (1917). *Supra*, note 18.

²⁰ This is true even though the wife claims to have a valid excuse for not following him. Reid v. State, 89 Tex. Crim. 65, 229 S. W. 324 (1921); Mikeska v. State, 88 Tex. Crim. 504, 228 S. W. 235 (1921); Green v. State 84 Tex. Crim. 151, 206 S. W. 93 (1918).

²¹ State v. Sharp, 31 Del. 148, 111 Atl. 909 (1920). However if the wife offers to return, a refusal by the husband to receive her back renders him liable for her support and maintenance.

²² State v. Nelson, 31 Del. 436, 114 Atl. 863 (1921); People v. Howell, 214 Ill. App. 372 (1919); Adams v. State, 164 Wis. 223, 159 N. W. 726 (1916).

of a father to maintain and support his infant children, but merely to more effectually enforce the legal duty.²³

One court has held, rightly, that the offense of failing to provide for the maintenance of a wife and failing to support a child are two separate offenses and that if the husband offered to support them if his wife would live with him or to provide separately for their support, there could be no conviction for a failure to support the child.²⁴

The financial inability of a father to support a child is a valid defense to a prosecution under the Act, and it is immaterial whether the inability is by reason of illness, poverty, or physical inability to work.²⁵ However, he must show that he has done all that he reasonably can towards their support, and it is his duty to seek employment even though it be different from his usual occupation.²⁶ It has also been held, where the accused was out of work part of the time and could afford to support only those children awarded him by a divorce decree, that a failure to provide for the support of his other children was not an offense punishable under the Act, the court saying that it was his first duty to support those children in his custody.²⁷ However, the mere fact that a divorce decree gave custody of the children to the wife does not prevent a prosecution of the husband for failure to support them.²⁸

In a prosecution under the Act it must be shown that the husband or father deserted his wife or child in "destitute or necessitous circumstances." It is not necessary that they be left in dire poverty, but it must appear that they are substantially destitute or without means of securing the reasonable necessities of life. The Wisconsin Supreme Court in construing this element of the Act held that it is not necessary

. . . that a wife must strip herself of all ornaments, such as her engagement ring and other jewelry of small value, or of her piano, and much less of necessary household furniture, before she can be considered in necessitous circumstances. . . . A wife is in necessitous circumstances, within the meaning of the statute, when she does not have property or money available for such necessities or ordinary comforts of life as her husband can reasonably furnish, even though she has the clothing, furniture, and ornaments usually owned by a woman in her station in life, or receives aid from others.²⁹

Although a strict construction of the statute results in holding that the wife or children must be left in "destitute and necessitous circum-

²³ *Butler v. Com.*, 132 Va. 609, 610, 110 S. E. 868, 869 (1922).

²⁴ *Sims v. State*, 91 Tex. Crim. 469, 239 S. W. 974 (1922).

²⁵ *Flowers v. State*, 87 Tex. Crim. 293, 221 S. W. 289 (1920). See cases cited therein for further examples.

²⁶ *State v. Nelson*, *supra* note 22.

²⁷ *State v. Bess*, 44 Utah 39, 137 Pac. 829 (1913).

²⁸ *People v. Baker*, 222 Ill. App. 451 (1921); *Watke v. State*, 166 Wis. 41, 163 N. W. 258 (1917).

²⁹ *Brandel v. State*, 161 Wis. 532, 533, 154 N. W. 997, 997-998 (1915).

stances" at the time of the desertion, their status *at that time* should not be controlling since a husband might leave them with sufficient means for support for only a limited time, and yet not be liable for desertion under the statute.³⁰ Also, it is to be noted that since there may be non-support without desertion, in such an instance a strict construction of the statute should not be applied.³¹

The husband cannot escape prosecution under the Act for wilfully failing to provide for support of his family by showing that such support is being supplied by friends, relatives or charitable institutions, since his duty is independent of the means or ability which they possess to support themselves.³² The very essence of the Act is that a husband or father should not be allowed to shift the burden of supporting his family upon others who are under no obligation to bear it. However, where the support of a child has been legally assumed by some third person the father is not liable for its support and cannot be convicted for failure to do so, e.g., where the parents are divorced, the mother remarried and the child is being supported by the step-father as a member of the family.³³

Procedure, Jurisdiction and Venue. Section 2 of the Act provides that proceedings may be instituted upon complaint by oath or affirmation by the wife, child, or any other person against the deserting father or husband.³⁴ Of the twenty-four jurisdictions which have adopted the Act, ten omitted this section and most of the remaining

³⁰ Kachel v. State, 96 Tex. Crim. 86, 256 S. W. 263 (1923). Many states take the view that the mere fact that the husband only deserts the dependents does not subject him to criminal liability and that it is only when he fails to provide for their support that a crime is committed. Green v. State, 96 Ark. 175, 131 S. W. 463 (1910); State v. Bailey, 115 Ore. 428, 236 P. 1053 (1925); Ex parte Strong, 95 Tex. Crim. 250, 252 S. W. 767 (1923). *But cf.* Murphy v. State, 171 Ark. 620, 286 S. W. 871 (1926) where the court held that wilful desertion of a wife without good cause may be made a criminal offense although it is not accompanied by failure to support. The Act as originally enacted provided for punishment for "desertion and non-support" but was later amended to "desertion or non-support" in order to cure the earlier defect. See *Supra*, note 18.

³¹ One court has gone so far as to hold that where the husband deserted his wife, leaving her with only three days provisions, she was not left in destitute and necessitous circumstances because he had left her all the furniture they had accumulated, which she had sold and appropriated the proceeds therefrom. Wallace v. State, 85 Tex. Crim. 91, 210 S. W. 206 (1919). However, in a case where the husband deeded a lot worth \$700 and a home worth \$1200 and left the wife with \$300 in cash, the court rightfully held that she was not left in destitute and necessitous circumstances even though she had spent the money left her, because she had a place where she could live which was sufficiently furnished for her comfort. Furlow v. State, 78 Tex. Crim. 544, 182 S. W. 308 (1916). See also: Barrow v. State, 88 Tex. Crim. 82, 225 S. W. 53 (1920); Hood v. State, 87 Tex. Crim. 222, 220 S. W. 550 (1920).

³² State v. Weldin, 8 W. W. Harr. (Del.) 158, 189 Atl. 586 (1937); People v. Howell, 214 Ill. App. 372 (1913); Huntley v. State, 98 Tex. Crim. 530, 266 S. W. 505 (1924); State v. Waller, 90 Kan. 829, 136 Pac. 215 (1913).

³³ State v. Constable, 90 W. Va. 515, 112 S. E. 410 (1922). *But cf.* Pope v. State, 123 Tex. Crim. 576, 59 S. W. 2d 390 (1933).

³⁴ 10 U. L. A. sec. 2 (1922).

fourteen modified it to conform to their existing law. Many states have added provisions pertaining to the duties of various public officials, the procedure to be followed, jurisdiction of the various courts and the rights of both parties.

Although the Act makes no provision for procedure or venue, the courts have generally followed existing practice relating to procedure in criminal cases. Further resort may be had to the constitutions, the common law and general statutes in determining the procedure to be followed.³⁵ Some of the states adopting the Act have drafted a form of complaint to be used. All that the complaint should state is (1) that the desertion was wilful or without just cause, (2) the names of the parties deserted, (3) their age (if children), (4) the existence of a marital relationship (if a wife), (5) that the dependents were left in destitute circumstances, and (6) the place of the desertion and the date of such desertion.

Where the accused is arrested and brought into court on a complaint there are two courses open. First, the state may give him a preliminary hearing, and if there is reasonable ground for establishing his guilt, he may be required to post bail to answer any indictment. Upon default of bail he may be committed as in other criminal proceedings but he cannot be tried for the offense except on presentment or indictment. Second, the complainant may give notice and file her petition for support pending prosecution and the defendant may make any defense to show that he is not liable for the support of those named in the petition.³⁶

Although a husband who was a resident of another state at the time the Act went into effect cannot be convicted, a deserting husband who goes into another state is subject to prosecution in the jurisdiction where the wife remained.³⁷ Where the husband and wife have been domiciled in one state and the husband constructively deserts the wife, causing her to take the children and go into another state where they become destitute, the husband is answerable for their support regardless of the state of his residence.³⁸ The mere fact that the husband was out of the state between the dates alleged in an indictment for the non-support of his wife constitutes no defense.³⁹ In order for a wife outside the state to secure support, she must show that the

³⁵ *Donaghy v. State*, 6 Boyce (Del.) 467, 100 Atl. 696 (1917); *Fisher v. Somerville*, 83 W. Va. 160, 98 S. E. 67 (1919).

³⁶ *State v. Goudy*, 94 W. Va. 542, 119 S. E. 685 (1923).

³⁷ *People v. Herrick*, 200 Ill. App. 428 (1916); *State v. Gillmore*, 88 Kan. 835, 129 Pac. 1123 (1913).

³⁸ *Alfred v. State*, 28 Okla. Crim. 13, 228 Pac. 788 (1924); *State v. Wellman*, 102 Kan. 503, 170 Pac. 1052 (1918). See also: *In re Fowles*, 89 Kan. 430, 131 Pac. 598 (1913).

³⁹ *Commonwealth v. Booth*, 266 Mass. 80, 165 N. E. 29 (1929).

support was due in the state where the action is brought, i.e.; she must show that she came or was willing to come into the state for support and that she took steps to obtain it from him after she learned that he was in the state. She cannot come from her resident state into the state where the husband is and charge him for non-support in that state unless she proves an express demand for support, or other circumstances from which it can be implied that the husband had knowledge that she was in the state and in need of support.⁴⁰

Support Pendente Lite. Section 3 of the Uniform Act provides for support of dependents *pendente lite*, enforceable by contempt proceedings.⁴¹ Of the twenty-four states which have adopted the Act, nine omitted this section and the greater part of those which adopted it have modified it by adding other provisions. It is usually held that to sustain an order for support *pendente lite*, the same elements and circumstances must be shown as would sustain a finding of non-support under Section 1.⁴²

The failure of the husband to comply with the order is civil and not criminal contempt since the provisions of the Act are primarily for the benefit of the wife and not the public.⁴³ Usually a petition charging contempt in violation of an order for support *pendente lite* must be verified or supported by an affidavit of the complainant, but where the contempt was committed in the presence of the court by failure to obey the order to make immediate payment, the court has jurisdiction to deal with such contempt without further complaint.⁴⁴

Probation and Suspension. Section 4 of the Uniform Act provides that before the trial (with the defendant's consent), or at the trial (if he pleads guilty), or after conviction, the court may order the defendant to make periodic payments to his dependents and may release him from custody upon probation. Such an order is conditioned upon his compliance with the order of support and is subject to modification in the discretion of the court.⁴⁵ Of those states adopting the Act, two omitted this section and the others modified and amended it so drastically that it would hardly be recognized as part of the original Uniform Act.

While such a provision can probably be found in the statutes of those states which have not adopted the Uniform Act, there has been

⁴⁰ *People v. Higgins*, 109 Misc. 328, 178 N. Y. S. 728 (1919).

⁴¹ 10 U. L. A. sec. 3 (1922).

⁴² *People v. Ankrum*, 286 Ill. 319, 121 N. E. 579 (1919).

⁴³ *State v. Chaffman*, 15 N. J. Super. 492, 83 A. 2d 643 (1951); *People v. Elbert*, 287 Ill. 458, 122 N. E. 816 (1919).

⁴⁴ *Petition of Kelley*, 292 Mass. 178, 197 N. E. 861 (1935); *Ex parte Sturrock*, 80 Tex. Crim. 307, 189 S. W. 487 (1916).

⁴⁵ 10 U. L. A. sec. 4 (1922).

some question raised as to the validity of the provision in that the power to suspend sentence encroaches on the pardoning power of the executive department of the state.⁴⁶ This section of the Act has been held to confer no power to change or commute a sentence of imprisonment once it has been imposed, since the words "after conviction" are to be read as meaning after conviction and before pronouncement of sentence. It was held that the Act gives only three distinct powers to the court: (1) it may impose a fine, (2) it may require the defendant to enter into a recognizance to pay a certain sum weekly to the wife, in which case he will be released from custody, or (3) it may sentence the defendant to the county jail and direct that such imprisonment be worked out in hard labor. The court may choose any three of the alternatives but has no power to commute a sentence of imprisonment once it has been imposed.⁴⁷

Non-Compliance with Court's Order. Section 5 of the Act provides for arrest, hearing, forfeiture of bond, modification of the order for maintenance or the imposition of a penalty upon failure to comply with the original order of support. In case of forfeiture of bond, payment of any part or all of it is made to the wife or children.⁴⁸ (The Act is unique in that it allows payment of the bond forfeiture to the deserted wife or children.) Five states which adopted the Act omitted this section and only seven appear to have adopted it without any notable change. The real purpose of this provision is to make Section 4 of the Act more effective in that it gives the court power to proceed with the trial and impose sentence under the original conviction, or to enforce the suspended sentence, if the defendant violates the order of support or the probation provisions of that section.

Non-Privileged Witnesses. Section 6 of the Act qualifies the ordinary rules of evidence and makes the husband or wife a competent witness against the other, except that neither can be compelled to give incriminating evidence against himself. The section further provides that proof of desertion of the wife or child in destitute circumstances or failure to provide for their support shall be *prima facie* evidence that such desertion or non-support is wilful.⁴⁹ Only three states omit-

⁴⁶ State v. Murphy, 207 Ala. 290, 92 So. 661 (1922). One State instead of adopting the provisions as to payment of support *pendente lite* imposed a fine on the defendant and made the fine payable to the deserted wife. This provision was upheld against an attack that it rendered the act void for diversion of a fine from the direction required in the Constitution, the court saying that it was doubtful whether anyone but the state had an interest sufficient to question the disposition of a fine since it was public money. Postelwait v. State, 28 Okla. Crim. 17, 228 Pac. 789 (1928). See also: State v. Gillmore, 88 Kan. 835, 129 Pac. 1123 (1913).

⁴⁷ State v. Superior Court, 79 Wash. 570, 140 Pac. 555 (1914).

⁴⁸ 10 U. L. A. sec. 5 (1922).

⁴⁹ 10 U. L. A. sec. 6 (1922).

ted the first provision of this section in adopting the Act. It is believed that their reason for so doing was that their statutes already had the same or similar provision. Four states omitted the last provision of this section. The entire section has been upheld as being a valid exercise of the legislative power to establish rules of evidence.⁵⁰ Although the section provides that proof of neglect shall be *prima facie* evidence that such neglect was wilful, no proof of a demand for support is necessary and the burden is still on the state to prove that the deserted wife or child was left in destitute circumstances. It is not sufficient to prove only desertion or abandonment since that presumption is rebuttable.⁵¹

Miscellaneous Provisions. Section 7 of the Act provides for the payment of an undetermined amount of compensation for each day of hard labor performed by the convicted person while imprisoned.⁵² Twelve of the states which adopted the Act omitted this section and those which included it set the amount from forty to fifty cents per day to be paid out of the general fund of the state. A few states have graduated the amount according to the number of dependents.

Section 8 provides that the Act shall be interpreted to effect its general purpose to make uniform the laws of the states which enact it. Section 9 is the repealing clause, although six states did not adopt it, and Section 10 is the effective date clause.

Evaluation. From the foregoing, it can be seen that the Uniform Desertion and Non-Support Act is anything but uniform in the states which have adopted it. This lack of uniformity is due to the fact that none of the states adopted the Act exactly as it was promulgated, and thirteen have amended the statute since their original enactment. Further departure from uniformity is evidenced by judicial construction in the adopting jurisdictions in that opposite results are often reached as to interpretations of the same provision. Uniformity of "the judge made law" is as essential and important as uniformity of statute law. Complete uniformity can never be attained so long as courts take an attitude similar to that of a Pennsylvania court, when speaking of another uniform act:

. . . it is difficult to see why, in matters of legal procedure, it is desirable for us to assimilate the practice in Pennsylvania to that of Kansas or Florida, however appropriate such uniformity may be with respect to negotiable instruments, warehouse receipts and the like. For some purposes it may be desirable to dress in ready-made uniforms, but it

⁵⁰ O'Brien v. State, 90 Tex. Crim. 276, 234 S. W. 668 (1921).

⁵¹ State v. Tucker, 151 Wash. 218, 275 Pac. 558 (1929); State v. Constable, 90 W. Va. 515, 112 S. E. 410 (1922).

⁵² 10 U. L. A. sec. 7 (1922).

is better for most men to be measured for their clothing and have their coats cut to suit their individual requirements.⁵³

It might be possible to achieve uniformity by:

. . . getting all the courts to commence over again and follow the decisions of some one court. The difficulties in the way of doing this readily suggest themselves to the lawyer who has ever attempted to get a court to overrule a former decision, or who has ever applied for a rehearing. One of the greatest troubles would be in getting all the others to follow the one. Each one would think itself the one to be followed and not the one to follow.⁵⁴

The National Conference realizes that the Act has failed in its prime objective and has recommended that it be re-classified as a Model Act. At their 1944 meeting, a preliminary draft of a revision was submitted because:

None of the Commissioners from whom we have heard indicates the existence of a demand in his state that its statute be amended more nearly to conform with the provisions of the Uniform Act. This very lack of uniformity and apparent absence of demand for uniformity would seem to demonstrate that this Act does not lend itself to uniformity of treatment. All would agree in principle that proper steps should be taken to prevent or punish the neglect of dependents, but there well may be differences of opinion concerning the most effective means to that end. Also, there may well be variances in social and governmental structure in the several states that justify diversity of treatment of the problem.⁵⁵

Existing Kentucky Law. The statutory provisions in Kentucky seem sufficiently adequate and comprehensive as to child desertion and non-support so that no purpose would be served by adoption of the Uniform Act. If the Act were adopted it would create new rights and duties and would change the existing law in many respects and thus make necessary much amendment and clarification of existing statutes. Under the existing Kentucky criminal statutes, any parent or other person having the care or custody of a child under six years of age who wilfully deserts it in a manner showing reckless disregard of its life or health is subject to punishment by confinement in the penitentiary for not more than three years.⁵⁶ There are no provisions for fine, probation or imprisonment at hard labor with payment by the state of a daily wage to the deserted wife or child for their support. There is no provision, other than imprisonment, for enforcement of support of the child. Any parent of a child under the age of sixteen who abandons it without making proper provision for its care is pun-

⁵³ Duff's Estate, 4 Pa. D. & C. 315, 317 (1923).

⁵⁴ Tompkins, *The Necessity for Uniformity in the Laws Governing Commercial Paper*, 13 A. B. A. REP. 247, 261 (1890).

⁵⁵ Report, *Committee on Review of Uniform Desertion and Nonsupport Act*, HANDBOOK, CONFERENCE OF COMMISSIONERS OF UNIFORM STATE LAWS, 272, 278 (1944). Cited in 9 OHIO ST. L. J. 665 (1948).

⁵⁶ KY. REV. STAT. 405.040; 405.990 (1953).

ishable by imprisonment for not less than one nor more than five years.⁵⁷ The circuit court has the power to postpone any indictment under this statute during the good behavior of the defendant and may suspend a verdict of conviction for the same reason, but such order is subject to modification for five years.⁵⁸ The defendant may interpose such defenses as inability by reason of poverty, illness, physical or mental incapacity, lack of knowledge of the existence of the child and that the child was not left in destitute circumstances.⁵⁹ The fact that friends or relatives may be providing for its support or that the wife was awarded custody of the child by a divorce decree is not a valid defense to a prosecution under the statute.⁶⁰ There is no provision in the criminal statutes for support *pendente lite*, although there are civil provisions as to alimony enforceable by contempt.⁶¹ A husband who abandons his wife while she is pregnant, leaving her in destitute circumstances, is punishable by confinement in the penitentiary from one to five years,⁶² but there is no criminal liability for the desertion or non-support of a wife who is not pregnant. Prosecution of the husband may be suspended upon a showing of good behavior, but such order is subject to modification for five years.⁶³

In any action for desertion or non-support of the wife or child, neither the husband nor wife may testify as to confidential communications between them during their marriage.⁶⁴ A strict construction of the Kentucky statute calls for a relaxation of the rule as to privileged communications only in actions for divorce. The husband or wife cannot testify as to confidential communications in a civil proceeding for alimony or for support in an action separate from divorce.⁶⁵ In all cases, however, neither can be compelled to give incriminating evidence against the other.

⁵⁷ KY. REV. STAT. 435.240 (1) (1953).

⁵⁸ KY. REV. STAT. 435.240 (2) (1953).

⁵⁹ *Miller v. Com.*, 284 Ky. 70, 143 S. W. 2d 854 (1940); *Cox v. Com.*, 280 Ky. 94, 132 S. W. 2d 739 (1939); *Clark v. Com.*, 262 Ky. 576, 90 S. W. 2d 998, (1936); *Webb v. Com.*, 237 Ky. 141, 35 S. W. 2d 14 (1931); *Brock v. Com.*, 206 Ky. 621, 268 S. W. 315 (1925).

⁶⁰ *Black v. Com.*, 259 Ky. 169, 82 S.W. 2d 321 (1935); *Parks v. Parks*, 209 Ky. 127, 272 S.W. 419 (1925).

⁶¹ KY. REV. STAT. 403.055 (1953).

⁶² KY. REV. STAT. 435.240 (1) (1953).

⁶³ *Supra*, note 58.

⁶⁴ KY. REV. STAT. 421.210 (1) (1953); For a very excellent note on this problem in Kentucky and a recommended statute proposed for adoption, see 38 Ky. L. J. 459 (1950).

⁶⁵ *London v. London*, 211 Ky. 271, 277 S. W. 287 (1925); *supra* note 64; In *West v. Com.*, 210 Ky. 536, 538, 240 S.W. 52, 53, (1922), the wife was held not to be a competent witness against the husband in a criminal action for desertion and non-support of the child, the court saying: "While it is proved that the witness and accused have separated, and each of them has contracted a marriage with another, there is no intimation that they have ever been divorced and the marriage ties dissolved, so as to render her a competent witness to give testimony

Adoption of the Uniform Desertion and Non-Support Act would result in the following changes in Kentucky's existing law:

1. The maximum penalty for desertion and non-support would be reduced from five years to two years with a maximum fine of \$500 in the case of desertion and non-support of a child under sixteen years of age.
2. The husband would be criminally liable for the desertion and non-support of a wife not pregnant. Such offense would be punishable by a maximum penalty of two years with a fine of not more than \$500.
3. The husband would be criminally liable for support *pendente lite* under the new act.
4. The Uniform Act would subject the state to payment of a stipulated daily wage to the wife or child for each day the husband or father spent in prison.
5. The defense of inability to provide for support would be substituted with the indefinite term "wilful" which would require judicial interpretation.
6. Adoption of the Uniform Act would result in a relaxation of the rule of evidence prohibiting the disclosure of confidential communications by the husband or wife in a suit between them.

In addition, the Kentucky Act has the following provisions not in the Uniform Act which would remain unaffected by its adoption:

1. The Kentucky Act provides penalties for the desertion and non-support of a child by any person other than its parents who is charged by law with the maintenance of a child.
2. The Kentucky Act distinguishes between legitimate and illegitimate children.
3. The Kentucky Act provides penalties for failure to support a child over the age of sixteen years who is mentally or physically unable to support itself.

Conclusion. Since adoption of the Uniform Act would result in the above changes or would necessitate revision or amendment to make it conform to the existing law, it is submitted that the Act should not be adopted. It is believed that the problem of non-support is one which is incapable of uniform treatment by the several states. Further, the Uniform Act is far from uniform since no state adopted it in its entirety and many refused to adopt certain provisions of the act, choosing to maintain their existing law on the subject.

The problem of desertion and non-support can be aided by giving dependents improved legal weapons with which to prosecute defaulters. Existing laws have not been adequate to handle the social, financial and legal problems arising from desertion and non-support. It is of great importance that claimants for maintenance be enabled

against him, under the general rule which excludes the testimony of a wife or husband against the other. . . . When the marriage relation is once lawfully established, it exists until the death of one of the parties, or until the status is destroyed by a judgment of divorce." See also *Hembree v. Com.*, 210 Ky. 333, 275 S. W. 812 (1925).

to enforce their rights by judicial action without excessive difficulty, delay and expense. Humanitarian reasons call for a simplification of the legal labyrinth in which dependents find themselves when they attempt to obtain support from defaulters.

Both the Uniform Support of Dependents Act and the Uniform Reciprocal Enforcement of Support Act—discussion of which follows—were designed to meet some of the challenging problems which arise when a person leaves the state in an effort to escape the responsibility of supporting his dependents.

II. *Reciprocal Support Legislation*

In 1949, New York passed experimental legislation known as the Uniform Support of Dependents Act (hereinafter referred to as the U.S.D.A.). This act served as a model for legislation in a few other states and was adopted by Kentucky in 1950.⁶⁶ Almost immediately after its adoption, a test case was filed with the Court of Appeals, attacking the constitutionality of the Act. The Court upheld its validity, although many defects were noted. In the 1954 session of the Legislature, this Act was repealed and replaced with the Uniform Reciprocal Enforcement of Support Act⁶⁷ (hereinafter referred to as the U.R.E.S.A.), drafted by the National Conference of Commissioners on Uniform State Laws. Both of these Acts were widely adopted and now exist in one form or other in forty-six states and four other jurisdictions. They create for the first time a two-state procedure, designed to provide a quick and effective means of enforcing in one state the duty of support against a father or other responsible person in another state, a remedy heretofore non-existent. It is the purpose of the following to discuss the Act as it was originally adopted by Kentucky, point out its defects as noted in the test case, show how these defects were corrected by the adoption of the U.R.E.S.A., and to note some of the defects in the new Act.

Remedies prior to adoption. Prior to the adoption of the U.S.D.A. in Kentucky, when a deserting father or husband crossed a state line, the difficulty of enforcing his obligation of support was great. The major obstacle was that of obtaining *in personam* jurisdiction. Personal service was impossible since the deserter had left the state. He could be sued in the state of the deserted wife or child so long as his

⁶⁶ LEGISLATIVE ACTS OF KENTUCKY, Ch. 66 (1950).

⁶⁷ House Bill 309. By some incongruity, the new Act still bears the title of Uniform Support of Dependents Act although it is an exact copy of the Uniform Reciprocal Enforcement of Support Act. House Bill 309, Sec. 1. In this Article, the Acts will be referred to by their correct titles, i.e., the original Act will be referred to as the U.S.D.A. and the new Act will be referred to as the U.R.E.S.A.

domicile remained unchanged, provided there was a statute allowing substituted service.⁶⁸ If he owned property in the state, jurisdiction *quasi-in-rem* could be obtained and any judgment against him could be satisfied out of his property,⁶⁹ but the usual situation was that he left no property in that state out of which a judgment could be satisfied, so that any judgment obtained was unenforceable. Although the judgment was usually entitled to full faith and credit in the state to which he had fled, the deserted wife or child could not afford the costs of a second suit, especially if it meant going into some other state. Under the Full Faith and Credit Clause of the Constitution, only final judgments must be recognized by another state.⁷⁰ A decree ordering the payment of alimony or support money in installments is subject to modification, therefore not final and not entitled to recognition. Only that part of the judgment ordering the payment of a fixed sum already due is entitled to extra-state recognition. Thus, only judgments for amounts accrued could be enforced, leaving the dependent helpless as to future payments unless several successive suits were brought. The fugitive father or husband was likely to complicate matters further by going into a third state, thus avoiding his responsibility wholly unless the wife or child could follow him from state to state, enforcing at various intervals the judgment obtained in the first state for amounts already accrued. If he changed his domicile to one of these other states, then the deserted wife or child had to obtain personal service on him in that state. By the simple method of crossing state lines, a husband could effectively prevent his dependents from enforcing family support obligations. It can easily be seen that it was not unusual for the deserted wife or child to abandon any attempt to obtain support from the father or husband. The logical recourse for the dependents was to apply for public welfare, rather than spend what little money they had trying to track down the deserter and force him to carry out his legal responsibility. The truth is that there was *no effective civil remedy* to enforce support of abandoned wives or children where a father absconded to another state for the purpose of avoiding his legal obligation.

Criminal methods of forcing the husband or father to support his family are not usually adequately enforced, because the prosecuting attorney does not care to devote him time to such 'unimportant' matters. The deserter is usually placed on probation only to desert again.

⁶⁸ *Milliken v. Meyer*, 311 U.S. 457 (1940).

⁶⁹ *Pennoyer v. Neff*, 95 U.S. 714 (1877).

⁷⁰ *Sistaire v. Sistaire*, 218 U.S. 1 (1910). However, some states have adopted the policy of enforcing foreign alimony decrees on grounds of comity, enforcing them in the same manner and with the same limitations as the issuing state would. *Biewend v. Biewend*, 17 Calif. 2d 117, 109 P. 2d 701 (1941); *Rule v. Rule*, 313 Ill. App. 108 (1942).

If he leaves the state, it necessitates the bringing of extradition proceedings, often clumsy and expensive, in order to bring him to trial at the place where the crime was committed. In order to extradite him, it must be shown to the governor of the asylum state that he has fled from justice. Even when extradited little is gained because if convicted he will be fined or placed in jail, or if placed on probation he may refuse to work or may again leave the state. He may have been extradited from a good paying job, and, if convicted and placed in jail, the state not only must support his wife and children but must also now support him. Criminal proceedings have proved impractical also because they were never intended to secure support, their sole purpose being to deter the husband from deserting or failing to provide for the support of dependents. Further impracticalities exist because the ambulatory husband may be prosecuted only in the state where the dependents become destitute, usually the residence of the wife or child at the time of abandonment. The reciprocal support legislation was aimed to correct such situations.

Procedure Under U.S.D.A. The Kentucky U.S.D.A.⁷¹ prescribed the procedure for civil proceedings to compel the support of dependent wives, children, and poor relatives within and without the state of Kentucky. It declares a husband liable for the support of his dependents, and in addition provided for the support of children by the mother in certain situations, and made parents severally liable for the support of a child over seventeen unable to maintain himself and likely to become a public charge.⁷² Divorce or separation did not relieve the husband of his responsibility of support to any dependent child.⁷³ Maintenance orders include food, shelter, clothing, care, medical or hospital expenses, expenses of confinement, expenses of education, funeral expenses and any other reasonable or proper expense.⁷⁴

The deserted dependent (petitioner) commenced support proceedings in the county of his residence by filing a verified petition giving the name, age, residence and circumstances of the petitioner, and of the deserter (respondent).⁷⁵ If the respondent was present in the county, the usual law of the state applied but if he had left the state (initiating state) the judge transmitted the certified petition⁷⁶ to the proper court in another state where he was believed to be residing or domiciled (responding state) if that state had adopted a reciprocal or substantially similar law. The judge in the responding state fixed

⁷¹ KY. REV. STAT. Ch. 407 (1953).

⁷² KY. REV. STAT. 407.030 (1), (2), (3) (1953).

⁷³ KY. REV. STAT. 407.030 (7) (1953).

⁷⁴ KY. REV. STAT. 407.040 (2) (1953).

⁷⁵ See Appendix for a model petition and testimony.

⁷⁶ See Appendix for a model copy of the judge's certification.

a time and place for a hearing on such petition and issued a summons directing the respondent to appear at a designated time and place. If the respondent failed to appear, he was subject to punishment to the same extent and in the same manner as a witness who wilfully disobeyed a summons or subpoena. The respondent was personally served and a hearing was held in the court of the responding state. If he denied any allegation of the petition such fact was transmitted to the court of the initiating state which took the petitioner's testimony. It was not necessary for the petitioner or his witnesses to appear at the hearing in the responding state since he was represented by a public official of that state. When the court of the initiating state received the denial of the respondent, a record of the petitioner's answer was taken and forwarded with recommendations to the court of the responding state where the hearing was resumed. Witnesses of the petitioner and respondent were then cross-examined by depositions and written interrogatories. If the court of the responding state found that the petitioner was entitled to support from the respondent, such an order was entered and sent to the court of the initiating state. Payments were made by the respondent directly to the court of the responding state and forwarded to the court of the initiating state for delivery to the petitioner. The respondent was placed on probation by the court of the responding state and could also be required to furnish recognizance in the form of a cash or surety bond. The responding court could require him to make periodic payments and to report personally to the probation department or to some bureau of the court. If he wilfully violated the order of the responding court, he was made subject to punishment for contempt or for violation of probation.⁷⁷

Thus, without leaving home, the deserted dependent could invoke the aid of judicial power with personal jurisdiction over the deserter. For the first time, a deserted wife or child had an *effective civil remedy* to compel support when the responsible head of the family had left the state.⁷⁸ Such a procedure has four advantages: (1) no longer

⁷⁷ KY. REV. STAT. 407.060 (1953).

⁷⁸ Even though the procedure is formidable, it has been said that difficulties will be encountered in a large number of cases, especially in the case of *ex parte* divorces in that the husband will, in many cases, obtain an *ex parte* divorce before support proceedings are instituted in order to escape his responsibility of support, and that the judge in the support proceeding will assume it valid, rather than inquire into the *bona fides* of the husband's domicile in the state which granted the divorce. See Mayers, *Ex Parte Divorce: A Proposed Federal Remedy*, 54 COL. L. REV. 54, 56-57 (1954). However, as the writer suggests, the wife may defeat this claim by seeking this support not as a wife but as a divorcee, upon the theory that the *ex parte* divorce did not cut off her right to support in those states which allow an *ex parte* action by the wife for alimony or support, notwithstanding a divorce obtained by the husband. For a note on this problem enunciating the general rule and its exceptions, see 34 Ky. L. J. 149 (1946). As to the effect of

must the decree be final so that it will be enforced in another state under the Full Faith and Credit Clause, (2) the husband's or father's earning capacity is not cut off and he is not stigmatized with a criminal record, (3) dependents have an inexpensive and convenient method of obtaining past support money and are assured a method of compelling future payments, and (4) expenditure of public relief funds to dependent wives and children will be reduced proportionately to the amount recovered from deserting fathers and husbands. The burden of providing for a deserted family was thus shifted from the state to the financially and physically able head of the family.

Jurisdiction. Under the Act as originally adopted, the court had jurisdiction of the parties regardless of the state of last residence or domicile of the petitioner or the respondent and whether or not the respondent ever was a resident of the responding state.⁷⁹ The petitioner was required to be a resident of the initiating state, but his personal presence within the responding state was all that was required to give that state jurisdiction.

The Act originally contained an unnecessarily complicated enumeration of the instances when the court had jurisdiction to entertain a proceeding to compel compliance with the duty of support.⁸⁰ The new U.R.E.S.A., repealing the original Act, makes no such enumeration, but simply provides that the court shall conduct proceedings in the manner prescribed by law for the enforcement of the type of support sought.⁸¹ Under this provision, the existing law of the state is resorted to in order to determine whether the court has jurisdiction. The defendant no longer can contend that the court has jurisdiction only in the enumerated instances, as could be done under the original Act. None of the other reciprocal support acts enumerate the cases in which proceedings are maintainable. No need for such an itemized enumeration is seen unless the purpose is to limit the jurisdiction of the court.

Argument can be advanced for regarding the action for non-sup-

the U.R.E.S.A. on interstate recognition of alimony decrees, see Note 41 CALIF. L. REV. 693, 699 (1953-54). The author of that note expresses the opinion that the responding courts will still be faced with the constitutional question of full faith and credit. He also expresses deep concern over the fact that in some situations, the choice of law problem may involve at least three states.

⁷⁹ KY. REV. STAT. 407.040(1) (1953).

⁸⁰ KY. REV. STAT. 407.050 (1953). Although the Kentucky Act was copied from the New York Act, Kentucky omitted a portion of this section providing that the court had jurisdiction: "Where the respondent was or is a resident of or domiciled in the initiating state and has departed from such state leaving therein a dependent in need of and entitled to support under this act and is believed to be a resident of or domiciled in another state having substantially similar or reciprocal laws." C.L.S. UNCONSOL. LAWS, Ch. 85, Sec. 5(d) (1952).

⁸¹ House Bill 309, sec. 19 (1954).

port as a transitory action, thus making presence alone the basis of jurisdiction. The strict jurisdictional requirement of residence or domicile often works a hardship on the families of migratory workers, servicemen and other transitory workers. Such persons will undoubtedly at times become public charges of the state regardless of the fact that their residence or domicile may be elsewhere or that they may not, in fact, have any established residence or domicile. Presence of the respondent within the state was made the sole basis of jurisdiction under the original Kentucky Act and under the newly adopted U.R.E.S.A.⁸² If presence alone is sufficient to provide jurisdiction over the respondent, it should likewise afford basis for jurisdiction over the petitioner. In many instances it would result in a great saving of time and expense to the petitioner, e.g., when she goes to one state to bring non-support proceedings only to find that the respondent has avoided her by crossing another state line. In no instance would it be detrimental to the rights of the respondent, since he owes the duty of support and it makes little difference which state enforces that duty so long as that state has some interest in the matter. A deserted petitioner is just as much a charge upon the public welfare whether she be residing, domiciled or present in the state. It would certainly seem better to aid the petitioner in securing support than to return her to the state of her residence, since the cost of obtaining a court order for her return may be far more than a proceeding to compel support.⁸³

The original Kentucky Act contained a number of defects as to jurisdiction, probably due to careless drafting but which were amended to avoid defeating the purpose of the enactment. Residence of the petitioner in the initiating state was made the basis of jurisdiction for a proceeding to compel support. However "initiating state" was defined as the ". . . state of *domicile* or residence of the petitioner."⁸⁴ (Italic's writer's.) Thus, it seemed that the petitioner was required to be domiciliary of the initiating state. Such a requirement would have unduly restricted the application of the Act. Under the newly adopted U.R.E.S.A., the concept of jurisdiction based on domicile has been abandoned and presence of either the respondent or petitioner is sufficient to give both courts jurisdiction.⁸⁵ Such a relaxation of

⁸² KY. REV. STAT. 407.050 (1953); House Bill 309, sec. 4 (1954).

⁸³ See Adams, *State Control of Interstate Migration of Indigents*, 40 MICH. L. REV. 711 (1942).

⁸⁴ KY. REV. STAT. 407.020(9) (1953).

⁸⁵ House Bill 309, sec. 4 (1954). Despite the broad language used, it has been indicated that the Act is of narrow application. According to Professor Brockelbank, Chairman of the Committee that drafted the Act, the applicable law may depend upon the presence of the obligor during the period for which support is being sought, i.e., if the obligor was present in the responding state, the law of

the jurisdictional requirement is necessary because of the difficulty which would be encountered by a petitioner in trying to locate and force the respondent to provide support. If more than the presence of respondent within the responding state were required, recovery would in most cases be defeated since the respondent would never remain in any one state sufficient time to establish a domicile or residence in that state, thus circumventing the power of the responding state to compel compliance. If the petitioner were required to be a resident or domiciliary of the state where she files her complaint, she would for relief in many cases be forced to return to another state where the desertion actually took place. Jurisdiction on presence of both parties gives effect to the full purpose of the Act and reduces the expense incurred by the petitioner.

Kentucky was the first state to have the constitutionality of its reciprocal support act carried to the highest state court. In the case of *Duncan v. Smith*⁸⁶ the original Act was attacked on eight grounds, discussion of which follows.⁸⁷

Are the Acts void for indefiniteness?^p It was contended that the language of the U.S.D.A. was so indefinite as to be incapable of enforcement. The main argument on this point was directed toward the various definitions contained in KY. REV. STAT. 407.020. While the Act gave many definitions of the word "court", it was held that so far as Kentucky was concerned, this meant county or circuit court and that the other definitions were for the sole purpose of describing appropriate courts in other states having a similar law. The same was held true as to the many definitions given to "petitioner's representative", the Court of Appeals holding that in Kentucky the County Attorney was intended and that the other designated officials were for the purpose of identifying the proper legal officers to represent the petitioner in other states. In the new Act the County or Circuit Court was given jurisdiction and the County Attorney was designated the official representative of the petitioner.⁸⁸ While the County Attorney may be the proper official, he is already overworked in many counties. A further objection can be made that since he obtains no added fees for such

that state will apply, but if the obligee is seeking an order for past support which has not been paid and the obligor was in the initiating state when the past support fell due, then the law of that state will apply. State of New York Joint Legislative Committee on Interstate Cooperation, Summary of "Conference on Social Welfare and Non-Support," 3 (1953).

⁸⁶ 262 S.W. 2d 373 (Ky. 1953).

⁸⁷ This writer has been honored with a copy of the briefs filed with the court by the attorneys: Hon. Lawrence G. Duncan, County Attorney of Jefferson County and Hon. Gerald B. Johnson, Jr., Attorney for the Department of Economic Security of Frankfort, Kentucky of counsel on the brief.

⁸⁸ House Bill 309, secs. 9, 11 (1954).

work, he may develop a tendency to proceed only when compelled rather than on his own initiative, resulting in a situation similar to that of the laxness of prosecuting attorneys in criminal proceedings. Aid in solving the problem might be found in the methods by which other states handle such difficulties. Some states have set up special welfare commissions to represent the petitioner.⁸⁹ One state has provided for the appointment of some other person.⁹⁰ Connecticut provides for a board of common pleas judges to appoint annually an attorney-at-law for each county to act as representative.⁹¹ This appears to be the best system yet discovered since it relieves the County Attorney of additional duties and enables the appointed attorney to devote the needed time and effort called for under the Act.

Further argument was made that the Act imposed duties on the "probation department or bureau" when Kentucky was acting as the responding state and that, since Kentucky has no such department or bureau, the Act was so incomplete and conflicting that it could not be properly executed. This argument was answered by holding that the duties imposed on the department were merely mechanical and that the provision was not mandatory. There was, therefore, no reason why these duties could not be performed by the court itself or by the clerk of the court as is done by court receivers or master commissioners. Upon adoption of the new Act, such duties were placed on "the clerk of the court or an official designated by the court."⁹²

The form of original Act has further been attacked in that the enumeration of the persons who were liable for support did not correspond with the enumeration of dependents.⁹³ KY. REV. STAT. 407.030(1) imposed a duty of support upon the husband to his wife and children under seventeen years and any other dependent. KY. REV. STAT. 407.020(4) defined dependent to include ". . . a wife, child, mother, father, grandparent, or grandchild. . . ." The word "husband" was appropriate as to "wife" but not as to "child" and was wholly inconsistent as to "mother, father, grandparent or grandchild." Did this mean that only husbands were to support mothers, fathers, grandparents and grandchildren? While this objection may seem trivial, it was one of the bases for denying relief in a case brought under the

⁸⁹ UTAH H.B. No. 5 and S.B. No. 7 (1950).

⁹⁰ R.I. Public Laws, Ch. 2772, sec. 19 (1951) provides that petitioner's representative is to be any person appointed by the Director of Social Welfare except in reimbursement proceedings which are to be conducted by the city or town solicitor and provides that the petitioner, if he wishes may employ his own counsel.

⁹¹ SUPP. TO CONN. GEN. STAT., sec. 2441c (1953).

⁹² House Bill 309 Secs. 22(b), 23, 24 (1954).

⁹³ See particularly KY. REV. STAT. secs. 407.040, 407.050 (1953). See also Brockelbank. *The Problems of Family Support—A New Uniform Act Offers A Solution*, 37 A.B.A.J. 93, 95-96 (1951).

New York Act.⁹⁴ While the Act may have been indefinite and uncertain in some respects, it is believed that it was sufficiently clear for execution under the well known principle that as between one or another of reasonable interpretations of a statute, that interpretation which will render the statute valid and operative should be adopted. As has been said:

Mere imperfections may be cured by judicial construction. Clarification may be had by considering the character and nature of the statute, and the purpose to be accomplished.⁹⁵

The new Act makes no attempt whatever to enumerate the instances where there is a duty of support but merely provides that:

‘Duty of support’ includes any duty of support imposed or imposed by law, or by any court order, decree, or judgment, whether interlocutory or final, whether incidental to a proceeding for divorce, legal separation, separate maintenance or otherwise.⁹⁶

The person to whom support is owed is called the “obligee”⁹⁷ and the person owing the duty of support is called the “obligor.”⁹⁸ The other definitions are much simpler and no objection can be made that new duties of support are created or that the definitions are so vague and indefinite as to render it unconstitutional.

Are the Acts special acts for benefit of a class? It was contended that the Act allowed a diversion of public funds for the purpose of providing legal representation for private persons, the private persons being petitioners who were represented both in the initiating and responding state by a public official without cost. This section of the Act was not changed by adoption of the U.R.E.S.A. and therefore the same objections could now be made. Section 171 of the Kentucky Constitution requires that: “Taxes shall be levied and collected for public purposes only. . . .” Section 3 of the Kentucky Bill of Rights provides that: “. . . no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services. . . .” On first observation, it might appear that free services are being given to private litigants, but when

⁹⁴ *Vincenza v. Vincenza*, 197 Misc. 1027, 98 N.Y.C. 2d 470 (1950). The court however, recommended an appeal for construction of the act on this and other points. Petitioner, a resident of New York, seventy years of age and the father of five adult children, named as respondents and who resided in New Jersey sought to obtain “fair and reasonable support” from them. The Court pointed out that Section 3 of the New York Act omits any reference or provision for liability of grandparents, grandchildren or for the support of needy parents or other poor relatives but that children over seventeen are the only poor relatives covered by the Act.

⁹⁵ *Folks v. Barren County*, 3118 Ky. 515, 520, 232 S.W. 2d 1010, 1013 (1950).

⁹⁶ House Bill 309, sec. 2(6) (1954).

⁹⁷ House Bill 309, sec. 2(8) (1954).

⁹⁸ House Bill 309, sec. 2(7) (1954).

the real purpose of the reciprocal support acts is considered, (that of securing" . . . support in civil proceedings for *dependent* wives, children and poor relatives from persons legally responsible for their support;")⁹⁹ the free service of public officials representing the petitioner is of secondary concern. (*Italics writer's*). Public funds in the form of direct cash payments are made to the needy blind, pauper idiots, needy aged and dependent mothers and children. If the Commonwealth's Attorney may be required to maintain criminal prosecutions for desertion and non-support, there is no good reason why a County Attorney may not be required to maintain civil actions for the same. There should be no objection to having a public official aid such persons in obtaining support from those who are legally responsible for their support. Actually, proper enforcement of the Act will decrease the amount of payments from the public treasury. If the dependent can obtain support from those responsible for his support, applications for relief from the Welfare Department will be greatly reduced. It has been reported that \$4,000 per month is being collected by the Brooklyn Family Court in cases between New York and New Jersey alone, and that in 1951 \$80,000 was collected by the New York Family Courts and sent to abandoned families without any cost to them.¹⁰⁰ This figure multiplied by the number of jurisdictions having reciprocal support laws will give some idea as to the reduction in payments from welfare funds.

The court made no distinction as to representation of resident and non-resident petitioners, holding that it is the duty of the petitioner's representative to serve in every proceeding under the Act, both when Kentucky is the initiating and responding state. If this be true, then the Act may be objectionable in that it requires a public official of this state to perform services not only for residents but also for non-residents. Are taxes paid by the citizens of Kentucky being used for the purpose of providing free legal services for citizens of another state? Must a public official elected by citizens of Kentucky for purposes of performing duties for citizens of Kentucky perform those duties for citizens of other states? While there is no objection to public funds being used for the benefit of resident petitioners, there may well be some merit to the objection that public funds paid by citizens of Kentucky should not be used for non-resident petitioners. While this objection was not raised in the test case, it may be enough to render

⁹⁹ KY. REV. STAT. 407.010 (1953). This is the stated purpose in the original Act. The new Act states that its purposes "are to improve and extend by reciprocal legislation the enforcement of duties of support and to make uniform the laws with respect thereto." House Bill 309, sec. 1 (1954).

¹⁰⁰ Seaman, *Making the Reciprocal Support Law Work*, 25 STATE GOVT. 132, 135 (1952).

the Act unconstitutional in that respect. Upholding this objection, however, would not avoid the whole Act in view of the severability provision.¹⁰¹ While the Court of Appeals ruled as to the payment of costs in a proceeding under the Act, holding that a non-resident petitioner must pay the costs and that a resident petitioner may proceed in forma pauperis, these costs do not include the payment of a fee to the County Attorney for legal services rendered to a non-resident petitioner. Such payment, if any, would have to come from public funds levied from the citizens of Kentucky. While it may be the public policy of Kentucky to aid *her* dependent wives, children, and other dependents, such policy would not extend to protect resident dependents of other states. There is argument that the benefits are reciprocal since other states when acting as responding states will be aiding Kentucky dependents. This argument has merit if such aid is on an equal basis, but one state under the present system will more than likely render more aid than it receives. Some method should be arranged whereby the responding state will be reimbursed if the representation of petitioners in that state is grossly unequal in relation to the number of petitioners of that state represented in other states. This is recommended for consideration when and if the Act is again revised.

Extra-territorial effect. The third ground of attack on the constitutionality of the original Act was that it was extra-territorial in its application in that it gave Kentucky courts jurisdiction outside the state and gave foreign courts jurisdiction within the state. There were numerous situations where the language of the Act seemed to *order* the responding court to perform certain functions with respect to obtaining jurisdiction of the respondent, holding a hearing, placing him on probation and forwarding payments made by the respondent to the initiating state. Other instances seemed to grant the responding court power to operate within Kentucky.¹⁰² Actually, however, the Act was not mandatory in any respect, but merely described to the responding state the action which was expected of it by the initiating state. Being a reciprocal act, these duties were not imposed upon the foreign court by Kentucky law or upon a Kentucky court by a foreign law but were imposed by virtue of the law of that state. The responding court did not perform these duties because the statutes of the initiating state imposed them upon it but by virtue of their own statutes. It was merely a case of careless statutory drafting.

¹⁰¹ KY. REV. STAT. 446.090 (1953).

¹⁰² *Supra* note 93 at 165. The author of this note compares the initiating state to that of the Island of Tobago, saying that the initiating state, like the Island of Tobago, cannot legislate for the whole world.

The duties of the court under the new Act are practically the same as those under the original Act. Upon receipt of the petition from the initiating state, if the responding court finds that it cannot obtain jurisdiction of the obligor because of inaccurate or inadequate statements in the petition, this fact is communicated to the initiating state, the responding court attempts to determine the accurate facts and continues the case until the defect is cured or an amended petition is received.¹⁰³ The responding court is given the same powers of enforcing compliance with its orders as was given in the original Act, except that the clerk of the court or some other designated official is to carry out the duties of the probation department.

There is little danger that the new Act will be attacked as extra-territorial in nature since the Act clearly limits its commands to courts and persons within the state. The commands are drawn in the form of corresponding provisions, e.g., "the court of this state when acting as an initiating state" and "the court of this state when acting as a responding state." The same result is reached as under the original Act, but through a better drafting method which eliminates any contention that the legislature of one state is legislating for the other state.

Considerable objection was made to the section which provided that after the initiating state had heard the petitioner's evidence ". . . the court shall make its recommendation, based on all of such proof and evidence, and shall transmit to the court in the responding state an exemplified transcript of such proof and evidence and of its proceedings and recommendation in connection therewith"¹⁰⁴ and the court of the responding state shall hear and determine the case. It was thought that this section destroyed the jurisdictional power of the court of the initiating state in that it limited the court to making recommendations rather than deciding the case which is its normal function.¹⁰⁵ However, it must be remembered that the act was a reciprocal act calling for a division of judicial functions, in that the complaint was filed in one state and the final decision made in another. While this may seem unique, it is not entirely new, since by use of depositions and interrogatories the same has long been accomplished in taking testimony. The initiating court could not make a final determination of the case because it did not have jurisdiction of the respondent. At that stage of the proceedings, only the petitioner was before the court of the initiating state. Only the responding court would have power to make a final order since it had personal jurisdiction of the respondent and the petitioner was before it by representation. While the respond-

¹⁰³ House Bill 309, sec. 18 (1954).

¹⁰⁴ KY. REV. STAT. 407.030(7) (1953).

¹⁰⁵ Note, 45 ILL. L. REV. 252, 260 (1950). See also *supra*, note 93 at 165.

ing court may not have full technical jurisdiction over the petitioner, it did have jurisdiction sufficient to render a binding decree. It is not always necessary that one be physically present in court for the court to make a binding determination as to his rights. Many cases are tried on depositions, default judgments are given, and in many personal injury actions the plaintiff never appears in court. The Court of Appeals disposed of this point by saying that there was no problem as to jurisdiction whatever, but merely a question of practice.

Interstate compact. Do the Acts create a compact between the states enacting it, without Congressional consent and therefore unconstitutional? It was contended that when the several states "agreed" to permit two state actions to be filed in their courts they agreed to extend or abolish the jurisdiction of their courts and that such an agreement, being political in nature, was contrary to the Constitution of the United States which provides that "No state shall, without the consent of Congress . . . enter into any agreement or compact with another state. . . ." ¹⁰⁶ It was early held that the prohibition against interstate compacts without the consent of Congress was directed against agreements that tend to *increase* political power. ¹⁰⁷ The difference between reciprocal legislation and an interstate compact is great. ¹⁰⁸ An interstate compact involves the making of a treaty which is negotiated and ratified by two or more states and which requires the passage of other legislation to declare the compact effective. Reciprocal legislation is a method whereby one state, by legislative action obtains for its citizens an advantage or immunity by conferring an advantage or immunity to the citizens of another state on condition that the other state make a similar grant to its citizens. No legislation between state officials is necessary, no ratifying act is necessary and no compact is entered into by any of the states. Reciprocal legislation further differs from an interstate compact in that Congressional consent is not required for the former. Reciprocal legislation may be said to be conditional legislation in that its effect depends upon passage of a similar act by another jurisdiction, but this does not mean that it must be ratified by the legislature of some other state. No one from Kentucky went to the officials of any other state and negotiated with them. No later act was passed to ratify adoption of the U.S.D.A. or the U.R.E.S.A. Kentucky is under no contract with any other state to keep the Act on its statute book. It can be repealed, revised, amended or replaced at any time in the same manner in which it was adopted—by

¹⁰⁶ U. S. CONST. Art. I, Sec. 10, Cl. 3.

¹⁰⁷ *Virginia v. Tennessee*, 148 U. S. 503 (1892).

¹⁰⁸ Starr, *Reciprocal and Retaliatory Legislation in the American States*, 21 MINN. L. REV. 371 (1936).

legislative action. Even if the Act should be held to be an interstate compact, this does not necessarily mean that it is unconstitutional because Congressional consent may be implied from silence and acquiescence.¹⁰⁹

Are the Acts discriminatory in nature?^P Do the reciprocal support acts violate the privileges and immunities clause of the United States Constitution?^{P110} It was contended that granting the petitioner the right of free legal representation by a public official and denying the same right to the respondent constituted a discrimination against residents by denying such privilege to a petitioner when the respondent is present in Kentucky. However, neither of the Acts make citizenship of the petitioner in the initiating state a prerequisite to filing a petition. All that was necessary under the original Act was that the petitioner be a *resident* of the county in which the petition was filed. A non-citizen of Kentucky could file a petition in the court of the county wherein he resided. The same was required of citizens of Kentucky. The petitioner was represented by the public official without regard to whether he was a citizen or a non-citizen.

While a state's public policy may determine whether and to what extent the state's courts will entertain transitory actions arising out of state, that policy must operate alike upon its own citizens and those of other states. The privileges which it affords to one must be afforded to the other.¹¹¹ However, there may be a discrimination by one state against the citizens of another state if there is a substantial and valid independent reason, beyond the mere fact that they are citizens of other states.¹¹² The privileges and immunities clause requires only that a state to accord to citizens of other states *substantially* the same right of access to its courts as it accords to its own citizens. A citizen of any state could bring a proceeding under the U.S.D.A. so long as he was a resident of the county where the proceeding was filed. The only discrimination made under the Act was that a non-resident petitioner was required to pay costs while a resident petitioner

¹⁰⁹ Bruce, *The Compacts and Agreements of the States With One Another and With the Foreign Powers*, 2 MINN. L. REV. 500, 516 (1918). See also, Brockelbank, *Is the Uniform Reciprocal Support Act Constitutional?*, 17 MO. L. REV. 1, 3 (1952). It has been said that there are hundreds of interstate compacts which have not been recognized by Congress but which are regarded as valid powers of the states. For a very excellent note summarizing this field with particular emphasis on one type of interstate agreement, see Ferguson, *The Legal Basis for a Southern University—Interstate Agreements Without Congressional Consent*, 38 KY. L. J. 347 347 (1950). And see, Note, 27 TEMPLE L.Q. 320, 326 (1954).

¹¹⁰ U. S. CONST. Art. IV, Sec. 2.

¹¹¹ Chambers v. Baltimore & Ohio R.R. Co., 207 U.S. 142, 149 (1907). *Bot cf.* Hughes v. Fetter, 341 U.S. 609 (1950).

¹¹² Toomer v. Witsell, 334 U.S. 385 (1947); Russo v. Reed, 93 F. Supp. 554 (1950).

could proceed *in forma pauperis*. However, it has been held that even though a state cannot forbid citizens of other states from suing in its courts, it may require a non-resident to give bond for costs, although such bond is not required of a resident, because a citizen of one state is not entitled to every privilege that is given to the citizens of another state.¹¹³ A reasonable discrimination by the courts of a state against non-residents does not violate the privileges and immunities clause of the Constitution,¹¹⁴ since that clause only forbids arbitrary distinctions against citizens of other states. Non-resident and resident petitioners were represented by a public official free of charge, but only non-resident petitioners had to pay costs. Thus, since the U.S.D.A. did not discriminate against citizens, the only reason that it could have been declared unconstitutional was that it discriminated against residents by allowing a petitioner free representation when the respondent was out of the state and denied this right of representation to a petitioner when the respondent was within the state. However, since one of the purposes of the Act was to provide a remedy for deserted dependents when the respondent was out of the state, there was no discrimination, but only a new remedy provided. There was no discrimination against petitioners when the respondent was within the state because there was no need for representation in another state. Neither was there any discrimination in providing the petitioner with free legal representation and denying such to the respondent, because the whole purpose of the Act was to secure support for dependent wives, children and poor relatives.¹¹⁵ The purpose of the Act was to provide a means of reaching a respondent, not to confer any benefit on him. This purpose was accomplished by compelling him to furnish support consistent with procedural due process. No rights were taken away from the respondent and at the same time no benefits were conferred upon him.

Under the provisions of the new Act, there is less likelihood that any such contention will be made, even though free representation is provided to only the petitioner. As will be remembered, the basis of jurisdiction under the U.R.E.S.A. is presence of both the obligor and obligee. While the obligor may still contend that he is being discriminated against by not being provided free representation, the contention that non-resident obligees are being discriminated against can no longer be made because the obligee is not required to be a resident of the state where the proceeding is instituted. Presence within the

¹¹³ Blake v. McClung, 172 U.S. 239, 256 (1898).

¹¹⁴ Toomer v. Witsell, 334 U.S. 385 (1947); Van Schaick v. Parsons, 11 F. Supp. 654 (1935); Douglas v. New York, New Haven & Hartford R.R. Co., 279 U.S. 377 (1929); LaTourette v. McMaster, 248 U.S. 465 (1919); Corfield v. Coryell, F. Cas. 3,230 (1823).

¹¹⁵ Ky. REV. STAT. 407.010(2) (1953).

initiating state is all that is required. The new Act also contains a provision that the court may in its discretion direct that all fees or costs be paid by the county, both when the state is acting as initiating and responding state.¹¹⁶ Under this provision, the court may direct that the costs and fees of either a resident or non-resident obligee or of the obligor be borne by the county. For these reasons, it is believed that the decision of the court in the *Duncan* case, as to the contention that the U.S.D.A. was discriminatory, would apply with even more force to the new U.R.E.S.A.

Do the Acts require approval of other authority? Are reciprocal support acts unconstitutional under that section of the State Constitution which invalidates laws enacted “. . . to take effect upon the approval of any other authority than the General Assembly . . .?”¹¹⁷ It was contended that since the U.S.D.A. would not be effective until the Legislature of some other state enacted a similar law, its validity was made to depend upon some other authority. While it is true that the effectiveness of both the U.S.D.A. and U.R.E.S.A. is dependent upon a similar enactment by the legislature of another state, the second state does not legislate or make policy decisions for Kentucky. The Acts contain no provision requiring the approval of any authority before they become effective, but go into effect ninety days after passage by the Legislature. Effective operation, however, is conditioned upon passage of a similar act by some other state. Its operative sphere is limited to those jurisdictions which have similar legislation. Although useless without passage of similar acts by other states, it would still have operative effectiveness dependent upon some event in the future. Statutes many times are enacted to take effect upon some contingency provided for in the statute. Reciprocal legislation is similar in that the action of a foreign government is the contingency upon which the law becomes operative. There is no difference in principle between such a contingency and one which is provided for in the statute. The Kentucky Court of Appeals, in dealing with another reciprocal law has said:

It is clear . . . that the legislature may enact a law to take effect when certain conditions arise. By the act in question the legislature itself says that, when certain conditions exist, the law shall be so and so. A foreign state may create the conditions, but it has no voice in determining what our law shall be. Our own legislature prescribes the condition. It alone says when the law shall apply. If the conditions never arise the act is quiescent. When they do arise it immediately becomes effective, not by virtue of the voice of the foreign legislature, but by virtue alone of the legislative will of this Com-

¹¹⁶ House Bill 309, sec. 14 (1954).

¹¹⁷ Ky. Constr. sec. 60.

monwealth. In the enactment of such a law, there is no surrender of the legislative function. It does not take effect on the approval of any other authority than the General Assembly. . . .¹¹⁸

Due process. Are the reciprocal support acts unconstitutional in that *ex parte* evidence is allowed, the defendant not being confronted with witnesses? It was contended that the U.S.D.A. was a criminal or quasi-criminal statute, in that it permitted criminal punishment to be imposed upon the respondent without allowing him an opportunity to confront his accusers, thus violating both the United States and Kentucky Constitutions.¹¹⁹ The specific provisions attacked were those permitting the use of *ex parte* evidence, allowing the court of the initiating state to make recommendations before hearing the respondent, and by allowing the responding court to place the respondent on probation, requiring him to furnish recognizance bond and report periodically while on probation subject to contempt sanctions.

However, any proceeding brought under the Act was purely civil. The purpose of the Act was to secure support in *civil* proceedings for dependents "from persons legally responsible for their support"¹²⁰ and to make this civil proceeding additional or alternative to any other remedy.¹²¹ Since the proceedings are not criminal in nature the respondent is not entitled to confrontation of witnesses, and the requirements of due process are satisfied by cross-examination of the petitioner by means of depositions or written interrogatories. The evidence was not subject to attack as hearsay since the Act itself provided for cross-examination. While it may be true that such cross-examination would not be as effective as if the witnesses were personally before the respondent, this appears to be one of those instances where "the necessity of justice requires it,"¹²² since one of the purposes of the Act was to give a deserted dependent an opportunity to obtain support without leaving the state. The respondent would be at a disadvantage in not having a representative before the initiating court, since the petitioner's representative was always before the responding court for the purpose of cross-examining the respondent. However, this is not too objectionable since it may be presumed that the court can determine those factors affecting the credibility of witnesses and detect

¹¹⁸ *Clay v. Dixie Fire Insurance Co.*, 168 Ky. 315, 319-320, 181 S.W. 1123, 1125 (1916). See also *Hunter v. City of Louisville*, 204 Ky. 562, 265 S.W. 277 (1924).

¹¹⁹ U.S. CONST. Amend. VI; Ky. CONST. sec. 11.

¹²⁰ KY. REV. STAT. 407.080(2) (1953).

¹²¹ KY. REV. STAT. 407.080 (1953).

¹²² *Laurel Printing Co. v. James*, 6 Boyce (Del.) 185, 97 A. 601 (1916); *Advertisers Exchange v. Bleist*, 40 Ohio 212, 57 N.E. 2d 91 (1943). In *People v. Graber*, 397 Ill. 522, 527, 74 N.E. 2d 865, 867 (1947), the court stated: ". . . we know of no rule or statute . . . which requires the plaintiff to personally appear before the court in order to prosecute his suit."

any attempt to work a fraud on the court. If the respondent believes that his rights will be prejudiced, he can return to the initiating state immediately upon being personally served, enter his defense and cross-examine the witnesses in a more effective manner.

After the judge of the initiating state heard the petitioner's evidence, under the U.S.D.A., he made recommendations to the judge of the responding court and forwarded them to that court. It should be noted that this recommendation was made without the initiating judge ever seeing the respondent and before any testimony was introduced. It is unfortunate that the Act was not more specific as to what type of recommendation the initiating judge might make. Could he recommend as to the final disposition before the respondent introduced any testimony? Did he recommend that the petitioner had introduced sufficient evidence to continue the hearing or as to the credibility to be given to the petitioner's witnesses on the basis of his observation of them?¹²³ The initiating court could not have possibly made recommendations as to the final disposition of the case since that court never had jurisdiction of the respondent. Its recommendation as to a fair and reasonable amount, based upon its view of the needs and circumstances of the petitioner would be of great assistance to the responding court, which could view this recommendation according to the means of the respondent. Proper recommendations by the initiating court would have related to continuance of the case, the credibility of the petitioner's witnesses or the equities involved which were incapable of being ascertained by the responding court. Although the recommendations were not binding on the responding court, since the court which has jurisdiction of both parties makes the final order, they would have proved helpful by providing knowledge which the responding court would have no method of obtaining, such as the past record of the respondent, his likelihood of attempting to escape the order of the court and a fair appraisal of the needs of the petitioner.

The Court of Appeals held that the provisions as to probation of respondent had no application in Kentucky since there is no procedure for probation except after conviction for a criminal offense. The court ruled that these provisions were another of the instances where the Act referred to the procedure of other states having a reciprocal law. If such provisions were enforced in Kentucky, the U.S.D.A. would probably have been classified as a quasi-criminal act. Their inapplicability would have rendered the Act less effective to some degree, in that Kentucky when acting as responding state would not have had that power. However, if the respondent failed to obey the order of the

¹²³ See Note, 45 ILL. L. REV. 252, 260 (1950).

court, he could have been punished for contempt as in a case of violation of an order to pay alimony.¹²⁴

There is no question but that the provision allowing punishment of the respondent for contempt for violation of the court order was valid. This punishment was not for criminal contempt but was civil in that the court was merely coercing compliance with its orders which were entered for the benefit of the petitioner and not for the purpose of vindicating the authority of the court.¹²⁵ There could be objection to the contempt provision on the ground that the responding court was enforcing the laws of the initiating state since the contempt would be for violation of the order of the responding court. Thus, the U.S.D.A. appeared to be procedurally constitutional since the respondent was given notice, had a fair hearing and an opportunity to present evidence and answer any allegations or claims against him.

The new Act does not contain any provision as to the manner in which proceedings are to be conducted but merely provides that:

The court shall conduct proceedings under this Act in the manner prescribed by law for an action for the enforcement of the type of duty of support claimed.¹²⁶

This practice is in line with that of the Commissioners on Uniform Laws in not inserting procedural matters in the various uniform acts. The Commission suggested that the adopting states follow New Jersey's provision that depositions and interrogatories be taken as is allowed in other courts of record. The suggestion was based on the belief that if procedural matters were not provided by the adopting state, the whole Act might be void for lack of definiteness. This was done by every state adopting the Act except Kentucky, but there is good reason to believe that the usual rules for jurisdiction, procedures and appeals will govern. In all likelihood, the net result will probably be that the procedure will be similar to that followed under the original Act. As to rules of evidence, however, the new Act provides that the court is bound by the rules that govern the Juvenile Court.¹²⁷

Penal nature of Acts. Are the reciprocal support acts unconstitutional in that the responding state enforces penal laws of the initiating state? It is well settled that the courts of one state cannot enforce claims arising under the penal laws of another state.¹²⁸ The United

¹²⁴ See Note, 41 Ky. L. J. 335 (1953).

¹²⁵ See Note, 13 Ky. L. J. 307 (1925).

¹²⁶ House Bill 309, sec. 19 (1954).

¹²⁷ House Bill 309, sec. 26 (1954).

¹²⁸ Wharton, CONFLICTS OF LAWS, sec. 4 (3rd ed. 1905); Goodrich, CONFLICTS OF LAWS, sec. 12 (3rd ed. 1949); Stumberg, CONFLICT OF LAWS, 67-68 (2nd ed. 1950); Beale, CONFLICT OF LAWS, 443.1 (1935).

States Supreme Court in the leading case of *Huntington v. Attrill*,¹²⁹ laid down the test in determining whether or not a statute was a penal law, as follows:

Whether a statute of one state, which in some aspects may be called penal is a penal law in the international sense, so that it cannot be enforced in the courts of another state, depends upon the question whether its purpose is to punish an offense against the public justice of the state, or to afford a private remedy to a person injured by the wrongful act.

. . .

The test is not by what name the statute is called by the Legislature or the courts of the state in which it was passed, but whether it appears to the tribunal which is called upon to enforce it, to be, in its essential character and effect a punishment of an offense against the public, or a grant of a civil right to a private person.¹³⁰

Applying this test, the reciprocal support acts are certainly not penal statutes since they do not attempt to punish the respondent for any offense against the public but merely grant to the petitioner an alternative civil remedy which in no way impairs any other remedy, civil or criminal.¹³¹ It is true that failure to provide support for dependents is a criminal offense also, but under the Acts the offense is dealt with as entirely civil.

Creation of new duties. The U.S.D.A. has been attacked as creating new duties of support instead of giving the deserted dependent a more effective method of enforcing existing duties.¹³² If this be true, then it certainly was objectionable and unsuitable for widespread adoption because of the great difference with which the states view the duty of support, some having a wide list of duties and others having a narrow list. The primary function of these reciprocal support acts is to provide a new remedy for enforcing existing rights and not to create new rights and duties. However, on many occasions, the U.S.D.A. did seem to declare that the law to be applied was that of either the initiating or responding state. A dependent was defined as one who was ". . . entitled to support from a person who is declared to be legally liable for such support *by the laws of the state or states wherein the petitioner and the respondent reside.*"¹³³ (italics writer's) Many other sections of the original Act contained the same or similar wording as to what law was applicable.¹³⁴ If this meant that the law of either state could be applied in order to declare the respondent liable for the

¹²⁹ 146 U.S. 657 (1892).

¹³⁰ *Ibid.* at 673 and 683.

¹³¹ House Bill 309, sec. 3 (1954).

¹³² *Supra*, note 93.

¹³³ KY. REV. STAT. 407.020(4) (1953).

¹³⁴ See the following sections of KY. REV. STAT. 407.020(7); 407.020(8); 407.030(5); and 407.030(6) (1953).

support of the petitioner then many new duties of support were created, depending only on the number of states wherein the respondent and petitioner resided. Under this construction, a respondent might have found that he was liable for the support of persons to whom he formerly owed no legal duty. For example, one is not legally liable for the support of his grandchildren in Kentucky. If, however, he left the state and went to another state where such liability exists, a proceeding for their support of the grandchildren could have been maintained under this construction of the original Act. Many such examples could be presented. If the law of either state could be applied to determine whether a duty of support is owed, the petitioner in every instance would have asked for the application of that law which was more liberal from her standpoint. If the duty was owed according to the law of some other state, there would have been many instances where new duties of support would have been created. The usual rule is that the character and extent of the obligation of support are determined by the law of the father's domicile and not by the place of the child's residence.¹³⁵ In most cases, the domicile of the father would not have been affected by his going into another state and the applicable law would have been that of the state of the petitioner.

Another possible construction was that the dependent could not recover unless the court found that the respondent was liable for such support by the laws of *both* states, i.e., where petitioner resided and where the respondent was present. Such a construction would have restricted recovery to only those few cases where the laws of both states were the same. In most situations, where such a contention would be favorable to the respondent, he would have always contended that he was present in a state other than that of the petitioner at the time the failure to provide for her support occurred. Such a contention, if proven, would have denied recovery to the petitioner. And what of the cases where the respondent had no *bona fide* residence but was a migratory worker, serviceman, or deserting traveling salesman? Under the above construction, he could have chosen some favorable jurisdiction as his residence and thus avoid entirely his legal responsibility of support. The proper law would seem to be that of the state of the residence of those who are required to be supported.¹³⁶

Under the new Act, the problem as to what duties of support are

¹³⁵ *Yarborough v. Yarborough*, 290 U.S. 202 (1933); 39 AM. JUR. 635 (1942).

¹³⁶ This is the rule that has been applied in a few civil cases and is the rule that is applied in criminal proceedings for non-support: *Com. v. Booth*, 266 Mass. 80, 165 N.E. 29 (1929); *State v. Hobbs*, 220 Mo. App. 632, 291 S.W. 184 (1927); *People v. Dimitry*, 163 Misc. 279, 297 N.Y.S. 1002 (1937). See also: *Gravitt v. Com.*, 232 Ky. 432, 23 S.W. 2d 555 (1930). *But cf.* *State v. Fick*, 140 La. 1063, 74 So. 554 (1917).

enforceable has been somewhat lessened by including those duties already imposed or impossible by law or court order. Thus, only those duties which now exist or which may exist in the future will be enforced. However, the problem as to the applicable law to enforce this duty is yet unsolved. The U.R.E.S.A. as originally promulgated gave the obligee of the support obligation a choice of two laws: (1) that of the state where the obligor was present when the failure to provide support occurred, or (2) that of the state where the obligee was present when the failure to support commenced. The purpose of this was to provide the obligee with a remedy when the whereabouts of the obligor was unknown.¹³⁷ However, under a later amendment of the Act, this section was changed to the provision now in the Act as adopted by the 1954 Legislature, and the applicable law is that of *any* state where the obligor was present during the period for which support is sought.¹³⁸ He is presumed to have been present in the responding state during this period unless proven otherwise. The reason given by the Commission for this change was that the obligee had no absolute right to choose an alternative applicable law but only the presumptive right to have the law of his own state applied until it could be shown that the obligor was in another state when the failure to support occurred, in which case the law of that other state was to be applied automatically.¹³⁹ The change was based upon the case of *Commonwealth v. Acker*,¹⁴⁰ where a husband, his wife and child were living in Nova Scotia and were citizens of Great Britain. The husband abandoned the wife and child and obtained employment in Massachusetts but lived apart from her husband, leaving the child in Nova Scotia. The husband was prosecuted in Massachusetts for failing to support the child. Under Massachusetts law non-support of a child was a criminal offense but there was no such statute in Nova Scotia. The accused's counsel argued that the offense could not be committed because the child was outside the state. The court sustained the conviction, saying:

The offender is here, within our jurisdiction. While residing here, he ought to make provision for the support of his wife and minor children, whether they are here or elsewhere. If he fails to do this, his neglect of duty occurs here, without reference to the place where the proper performance of his duty would confer benefits.¹⁴¹

¹³⁷ Brockelbank, *Multiple-State Enforcement of Family Support*, 2 *ST. LOUIS UNIV. L. J.* 12, 15 (1952).

¹³⁸ House Bill 309, sec. 7 (1954).

¹³⁹ Note, 7 *ARK. L. REV.* 363, 366 (1953).

¹⁴⁰ 197 *Mass.* 91, 83 *N.E.* 312 (1908). This case may be regarded by some as laying down the extreme rule that the duty of support may be enforced against the obligor even though the dependents live in foreign countries. This writer does not believe the rule to be either harsh or extreme since the court had jurisdiction based on temporary presence.

¹⁴¹ *Ibid.* See also: *Smith v. State*, 156 *Tenn.* 599, 4 *S.W. 2d* 351 (1928);

The rule of that case was that, in order to determine legal rights and duties in relations between persons in different jurisdictions, the applicable law is the law to which the person alleged to be under a duty was subject at the significant time and not the law to which the person claiming the right was subject.¹⁴² Thus, this amendment brings Section 7 in accord with the original intention of the National Conference, that it be used only when the petitioner does not know the whereabouts of the respondent, and not to provide an absolute right to choose which law to proceed under. However, this writer can think of many situations where the obligee would fail under this provision of the Act. For example, suppose that the obligor has been present in at least two states during his failure to provide support. He is found in the responding state and the obligee elects to proceed under the law of that state. However, when the trial comes to issue, the obligor proves that he was present in some other state during the period and that under the laws of that state he does not owe a duty of support to the obligee. Thus, in such a situation, the obligee would be denied relief. Under the original version of the Act, she could have proceeded under the laws of the state where she was present when the failure to support commenced. The amended section has not yet received the approval of all concerned and a committee of the National Conference has taken the problem under study.¹⁴³ The better rule would seem to be to apply the law of the state of the residence of those who are required to be supported as is done in criminal proceedings for non-support.¹⁴⁴

* * * *

The U.S.D.A. was adopted by only eight states,¹⁴⁵ the majority of

State v. Borum, 188 La. 846, 178 So. 371 (1937); Com. v. Jamison, 149 Pa. Super. 504, 27 A. 2d 535 (1942). These states consider the offense of non-support a continuing offense saying that the duty of support follows the deserter wherever he goes and that he may be prosecuted where found regardless of the presence or residence of the dependents.

¹⁴² Stimson, *Simplifying the Conflicts of Laws*, 36 A.B.A.J. 1003, 1005 (1950).

¹⁴³ Manual of Procedure, RECIPROCAL STATE LEGISLATION TO ENFORCE THE SUPPORT OF DEPENDENTS, Council of State Governments, 22 (1953).

¹⁴⁴ Another possible solution to the choice of laws problem would be to adopt the Conflicts rule that Virginia adopted in its original act, that ". . . whenever a person *residing* in this state fails to provide for the support of any other person, *wherever resident*, to whom the duty of support is owed *under law of this state* or would be owed if such other person were a resident of this state . . . the court may make orders for support. . . ."

Such a statute takes the position that the question is procedural, applying the law of the forum. This provision is subject to the attack that jurisdiction of the respondent is based, not on presence as in all other acts, but on residence and unless the petitioner can prove his residence in the state, he will be denied recovery. However, it must be admitted that such a statute does simplify the choice of laws problem, even though it be undesirable.

¹⁴⁵ These states are: Florida, Georgia, Illinois, Iowa, New York, South Carolina and Virgin Islands. Two states have special acts which are similar in nature to the

jurisdictions (41 including the adoption by Kentucky) adopting the U.R.E.S.A. Some of the states which originally adopted the U.S.D.A., including Kentucky, have since repealed it and adopted in its stead the U.R.E.S.A., which was drafted by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association in 1950. After two years of operation, a number of defects were discovered and the Act was amended in 1952 with many improvements. Five sections of the original U.S.D.A. were eliminated and nine new sections added to take care of problems not covered by the original enactment. Although the U.R.E.S.A. is largely a revision of the U.S.D.A., it contains many important provisions not found in the latter Act. These will be discussed in the remaining portion of this Article.

Criminal enforcement. Under the criminal provisions of the new Act, the Governor of the adopting state is allowed to surrender to or to demand the surrender from any other state, any person charged with the crime of non-support, even though the obligor was not in the demanding state at the time of the commission of the crime and even though he had not fled from justice.¹⁴⁶ He may escape extradition if he submits to the jurisdiction of the initiating or demanding state and complies with the court's order of support.¹⁴⁷ These criminal provisions are practically a copy of Section 6 of the Uniform Extradition Act,¹⁴⁸

U.S.D.A. and the U.R.E.S.A., but which were not modeled after these acts, Delaware and Minnesota. Those two states which have not yet adopted any act are Mississippi and Nevada. All the other states have adopted either the original or amended version of the U.R.E.S.A. Manual of Procedure, RECIPROCAL STATE LEGISLATION TO ENFORCE THE SUPPORT OF DEPENDENTS, Table 1, 23 (1953).

¹⁴⁶ House Bill 309, sec. 5 (1954).

¹⁴⁷ House Bill 309, sec. 6 (1954).

¹⁴⁸ "The Governor of this state may also surrender, on demand of the Executive Authority of any other state, any person in this state charged in such other state in the manner provided in Section 3 with committing an act in this state, or in a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand and the provisions of this act not otherwise inconsistent shall apply to such cases, *even though the accused was not in that state at the time of the commission of the crime and has not fled* therefrom. (Italics writer's.) UNIFORM CRIMINAL EXTRADITION ACT, sec. 6, 9 U.L.A. (1951). The procedure followed in an extradition under the act is as follows: the Executive Authority of the demanding state after authentication of the papers forwards his request for extradition with either a copy of an indictment or an information supported by an affidavit to the Executive Authority of the asylum state. With this is enclosed a copy of any warrant or a copy of a conviction or sentence imposed. The request must allege, except for cases under Section 6 that the accused was present in the demanding state at the time of the commission of the crime and thereafter fled from justice therefrom. The Executive Authority of the asylum state may investigate to see if extradition should be granted. If he then decides, in his discretion, that the request should be honored, he signs a warrant of arrest directed to any peace officer of the asylum state authorizing the officer to arrest the accused and deliver him to the agent of the demanding state. UNIFORM CRIMINAL EXTRADITION ACT, 9 U.L.A. (1951).

which has been adopted by thirty-eight states and which has been held constitutional by four state courts.¹⁴⁹ It has been said that this does not create a new crime but merely facilitates interstate rendition of those guilty of the existing crime of non-support.¹⁵⁰ However, it will be noted that under this provision the established grounds for extradition have been dispensed with.

The extradition provision in the United States Constitution is:

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice and be found in another State, shall on demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.¹⁵¹

Federal and state courts alike have interpreted the Constitution to restrict the extradition procedures to those persons who were physically present in the demanding state at the time of the commission of the crime and who fled therefrom.¹⁵² However, the Supreme Court has sanctioned the liberalization of the extradition process by the states as a valid exercise of their sovereign powers. Even though the elements of extradition are based on the Constitution and Congressional statutes, it has been held that a statute may permit or require extradition on easier terms than required by the Constitution.¹⁵³ In some cases, part of the non-support may have occurred in the demanding state, but what of the case where the obligor left the demanding state to seek employment elsewhere and thereafter decided that he would no longer support his dependents? Clearly the crime of failing to provide support would not then have been committed in the demanding state, yet under this provision of the Act the demanding state may nevertheless extradite him.¹⁵⁴ However, it has been held in many

¹⁴⁹ *Ex Parte Morgan*, 78 F. Supp. 756 (S.D. Calif. 1948); *State ex rel. Gildar v. Kriss*, 191 Md. 568, 62 A. 2d 568 (1948); *People ex rel. Fauls v. Herberich*, 93 N.Y.S. 2d 272 (1949); *Culbertson v. Sweeney*, 70 Ohio App. 344, 44 N.E. 2d 807 (1942).

¹⁵⁰ Brockelbank, *MULTIPLE STATE ENFORCEMENT OF FAMILY SUPPORT*, 2 ST. LOUIS UNIV. L. J. 12, 13 (1952).

¹⁵¹ U.S. CONST. Art. 4, Sec. 2, Cl. 2.

¹⁵² *Daugherty v. Hornsby*, 151 F. 2d 799 (1946); *Ex parte Montgomery*, 246 U.S. 656 (1917); *Appleyard v. Com. of Mass.*, 203 U.S. 222 (1906); *Hyatt v. People of State of N.Y.* 188 U.S. 691 (1903).

¹⁵³ See Note, 5 *FORD. L. REV.* 484 (1936).

¹⁵⁴ What of the contention that the crime of abandonment and non-support is a crime of omission while Sec. 6 of the Act provides for the extradition of those persons "committing an act in this state or a third state intentionally resulting in a crime in the demanding state." This question was raised in *U.S. v. Johnson*, 63 F. Supp. 615 (D. Ore. 1945), where the judge expressed serious doubts as to the extradition for the crime of non-support since it was a crime of omission. This problem had been foreseen by a writer at a much earlier date, who suggested that in order to avoid this problem, a statute should read ". . . who while within this state wilfully does or omits to do any act or duty the doing or omission of which results in the consummation of a crime." Reid, *Interstate Extradition for Extra-Territorial Crime*, 45 *A.B.A. REP.* 432, 440-442 (1920).

cases that acts committed in one state result in a crime in some other state.¹⁵⁵ The action of the obligor outside the state in not supporting his dependents certainly has a criminal result in the state where the dependents reside and public policy demands that he be held criminally liable for his acts.

While there may be some instances where the criminal provisions of the Act will be useful, it is believed that they are not needed since most states already have adequate criminal statutes for enforcing the duty of support. The only advantage obtained by this provision is that it is not necessary to show that the obligor was in the state at the time he failed to furnish support nor that he fled from justice. While these advantages are desirable, many states already have or could easily adopt such statutory provisions. Extradition and criminal enforcement is a fruitless remedy insofar as providing support for needy dependents is concerned. Costs are disproportionately expensive to the result achieved. Forcing the husband to serve a jail sentence merely places a double burden on the state.¹⁵⁶ He may have been extradited from gainful employment and if brought back, this course of income will be eliminated. If extradited, he may not be able to find a job with his newly acquired criminal record. It should be pointed out that the criminal provisions of the Act cannot be reciprocally enforced, since such extra-territorial enforcement of foreign criminal statutes would be objectionable under the rule that penal laws of another state cannot be enforced by some other state.¹⁵⁷ The only possible advantage in

¹⁵⁵ *Strossheim v. Daily*, 221 U.S. 280 (1911). See also, *Berge, Criminal Jurisdiction and the Territorial Principle*, 30 *MICH. L. REV.* 238 (1931). However, in *Ex parte Hawkins*, 37 *Okla., Crim.* 97, 255 P. 718 (1927), wherein it appeared that the husband and wife resided in the asylum state and that the wife thereafter moved to another state, the husband was not a "fugitive from justice" of the state to which the wife had moved. Many early cases laid down the rule that one who furnishes adequate support to his family while he remains in the state where they are but later removes to another state, and then fails to continue the support is not, with respect to the offense of non-support, a fugitive from justice of the state where the deserted wife or child remains and is not subject to extradition. *Taft v. Lord*, 92 *Conn.* 539, 103 A. 644 (1918); *Re Roberson*, 38 *Nev.* 487, 137 P. 83 (1915); *People v. Higgins*, 109 *Misc.* 328, 178 *N.Y.S.* 728 (1919). For an interesting case holding the defendant liable for non-support in the state of the deserted dependents and subject to extradition because he visited his dependents there on two occasions for "only a few hours," see *People v. Brown*, 237 *N.Y.* 483, 143 *N.E.* 653 (1924).

¹⁵⁶ In answer to this argument, it may be said that even though extradition is expensive, it results in less expense to the state than if the accused were not compelled to recognize his obligation, because then the state would have to support his family. This is true so far as it goes but it overlooks the fact that if extradited and placed in jail, who supports the family? And then there is also the burden of supporting the jailed husband.

¹⁵⁷ See *American Banana Co. v. United Fruit Co.*, 213 U.S. 347, 356 (1908), where the Court objecting to this method of extra-territorial enforcement of criminal statutes said: ". . . the general and almost universal rule is that the character of an act as lawful or unlawful must be determined wholly by the law

the use of the criminal provisions is that they may be used to threaten the respondent into complying with his duty. The National Conference has recognized the desirability of civil enforcement over criminal enforcement. Their report states:

The proposed act contains provisions for both civil and criminal enforcement. While both have their importance, it is probable that the civil remedies will be more frequently used. Criminal punishment has little but a deterrent effect, while the civil remedies will make the means of the husband and father actually available to those in need. It is of little comfort to a needy family to say that we will put the bread-winner in jail.¹⁵⁸

Punishment of the obligor does not solve the problem of furnishing support to dependent wives and children. It either allows him to evade his duty or forces the state to assume the support of both the obligor and obligee. Amendments to the Act to make the provision's for criminal enforcement more satisfactory are needed. Perhaps a plan similar to that adopted by Wisconsin would solve the problem. Under the Huber Act,¹⁵⁹ more commonly called the Day Parole Plan, the husband is allowed to hold a regular job, but is confined in the county jail when not at work. He is strictly supervised but his earning power is not reduced. His wages are handled by the sheriff, who disburses them to the family, thus enabling him to support himself and his family with the assurance that this duty will be carried out. It is reported that the plan has been highly successful in operation.¹⁶⁰ It is believed that the criminal provisions of the Act require amendment before they will be of much aid in enforcing the duty of support.

Additional provisions not in U.S.D.A. A proceeding under the U.R.E.S.A. is begun exactly as under the U.S.D.A., by filing a verified petition in the proper court, such petition setting forth he required information and other useful information that is available to the petitioner.¹⁶¹ Special provision is made for a proceeding by a minor. The

of the country where the act is done. . . . For another jurisdiction, if it should happen to lay hold of the actor, to treat him according to its own notions rather than those of the place where he did the acts, not only would be unjust, but would be an interference with the authority of another sovereign, contrary to the comity of nations, which the other state concerned justly might resent."

¹⁵⁸ Nat'l. Conf. of Comm. on Unif. State Laws, *Report of Special Commission on All Phases of the Subject Matter of Desertion and Non-Support*, 2 (1949). Cited in 1 SYRACUSE L. REV. 300, 302 (1950). The Council of State Governments in speaking of criminal enforcement in general says that a criminal process is impractical because of expensive extradition costs, the limited nature of the criminal statute and the fact that the arrest of the husband or father destroys the source of wage earnings. *Manual of Procedure, Reciprocal State Legislation to Compel the Support of Dependent Wives and Children Within and Without the State* (1950). Quoted in *Vincenza v. Vincenza*, 197 Misc. 1027, 1029, 98 N.Y.S. 2d 470, 473 (1950).

¹⁵⁹ Wis. STAT. sec. 56.08 (1951).

¹⁶⁰ See Note, 1952 Wis. L. REV. 544, 553-555 (1952).

¹⁶¹ House Bill 309, sec. 10 (1954).

duties of the initiating state are practically the same as those under the U.S.D.A. except that they are made more clear. The Department of Economic Security is made the information agency, the exact number of petitions to be sent to the responding state is specified and acknowledgment of receipt is required of the responding court. When the court of the initiating state has reason to believe that the obligor may attempt to flee from the responding state upon learning of the institution of the proceedings, it may request that the responding court obtain jurisdiction of him by arrest, if permissible under the laws of that state.¹⁶² This provision may prove to very important. In many instances, the obligor upon learning of the proceedings may then flee to another state, thus requiring the dependent to institute new proceedings in that state or necessitating transfer of the petition to the other state. This unnecessary delay would result only in the dependent being forced into more destitute circumstances. However, the courts should be careful not to abuse this provision and request arrest as a matter of course, because the obligor's wage earning capacity will terminate upon his arrest and the whole purpose of proceeding under the Act will be defeated.

Special provisions. The U.R.E.S.A. contains some important and desirable provisions that are not found in the U.S.D.A. The Act contains a special provision which permits the disclosure of privileged communications between husband and wife in any proceeding, making husband and wife competent witnesses as to any matter.¹⁶³

There are two other provisions contained in the Act which serve to make the proceeding more convenient and expeditious. The first of these relaxes the technical rules of evidence in any proceeding¹⁶⁴ and the other grants immunity of jurisdiction to parties in any proceeding other than those under the Act.¹⁶⁵

Reimbursement proceedings by the state. Probably the most important provision in the Act not contained in the U.S.D.A. is that which provides that whenever a state or political sub-division has furnished support to an obligee, it may invoke the provisions of the Act for the purpose of securing reimbursement of expenditures made.¹⁶⁶ Under this provision, the state may thus recoup some of the money spent by it on families receiving public welfare. In many instances, dependents will not know that they can obtain support from their out-of-state husbands or fathers. In other instances, they may think it easier to

¹⁶² House Bill 309, sec. 15 (1954).

¹⁶³ House Bill 309, sec. 25 (1954).

¹⁶⁴ House Bill 309, sec. 26 (1954).

¹⁶⁵ House Bill 309, sec. 28 (1954).

¹⁶⁶ House Bill 309, sec. 8 (1954).

continue receiving support money out of public funds. The ease with which one may be placed on public relief rolls many times enables one to actually work a fraud on the state.¹⁶⁷ Under this provision of the Act, the burden on taxpayers can be lessened and possibly diminished altogether by compelling the dependent to assist the state in seeking reimbursement under penalty of forfeiture of public assistance if he refuses. Since the state or welfare agency can obtain the help of other states in locating the deserter, there is some indication that such proceedings will prove to be highly successful. Although the petitioner need not attend the hearing in the responding state, it might be advantageous if some representative of the state appeared when the state is seeking reimbursement for the amount paid out of its welfare fund.

Some states hold that a cause of action does not accrue in favor of the county or state welfare department against the relative failing to furnish support to the dependent until he is directed to do so by a court order.¹⁶⁸ In these states, the effect of the reimbursement provision of the Act will be drastically limited and it is possible that in some cases, the section will be entirely useless since the proceeding cannot be brought when one of these states is a responding state. However, many states allow subrogation and reimbursement proceedings by the state or county without prior determination of liability and a court order for support.¹⁶⁹ Kentucky's statute¹⁷⁰ allows the Department of Welfare to obtain reimbursement from the relatives of a patient, from the estate of the deceased patient and from the husband, wife or parent of any such patient. It is not necessary under the statute that the party be liable for such support under a decree of the court.¹⁷¹ Such a reimbursement provision as that contained in the U.R.E.S.A. is thus mechanically operative in Kentucky.

¹⁶⁷ This writer has before him a newspaper clipping from a small county newspaper, relating the instance where one of our Circuit Judges sentenced a husband to thirty days in jail so that ". . . his wife would be eligible for relief money."

¹⁶⁸ *Howard County v. Enevoldson*, 118 Neb. 222, 224 N.W. 280 (1929); *Multowmah County v. Feling*, 48 Ore. 603, 91 P. 21 (1907); *Town of Saxville v. Bartlett*, 126 Wis. 655, 105 N.W. 1052 (1906). See also: Note, 34 MARQ. L. REV. 34 (1950).

¹⁶⁹ *Los Angeles County v. Frisbie*, 19 Calif. 2d 634, 122 P. 2d 526 (1942). See: MINN. STAT. ANN. sec. 261.02 (1945); N.D. REV. CODE, sec. 50.0731 (1943); VT. STAT. sec. 7128 (1947).

¹⁷⁰ KY. REV. STAT. 203.100 (1953): "The department may take all necessary steps by suit or otherwise to secure from relatives and friends who are liable therefor or who are willing to assume the cost of support of any person supported by the state, reimbursement, in whole or in part, of the money expended for the support of any patient confined or maintained in a state institution." KY. REV. STAT. 203.080 (1) (1953) holds the estate of the patient liable for his board and maintenance and Ky. REV. STAT. 203.080(2) (1953) holds the husband, wife or parent of any such patient liable for the cost of supporting the patient.

¹⁷¹ *Dept. of Welfare v. Fox*, 240 S.W. 2d (Ky.) 65 (1951); *Dept. of Public*

Elimination of fees. Under the new Act, the court when acting either as initiating or responding state may direct that any part or all of the fees necessary for a proceeding be eliminated or shall be paid by the county or by the state and that when a proceeding is brought by the state for purposes of reimbursement to its welfare fund, there shall be no filing fee.¹⁷² This provision is highly desirable in that proceedings are usually begun by needy petitioners in destitute circumstances or who are already on public welfare rolls and are unable to pay fees. Requiring the payment of fees and costs may in many instances hamper the effectiveness of the Act. It has been advocated by various persons and agencies that all fees and costs be eliminated.¹⁷³ In ninety per cent of the proceedings, the petitioner will probably be receiving welfare funds from the state and it may be practically impossible for her to pay such fees and costs. However, there will be cases where the proceeding is brought for the collection of alimony as separate maintenance when the petitioner will be able to pay the normal fees. In such instances the court could and should exercise its discretion so that fees and costs are waived only when the petitioner is not financially able to pay them.

Miscellaneous provisions. Section 12 of the Act is highly important in that it allows the person having custody of a minor obligee to file a petition in his behalf without their appointment as guardian ad litem. Since the Act supplies a convenient method of collecting support money for children by a divorced wife, the formality of having the wife appointed as guardian ad litem of the children before she may bring suit in their behalf is dispensed with. She may now proceed at once without waiting until she has incurred the expense of supporting them.

Section 16 designates the Department of Economic Security as State Information Agency for the purpose of compiling lists of the courts and their addresses and transmitting these to the agency of any other state having a reciprocal act. Provision is made also for the forwarding of these lists to the courts of every state having jurisdiction under the Act. This provision is very helpful and provides for more efficient functioning of the Act since it makes readily accessible an efficient source of information.

The Act provides for the forwarding of three copies of the petition

Welfare, Com. of Ky. v. Meek, 264 Ky. 771, 95 S.W. 2d 599 (1936); Dept. of Welfare of Com. of Ky. v. Farmer's Committee, 290 Ky. 813, 162 S.W. 2d 796 (1942).

¹⁷² House Bill 309, sec. 14 (1954).

¹⁷³ Seaman, *Making the Reciprocal Support Law Work*, 25 STATE GOVT. 132, 135 (1952).

to the responding state,¹⁷⁴ one for the court and one for the representative of the petitioner and respondent. The Act also provides for the sending of a certified copy of the Act to the responding court.

Conclusion

The current trend seems to be toward the adoption of the U.R.E.S.A. Many states, like Kentucky, which had previously adopted the U.S.D.A. have since repealed it and substituted the Act promulgated by the Uniform Law Commission because of its less ambiguous nature, its easier adaption to existing law, its simpler treatment and many desirable provisions not found in the U.S.D.A. Both acts are largely experimental and time will be needed to work out many of the unique problems presented.¹⁷⁵ However, time has already indicated that the U.R.E.S.A. is far more desirable than the U.S.D.A. Little effort was made to adapt the U.S.D.A. to Kentucky law, it being copied almost verbatim from the New York Act. Too many duties were placed on the petitioner's representative and proper attention was not directed to which court should have jurisdiction. Adoption of the U.R.E.S.A. leaves such matters to the Legislature and allows better synchronization of the Act with existing substantive and procedural law.

With the increasing mobility of our population and the present practice of husbands and fathers to cross state lines in an effort to avoid their responsibility of support, some effective remedy is sorely needed. To shut our eyes to such a practice places a greater burden on our citizens in the form of increased taxes and increases the demand for passage of Federal legislation. The problem is one which should be left entirely to the states for a solution. The states have at last recognized the need to curb this national evil. The nation-wide movement for a reciprocal inter-state statutory plan has proved most effective in solving the problem. Such a plan has received unprecedented acceptance exemplified in the fact that only two states have failed to adopt such a plan since its inauguration only five years ago. It is hoped not only that these states will join but also that this plan will eventually be useful in solving the international problem of non-support. And

¹⁷⁴ House Bill 309, sec. 13 (1954).

¹⁷⁵ The court said in *Vincenza v. Vincenza*, 197 Misc. 1027, 1035, 98 N.Y.S. 2d 470, 478 that policy considerations "... require careful selectivity in asking another State to open the doors of its Courts to non-residents of that state under a novel statute rooted in a concept of comity. Adoption of a come-one-come-all policy toward petitioners who may turn to the over-publicized new legislation as a panacea, which, of course, it is not, would doom the experiment to failure. Better, therefore, to err on the side of circumspection against extending the new law during the experimental initial stage beyond its primary and original motivation and to avoid sending to a 'responding state' cases of doubtful merit, such as the instant proceeding."

if such a method works in the field of non-support, there is good reason to believe that it may also work in other fields as well.

APPENDIX

These sample forms taken from the Manual of Procedure, Reciprocal State Legislation to Enforce the Support of Dependents, published by the Council of State Governments. A copy of the Manual may be obtained by writing to the above at 1313 East 60th Street, Chicago 37, Illinois. Cost of the manual is \$1.00 and should be of great assistance to the practicing attorney. The writer is grateful to the Council for permission to reproduce these suggested forms for use with any of the reciprocal support laws and to the assistance received from the Council in the preparation of this Article.

FORM I

Sample Form of Testimony by Petitioner

STATE OF
COUNTY OF
COURT OF

..... }
Petitioner }
vs. }
..... }
Respondent }

TESTIMONY OF

....., Petitioner

Docket No.....

....., the Petitioner herein,
(Insert name of petitioner)

being duly sworn, on her oath testifies as follows:

Q. What is your full name?

A.

Q. What is your present address?

A.

Q. When and where were you married to the Respondent? (If petitioner claims to be the common-law wife of the Respondent, the following should also be answered.) When did you and Respondent decide to assume the status of husband and wife? How was the assumption of this status made public? Where and for what length of time did you and Respondent live together as husband and wife?

A.

Q. What were the circumstances leading to the separation from your husband?

A.

Q. Are you now pregnant?

A.

Q. What are the names and ages of the children now living?

A.

Q. Are they living with you?

A.

Q. When was it your husband last lived with you?

A.

Q. When and how much was his last contribution for support?

A.

Q. Is there a complaint or an order for support in any court?

A.

Q. Are you employed? What are your earnings?

A.

Q. Have you any other source of income? If so, what is the source and what is the amount thereof?

A.

Q. Are you and the children in good health?

A.

Q. Have you any debts outstanding?

A.

Q. What do you require for the support of yourself and children?

A.

Q. Do you know the present whereabouts of your husband? If so, please give his address.

A.

Q. Do you know if and where your husband is now employed? If so, state: Name and address of employer and give husband's Social Security number.

A.

Q. What is his salary, if you know?

A.

Q. Are you now receiving public aid and how much?

A.

Q. Give an accurate physical description of the Respondent (color of hair, distinguishing marks, age, etc.), describe other names and aliases by which he is known and attach a recent photograph or snapshot of the Respondent.

A.

Taken and sworn to before me

this day of, 19....

Petitioner

Justice of the Court of

FORM II

Sample Form of Petition

STATE OF

COUNTY OF

COURT OF

..... against
(Petitioner) (Respondent)

The petition of respectfully shows:

1. THAT she is the wife of, the respondent; that petitioner was duly married to said respondent on or about (insert date) at (insert place of marriage) and that her present address
2. THAT petitioner is the mother and said respondent is the father of the following named dependent(s): (insert names and dates of births of dependents).
3. THAT petitioner and said child(ren) (is) (are) entitled to support from the respondent under the provisions of the Uniform Reciprocal Enforcement of Support Act of this state (Chapter, Laws of), copy of which is attached and made a part hereof.
4. THAT respondent, on or about (insert date), and subsequent thereto, refused and neglected to provide fair and reasonable support for petitioner and the other dependent(s) according to his means and earning capacity.
5. THAT respondent (was) (is) present in the State of during the period for which support is sought.
6. THAT, upon information and belief, respondent's present address is (insert address and name of state), and that respondent is within the jurisdiction of the Court of (insert name of Court in responding state), which state has enacted a law substantially similar to the Uniform Reciprocal Enforcement of Support Act of this state.

WHEREFORE, The petitioner prays for such an order for support, directed to said respondent, as shall be deemed to be fair and reasonable, and for such other and further relief as the law provides.

.....
(Petitioner)

Personally appeared before me (insert name of petitioner) to me personally known and made oath that she has read the above petition and knows the contents thereof, and that the same are true of her own knowledge except as to matters stated on information and belief, and as to these matters she believes them to be true.

.....
(Clerk of Court)

FORM III
Sample Form of Certificate*

* If the certifying Judge has reason to believe that the respondent may leave the responding state, he may wish to so indicate in the certificate and recommend that the respondent be brought into Court, if possible, by warrant rather than by service of process.

STATE OF
COUNTY OF
COURT OF

.....
Petitioner
vs. } Docket Number
.....
Respondent

The undersigned, a Justice of the Court of hereby certifies:

1. THAT on (insert date) a petition was verified by the above named petitioner and duly filed in this Court in a proceeding against the above named respondent commenced under the provisions of the Uniform Reciprocal Enforcement of Support Act (Chapter, Laws of) to compel the support of the dependent(s) named in that petition.
2. THAT the above named respondent is believed to be present in (insert address and state), and that the Court of (insert name of Court in responding state) may obtain jurisdiction of the respondent or his property.
3. THAT the undersigned, a Justice of the Court of has examined the petitioner under oath and she has reaffirmed the allegations contained in the petition; and that according to the testimony of the petitioner the needs of the dependent(s) named in the petition for support from the respondent are the sum of \$..... per (week) (month).
4. THAT in the opinion of the undersigned Justice the petition sets forth facts from which it may be determined that the respondent owes a duty of support and that such petition should be dealt with according to law.

WHEREFORE, it is hereby ORDERED that this certificate together with certified copies of the petition be transmitted to the Court of (insert name of Court in the responding state).

.....
Justice of the Court of

Dated, 195...

KENTUCKY LAW JOURNAL

Vol. XLIII

Fall, 1954

Number 1

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The *Kentucky Law Journal* is published in Fall, Winter, Spring and Summer by the College of Law, University of Kentucky, Lexington, Kentucky. It is entered as second-class matter October 12, 1927, at the post office, at Lexington, Kentucky, under the act of March 3, 1879.

Communications of either an editorial or a business nature should be addressed to *Kentucky Law Journal*, University of Kentucky, Lexington, Kentucky.

The purpose of the *Kentucky Law Journal* is to publish contributions of interest and value to the legal profession, but the views expressed in such contributions do not necessarily represent those of the *Journal*.

The *Journal* is a charter member of the Southern Law Review conference.

Subscription price: \$4.00 per year

\$2.00 per number