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PUBLIC WELFARE

Duty of Children to Support—Chapter 82 imposes a legal duty upon children over twenty-one years of age to contribute to the support of their parents.[1] The children must be financially able to contribute; the parents must be financially unable to support themselves; and the parents must have supported the children during minority.[2] The contention that a similar statute was unconstitutional because it created an unreasonable classification by failing to impose this duty to support upon infant and non-resident children has been rejected.[3] The Indiana statute would be less susceptible to such an attack since the duty is imposed on both resident and non-resident children.

A civil action to enforce this duty may be brought by the parents, the prosecutor, the county welfare director, or the township trustee of the township where the parents reside.[4] Upon the request of any of these persons, the prosecutor must bring the action. The action is commenced by filing a complaint in the county of residence of one or both of the parents.

If the trial is by jury, the verdict shall state only that the jury finds in favor of such parties as shall recover.[5] If the verdict is against the defendants, the court enters judgment against them and issues an order which makes adequate provision for the support of the parents. In making this order, the court shall consider the needs of the parent, the ability of the children to pay, and the treatment given the children when the parents were obligated to support them. The order shall be continuing, subject to modification, and enforceable by contempt proceedings. Execution may issue on this judgment without relief from valuation, appraisement or exemption laws.

The court on its own motion may order other children made parties defendant.[6] The order for support shall be

1. Ind. Acts 1947, c. 82, §1.
2. The parents must have provided the children with the necessary food, shelter, clothing, medical attention and education until the children being males reached the age of 16 and being females reached the age 17. Id.§7.
3. Wood v. Wheat, 11 S.W. (2d) 916 (Ky. 1928).
4. Ind. Acts 1947, c. 82, §2.
5. Id. §5.
6. Id. §3.

for periodical payments, and in making its award, the court may apportion different amounts among the defendants.[7] In one case,[8] an interpretation of a statute similar to the Indiana enactment denied children who voluntarily supported their parents a right to contribution from other children. The court emphasized the voluntary nature of the plaintiff's contribution. Notwithstanding the fact that the statute provided no remedy, the plaintiff's could have recovered if they had given notice to the defendants that the parent was indigent because "it is a general rule of equity that a party who has discharged an obligation or duty resting upon several and constituting a common burden or liability may recover contributions from those to whose advantage the discharge of the obligation operated."[9]

Numerous states have previously enacted similar legislation.[10] In several of these states, before the right of action accrues, the parent must be a recipient of some form of public assistance.[11] The purpose of such statutes is to protect the public purse,[12] and in Illinois that purpose is effectuated by making the child liable for the repayment of a pension received by the parent.[13] The policy argument in favor of such legislation is very strong and a contract by a parent releasing a child from this statutory obligation is unenforceable because it is against public policy.[14] Apparently the primary purpose of the Indiana statute is to provide for the comfortable maintenance of indigent persons rather than to reimburse a governmental agency providing relief.

A previous Indiana statute imposes a criminal liability upon children failing to support parents who are sick or unable to support themselves.[15] Although this statute does

7. Id. §5.
8. Wood v. Wheat, 11 S.W. (2d) 916 (Ky. 1928).
9. Id. at 918.
10. For a comprehensive table and analysis of comparative legislation, see 4 Vernier, "American Family Laws" (1936) §235.
11. Fla. Comp. Laws (Cum. Supp. 1940) §4139(17); Ill. Stat. Ann. (Jones, 1935) §98.01 et seq.; Me. Rev. Stat. (1944) c. 22, §271; Minn. Stat. (Henderson, 1941) §256.26; N.Y. Soc. Welfare §101-104; N.Y. Code of Crim. Proc. §914-920.
12. Anonymous v. Anonymous, 26 N.Y.S. (2d) 597, 600 (1941).
13. Ill. Stat. Ann. (Jones, 1935) §18.181.
14. Kriss v. Kriss, 285 N.Y.S. 58 (1936).
15. Ind. Acts 1921, c. 31, §1 as amended by Ind. Acts 1923, c. 15, §7, Ind. Stat. Ann. (Burns, Repl. 1942) § 10-1410.

not give a parent a civil cause of action,[16] the court could enforce the duty to support by suspending judgment on condition that the defendant would provide for his parents as directed by the court.[17] Whether the liability is civil or criminal, it is created only by statute because no such duty existed at common law.[18]

Lien for Old Age Assistance—Whether the state should seek reimbursement from the property or estate of an aged pensioner is a question on which policy in Indiana has vascillated. Under the old-age pension act of 1933, the state and county were permitted to recover sums paid out to pensioners.[19] In 1936, at a special session, the legislature incorporated old-age pensions in the Public Welfare Act,[20] which remains the basic act at this time. In that statute, the state and county were again given power to recover assistance payments, and a lien upon the pensioner's property was prescribed.[21] The recovery and lien provisions of the 1936 Act, however, were repealed in 1941.[22] Now, the 1947 legislature has restored both the lien and the recovery provisions substantially as they existed in the basic 1936 Act.[23]

As a condition precedent to obtain old-age assistance, the pensioner must agree to reimburse the state and county for assistance received,[24] and this agreement constitutes a lien upon *real* property.[25] When the pensioner has executed

16. Haskamp v. Swenger, 85 Ind. App. 255, 153 N.E. 815 (1926).
17. Ind. Acts 1921, c. 31, §2 as amended by Ind. Acts 1923, c. 15, §2, Ind. Stat. Ann. (Burns, Repl. 1942) §10-1411. Cf. Ohio Gen. Code Ann. (Page, 1939) §12429.
18. Haskamp v. Swenger, 85 Ind. App. 255, 153 N.E. 815 (1926); In re Salm's Guardian, 12 N.Y.S. (2d) 678 (1939); 4 Vernier "American Family Laws" (1936) §235.
19. Ind. Acts 1933, c. 36, §7, Ind. Stat. Ann. (Burns, 1933) §52-307.
20. Ind. Acts 1936, c. 3, Ind. Stat. Ann. (Burns, Supp. 1943) §52-1201 et seq.
21. Ind. Acts 1936, c. 3, §38, 44-48, Ind. Stat. Ann. (Burns, Supp. 1943) §52-1207.
22. Ind. Acts 1941, c. 201, §§1, 2. For effect of this repeal on previous liens see Dept. Public Welfare v. Potthof, 220 Ind. 574, 44 N.E. (2d) 494 (1942).
23. Ind. Acts 1947, c. 144.
24. Id. §2 reads " . . . applicant shall . . . reimburse . . . for all assistance granted, from whatever source such assistance may have been derived." This includes matching funds the state receives from the Federal government.
25. Id. §2; cf. Ind. Acts 1936, c. 3, §44 which provided that pensioner should be required to assign as collateral security for his agreement to reimburse, such part of his personal property as the county department required.

his agreement and the certificate of assistance has been filed in the office of the county recorder, a specific lien in favor of the state and county arises and this lien takes priority over any other lien subsequently acquired.[26] The 1947 Act authorizes the state and county departments to bring foreclosure proceedings or "to make arbitration of the amount due" on the lien.[27] In addition to the lien provisions, recovery of assistance payments from the recipient or from his estate is provided. Upon the death of any person who is a recipient of old-age assistance, the county department of public welfare must file a claim for recovery of payments. And any claim filed for recovery of assistance is given statutory priority over all other claims except prior recorded encumbrances, taxes, reasonable costs of administration and funeral expenses in an amount not to exceed $125.[28] Any excess assistance paid as a result of pensioner's failure to report changed circumstances, or as a result of pensioner's fraud may be recovered from the recipient.[29] In addition, a penalty of 20% is recoverable in the case of fraud, either from the recipient or his estate.[30]

The provisions of this act apply to all pensioners whether assistance was previously granted or not,[31] but the act does not provide for the transfer of property by the old-age applicant to the county as did the 1936 statute.[32]

TAXATION

Administration—By creating the Indiana Department of State Revenue, Chapter 42 provides for a consolidation of Indiana tax administration. The Department will be directed by a Board consisting of the Governor, State Treasurer and State Auditor.[1] The Board has authority to employ a Commission-

26. Id. §1. Accord Ind. Acts 1936, c. 3, §38, Ind. Stat. Ann. (Burns, Supp. 1943) §52-1207.
27. Id. §1. This specific authority was not granted in the 1936 act.
28. Id. §3. Accord, Ind. Acts 1936, c. 3, §47. The present act does not provide for interest as did the 1936 Act.
29. Id. §4. Accord, Ind. Acts 1936, c. 3, §46.
30. Ibid. The 1936 Act prescribed a recovery of double the amount of payments in the case of fraud.
31. Id. §6.
32. Ind. Acts 1936, c. 3, §45.
1. Ind. Acts 1947, c. 42, §3.