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Family Responsibilty Under the American Poor Laws: II

Daniel R. Mandelker
Indiana University

FAMILY RESPONSIBILITY UNDER THE AMERICAN POOR LAWS:II*

Daniel R. Mandelker†

IV. ENFORCING THE SUPPORT DUTY

A. *Civil Support Actions Under the Statute*

No substantive statutory provision fulfills the purpose for which it was enacted unless fair and efficient procedures are provided for its enforcement. Under the Elizabethan family responsibility law, enforcement was confined to the parish justices of the peace, who at that time exercised both administrative and judicial functions.[115] The blending of administrative and judicial functions no longer being the rule in American local government, practically all of the American family responsibility statutes provide for some judicial procedure by which the support duty may be enforced. The basic issue with which the courts have been concerned in applying these statutory remedies may be pointed up by first considering those few American laws which state the support duty but provide no remedy.[116] Under such a statute the California Supreme Court, in *Paxton v. Paxton*,[117] held that the statement of the duty implies a remedy and, on this basis, allowed a dependent person to bring an action in equity for future support against a responsible relative. The South Dakota court, while first holding that a similar statute authorized only an action by the county for assistance already given,[118] later, in *Mower v.*

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† B.A. 1947, LL.B. 1949, University of Wisconsin; Assistant Professor of Law, Indiana University.—Ed.

115 FORDHAM, LOCAL GOVERNMENT LAW 3-5 (1949).

116 Cal. Civ. Code (1949) §206; La. Civ. Code (Dart, 1945) art. 229 et seq.; Okla. Stat. Ann. (1951) tit. 10, §12; Ore. Rev. Stat. (1953) §109.010; S. D. Code (1939) §14.0312. A remedy is provided, however, in the family responsibility sections of Oregon's public assistance law. See also N.D. Rev. Code (1943) §14-0910 (domestic relations law), providing only that the support duty may be enforced by a person furnishing necessaries. The statute does not indicate whether this remedy is exclusive. See note 132 infra. The family responsibility provision in the general assistance law provides a remedy. Cf. Sharum v. Sharum, 101 Okla. 273, 225 P. 682 (1924).

117 150 Cal. 667, 89 P. 1083 (1907), noted, 1 CALIF. L. REV. 65 (1912). The court relied on a provision of the California Civil Code directing that, where no procedure is prescribed by statute, any appropriate procedure may be used. But cf. State Dept. of Public Welfare v. Shirley, 243 Wis. 276, 10 N.W. (2d) 215 (1943). See also Cunningham v. Cunningham, 72 Conn. 157, 44 A. 41 (1899), where the court interpreted the statute in a manner that avoided the question.

118 McCook Co. v. Kammoss, 7 S.D. 558, 64 N.W. 1123 (1895). The court indicated that the county was "coerced" into paying assistance. This comment is apt if general assistance is a right and may not be refused in the discretion of the county officials. This and other statements by the court indicate that its opinion was based on restitution theory.

Mower,[119] allowed a dependent person to enforce the support duty by securing an order for future support in a divorce action.

Whether the court should imply a remedy in cases like this would seem to depend on what was accomplished by the enactment of the Elizabethan law. If there was only a moral duty of support prior to its enactment then there would seem to be no reason for passing the statute except to make what was only a moral duty legally enforceable. This was accomplished under the English law by entrusting enforcement to officials exercising administrative and judicial duties. As the American laws are based on the English model, it would seem in keeping with the intent of the English statute to imply a judicial remedy where none is provided.[120]

Under statutes providing a remedy the same question comes up in different form and is put in terms of whether the remedy provided by statute is meant to be exclusive. In several cases in which the responsible relative was under guardianship by reason of incompetency, the dependent person, or the responsible relative's guardian, petitioned the court having jurisdiction over the estate of the incompetent to make an allowance for support of the dependent out of the incompetent's estate. This disregards the remedy provided in the family responsibility statute, which does not explicitly anticipate this type of proceeding. Applying the rule that the statutory remedy is exclusive where both duty and remedy are an innovation to the common law, the Wisconsin court has not allowed such an action.[121] Other courts have taken the contrary position on the basis that the statutory remedy is not exclusive.[122]

Both of the problems discussed so far raise fundamentally the same question: was the statute meant to be exclusive both as to

119 47 S.D. 353, 199 N.W. 42 (1924).

120 Some of those jurisdictions not providing a remedy are civil code jurisdictions. The purpose of a civil code appears to be to state rights and duties which are to be enforced by the courts, and on this basis it would appear that the implication of a remedy was intended. Cf. Ga. Code Ann. (1936) §3-105 ("for every right there shall be a remedy").

121 In re Heck's Guardianship, 325 Wis. 636, 275 N.W. 520 (1937). The court reached its result in spite of the fact that the guardianship statute authorized the application of the incompetent's estate to the support of his family.

122 Gamble v. Leva, 212 Ala. 155, 102 S. 120 (1924) (petition by guardian of estate). A similar result has been reached in California, where the statute provides no remedy. Estate of Lynch, 5 Coff. (Cal.) 279 (1894) (petition by dependent person). In each state the guardianship statute provided that the incompetent's estate should be used to support members of his family, and the courts looked to the family responsibility statute to find a duty to provide for the dependent relatives which it named.

what was included and omitted with regard to available remedies? Legislative intent does not seem to be strained by recognizing the family responsibility statute as creating a substantive duty of support which, regardless of the particular form of action provided, would seem to be capable of being enforced in any context in which it is appropriate. In one case, for example, in which a son sued his mother for rent of a dwelling under a lease between the parties, the mother counterclaimed on the ground that she was poor and that the rent was but a reasonable contribution by the son for her support. This court dismissed the counterclaim on the ground that it was not properly pleaded.[123] Assuming that it was, however, it would seem to be more fair to the parties to try out the substantive duty in an action before the court than to force them to their statutory remedy. A similar question arises where one of the parties to the support relationship attempts to rely on the duty imposed by the statute in asserting rights against third parties. A typical case would be one where a dependent parent sues a third party wrongdoer for the death of an adult son, claiming that the death of the son gives rise to a cause of action for the loss of support owing under the family responsibility act. Again, the courts seem to be divided on whether they should allow such an action.[124]

The question of the exclusiveness of the statutory remedy becomes important with regard to determining who may enforce the support duty, the dependent person entitled to support, a third party who has extended aid to the person in need, or the community. An examination of this question will indicate whether the statute in fact operates efficiently to afford support to dependent persons whenever it is needed.

[123] Fitzke v. Fitzke, 210 Minn. 430, 298 N.W. 712 (1941). This case was complicated by the fact that the Minnesota statute does not afford a remedy to the dependent person but provides for a suit by the welfare official only.

[124] The following cases are representative. In Mercer v. Jackson, 54 Ill. 397 (1870), the court did not allow a father to recover for the wrongful death of his adult son. Although the father apparently qualified as a dependent person under the family responsibility law, the court held that the statutory remedy under that law was exclusive. *Accord,* Allen v. Trester, 112 Neb. 515, 199 N.W. 841 (1924) (suit by mother against employer for injuries incapacitating her son). However, in Clinton v. Laning, 61 Mich. 355, 28 N.W. 125 (1886), an adult son was rendered helpless by the negligence of the defendant. His father, who was then compelled to support him, was allowed to recover the amount expended from the defendant. The court relied on the father's duty, created by the family responsibility law, to support his indigent son. See also Bruce v. Tobin, 39 S.D. 64, 162 N.W. 933, cert. den. 245 U.S. 18, 38 S.Ct. 7 (1917), holding that a father was entitled to recover for the death of a son under the Federal Employers' Liability Act. His damages were measured by the support he was entitled to receive under the family responsibility law in his old age. There was no showing that the father was

About two-thirds of the family responsibility statutes provide for an action by public officials only, either those charged with administering general assistance or by others at the request of the relief official.[125] Under a statute of this type the courts are divided on the question of whether the dependent person may also sue the responsible relative. Some courts say no, indicating that the statute may not be extended beyond its terms,[126] while other courts, ignoring this rule, have held that the statute implies that the dependent person may also sue.[127]

Which position is correct would seem to depend on whether the designation of the persons who may enforce the support obligation is a matter of substance or procedure. This is not an easy question to answer. It could be contended that a part of the substantive right is the designation of the person to whom that right is owing, in terms of who may bring a legal action to enforce it. In this event, actions under a statute of the type described would be limited to the public officials enumerated. But it might also be contended that the statute states a substantive duty to the dependent person in any event, and that the question of who may enforce it then becomes one of procedure. Under the latter interpretation, a court which wanted to take a "liberal" view of the

in need of family support at the time of the son's death or that he would have needed it in the foreseeable future. Under workmen's compensation laws the courts generally seem to have required that a claimant cannot recover for the death of a dependent unless the dependent was actually furnishing the claimant with support at the time. LARSON, WORKMEN'S COMPENSATION LAW §63.31 (1952). *Contra,* Mattis v. Arcadia Coal Co., 148 Pa. Super. 462, 25 A. (2d) 610 (1942) (duty of support under family responsibility law).

125 Ala. Code (1940) tit. 44, §8; Alaska Laws (1953) c. 110, §§13, 14; Ariz. Code Ann. (Supp. 1952) §70-605; Cal. Welfare & Inst. Code (1952) §2576; Colo. Stat. Ann. (1949) c. 124, §1; Conn. Gen. Stat. (Supp. 1953) §1111c; Ga. Code Ann. (1936) §23-2303; Idaho Code Ann. (1948) §32-1002; Ill. Stat. Ann. (Supp. 1955) c. 23, §§436-12, 439-2; Iowa Code Ann. (1949) §252.6; Me. Laws (1953) c. 308, §97; Mass. Ann. Laws (1949) c. 117, §7; Minn. Stat. Ann. (1947) §261.02; Miss. Code Ann. (1952) §7357; Nev. Comp. Laws (Supp. 1949) §5140.01; N.H. Rev. Laws (1942) c. 124, §18; N.Y. Social Welfare Law (Supp. 1955) §§102(1), 104(1); N.Y. Criminal Code (1945) §915; N.D. Rev. Code (1943) §50-0119; R.I. Gen. Laws (1938) c. 69, §6; Utah Code Ann. (1953) §17-14-1; W.Va. Code Ann. (1949) §626(151); Wis. Stat. (1953) §52.01(2).

126 Stark v. Jersey City, 90 N.J.L. 187, 100 A. 340 (1917); State v. Ackerman, 55 N.J.L. 422, 27 A. 807 (1893); In re Salm's Guardianship, 171 Misc. 367, 12 N.Y.S. (2d) 678 (1939), affd. 258 App. Div. 875, 16 N.Y.S. (2d) 1022 (1939), affd. per curiam, 282 N.Y. 765, 27 N.E. (2d) 46 (1940). Cf. Schwerdt v. Schwerdt, 141 Ill. App. 386 (1908) (dictum), affd. on other grounds, 235 Ill. 386, 85 N.E. 613 (1908). Cf. People v. Williams, 161 Misc. 573, 292 N.Y.S. 458 (1936) (parent not criminally liable for nonsupport when demand not made by public official).

127 Cunningham v. Cunningham, 72 Conn. 157, 44 A. 41 (1899); Citizens & Southern Nat. Bank v. Cook, 182 Ga. 240, 185 S.E. 318 (1936), relying on Ga. Code Ann. (1936) §3-105. See note 120 supra.

procedures that are available under the statute might well find that the dependent person as well as the public official has a right to the action.

Whatever interpretation is adopted, the advisability of allowing a direct suit by the dependent relative seems open to question. First of all, little is to be gained by such a suit if all that may be demanded is support equal to that which would be provided by the assistance authorities. If this is the case, the dependent person might just as well file his application for aid and let the relief officials enforce the support duty. Futhermore, it is conceivable that allowing the dependent personally to confront the responsible relative with a claim for help in a court of law might be more disruptive of the family relationship than if the same claim were to be presented by a disinterested third party. There could be particularly disruptive effects if dependent persons, knowing such a remedy to be available, threatened to resort to judicial procedure. It may be better to limit the private action to the family support duties that arise out of the immediate, interdependent family relationship in which the standard of support that is imposed is based on the station-in-life test. This approach assumes, of course, that the welfare officials are doing their job adequately (and that the applicant need not bring a court action for support as a prerequisite to receiving relief). Because of the inadequacy of relief administration in some areas, and the frank admission by some general assistance administrators that not all those in need can be taken care of, it might be necessary to provide by statute that the responsible relative may be sued directly where public relief, for one reason or another, is not forthcoming. In any event, several statutes provide both for an action by the welfare official and the dependent person,[128] and a few statutes limit the remedy to the dependent person only.[129]

[128] Del. Code Ann. (1953) tit. 13, §501 (also on complaint of "any person interested"); Hawaii Rev. Laws (1945) c. 298, §12,290; Ill. Stat. Ann. (Supp. 1955) §439-2; Ind. Stat. Ann. (Supp. 1955) §3-3002; Mich. Stat. Ann. (Supp. 1953) §16.123 (action may be brought by officials and by a "dependent parent"); Mont. Rev. Code Ann. (1953) §§71-238, 71-239; Neb. Rev. Stat. (Supp. 1953) §68-101; Ore. Rev. Stat. (1953) §§411.434, 411.438; Pa. Stat. Ann. (Supp. 1954) tit. 62, §1973 (b) (also on complaint of "any other person"); Vt. Laws (1953) No. 196, §3; Va. Code (1950) §20-64.

The New Jersey law would seem to accomplish the same result simply by authorizing the institution of a suit by "any person." N.J. Rev. Stat. (1940) §44:1-140. For a case construing a similar provision see O'Connor's Appeal, 104 Pa. 437 (1883) (person having an "interest" in dependent's support held to include the dependent himself).

[129] La. Rev. Stat. (1950) §13:4731; N.Y. City Domestic Relations Court Act (Supp. 1954) §111.

Another problem is faced by persons in need when help is not forthcoming, either from the public authorities or from the responsible relatives themselves when it is demanded. The dependent person might then apply to a willing party for aid, e.g., a charitable institution. Where the dependent person is in need of emergency medical attention, such aid from doctors and hospitals is usually forthcoming and may be given even in non-emergency cases. The question then arises whether the third party who has given aid to the dependent may recover from the responsible relative for the aid that has been given. A few states allow such an action by explicit statutory provisions,[130] but elsewhere it is an open question.

Applying the rule that the statutory remedy is exclusive, the courts have usually held that a third party who aids a dependent person is a volunteer and therefore may not recover from a responsible relative the money expended.[131] However, there is support for the contrary position where aid has been rendered in an emergency to one who could qualify for support under the family responsibility statute.[132] The latter cases take the position

130 E.g., Cal. Civ. Code (1949) §207; Me. Laws (1953) c. 163 (suit by hospital); Miss. Code Ann. (1952) §7357.

131 Dawson v. Dawson, 12 Iowa 512 (1861); Gray v. Spaulding, 58 N.H. 345 (1878); Edwards v. Davis, 16 Johns. (N.Y.) 281 (1819); Rutecki v. Lukaszewski, 273 App. Div. 638, 79 N.Y.S. (2d) 341 (1948); Belknap v. Whitmire, 43 Ore. 75, 72 P. 589 (1903) (dictum). The cases, pro and con, are discussed in 116 A.L.R. 1281 (1938). Of course, where the responsible relative has requested the aid or has promised in advance to pay it, the third party may recover. Forsyth v. Ganson, 5 Wend. (N.Y.) 558 (1830) (held, third party may recover either on promise to pay or on the basis of the duty imposed by statute). Whether the promise of a relative to pay for the past support of a dependent person by a third person would be binding would depend on whether it was supported by a sufficient moral obligation. Cf. Cook v. Bradley, 7 Conn. 57 (1828), holding that, since the Connecticut statute authorizes an action for future support only, it does not provide a sufficient moral obligation to support a promise to pay a third person for past support. *Accord,* In re Allen's Estate, 147 Neb. 909, 25 N.W. (2d) 757 (1947). Some statutes provide that a promise by a person to pay for necessaries given to a dependent relative is binding. E.g., Cal. Civ. Code (1949) §206, applied in Huntoon v. Powell, 88 Cal. App. 657, 263 P. 1030 (1928).

132 Tyron v. Dornfeld, 130 Minn. 198, 153 N.W. 307 (1915); Bismarck Hospital v. Harris, 68 N.D. 374, 280 N.W. 423 (1938), noted, 23 MINN. L. REV. 243 (1939). Both cases involved emergency medical care rendered to the dependent person. The rule adopted by these cases is similar to that adopted by some courts, that the cost of emergency care given to a dependent may be recovered from the community of settlement. The position of the dissent in the North Dakota case, that their statute requires a promise by the responsible relative to pay for necessaries, is persuasive. It should also be noted that the majority opinion relied on the fact that the family responsibility provision relied on in this case had been enacted prior to and independently of the general assistance law. See note 116 supra. Contrast with the cases in this and the preceding footnote the rule, previously stated, that the common law duty of a parent to support his child was enforceable only by the third person who furnished necessaries and not in a direct action by the child. PECK, DOMESTIC RELATIONS, 3d ed., §126 (1930).

that the statute imposes a substantive duty apart from the specific remedy which it provides.

It should be noted at the outset that there are considerable difficulties inherent in an ex post facto suit for support which has been given to a dependent person. In such an action the court is placed in the difficult position of determining the relative's ability to pay at a time which may be considerably removed from the date when the dependent person's need arose. This task is complicated by the fact that the judgment will require lump sum payment rather than monthly instalments. Therefore, however hard the court tries to decide the case on the facts as they were, the judgment given will in fact require an immediate adjustment in the standard of living of the family of the person against whom the judgment is rendered. Nevertheless, there would seem to be circumstances in which the need for a third party action overweighs these considerations.

One such situation is that where medical or other aid must be furnished immediately, with no time to consult with responsible relatives. The presence of this emergency factor in the cases just discussed may well distinguish them from the decisions cited as holding the other way. Third party aid may also be required where the responsible relatives fail to give help after the dependent has notified them of his need. However, whether the court should be at liberty to write an aid-after-notice requirement into the family responsibility statute is questionable.[133] Statutes in some states authorize an action by a third party against the community for help given after the dependent's notice of need and failure by the community to provide it. These might well be amended to include actions against responsible relatives.

There is also a question as to whether a locality may proceed against responsible relatives for support previously provided, or whether it is limited to suing for the future support of the dependent person. In the latter event the locality may be reluctant to render aid, and the applicant for help may have to depend on the results of the locality's court suit, with the possibility of delays and even eventual default by the responsible relative. A few

[133] In Tyron v. Dornfeld, 130 Minn. 198, 153 N.W. 307 (1915), the court left open the question whether, in other than emergency cases, the third party must give notice to the responsible relative. If the relative's suit for contribution could be entertained by a court in equity, the judge might be able to authorize instalment payments of the judgment and thus avoid the difficulties involved in a lump sum payment. See 4 POMEROY, EQUITY JURISPRUDENCE, 5th ed., §1418 (1941).

statutes seem to indicate that an action for future support only is contemplated.[134] Many are not clear as to the precise remedy available to welfare officials. Several, for example, provide simply for a court action to determine what the relative shall "contribute" to the support of the dependent person.[135] The cases have usually held that statutes of this type provide only for an action by the proper public official for future support.[136] This seems a fair inference in view of the provisions in such statutes for enforcement of support orders in cases of default which appear to contemplate continuing future support rather than reimbursement. There is some authority, however, that even under statutes of this type the locality may bring a common law action for restitution.[137] These cases should be compared with those which hold that a third party

134 The following statutes do not provide that only an action for future support may be brought, but this seems to be a fair inference from their content: Ind. Stat. Ann. (Supp. 1955) §3-3005; N.Y. Criminal Code (1945) §915; N.Y. City Domestic Relations Court Act §111.

135 Statutes authorizing suits by public officials, which may be said to fall into this group, are the following: Conn. Gen. Stat. (Supp. 1953) §1111c; Del. Code Ann. (1953) tit. 13, §501; Hawaii Rev. Laws (1945) c. 298, §12,290; Miss. Code Ann. (1952) §7357; Neb. Rev. Stat. (Supp. 1953) §68-101; Pa. Stat. Ann. (Supp. 1954) tit. 62, §1973(a); Vt. Laws (1953) No. 196, §3; Wis. Stat. (1953) §52.01.

Whether the dependent person may sue for past as well as future support raises similar problems. The statutes in Montana and a few other states authorize the dependent to sue both for future and past support. See the statutes cited in note 128 supra. See also La. Rev. Stat. (1950) §13-4731, which appears to leave this point in doubt. No cases were found which discuss this problem, but on the reasoning of the cases cited in note 136 infra, the statutes would probably be found to authorize only an action for future support in the absence of an explicit direction to the contrary. The statute authorizing a future support action may also apply to third persons and other relatives.

136 Wethersfield v. Montague, 3 Conn. 507 (1821); Waterbury v. Hurlburt, 1 Root (Conn.) 60 (1773); Howard County v. Enevoldsen, 118 Neb. 222, 224 N.W. 280 (1929); Saxville v. Bartlett, 126 Wis. 655, 105 N.W. 1052 (1906) (under prior statute).

137 For cases allowing restitution under statutes which did not authorize or may have precluded it, see Dept. of Public Assistance v. Cucura, 45 Pa. D. & C. 549 (1942); Commissioners v. Dooling, 1 Bailey (S.C.) 73 (1827) (relative was outside the state when aid was extended). But cf. Commonwealth v. Bauman, 46 Pa. D. &. C. 629 (1943); Dept. of Public Assistance v. Marley, 45 Pa. D. & C. 166 (1942). The Pennsylvania statute now authorizes the recovery of aid given to a spouse or minor children. Pa. Stat. Ann. (Supp. 1954) tit. 62, §1974(a). But cf. Dept. of Public Assistance v. Sharago, 381 Pa. 74, 112 A. (2d) 162 (1955).

The courts have held, however, that a promise by a responsible relative to pay the locality for the past support of the dependent person is not binding. Lebanon v. Griffin, 45 N.H. 558 (1864). Cf. Freeman v. Dodge, 98 Me. 531, 57 A. 884 (1904) (promise to pay for future support); Wimer v. Worth Twp., 104 Pa. 317 (1883) (town may not recover on responsible relative's promise for a sum in excess of the amount actually expended on the dependent). Whether the municipality would have succeeded had it sued for restitution was not discussed in these cases. See note 131 supra for a discussion of the question of whether third parties may sue responsible relatives on their promises for past support.

who gives help to the dependent person is a mere volunteer, and cannot recover from the responsible relative.

Most of the family responsibility statutes, however, provide for an action by the locality to recover any aid actually expended. Some of these provide for an action of restitution only,[138] while the remainder appear to authorize both an action for restitution and an action for future support.[139] While the argument has been made under the latter type of statute that restitution may not be obtained until an action for future support has been brought to determine the liability of the responsible relative, this has been rejected by the courts which have considered it. They have held what seems to be implied from the statutes, that an action for restitution may be brought in the alternative without first bringing an action to attempt to subject the relative to future liability.[140]

It is difficult to find a common denominator in the cases that have considered the remedial problems that arise under family responsibility laws. The courts have not considered the effects on the family relationship of the particular decision in question, nor its effect on the ability of a person in need to secure help in a reasonable length of time. The only unifying factor in all of these cases, in line with the apparent purpose of family responsibility, seems to be a desire to save the public expense whenever

[138] Ala. Code (1940) tit. 44, §8; Alaska Laws (1953) c. 110, §§13, 14; Cal. Welfare & Inst. Code (1952) §2576; Colo. Stat. Ann. (1949) c. 124, §2; Ga. Code Ann. (1936) §23-2303; Idaho Code Ann. (1948) §32-1002; Mich. Stat. Ann. (1950) §16.281 (hospital care only); Minn. Stat. Ann. (1947) §261.02; Nev. Comp. Laws (Supp. 1949) §5140.01 (hospital care only); N.D. Rev. Code (1943) §50-0119; Ohio Rev. Code (1953) §5113.14; Utah Code Ann. (1953) §17-14-1.

[139] Ariz. Code Ann. (Supp. 1952) §70-605; Ill. Stat. Ann. (Supp. 1955) c. 23, §439-2; Iowa Code Ann. (1949) §§252.8, 252.13; Me. Laws (1953) c. 308, §97; Mass. Laws Ann. (1949) c. 117, §§7, 8; Mich. Stat. Ann. (Supp. 1953) §16.129; Mont. Rev. Code Ann. (1953) §71-240 (implied); N.H. Rev. Laws (1942) c. 124, §§18, 19; N. J. Rev. Stat. (Supp. 1954) §44:1-141; N.Y. Social Welfare Law (Supp. 1955) §§102(1), 104(1); Ore. Rev. Stat. (1953) §411.470 (implied); R.I. Gen. Laws (1938) c. 69, §§6, 9; W.Va. Code Ann. (1949) §626(151).

[140] Los Angeles Co. v. Frisbie, 19 Cal. (2d) 634, 122 P. (2d) 526 (1942) (under prior statute); Hamilton Co. v. Hollis, 141 Iowa 477, 119 N.W. 978 (1909); Boone Co. v. Ruhl, 9 Iowa 276 (1859). But cf. Dawson v. Dawson, 12 Iowa 512 (1861). See Tolley v. Maliswaski, 159 Misc. 89, 287 N.Y.S. 245 (1936), where the point discussed in the text was not raised. The New York case is typical of the many trial court cases in that state allowing actions for restitution under their statute. Some of the statutes authorizing suits for restitution make the relative liable even though he was not able to pay when the aid was extended, provided he is able to pay at the time the suit is brought. This is true of the New York law. Under some statutes, however, the relative is not liable unless the relief agency has formally directed him to furnish support. See Manthey v. Schueler, 126 Minn. 87, 147 N.W. 824 (1914).

possible. Such an attitude, for example, would explain why the courts might allow a locality to sue for restitution, although the statute does not allow it, but would deny such a privilege to a third party. In the latter situation the voluntary assumption of responsibility by the third party has already relieved the public of its burden.

B. *Uniformity of Interpretation Through Appellate Proceedings*

It is outside the scope of this study to note the many details of court procedure in family responsibility proceedings, if only because local variations in practice make a generalized summary difficult. Some of the cases involving procedure problems have been collected in the footnote.[141] It should be noted, however, that the family responsibility statutes have usually been held to authorize a special proceeding, summary in character, to which the usual common law guarantees do not, in the absence of express provision, apply. While constitutional objections have been raised as to aspects of procedure under some of the statutes which deviate from the due process requirement, such as the absence of a trial by jury, they have again been rejected on the antiquity argument. As the English family responsibility provision antedates state constitutions, the requirement of due process has been held to be satisfied since constitutions require no greater procedural protection to litigants than that which was afforded at the time they were adopted.[142]

One problem deserving of consideration, however, involves the right of either party to the support action to bring a direct

141 See In re Henriksen, 182 Misc. 550, 44 N.Y.S. (2d) 406 (1943). Noting that the family support action was sui generis, being neither civil nor criminal, the court found that the court having jurisdiction over the place where the "offense" of nonsupport was committed had jurisdiction of the action. Where the statute names the court in which the support action is to be brought, as in Pennsylvania, some courts have held that no action to enforce the support duty may be brought elsewhere. Commonwealth v. Price, 72 Pa. D. & C. 106 (1950); Commonwealth v. Lanahan, 56 Pa. D. & C. 504 (1945); Darlington v. Darlington, 5 Pa. Co. Ct. Rep. 132 (1887). Cf. Tracy v. Rome, 64 Me. 201 (1875) (petition by child to be relieved of further support must be filed in county where original order made). On the grounds that the remedy provided by statute is exclusive, one court has held that a support order is not enforceable by contempt proceedings unless the statute expressly authorizes it. Dierkes v. Philadelphia, 93 Pa. 270 (1880).

142 People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896). See also Corn Exchange Bank v. Coler, 280 U.S. 218, 50 S.Ct. 94 (1930), upholding a statute authorizing the seizure without notice of the property of a deserting husband. The opinion of the New York Court of Appeals in the case, by Cardozo, J., is also instructive. Coler v. Corn Exchange Bank, 250 N.Y. 136, 164 N.E. 882 (1928).

appeal from the decision of the lower judicial tribunal hearing the case to an appellate court.[143] While the prolongation of the judicial process in connection with family responsibility actions will probably do nobody any particular good, one compelling argument for allowing appeals is to secure some degree of uniformity in questions of statutory interpretation. Whether this would be achieved as a practical matter, considering the small sums of money that are usually involved and the high cost of appeals, is another question.

These considerations furnish an argument for not separating the administration of family responsibility from the administration of general assistance but, instead, for conferring on the county departments of public welfare the authority to hear such cases. To make such a system work the administration of general assistance would have to be lodged in the county departments, subject to the control of the state welfare department. What would be needed in addition, however, would be the right to appeal the administrative decision up to the state's appellate court, in order that restraints could be placed on overzealous public officials.[144] Such a system would help secure uniformity at the administrative level but would not solve the problem of court costs on appeal.[145] Furthermore, as will be noted later, there are positive reasons for separating the enforcement of family responsibility from the administration of general assistance.

In any event, there are a few statutes which expressly authorize

143 It should be noted, in connection with this discussion, that the right of appeal does not appear to be inherent, even in actions recognized at common law. See, e.g., Warren v. Indiana Telephone Co., 217 Ind. 93, 26 N.E. (2d) 399 (1940); ORFIELD, CRIMINAL APPEALS IN AMERICA 32 (1939).

144 This appears to have been the system in Arkansas. Ark. Stat. Ann. (Supp. 1953) §83-608. The statute authorized an appeal by the responsible relative to the chancery court after an adverse determination by the welfare department on the relative's responsibility. But Arkansas repealed its family responsibility law in 1955. Ark. Laws (1955) c. 37.

145 In states where general assistance is presently administered by the county departments of welfare, under state supervision, some degree of uniformity has been obtained since the local department will make the initial determination whether support is owing and, if so, how much. However, the department must go into court to secure enforcement of its order, which is then subject to interpretation by the judge who hears the case.

On balance, for the reasons given earlier, it would still seem most desirable to remove the welfare authorities entirely from this area. Even if assessing family responsibility were the responsibility of the courts, it might be possible to secure uniformity of administration in other ways. If all cases involving family responsibility, even those, for example, in which contribution is asked, could be channeled to the "family court" in each judicial circuit, that would be a considerable improvement. Thought might also be given to methods of facilitating appeals, perhaps by waiving costs.

an appeal in family responsibility cases.[146] In the absence of statute most courts have not allowed a direct appeal on the ground that the statutory proceeding is summary and, since it did not exist at common law, no appeal from the determination of the lower court hearing the case was contemplated.[147] A holding of this kind does not, it should be pointed out, prevent family responsibility questions from being litigated in the appellate courts. The family responsibility statutes may be collaterally involved in litigation, as in the case of the relief agency which, having extended aid to a dependent person, sues a responsible relative for restitution. In such a case the agency must prove, for example, both that the person helped was eligible for support and that the relative in question is liable to pay. Many of the problems of statutory interpretation considered here have been litigated in this way.

C. *Apportioning Liability*

Another procedural problem which arises in connection with enforcing family responsibility involves the question of shared liability. No problem is presented where only one relative is responsible for one dependent person. Where, however, there is more than one party on either side of the support obligation, the question of assessing and apportioning liability arises.

Strangely enough, the only question that seems to have arisen in this connection involves the apportioning of liability for one dependent among two or more relatives. No cases have been found where more than one dependent seeks support from the same

146 Ill. Stat. Ann. (Supp. 1955) c. 23, §439-2 (provisions of Illinois Civil Practice Act made applicable); Ind. Stat. Ann. (Supp. 1955) §3-3004; Iowa Code Ann. (1949) §252.9; Ore. Rev. Stat. (1953) §411.446; Va. Code (Supp. 1954) §20-88; Wis. Stat. (1953) §52.01 (5).

147 Nantucket v. Cotton, 14 Mass. 243 (1817); Smith v. Lapeer Co., 34 Mich. 58 (1876); In re James, 116 Pa. 152, 9 A. 170 (1887); Philadelphia v. Hays, 56 Pa. Super. 352 (1914). See Regina v. London Justices, [1900] 1 Q.B. 438 (no appeal under Elizabethan act). *Contra,* Brown v. Van Keuren, 340 Ill. 118, 172 N.E. 1 (1930). The Illinois statute now allows an appeal. On the ground that the proceeding was summary, an earlier case in the Illinois appellate court had held that the family support order was not appealable under the general statute authorizing appeals in civil actions. People v. Peters, 173 Ill. App. 564 (1912). Indeed, those courts which have passed on the question have held that there is no appeal from family support cases even if there is a general statute authorizing appeals which appears to cover the case, e.g., a statute authorizing appeals from the court in which the family support action is heard. The courts have held that statutes of this type are to be restricted to actions known at common law, and, therefore, do not extend to family responsibility actions. Ex parte Pierce, 5 Me. 524 (1828); Eaton v. Williams, 51 Wis. 99, 7 N.W. 828 (1881) (under prior statute).

responsible relative. How the courts would handle this situation is open to conjecture. Perhaps they would determine the total amount that the relative can contribute and apportion this among the various dependent persons on the basis of their need and their relationship to the responsible relative. Some difficulties might be placed in the way of such a solution, however, if the responsible relative could be sued in more than one court, or if separate actions were brought against him in the same court. In the latter event the situation might be corrected by the court's power to consolidate actions for trial.

Where there are several relatives able to support one dependent person the first question that arises is whether the dependent person may select the person against whom he wishes to proceed, or whether he must proceed against certain relatives in a particular order. Some of the statutes specify the order of liability, invariably indicating that the relatives most closely related to the dependent must be proceeded against first.[148] In the absence of a statutory direction of this type, the existence of an order of liability is not clear. In the usual case, the statute, as did the English statute, simply lists the relatives liable, starting with the nearest, such as parent, child, husband, or wife. Although some cases indicate that there is no order of liability under such a statute,[149] other courts seem to treat the statute, even in the absence of a specific direction, as imposing a liability in the order named[150]

148 Alaska Laws (1953) c. 110, §13; Ariz. Code Ann. (Supp. 1952) §70-605; Colo. Stat. Ann. (1949) c. 124, §2; Del. Code Ann. (1953) tit. 13, §501; Ill. Stat. Ann. (Supp. 1955) c. 23, §439-2; Iowa Code Ann. (1949) §252.5; Mich. Stat. Ann. (Supp. 1953) §16.125; Minn. Stat. Ann. (1947) §261.01; Mont. Rev. Code Ann. (1953) §71-234; Neb. Rev. Stat. (1950) §68-102; W.Va. Code Ann. (1949) §626(150); Wis. Stat. (1953) §52.01(4). For a case applying such a provision see Johnson County v. Stratton, 111 Iowa 421, 82 N.W. 955 (1900).

149 For a decision reaching this result under an earlier New York statute modelled on the Elizabethan law, see In re Kasner's Estate, 175 Misc. 832, 25 N.Y.S. (2d) 488 (1941). See also Matheny v. Matheny, 205 La. 870, 18 S. (2d) 324 (1944), holding that a mother's obligation to support her daughter under the family responsibility provisions of the civil code is not primary to the husband's duty to furnish alimony under another provision of the code.

150 All of these cases have arisen in New York and Pennsylvania trial courts. The New York cases have arisen under the provisions of N.Y. City Domestic Relations Court Act §101. This provision is rather ambiguous, since it appears to intermingle both responsibility for needy relatives and responsibility in the absence of need based on the family relation. It contains a series of paragraphs listing, in no apparent order, the liability of various relatives, and, in subsection 4, provides, in addition, that the parents, grandparents, and children are liable for the support of a dependent person over seventeen years of age. Subsection 5 establishes the liability of stepparents for their indigent children under certain conditions. Under this statute the courts have at least indicated that the liability of parents is primary. E.g., Whitney v. Harrison, 127 N.Y.S. (2d) 227

or, in spite of the statutory order, progressively toward the more distant relatives.[151] Whether spelled out in the statute or adopted by the court, the latter approach seems preferable, since it recognizes that the closer the relationship, the stronger will be the family ties.

The next question is whether liability for support is joint or several, and the immediate issue is whether a relative sued singly may move to join others responsible as additional parties. If the statute imposes no order of liability, perhaps all of the responsible relatives might be joined. Even if the statute imposes an order of liability, the relative sued ought to be able to join all other relatives of the same degree. Some statutes expressly authorize the court or a relative named as a defendant to bring in additional parties to the support action. Others seem to authorize joinder impliedly by providing that liability for support is joint.[152]

(1953); Caplan v. Caplan, 177 Misc. 847, 32 N.Y.S. (2d) 43 (1942); Anon. v. Anon., 171 Misc. 644, 12 N.Y.S. (2d) 837 (1939). As a result, the liability of grandparents is secondary.

Under the Pennsylvania statute, which simply lists the relatives liable in an order similar to that given in the text, the lower courts seem to have held that the order of support is imposed in that order. E.g., Commonwealth v. Wright, 28 Del. (Pa.) 522 (1939); Commonwealth v. Zinnell, 28 Del. (Pa.) 434 (1939). The state supreme court has reserved decision on this point, indicating, however, that there may be no order of liability. In re Stoner's Estate, 358 Pa. 252, 56 A. (2d) 250 (1948).

[151] For example, although the liability of a stepparent is listed after the liability of a grandparent in N.Y. City Domestic Relations Court Act §101, one court has held that the obligation of a stepparent is primary to that of a grandparent. D.G. v. Hermanez, 204 Misc. 650, 123 N.Y.S. (2d) 234 (1953). The court recognized what it considered the realities of family relationships, and was therefore averse to discriminating between natural children and stepchildren of the same family. The liability of a parent under the statute is primary. See note 150 supra.

[152] The following statutes contain explicit provisions to this effect or appear to accomplish the same result by other means: Del. Code Ann. (1953) tit. 13, §501 ("several relations of the same order shall, if able, contribute equally"); Ill. Stat. Ann. (Supp. 1955) c. 23, §436-12 (actions for nonsupport may be consolidated and liability assessed proportionately); Ind. Stat. Ann. (Supp. 1955) §3-3003 (court may bring in new parties); Iowa Code Ann. (1949) §252.7 (same); Me. Laws (1953) c. 308, §97 (all relatives may be joined); Mass. Laws Ann. (1949) c. 117, §17 (same); Mont. Rev. Code Ann. (1953) §71-235 (relatives "jointly and severally liable in the order named"); R.I. Gen. Laws (1938) c. 69, §11 (court may bring in other parties); Va. Code (Supp. 1954) §20-88 (joint and several liability). Two statutes accomplish the same result as those cited above by expressly authorizing any responsible relative to bring an action against any other responsible relatives for the assessment of future support for the dependent. Conn. Gen. Stat. (Supp. 1953) §1111c; Vt. Laws (1953) No. 196, §3. For a similar provision see Me. Laws (1953) c. 386 (family responsibility provision in domestic relations law). There are also some jurisdictions where any "interested person," or "any person" may bring an action to assess the future liability of a responsible relative. E.g., Del. Code Ann. (1953) tit. 13, §501 ("any person interested"); Pa. Stat. Ann. (Supp. 1954) tit. 62, §1973(b) ("any other person"). If this terminology can be interpreted to extend to a responsible relative, then these statutes would also appear to allow actions in which the proportionate liability of relatives can be determined.

Statutes providing that the court may assess liability proportionately according to the ability of the respective relatives would appear, at the least, to authorize the court

Whether, in the absence of such provisions, more than one responsible relative of the same degree may be joined has led to a difference of opinion[153] in cases where one relative, sued singly, attempts to join another, and in other situations where the court's decision indicates whether liability under the statute is several or joint.[154] While one court indicated that the inability to join other relatives would not necessarily preclude a future action against them for contribution,[155] the question of securing contribution toward past expenditures would also seem to hinge on whether liability under the statute is joint or several. There are some statutes which specifically provide for an action of contribution.[156]

to apportion liability when several relatives have been brought before the court by the complainant. E.g., N.Y. Criminal Code (1945) §917; W.Va. Code Ann. (1949) §626 (153); Wis. Stat. (1953) §52.01 (4). See Stone v. Burgess, 47 N.Y. 521 (1872); In re Whitesell, 18 Pa. Dist. 520 (1909). Perhaps statutes of this sort would also authorize the joinder of additional parties.

153 For cases holding or implying that liability is several, see Tuller v. Superior Ct., 215 Cal. 352, 10 P. (2d) 43 (1932) (relative sued may not join other responsible relatives); Duffy v. Yordi, 149 Cal. 140, 84 P. 838 (1906) (fact that dependent being supported by another relative good defense to support action); In re Whitesell, 18 Pa. Dist. 520 (1909) (fact that there are other responsible relatives in addition to the immediate defendant is no defense). *Contra:* Anon. v. Four Anon., 173 Misc. 623, 18 N.Y.S. (2d) 578 (1940) (fact that dependent is being supported by another relative is not a defense); Commonwealth v. Marzano, 9 Pa. D. & C. 764 (1927) (same). Note the conflict in the Pennsylvania cases. The New York case involved N.Y. City Domestic Relations Court Act (Supp. 1954) §101 (4) which states that the relatives there named are "severally chargeable." However, the court seemed to base its decision on a subsequent provision in that subsection that support is to be assessed proportionately on the relatives named. But cf. Bernardus v. Williamson, 1 Wheeler Crim. Cas. (N.Y.) 234 (1823).

The cases seem to have held, apparently on the overriding public policy basis, that one responsible relative may not be relieved of his support obligation by another even for a good consideration. Kentfield v. Kentfield, 8 Cal. (2d) 75, 63 P. (2d) 1111 (1936); Kriss v. Kriss, 246 App. Div. 847, 285 N.Y.S. 58 (1936), appeal withdrawn, 275 N.Y. 546, 11 N.E. (2d) 746 (1937); Wimer v. Worth Twp., 104 Pa. 317 (1883); Commonwealth v. Hecker, 82 Pa. Super. 123 (1923). In Mitchell-Powers Hardware Co. v. Eaton, 171 Va. 255, 178 S.E. 496 (1938), the case was remanded to determine whether a conveyance of stock by a brother to a sister, to reimburse her for supporting their mother, was a fraud on creditors. The court held that it would not be if the mother qualified for support under the Virginia family responsibility statute and if the son were able to support her in the manner required.

154 For example, a relative sued singly for support may allege as a defense that there are other responsible relatives. See the cases cited in the preceding note. Should the defense be rejected in this instance, the court would seem to be placing liability solely on the relative sued, thus indicating, by implication at least, that liability under the statute is several rather than joint.

155 Duffy v. Yordi, 149 Cal. 40, 84 P. 838 (1906).

156 The statute may directly authorize an action of "contribution." Iowa Code Ann. (1949) §252.15; Ore. Rev. Stat. (Supp. 1955) §411.425; Va. Code (Supp. 1954) §20-88. Or, as in two New England states, the statute authorizing the locality to sue for reimbursement may also authorize kindred who have supported the dependent person to bring an action against responsible relatives to determine the liability of the latter. The effect is to authorize a contribution action. Me. Laws (1953) c. 308, §97; Mass. Laws Ann. (Supp. 1954) c. 117, §7. Where, however, the person bringing the contribu-

In the absence of such provision the courts are again divided. Some decisions, impliedly or expressly recognizing the joint nature of the support liability, have found a duty to contribute.[157] But there are decisions to the contrary, which appear to reject the idea that the statute imposes equal responsibility.[158]

tion action is not "kindred" who is liable for support, contribution will not be awarded. Farr v. Flood, 65 Mass. 24 (1853) (in-law). See the discussion in Part II of the first instalment of this article [54 MICH. L. REV. 497 at 506 et seq.].

The South Dakota statute provides, "A parent is not bound to compensate the other parent or a relative for the voluntary support of his child without an agreement for compensation. . . ." S.D. Code (1939) §14.0316. This section was applied in Tesch v. Tesch, 65 S.D. 637, 277 N.W. 328 (1938).

157 Shaver v. Brierton, 1 Ill. App. (2d) 192, 117 N.E. (2d) 298 (1954), noted 32 CHI-KENT L. REV. 334 (1954); Jones v. Pool, 323 Ill. App. 293, 55 N.E. (2d) 394 (1944) (abstract of opinion only); Rogers v. Rogers, 51 Ill. App. 683 (1893); Wood v. Wheat, 226 Ky. 762, 11 S.W. (2d) 916 (1928); Succession of Guidry, 40 La. Ann. 671, 4 S. 893 (1888) (dictum); Pechtl v. Schmid, 172 Minn. 362, 215 N.W. 512 (1927); Howie v. Gangloff, 165 Minn. 346, 206 N.W. 441 (1925); Manthey v. Schueler, 126 Minn. 87, 147 N.W. 824 (1914). For a case in which the effect of the court's decision is to compel contribution, see Application of Mach, 71 S.D. 460, 25 N.W. (2d) 881 (1947).

The Minnesota cases require the relative giving support to have had a reasonable expectation that he would be reimbursed; otherwise he will be treated as a volunteer and recovery will be denied. While notice that the relative furnishing support expects reimbursement will meet the test of these cases, apparently this is not necessary if reimbursement was in fact reasonably expected. See Pechtl v. Schmid, supra. The duty to contribute which was found in the Kentucky case was rested on the Kentucky criminal statute making it a crime for an adult child not to support his indigent parent. Ky. Rev. Stat. (1953) §405.080. Because this statute makes the duty dependent upon reasonable notice that support is required, the court read a similar notice requirement into the action for contribution. Because no notice had been given by the relative seeking contribution in that case, his action was dismissed. The Kentucky law is discussed in a comment, 39 KY.L.J. 451 (1951).

Rogers v. Rogers, supra, is an interesting decision. A divorced wife brought an action, based on the family responsibility law, against her former husband to secure his assistance in the past and future support of their incapacitated, adult daughter. The court had no difficulty awarding a decree for past support on the joint liability theory. In addition, although the statute then provided that only the state's attorney could bring an action for future support, the court awarded a decree to the wife for the future support of the daughter on general equitable principles. An action for contribution for past support may be based on an express or implied request by one relative to another to furnish it. Stone v. Stone, 32 Conn. 142 (1864). But see note 137 supra.

158 Connell v. Connell, 131 W.Va. 209, 46 S.E. (2d) 724 (1948) (interpreting general assistance law). This also appears to be the import of the decisions in Meier v. Planer, 107 N.J. Eq. 398, 152 A. 246 (1930), and Duffey v. Duffey, 44 Pa. 399 (1863). Both cases involved grandfathers who attempted to secure reimbursement from the parents of indigent infant children whom they had supported. Neither case allowed restitution, although each court handled the problem as if it involved only the duty of the parent to support his minor children at common law. The Pennsylvania court rejected the grandfather's claim on the ground that one standing in loco parentis to a child is presumed to render services to him out of affection, and is not entitled to compensation from the natural parent in the absence of an express promise. Cf. Chilcott v. Trimble, 13 Barb. (N.Y.) 502 (1852).

The New Jersey court rested its decision on the absence of a common law duty of a parent to support his infant child. It is to be noted, however, that in both jurisdictions, at the time of these cases, both a father and a grandfather were liable for the

There are problems in extending the liability for support to additional relatives. Family difficulties and family tensions may complicate any attempt to secure contribution. Furthermore, because of the tremendous amount of migration that has occurred in recent years, the average American family can probably no longer be found within the confines of one jurisdiction. This would be especially true if the support duty extends to grandparents, brothers and sisters, as well as to parent and child. There will be natural resentment on the part of the relatives called on to contribute support when there are other relatives equally able who have been made immune by the accident of state boundaries. To a certain extent this situation may be alleviated by the reciprocal enforcement of support acts which have now been passed by virtually every jurisdiction, and which will be discussed shortly. However, these statutes do not appear to apply to an action for contribution.

In an action for future support the best solution can be reached where joinder of all the parties within the reach of the court's process is possible, as the court is thus enabled to consider the problem as a whole in the light of the family relationships that have been discussed above. On the other hand, the difficulties which are presented by an action for past support have already been noted. They are present to the same extent in an action for contribution. Therefore, the relative who was subject to the jurisdiction of the court at the time of the original support action ought not to be subject to a suit for contribution once the rights of the parties have been determined. Perhaps the conclusion should be otherwise if the responsible relative sued for contribution, was outside the jurisdiction at the time of the original suit,[159] or could not be found after diligent search. A further considera-

support of dependent children and grandchildren under the applicable family responsibility statutes. Assuming this statute to apply to minor children, the cases in fact involved the question of contribution by one responsible relative to another. In the New Jersey case, indeed, the grandfather made the contention that he was entitled to reimbursement on the ground that he was subrogated to the right of the municipality against the father, which would have had to support the grandchild if the grandparent had not. The court held that the grandfather was only a "volunteer."

See also the Pennsylvania cases and statute discussed in notes 152 and 153 supra. If the present Pennsylvania statute authorizes the court to apportion the liability of all responsible relatives in an action for future support, it may be interpreted to exclude an action for contribution toward past expenditures on the ground that the statutory remedy provided is exclusive.

159 Cf. Commissioners v. Dooling, 1 Bailey (S.C.) 73 (1827) (liability of father to third person affording support to daughter).

tion is that the support obligation has been fulfilled by one of the responsible relatives, who has already been forced to make the necessary adjustments in interpersonal relationships and standard of living. In contribution cases the judge must be enjoined not only to consider the case as if it were one of first impression for future support by the relative sued for contribution, but to calculate the value of the adjustments that have voluntarily been made by the party who assumed the support obligation.

Because of the difficulties presented when a responsible relative lives outside the jurisdiction where the person claiming support resides, not only under family responsibility but under other support laws, the legislatures of almost all jurisdictions have in recent years adopted some form of reciprocal enforcement of support legislation aimed at authorizing a civil interstate support action. Most of the jurisdictions have adopted one of the forms of a bill proposed by the National Conference of Commissioners on Uniform State Laws, while a smaller group has copied similar legislation first enacted in the state of New York.[160] Under the reciprocal enforcement statutes a dependent person claiming a duty of support on the part of a responsible relative may file a petition for support in the state of his residence, which is known as the initiating state. If the judge in the initiating state finds that a duty to support might exist, the petition is forwarded to the appropriate court in the state of the relative's residence, which is known as the responding state. The proceeding then continues, testimony being taken as needed in both courts, and if the relative named in the petition is found to owe a duty of support, the court in the responding state issues an appropriate order which is enforced like any other.[161]

160 The Uniform Act was first proposed in 1950 and revised in 1952. For citations to statutes in jurisdictions which have enacted it see 9A Uniform Laws Annotated 58, 92 (Supp. 1954). Five jurisdictions in addition to New York appear to have adopted the New York act. See N.Y. Unconsolidated Laws (Supp. 1954) 50. This list no longer includes Kentucky and South Carolina as these states have recently adopted the Uniform Act. Ky. Rev. Stat. (Supp. 1954) §407.010 et seq.; S.C. Code (Supp. 1955) §20-237 et seq. Delaware appears to have a unique statute. Del. Code Ann. (1953) tit. 13, §512. It was copied from an earlier Virginia law, different from any other, which has now been replaced by the Uniform Law. The problems arising under the various types of statutes are discussed fully in Von Otterstedt, "Reciprocal Enforcement Legislation," CURRENT TRENDS IN STATE LEGISLATION 164 (University of Michigan Law School Legislative Research Center 1952).

161 All funds collected by the court in the responding states are sent to the court in the initiating state. The procedure has been given in the text only in outline form. Details of the procedure may be found in Von Otterstedt, "Reciprocal Enforcement Legislation," CURRENT TRENDS IN STATE LEGISLATION 186-188 (1952) (University of Michigan Law School Legislative Research Center).

Many problems of interpretation have arisen under these statutes, the most difficult being the decision as to which family responsibility statute is applicable to the case at hand, that of the initiating state, the responding state, or conceivably that of some other jurisdiction where either party may have had residence or where the failure to support may have occurred.[162] Problems of procedure will also arise, because the typical family responsibility action, if it requires the help afforded by reciprocal support legislation, most likely will involve some responsible relatives who live within the dependent's jurisdiction and some who live without. Unfortunately, this contingency does not appear to have been foreseen by those who drafted the legislation. As pointed out before, the reciprocal enforcement statutes do not seem to authorize an action by one relative against another for contribution, as they authorize an action only by the dependent person and, in most cases, by the locality which has given assistance.[163] Whether a dependent person who has sued relatives living within the state could join, by virtue of the reciprocal enforcement statute, relatives living outside the state, is another question. Assuming that joinder would be found to be authorized, several complications would arise in such an action because the relative residing outside the state may be found to be subject to a support statute other than that of the initiating state which, presumably, covers the intrastate relatives. The problem of determining the applicable support duty will be further complicated if either the initiating or responding state has adopted the New York act, which restates the substantive support duty. Although both the in-state and out-of-state relatives might be bound by the statutes of the initiating state, the reciprocal enforcement act of the initiating state would seem to impose a separate substantive support duty on the out-of-state relatives, insofar as it conflicts with the family

162 Of course, this question will arise with reference to all of the civil support statutes covered by the reciprocal enforcement act. For a discussion of these conflict of laws questions see Von Otterstedt, "Reciprocal Enforcement Legislation," CURRENT TRENDS IN STATE LEGISLATION 218-251 (1952) (University of Michigan Law School Legislative Research Center); Ehrenzweig, "Interstate Recognition of Support Duties—The Reciprocal Enforcement Act in California," 42 CALIF. L. REV. 382 (1954). For a discussion of the manner in which cases have been handled under the New York act see GELLHORN, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY 182-187 (1954).

163 The commissioners' bills authorize actions by the community for reimbursement. E.g., 1950 Uniform Act, §8. The New York statute has now been amended to provide a similar remedy, but originally it did not. N.Y. Unconsolidated Laws (Supp. 1954) §2115-2. Whether a private individual giving aid to a dependent person could bring an action under the interstate act is another question.

responsibility law of the initiating state. A New York trial court has held that the substantive duty created by the New York act is controlling in interstate actions.[164] Indeed, the New York reciprocal enforcement act has been found to have created support duties enforceable in intrastate actions where, for example, it supplements the local statute.[165] The uniform law simplifies these problems. It does not attempt to enact separate substantive support duties but provides simply that those substantive duties created by existing statutes may also be enforced in the interstate action.

At least the reciprocal enforcement laws represent a step toward the solution of the problem presented when responsible relatives live outside the state. How successful they will be, and whether additional solutions are needed, remains to be seen.

V. EFFECT OF FAMILY RESPONSIBILITY LAWS ON THE DEPENDENT'S ELIGIBILITY FOR ASSISTANCE

The inclusion of a family responsibility provision in general assistance laws has given rise to the assumption that family responsibility for dependent persons is primary, that public responsibility is secondary, and that public assistance, therefore, cannot be given until all possibility of securing support under the family responsibility laws has been exhausted. This statement is not accurate, of course, with reference to those jurisdictions where there is no statute providing for the family support of dependent persons,[166] nor does it seem to be true in most jurisdictions whose family responsibility laws authorize only the recovery of assistance previously given to persons in need.[167]

It is not clearly indicated in the remaining family responsi-

[164] Vincenza v. Vincenza, 197 Misc. 1027, 98 N.Y.S. (2d) 370 (1950). A recent change in the New York statute does not appear to change the result in this case. N.Y. Unconsolidated Laws (Supp. 1954) §2112.

[165] Davis v. Davis, (Iowa 1954) 67 N.W. (2d) 566. See note 13, supra, for cases holding that intrastate family responsibility statutes are not unconstitutional on the grounds that they cannot be made applicable to out-of-state residents. But a statute expressly made discriminatory might be another thing.

[166] E.g., Arkansas, Florida, Kansas, Kentucky, New Mexico, North Carolina, Tennessee, Texas, Washington, and Wyoming. Cf. Conant v. State, 197 Wash. 21, 84 P. (2d) 378 (1938) (OAA statute), noted, 39 COL. L. REV. 711 (1939), discussing the problems taken up in this section as they have arisen under the categorical programs. See also, with reference to the categorical programs but also of more general interest, "Relatives' Responsibility" Provisions of State Plans Affecting Eligibility for Public Assistance (U.S.-FSA State Letter #47, March 5, 1945).

[167] These statutes are collected in note 138 supra. However, in some jurisdictions, which authorize only an action for assistance that has been expended, the statutes may also indicate that family responsibility is, nevertheless, primary. Furthermore, whenever restitution is authorized, the ultimate responsibility for assistance can be made to rest on the responsible relatives, so that family responsibility is primary in that sense.

bility statutes whether or not family responsibility is primary and an answer must come from an analysis of the language used in the statutory definition of the need for public assistance, or in the wording of the family responsibility section itself. The majority of the statutes contain no clue as to how this question is to be resolved. Those statutes which attempt to deal with the problem fall into two groups. Some seem to have intended to provide that only support actually received from relatives will count as a resource in determining the individual's need for public assistance, providing, for example, that assistance will be given whenever the responsible relatives "fail or refuse to maintain" the applicant.[168] Other statutes indicate that the mere presence of relatives able to support the applicant will disqualify him from public assistance,[169] and one court, in the absence of any statutory provision, appears to have taken the same approach.[170]

[168] Cal. Welfare & Inst. Code (1952) §2500 (indigent persons to be supported when "not supported and relieved by their relatives or friends"); Colo. Stat. Ann. (1949) c. 124, §3 (support given when relatives "fail or refuse to maintain" applicant); Ill. Stat. Ann. (Supp. 1955) c. 23, §§436-12, 439-1 (family responsibility "primary" but assistance to be given to persons "whose families are unable to provide them a reasonable subsistence"); Minn. Stat. Ann. (Supp. 1954) §261.03 (same as Colorado); Mont. Rev. Code Ann. (1953) §71-237 ("the liability of a relative to contribute to the support of recipient of public assistance . . . shall not be grounds for denying or discontinuing public assistance"); Neb. Rev. Stat. (1950) §68-103 (same as Colorado); Nev. Comp. Laws (Supp. 1949) §5140 (support given when relatives "refuse or neglect to care for and maintain such poor person"); N.Y. Social Welfare Law (Supp. 1955) §158 (assistance given to persons "unable to secure support from a legally responsible relative"); Ore. Rev. Stat. (1953) §411.428 (same as Montana). Some of these statutes also provide that assistance may be given if there are no legally responsible relatives. See also, e.g., Mo. Stat. Ann. (Supp. 1955) §208.010 (income from whatever source considered in determining need); N.J. Rev. Stat. (Supp. 1954) §44:8-125 (similar). For a case applying the Nebraska law see Otoe Co. v. Lancaster Co., 78 Neb. 517, 111 N.W. 132 (1907) (facts relating to need not proved).

[169] Conn. Gen. Stat. (1949) §2612 (support contribution "as fixed by the court" considered as resource); Conn. Gen. Stat. (1949) §2585 (support given only if no "relations of sufficient ability who are obliged by law to support" applicants); Mo. Rev. Stat. (1952) §205.590 (assistance given "when there are no other persons required by law and able to maintain" applicants); N.H. Rev. Laws (1942) c. 124, §18 (assistance given if "such poor person has no relations of sufficient ability"); S.C. Code (1952) §71-131 (assistance given if applicant has "no relative or other person able to provide and legally responsible for his maintenance"); Va. Code (Supp. 1954) §63-209 (applicant's income considered, including that due from responsible relatives, which applicant "may or should receive"). Similar provisions are sometimes found in statutes authorizing hospital care for persons in need. See, e.g., Ind. Stat. Ann. (Supp. 1955) §52-1131; Iowa Code Ann. (1949) §255.1; Minn. Stat. Ann. (1947) §261.22(2); Ore. Rev. Stat. (1953) §445.020(1) (hospital care for indigents injured in auto accidents).

There are also statutes which ambiguously provide that, before giving aid a second time, the welfare official must call on all relatives of the dependent person who live in the locality, and ask them for support. The consequences of a failure by the relatives to provide such support are not indicated. Ind. Stat. Ann. (Burns, 1951) §52-153; S.D. Code (1939) §50-0103. See also Ohio Rev. Code (1953) §5113.04 ("reasonable effort" to be made to get support from relatives).

[170] Bloomfield v. French, 17 Vt. 79 (1843).

Both statutory provisions just described would appear to make family support primary, but the difficulty comes in determining how this "primary" obligation is satisfied. Where there is nothing in the statutes on this problem the usual provision that all persons in need are to be helped might indicate, on the other hand, that assistance should be given first and responsible parties looked to afterward. Again, the lack of conclusive information as to the purpose intended to be accomplished by the insertion of the family responsibility provision in the poor law makes these questions difficult ones. However, in view of the urgency involved in a request for assistance, it would seem undesirable to delay the giving of aid until the responsibility of relatives can be determined.[171] If the giving of assistance must await the result of a court suit against the relatives in every case, the effects on the applicant might well be disastrous and the administrative costs prohibitive, considering the number of actions which will be dismissed. Nor do those statutes seem wise which count the presence of relatives legally responsible as a resource though no support is in fact forthcoming, since in such cases the applicant is receiving no real help at all.

The cases that have considered this question are far from satisfactory. Where the statute does not attempt to deal with the problem, it has been held, for the reasons indicated, that aid may be given even though relatives have not been called on by the welfare officials.[172] This result has also been reached under a

171 A recent survey in Illinois indicated that most persons contacted felt that the family responsibility requirement should not prevent the prompt giving of assistance when it was needed. A Proposed Public Assistance Code of Illinois 125 (Report of the Illinois Public Assistance Laws Commission 1947).

172 Milwaukee Co. v. Green Bay, 249 Wis. 90, 23 N.W. (2d) 487 (1946). This also seems to be the import of the decision in Mappes v. Iowa County, 47 Wis. 31, 1 N.W. 359 (1879), although all this case actually held was that the contribution of partial support by relatives did not relieve the community of responsibility for the deficiency.

The cases in which these questions have been raised involve suits against localities by third persons to recover for help given to an allegedly dependent person, or a suit by one locality against another where a town, not the town of settlement, has given such assistance and now sues the town of settlement to secure reimbursement. These cases are in point because the locality sued raises the defense that the dependent person in question was not in need because he had relatives able to support him. The court must then decide, in determining whether suit will lie, whether the individual or locality which furnished relief had the authority to do so in light of these facts. If the court finds for the plaintiff, then it must also find that the person aided was in need, in spite of the presence of responsible relatives, because no help from them was in fact forthcoming.

Some of these cases, however, turn on the point that a locality, not the locality of settlement, has an option whether to proceed against the relatives of the dependent

statute which seemed to predicate need on the absence of actual support by relatives.[173] In effect, these cases have adopted the position that family responsibility is secondary, in that they would appear to authorize welfare officials to give assistance first and call on responsible relatives later.

There is authority, however, under a statute of the type last mentioned, to the effect that assistance cannot be given until support from relatives has been asked by the agency and refused.[174] Although this rule would appear to make family responsibility primary, it does not place an undue burden on the assistance process and, therefore, is not objectionable. Indeed, such a requirement may be a helpful restraint in some cases. No doubt a court taking this view would require that every reasonable effort be made by the administrative agency to secure family support.

But where family responsibility is primary, the question of whether a court suit is required to decide if this primary liability has been fulfilled has not been answered with satisfaction. Under statutes making the failure to receive actual family support a condition of need, the courts might conceivably adopt the view that a court order fixing liability, followed by a refusal to obey the order on the part of the relatives named, must be shown. This interpretation seems just as plausible as that adopted by the cases discussed above. The problem is particularly acute under the type of statute which makes the mere presence of legally responsible relatives a disqualification. Unless the court were to say that the agency may determine whether a relative is responsible or not and then advance aid accordingly, it would seem that a

person or to give him aid and sue the town of settlement. See, e.g., Auburn v. Lewiston, 85 Me. 282, 27 A. 159 (1893); Cordova v. Lesueur Center, 74 Minn. 515, 77 N.W. 290, 77 N.W. 430 (1898). Compare Colchester v. Lyme, 13 Conn. 274 (1839) (only town of settlement may take advantage of family responsibility laws), and Salem v. Andover, 3 Mass. 436 (1807) (same), with Chester v. Underhill, 16 N.H. 64 (1844) (implying that only locality in fact giving assistance may sue responsible relative). But cf. Alna v. Plummer, 4 Me. 258 (1826). See also Templeton v. Winchendon, 138 Mass. 109 (1884) (dependent not in need if there is relative willing to support her).

173 Kankakee v. McGrew, 178 Ill. 74, 52 N.E. 893 (1899), interpreting a prior statute not materially different from the present provision. Cf. Moultenborough v. Tuftonborough, 43 N.H. 316 (1861) (under earlier statute).

174 This appears to be the holding in Newark Twp. v. Kearney Co., 99 Neb. 142, 155 N.W. 797 (1915), where the lack of liability of the locality of settlement appears to be predicated in part on the failure of the locality rendering aid to make a demand on the responsible relative. *Accord,* Humphrey v. Goose Prairie, 208 Minn. 544, 295 N.W. 83 (1940), where the inability of a doctor to collect from the community for medical services given to an allegedly dependent person seemed to be based in part on his failure to seek compensation from a responsible relative.

court ruling would be necessary every time an application for assistance is made.[175]

This problem could easily be clarified by a statutory indication of what the welfare official must do, with respect to family responsibility, before he can render assistance.[176] The best approach would be to separate the enforcement of family responsibility from the administration of general assistance.[177] Aid would then be given to anyone in need, with no immediate concern about relatives who might ultimately be liable for the dependent's support. This approach would avoid delay in giving help and would also relieve the general assistance program of the administrative difficulties involved in assessing family responsibility.

Where, however, the application for public aid indicates the possible presence of responsible relatives, the applicant should be referred to the appropriate public officials for help in prosecuting an action for support. This is not to say that the enforcement of family responsibility should be placed with law enforcement offi-

[175] Some indication that a court action is not necessary under this type of statute is afforded by the case of Winchester v. Burlington, 128 Conn. 185, 21 A. (2d) 371 (1941). Here a family in need was given aid in a town other than their town of settlement, and that town sued the town of settlement to recover the aid that had been given. The town giving aid had not, before extending assistance, attempted to call on certain relatives who may have been able to provide support. Without discussing this aspect of the case, the court found that the town giving aid was entitled to recover because the relatives in question were not, in fact, able to contribute. The decision seemed based in part on the holding that where aid is extended by a town other than the town of settlement, it need not first inquire whether there are responsible relatives able to contribute. See note 172 supra. However, the court's opinion also seems to indicate that the question of whether support is available from relatives under the family responsibility law can be determined by the agency without the necessity of a court suit. Cf. East Hartford v. Pitkin, 8 Conn. 392 (1831) (statement that there are no relatives who can support dependent sufficient allegation of need). But cf. Conn. Gen. Stat. (1949) §2612 (support contribution "as fixed by the court" considered as resource).

[176] Ark. Stat. Ann. (Supp. 1953) §85-611 (which provided that before the applicant could be considered for assistance, he must file suit against a relative if the relative failed to provide the welfare department with requested information or if there was a question as to the relative's responsibility) was repealed in 1955. Ark. Laws (1955) c. 37. For state regulations indicating the procedure to be followed in attempting to secure support by relatives, but indicating that assistance should still be made available even though support is refused, see Manual for General Assistance and Veterans Assistance Rule 39 (Illinois Public Aid Commission, April 1952); Minnesota Public Welfare Manual §2532 (Department of Public Welfare, June 1, 1953). Both states authorize the giving of assistance upon the relatives' failure or refusal to support. The Illinois regulation indicates that the possibilities of support by relatives are to be explored before assistance is given, and adds that ". . . a plan of approach to the relative [should be] agreed upon which will strengthen rather than destroy the family relationship vital to the welfare of the individual."

[177] This has often been recommended. See ABBOTT, PUBLIC ASSISTANCE: AMERICAN PRINCIPLES AND POLICIES (1940); PUBLIC ASSISTANCE GOALS, 1953, 17, 19 (U.S.-FSA 1952).

cials who might be insensitive to the problems involved. Jurisdiction over family responsibility cases, as well as over litigation involving family problems, might be given to an integrated family court in which lawyer, judge, and caseworker can cooperate.[178]

If family responsibility is to remain primary, however, it is suggested that assistance should be given after the responsible relatives have refused the welfare official's request to render assistance. This would require the relief administrator to determine whether or not the refusal of a responsible relative to help is final under the circumstances or if, with some additional effort, help might be forthcoming. In those jurisdictions, then, in which the giving of assistance is conditioned on first exhausting the support obligation, the approach that has been suggested places a difficult burden on the shoulders of the public assistance caseworker, who is the one directly in contact with the applicant. The success of the family responsibility laws depends, in the last analysis, not so much on legal concept and principle, but on the caseworker's ability to appraise and handle a difficult family situation.

VI. CONCLUSION

In spite of all the insistence on, and public approval of, statutory provisions making the duty of family support in the general assistance setting legally enforceable, the details of this concept remain largely undefined. There is a paucity of appellate decisions in this area because of the inability to bring direct appeals from such cases in some jurisdictions, the small sums that are usually involved, and the relative poverty of the persons affected. Support decrees that are not accepted by responsible relatives are probably ignored rather than appealed and, indeed, the law may well have fallen into disuse in some communities.

Even on those issues which have been dealt with at the judicial level there is no unanimity of opinion—perhaps because of the lack of any accepted postulates to guide the decisions of judges (and administrative officials) in this area. The administration of any law which involves such generalized concepts as "sufficient ability" to pay must be confided to a large extent to the discretion of the individual judge and administrator. However, statutory

[178] For one recent survey of the inadequacies of judicial facilities for family litigation in one city, see GELLHORN, CHILDREN AND FAMILIES IN THE COURTS OF NEW YORK CITY (1954).

clarification would certainly be of some help. If family responsibility is limited as indicated to situations where, on a realistic basis, the responsible relative is able to pay, and where undue strain will not be placed on an already difficult family relationship, then the law may well be workable, and statutory guidance will be afforded on the more difficult problems of interpretation.