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VIRGINIA'S UNTESTED STATUTE REQUIRING CONTRIBUTION TOWARD STATE CARE OF INSANE

Code of Virginia § 37-125.1 through 37-125.14, enacted as Chapter 536, Acts of 1948, represents a legislative effort to shift in part the burden of the support of adjudged incompetent persons from the State to the individuals themselves or persons liable under law for their support. The text of § 125.1 reads, "Any person who has been or who may be committed or admitted to any hospital for the insane or colony for the epileptics or the feeble-minded, and any person admitted or committed for drug addiction or the intemperate use of alcohol, or the estate of any such person, or the person legally liable for the support of any such person, shall be liable for the expenses of his care, treatment and maintenance in such institution. Such expenses shall not exceed the actual per capita cost of maintenance, or the sum of forty dollars per month, whichever amount is the lesser, and shall be fixed by the Department of Mental Hygiene and Hospitals."

Provisions follow for determination of the parties' ability to pay and for steps to be taken in event of failure to pay. § 125.9 is the important one of these: "Hearing and order; matters for consideration—At such hearing the court shall hear the allegations and proofs of the parties and shall by order require payment of maintenance or any part thereof by the parties legally liable therefor, if of sufficient ability, having due regard for the financial condition and estate of the patient or inmate, his present and future needs, and the present and future needs of his lawful dependents, if such proceeding is to charge the patient or inmate with such expenses; and if such proceeding is to charge any other person legally liable for such expenses, the court shall have due regard for the financial condition and estate of such person, his present and future needs, and the present and future needs of his lawful dependents."

Next are provisions for modification, appeal and enforcement of the order, after which § 125.13 states: "When collection of expenses not required—This article shall not be held or construed to require the Department to collect the expenses of the care, treatment and maintenance of any indigent patient or inmate from such person, or to collect such expenses from any person legally liable therefor, where investigation discloses that such person legally liable for the support is without financial means, or that such payment would work a hardship on such person or his family. Neither

shall it be the duty or obligation of the Department to institute any proceedings provided for in this article to effect such collection where investigation discloses that such proceedings would be without effect, or would work a hardship on such patient or inmate, or the person legally liable for his support." The concluding section deals with the liability of the patient's estate after death.

As no reported case challenging this law has, as yet, been considered by the Supreme Court of Appeals, and because of its pronounced social and economic implications, the statute seems to deserve serious consideration on, at least, the following points:

- I. The validity of the law itself; and if valid,
- II. What persons may be affected by it; and,
- III. What problems may arise from its application.
- IV. Finally, certain conclusions may be drawn as to desiderata.

I. Formerly it was the policy of the State of Virginia to take care of insane persons without expense to them or others;¹ this was declaratory of the common law rule that there was no liability² nor duty³ of the responsible person to support the insane one.

Statutory change or modification of the rule has occurred in at least forty-five states; for example, in Delaware,⁴ Georgia,⁵ Florida,⁶ Iowa⁷ and Kansas⁸ the statutes set forth that the responsible person "shall pay." While Massachusetts,⁹ Illinois,¹⁰ Maryland,¹¹ Louisiana,¹² Alabama,¹³ Connecticut,¹⁴ Idaho,¹⁵ and Arkansas¹⁶ phrase their respective laws to provide that such party shall "pay if able." Kentucky¹⁷ and Indiana¹⁸ statutes provide that if the

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1. *Commonwealth v. Mason*, 177 Va. 684, 15 S.E.2d 114 (1941); *Brunn v. Western State Hospital*, 110 Va. 321, 66 S.E. 48 (1909).
 2. *In re: Hahto's Estate*, 236 Wis. 65, 294 N.W. 500 (1941).
 3. *In re: Hofmann's Estate*. 261 App. Div. 556, 26 N.Y.S.2d 430 (1941).
 4. DEL. REV. CODE § 76-11 (1935).
 5. GA. CODE ANN. § 35-233 (1936).
 6. FLA. STAT. § 394.11, 12 (1941).
 7. IOWA CODE § 230.15 (1946).
 8. KAN. GEN. STAT. § 59-2006 (1935).
 9. MASS. GEN. LAWS (Ter. Ed. 1932). c. 123 § 96.
 10. ILL. REV. STAT. c. 91½ § 9-19 (1947).
 11. MD. CODE 1939, 1943 Supp. Art. 59 § 4.
 12. REV. CIV. CODE, Art. 28-143.
 13. ALA. CODE, Tit. 45, § 213-214 (1940).
 14. CONN. GEN. STAT. § 2663 (1949).
 15. IDAHO CODE § 66-354 (1947).
 16. ARK. STAT. § 59-230-115 (1947) (father and mother, children and grandchildren, but not husband or wife, are bound to pay); cf. W. VA. CODE § 27-5-2 (1943) (inmate, then husband or wife, then children responsible).
 17. KY. REV. STAT. § 203.080 (1935).
 18. BURNS' IND. ANN. STAT. §§ 22-401, 22-1201 (1933).

responsible person's estate is sufficient to support the committed person in addition to providing support for any other dependents, he shall pay.

Ability to pay may be determined by a probate judge.¹⁹ The maximum amount may be nominal.²⁰

Other states, as Colorado,²¹ Wisconsin,²² and Arizona,²³ continue to treat the support as a state responsibility.

There is some authority to support the constitutionality of all such statutes.²⁴ Specifically, it has been held that a statute imposing liability on certain relatives without notice of hearing does not amount to a denial of due process under the Fourteenth Amendment.²⁵ Nor is such a law class legislation,²⁶ for the distinction between the able and the helpless is no more arbitrary than such classifications as married women, infants, and indigents.

It has been contended that since the responsible party has already paid for the support of such institution through general taxes, to compel him to pay directly for the support of an inmate would amount to double taxation. But it would seem that since the state has been partially reimbursed for the support, thus in effect returning that money to the taxpayer in the form of a lightened burden, that the contention is invalid. If the responsible party must pay in the county hospital or poorhouse, if able, there is no valid reason why he should not in a state hospital.²⁷ Further, such payment is for services, and is not taxation, as such.²⁸

A statute imposing liability on certain relatives has been held not to violate the constitutional requirement of uniformity.²⁹ Nor would such a law appear to impair the obligation of a contract, for, since the inmate does not enter the hospital on a contractual basis, the state may change the rules respecting him.³⁰ Probability of

19. MICH. COMP. LAWS 330.28 § 18(a) (1948).

20. MINN. STAT. § 526.01 (1941).

21. '35 C.S.A. 105 § 42. But see § 16.

22. WIS. STATS. § 51.17 (1947) (any person may pay).

23. ARIZONA CODE § 8-303 (1939) (former provision for liability no longer in code).

24. *Re Yturburru*, 134 Cal. 567, 66 P. 729 (1901); *In re: Mansley's Estate*, 253 Pa. 522, 98 A. 702 (1916).

25. *State v. Bateman*, 110 Kan. 546, 204 P. 682 (1922).

26. *State Commission in Lunacy v. Eldridge*, 7 Cal. A. 298, 94 P. 597 (1908).

27. *Bon Homme County v. Berndt*, 15 S.D. 494, 90 N.W. 147 (1902).

28. *Guthrie County v. Conrad*, 133 Iowa 171, 110 N.W. 454 (1907).

29. *State v. Bateman*, *supra*.

30. *State v. Romme*, 93 Conn. 571, 107 A. 519 (1919).

constitutionality is further emphasized by the fact that such laws in some jurisdictions are over fifty years old.

II. Since § 125.1 states that "any person committed" falls within its purview, the statutory provisions on commitment are pertinent. In substance, they are: A judge or trial justice may issue a warrant on his own suspicion of insanity, feeble-mindedness, epilepsy, or inebriety, or upon signed complaint of any respectable citizen. The judge and two physicians shall then constitute a commission to inquire whether such person is insane, epileptic, or inebriate, in the course of which inquiry the judge shall summon witnesses. The two physicians must satisfy themselves and the judge of the mental condition of such person, whereupon, if the finding is positive, the judge orders the sheriff to deliver him to the appropriate hospital. Provision is made for appeal from the commission's decision.

The persons legally liable for support are, in turn, set forth in the code: The husband is liable for support of the wife; either parent is liable for that of a son under sixteen or a daughter under seventeen, or of a child of any age if incapacitated and in destitute or necessitous circumstances. Children over sixteen must, after reasonably providing for their immediate families, support or assist their mother, or aged or infirm father.³¹

III. Certainly the determination of what is meant by "hardship" should be reached by some reasonably ascertainable standard, in order to prevent unfortunate inequities in the application of § 125.13. It is evident that ability to pay involves health, age, earning power, other dependents, and certain intangibles as well as capital assets; yet the phrase "able to pay" is found in the majority of the statutes imposing liability on the responsible person without any elaboration of the meaning of "able." The meager case material sheds little light on the matter; one leading case, cited frequently in other cases and annotations, held that one of advanced years who received sums totalling \$12,000 over a period of fourteen years was able to pay \$10 per month for his wife during that period.³² Another case, often quoted, held only that the husband was liable for his wife's support during her incompetency, where circumstances did not indicate it would be inequitable to compel him to pay.³³ In

31. VA. CODE ANN. § 37-61 through 37-65.

32. *Re Fox' Will*, 275 N.Y. 604, 11 N.E.2d 777 (1937).

33. *Manufacturers Trust Co v. Gray*, 278 N.Y. 380, 16 N.E.2d 373 (1938).

Pennsylvania the position has been taken that whereas "legally able to pay" means "financially able to pay,"³⁴ there is no liability to pay the exact sums expended for care, where liability is founded on ability to pay.³⁵ Certainly such sketchy equivocations are of little assistance in formulating even the crudest sort of rule for defining "hardship." The courts, however, possibly out of reluctance to indulge in innovation, have been uniformly content to decide the cases on the peculiar facts of each. The redeeming feature is that any such liability being purely statutory, the statutory procedure is exclusive and must be followed with exactness.³⁶ In effect, this appears in most cases to give the responsible party the benefit of whatever doubt there may be as to his ability to pay.

IV. Material, both case and statutory, is notable for its omission of adequate treatment of certain elements of the problem. In particular, there is little weight given to the types and degrees of insanity and the consequent purposes motivating the commitment of the various insane persons. Thus the scale may range from the dangerous psychopathic, not yet a criminal, whom the state is bound to commit and support as surely as it would any criminal, in order to protect society, to the harmless case of senility whose basic social fault is that he imposes a burden of added care on his immediate family, who therefore seek to conveniently place him out of the way. The former case is no more the family's responsibility than it would be if the individual were a convicted criminal, while the latter case is no more society's responsibility than if the individual were infirm for any other cause, where, in either case, ability to support is not an issue. *Department of Welfare v Brock*³⁷ has held that where a convict in the penitentiary was found insane and transferred to the state hospital, the duty to support remains the obligation of the state.

It would appear reasonable to impose no obligation upon the responsible person which might ultimately result in pauperizing him and thus creating a second public charge. This danger exists particularly in the case of aged or infirm persons possessing some capital. The rule adopted in California and other states requiring the child to contribute to the impecunious parent's support on a sliding

34. 89 PA. L. J. 285.

35. *Comw. of Pa. v. Carr*, 10 N.J. Super. 592, 77 A.2d 515 (1950).

36. *Martin v. Beuter*, 79 W. Va. 604, 91 S.E. 452 (1917); *In re Hahto's Estate*, *supra*.

37. 306 Ky. 243, 206 S.W.2d 915 (1947).

scale, based on the child's income, before the parent qualifies for old age pension benefits, commends itself as a good beginning in establishing a workable formula. Hand in hand with the establishment of a justly administered scale of contributions should go a thorough screening of applicants to state mental hospitals, excluding certain categories of individuals, such as the aged, the disabled, and the indigent, for whom the state makes other provision.

It is concluded that the code provisions under consideration implement the undoubted right of the state to recover whatever it can of the sums necessarily expended for the support of those who require institutional care. The right of the state exists when the individual becomes a state charge on any basis other than that of the convenience of the state; e.g., confinement for the protection of society. It should be exercised, therefore, in the light of such basic distinction.

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