



1977

# Comments: Decriminalization of Non-Support in Maryland — a Re-Examination of a Uniform Act Whose Time Has Arrived

William F. Ryan Jr.  
*University of Baltimore School of Law*

Follow this and additional works at: <http://scholarworks.law.ubalt.edu/ublr>



Part of the [Law Commons](#)

### Recommended Citation

Ryan, William F. Jr. (1977) "Comments: Decriminalization of Non-Support in Maryland — a Re-Examination of a Uniform Act Whose Time Has Arrived," *University of Baltimore Law Review*: Vol. 7: Iss. 1, Article 5.  
Available at: <http://scholarworks.law.ubalt.edu/ublr/vol7/iss1/5>

This Article is brought to you for free and open access by ScholarWorks@University of Baltimore School of Law. It has been accepted for inclusion in University of Baltimore Law Review by an authorized administrator of ScholarWorks@University of Baltimore School of Law. For more information, please contact [snolan@ubalt.edu](mailto:snolan@ubalt.edu).

## DECRIMINALIZATION OF NON-SUPPORT IN MARYLAND — A RE-EXAMINATION OF A UNIFORM ACT WHOSE TIME HAS ARRIVED

*After reviewing Maryland law providing criminal penalties for the failure to support a spouse, child, or parent-in-need, the author presents a better way to deal with non-support — enactment of the Uniform Civil Liability for Support Act.*

### I. INTRODUCTION

On September 14, 1977, the Maryland Court of Special Appeals removed one side of the criminal non-support triangle by its decision in *Coleman v. State of Maryland*.<sup>1</sup> The court held unconstitutional Article 27, section 88(a) of the Maryland Code which made it a crime for a husband not to support his wife.<sup>2</sup> Child non-support<sup>3</sup> and non-support of a parent-in-need,<sup>4</sup> the other sides of the triangle, remained crimes under other sections of this somewhat outmoded statute.

Although the statute admittedly could be amended<sup>5</sup> to conform to article 46 of the Declaration of Rights (hereinafter the "Equal Rights Amendment") by substituting "person" for "man," thereby providing the required mutuality in spousal support, the *Coleman* decision provides a timely opportunity to decriminalize non-support.

In recent years, almost perennial efforts to decriminalize non-support have been introduced in the Maryland General Assembly.<sup>6</sup> These efforts have gained increasing support. In 1976, the Committee on Juvenile and Family Law and Procedure of the Maryland Judicial Conference proposed decriminalization of non-support, and the Committee's proposal was approved by the Maryland Judicial Conference on April 24, 1976.<sup>7</sup> In addition, decriminalization has been supported by some members of the Council of the Juvenile and Family Law Section of the Maryland State Bar Association.<sup>8</sup>

The over-crowded criminal calendar alone provides sufficient reason to decriminalize non-support. The burden which non-support

---

1. 37 Md. App. 322, 377 A.2d 553 (1977).

2. The basis for the court's holding was that article 46 of the Maryland Declaration of Rights, approved by the voters in 1972, provides that equality of rights under the law shall not be abridged or denied because of sex.

3. MD. ANN. CODE art. 27, § 88(b) (Supp. 1977).

4. *Id.* art. 27, § 104 (1976).

5. See Law of April 29, 1977, ch. 213, 1977 Md. Laws 1852, by which the general assembly repealed and reenacted article 27, § 88(a) to eliminate desertion of a wife as a crime, but left non-support of a wife standing in spite of the Equal Rights Amendment.

6. See H. 1532 (1977); S. 561 (1975); H. 774 (1974); H. 899 (1973); and H. 1235 (1972).

7. Transcript of Proceedings, 1976 Maryland Judicial Conference, April 24, 1976, p. 10.

8. Conversation with James G. Beach, Jr., Esq., Chairman of the MSBA Section of Juvenile and Family Law, in Baltimore City (October 28, 1977).

cases are currently placing on the criminal justice system is illustrated by the fact that during Fiscal Year 1977, Maryland criminal non-support cases totalled 2,284, equal to 5.29 percent of criminal filings.<sup>9</sup> The state public defender has noted that his office handled approximately 2,000 criminal non-support cases during Fiscal Year 1977 and that in Part 8 of the Criminal Court of Baltimore three days a week are set aside for non-support cases.<sup>10</sup>

In addition to lessening this burden on the criminal calendar, decriminalization would remove the criminal stigma now imposed on persons found to owe a duty of support.<sup>11</sup> Judges seem reluctant to impose imprisonment, the only realistic sanction the statute provides, not only because imprisonment exacerbates underlying conflicts within the family, but also because incarceration both imperils employment and is counterproductive of support.

The purpose of this Comment is to re-examine one alternative to criminal non-support available since 1954, when the National Conference of Commissioners on Uniform State Laws approved the Uniform Civil Liability for Support Act<sup>12</sup> (hereinafter called "the Uniform Act"). Endorsement by the American Bar Association followed in the same year, and various versions have been enacted in four states.<sup>13</sup> The Uniform Act complements the Uniform Reciprocal Enforcement of Support Act, adopted in Maryland in 1951.<sup>14</sup>

The principal operative sections of the Uniform Act are sections 2, 3, 6, 8 and 10. The remaining sections are definitional, or are "boilerplate" provisions for jurisdiction and appeals, or are similar to provisions found in other sections of the Maryland Code.<sup>15</sup>

The remainder of this Comment examines the operative sections of the Uniform Act from the standpoint of Maryland statutory and case law.

---

9. Statistical Abstract, Annual Report of the Maryland Judiciary, 1976-1977, Table C-1, p. 34.

10. Conversation with Alan H. Murrell, Esq., State Public Defender, in Baltimore City (October 21, 1977).

11. See *Ewell v. State*, 207 Md. 288, 114 A.2d 66 (1955) (at common law, non-support not a criminal offense).

12. 9 UNIFORM LAWS ANN. 135 (1973).

13. CAL. CIV. CODE §§ 241-254 (West) (Supp. 1977); ME. REV. STAT. tit. 19 §§ 441-453 (1964 & Supp. 1976-77); N.H. REV. STAT. ANN. § 546-A:1 to -A:12 (1974); UTAH CODE ANN. § 78-45-1 to -45-13 (Supp. 1975).

14. MD. ANN. CODE art. 89C (1969 & Supp. 1977).

15. For example, § 12 (Severability) of the Uniform Act is substantially the same as MD. ANN. CODE art. 1, § 23 (1976).

## II. UNIFORM ACT: SECTIONS 2 & 3 (MAN'S/WOMAN'S DUTY OF SUPPORT)

The Uniform Act places spousal, child and parent-in-need support on an equal footing in a simple format.

Section 2 of the Uniform Act reads as follows:

“§ 2. (Man's Duty of Support)

Every man shall support his wife, and his child [; and his parent when in need].”<sup>16</sup>

Section 3 of the Uniform Act reads as follows:

“§ 3. (Woman's Duty of Support)

Every woman shall support her child, and her husband [and her parent] when in need.”<sup>17</sup>

Two states<sup>18</sup> have merged sections 2 and 3 in adopting the Uniform Act. This is a precedent worth considering, in view of Maryland's enactment of the Equal Rights Amendment.

An examination of whether the support provisions of the Uniform Act are in accord with Maryland law follows: spousal support is discussed in subsection A, child support in subsection B, and support of a parent-in-need in subsection C.

### A. *Spousal Support*

The duty of a husband to support his wife is well settled in Maryland. At common law, a husband owes a legal duty to support his wife.<sup>19</sup> This duty obligates a husband to furnish his wife with necessities, according to his means and station in life.<sup>20</sup> In addition to the common law obligation, a husband is also under a statutory obligation to provide support for his wife.<sup>21</sup>

Although there are no Maryland appellate decisions expressly recognizing that a wife owes a corresponding duty of support to her husband, recent statutory enactments have established a mutual spousal obligation of support. The first step toward recognition of this concept occurred with the 1972 passage of the Equal Rights

16. 9 UNIFORM LAWS ANN. 135, 136 (1973).

17. *Id.* at 138.

18. N.H. REV. STAT. ANN. § 546-A:2 (1974); CAL. CIV. CODE § 242 (Supp. 1977).

19. *See Roberts v. Roberts*, 160 Md. 513, 154 A. 95 (1931); *Hood v. Hood*, 138 Md. 355, 113 A. 895 (1921).

20. The Maryland Court of Appeals in *Ewell v. State*, 207 Md. 288, 292, 114 A.2d 66, 69 (1955), equated the husband's obligation of support to the furnishing of necessities to the wife. If he did not, her remedy was to purchase the necessities on his credit.

21. MD. ANN. CODE art. 45, § 21 (1971).

Amendment, which established that equality of rights under the law shall not be abridged or denied because of sex.

Following enactment of the Equal Rights Amendment, an alimony award to a wife was challenged by her husband in *Minner v. Minner*<sup>22</sup> on the ground that Article 16, Section 5(a) of the Maryland Code violated the Equal Rights Amendment by providing for an award of alimony to a wife without making any provision for an award of alimony to a husband. Although the Maryland Court of Special Appeals affirmed the alimony award to the wife, it stated that in a proper case alimony could be awarded to a husband. In *Minner*, however, the husband had not sought alimony.

The general assembly subsequently amended Article 16, Section 3<sup>23</sup> and Section 5(a),<sup>24</sup> establishing in 1975 a mutual spousal support obligation in cases where a divorce is decreed, and extended this in the following year to include alimony, alimony *pendente lite* and counsel fees.

During the 1976 legislative session, the general assembly also added Section 5B to Article 16 of the Maryland Code,<sup>25</sup> to provide that a court may order a lien on the earnings of a party defaulting in payment of court ordered spousal or child support. Use of the word "spousal" further indicates the legislature's intent to place a wife's obligation to support her husband on an equal footing with a husband's duty to support his wife. For some reason, Article 45, Section 21, which is the civil statutory basis for a husband's support of his wife, remained untouched.

The concept of mutuality of support came to fruition on September 14, 1977, when the Maryland Court of Special Appeals decided *Coleman*. In that case, the court declared Article 27, Section 88(a) of the Maryland Code unconstitutional as violative of the Equal Rights Amendment in that the statute made it a crime for a husband to fail to support his wife, but did not make it a crime for a wife to fail to support her husband.

Taken together, enactment of the Equal Rights Amendment in 1972, the amendments to Article 16 in 1975 and 1976, and the *Coleman* decision establish that each spouse owes a duty to support the other under Maryland law.

### *B. Child Support*

Sections 2 and 3 of the Uniform Act impose upon both a man and a woman the obligation to support their child. This duty is in accord with Maryland law.

---

22. 19 Md. App. 154, 310 A.2d 208 (1973).

23. Law of April 22, 1975, ch. 332, 1975 Md. Laws 2119.

24. Law of May 4, 1976, ch. 440, 1976 Md. Laws 1161.

25. Law of May 4, 1976, ch. 496, 1976 Md. Laws 1311.

Under the common law, a father has a legal obligation to support his minor children.<sup>26</sup> There is also, in Maryland, civil<sup>27</sup> and criminal<sup>28</sup> statutory liability for support of a minor child. The Parent and Child Article<sup>29</sup> provides that a father and mother are joint natural guardians of their children under eighteen years of age and are jointly and severally charged with their support. The paternity statute provides that an order declaring a defendant to be the father of a child shall also provide for the support and maintenance of the child, and may also provide for contribution by the mother.<sup>30</sup>

Although at common law there was no obligation on the part of a parent to support an adult child,<sup>31</sup> the criminal non-support statute was amended in 1947 to establish the obligation of any person who has an adult child unable to support himself by reason of mental or physical infirmity to provide the child with necessary shelter, food, care and clothing if the parent is possessed of, or is able to earn, means sufficient to do so.<sup>32</sup> The paternity subtitle contains similar provisions.<sup>33</sup>

Notwithstanding specific statutory language<sup>34</sup> jointly and severally charging a father and mother with the support of a minor child, until recently the Maryland courts followed the common law rule announced by the Maryland Court of Appeals in *Alvey v. Hartwig*<sup>35</sup> that the father is primarily liable for the support of his child. On June 30, 1977, in *Rand v. Rand*,<sup>36</sup> the Maryland Court of Appeals abrogated the common law rule and advanced the concept of mutuality of spousal support by holding that the parental obligation for child support is not primarily an obligation of the father, but is one shared by both parents in accordance with their respective financial resources. In placing child support on an equal basis, the court stated that

The common law rule is a vestige of the past; it cannot be reconciled with our commitment to equality of the sexes. Sex of the parent in matters of child support cannot be a factor

26. See *Blades v. Szatia*, 151 Md. 644, 135 A. 841 (1927).

27. MD. ANN. CODE art. 72A, § 1 (Supp. 1977); MD. ANN. CODE art. 16, § 66H (1973 & Supp. 1977).

28. *Id.* art. 27, § 88(b) (Supp. 1977).

29. *Id.* art. 72A, § 1 (Supp. 1977).

30. *Id.* art. 16, § 66H (a), (c) (1973 & Supp. 1977).

31. *Borchert v. Borchert*, 185 Md. 586, 590, 45 A.2d 463, 465 (1946).

32. Law of March 15, 1947, ch. 113, 1947 Md. Laws 164 (codified at MD. ANN. CODE art. 27, § 97 (1976)). See *Smith v. Smith*, 227 Md. 355, 176 A.2d 862 (1962) (holding that under this statute a father had an obligation to support his adult epileptic son).

33. MD. ANN. CODE art. 16, § 66H(a)(1) (Supp. 1977).

34. *Id.* art. 72A, § 1 (Supp. 1977).

35. 106 Md. 254, 67 A. 132 (1907).

36. 280 Md. 508, 374 A.2d 900 (1977); *Rand* was closely followed on July 28, 1977, by the Maryland Court of Special Appeals decision in *German v. German*, 37 Md. App. 120, 376 A.2d 115 (1977).

in allocating this responsibility. Child support awards must be made on a sexless basis.<sup>37</sup>

Thus, Maryland law with respect to civil liability for child support appears to be squarely in accord with the parental civil liability for child support provisions of the Uniform Act.

In addition, Article 27, Section 88(b) imposes criminal penalties for non-support of a child. Besides the strong policy arguments for de-criminalizing non-support, another, and possibly compelling, reason suggests that repeal of this statute may be prudent. In *Williams v. Williams*<sup>38</sup> the Maryland Court of Special Appeals held that the Parent and Child Article<sup>39</sup> applies only to children born in wedlock, and that the paternity subtitle<sup>40</sup> is the exclusive basis for enforcing the support obligation of the parents of a child born out of wedlock. From this it seems clear that the object of Article 27, Section 88(b) is to provide directly for unsupported legitimate children.<sup>41</sup> The former statute, making bastardy a criminal offense,<sup>42</sup> also contained provisions for the support and education of illegitimate children. The failure of the general assembly to repeal Article 27, Section 88(b) in 1963 when it repealed the Bastardy and Fornication Article may, curiously, have violated the equal protection clause<sup>43</sup> of the fourteenth amendment by leaving standing criminal sanctions for non-support of children on the basis of legitimacy. As a result, despite the fact that parents of legitimate and illegitimate children have identical duties of support toward their children,<sup>44</sup> only parents of legitimate children appear to be subject to criminal liability for non-support.

In determining the validity of state statutes under the equal protection clause, the statutory classification must, at a minimum, bear some rational and reasonable relationship to a legitimate state purpose.<sup>45</sup> While it may be reasonable to subject all parents who fail to support their children to criminal liability, it is questionable whether it is rational to subject only the class of parents of legitimate children to criminal liability when parents of both

---

37. 280 Md. 508, 516, 374 A.2d 900, 905 (1977).

38. 18 Md. App. 353, 306 A.2d 564 (1973).

39. MD. ANN. CODE art. 72A (Supp. 1977).

40. *Id.* art. 16, § 66A-P (1973 & Supp. 1977).

41. *See State v. James*, 203 Md. 113, 100 A.2d 12 (1953).

42. MD. ANN. CODE art. 12, Bastardy and Fornication, repealed by Law of April 30, 1963, ch. 722, 1963 Md. Laws 1497, which also enacted MD. ANN. CODE art. 16, § 66A-P. *See Corley v. Moore*, 236 Md. 241, 203 A.2d 697 (1964).

43. U.S. CONST. amend. XIV.

44. MD. ANN. CODE art. 16, § 66A (1973) assigns to parents of illegitimate children the same support responsibilities as are assigned to parents of legitimate children by MD. ANN. CODE art. 72A, § 1 (Supp. 1977).

45. *See, e.g., Gomez v. Perez*, 409 U.S. 535 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164 (1972).

legitimate and illegitimate have identical support responsibilities.<sup>46</sup> Repeal of the criminal non-support statute and enactment of the Uniform Civil Liability for Support Act would restore the former equality in application of the non-support law as between parents of legitimate and illegitimate children, on the basis of purely civil liability.

### *C. Support of Parents-In-Need*

Sections 2 and 3 of the Uniform Act provide (in brackets) for the support of parents-in-need. This also is in accord with Maryland law, which since 1916 has recognized a legal obligation to support a parent who is destitute and unable to support himself or herself because of old age, infirmity, or illness.<sup>47</sup> The Maryland statute imposes criminal penalties on any person possessed of means to do so who fails to support a destitute parent. Repeal of this statute and reenactment in the form of the Uniform Act would continue this liability on a civil basis, and undoubtedly would result in more frequent enforcement of this seldom invoked obligation.

## III. UNIFORM ACT: SECTION 6 (AMOUNT OF SUPPORT)

Section 6 of the Uniform Act reads as follows:

### § 6. (Amount of Support)

When determining the amount due for support the court shall consider all relevant factors including but not limited to:

- (a) the standard of living and situation of the parties;
- (b) the relative wealth and income of the parties;
- (c) the ability of the obligor to earn;
- (d) the ability of the obligee to earn;
- (e) the need of the obligee;
- (f) the age of the parties;
- (g) the responsibility of the obligor for the support of others.<sup>48</sup>

The section seems largely declaratory of Maryland law as recently expressed in *Rand*, and particularly in *German v. German*, in which the Maryland Court of Special Appeals enumerated the

46. In this regard it is significant to note that during 1975, 47.2% of the live births in Baltimore City were illegitimate. See VITAL STATISTICS 1975, BALTIMORE, MARYLAND 11 (December, 1976, Baltimore City Health Department, Bureau of Biostatistics).

47. Law of April 18, 1916, ch. 637, 1916 Md. Laws 1320 (codified at MD. ANN. CODE art. 27, § 104 (1976)).

48. 9 UNIFORM LAWS ANN. 135, 140 (1973).



factors to be considered in determining the amount of support payments, stating:

The factors which the chancellor should consider include the financial circumstances of the parties, their age and physical condition, their ability to work, the family's station in life, and the expense of educating the children. The supporting parents' financial ability and the needs of the children are the controlling factors.<sup>49</sup>

The factors set forth in Section 6 of the Uniform Act appear to be entirely consistent with those currently considered in Maryland.

#### IV. UNIFORM ACT: SECTION 8 (ENFORCEMENT OF RIGHTS)

Section 8 of the Uniform Act reads as follows:

The obligee may enforce his right of support against the obligor and the state [or any political subdivision thereof] may proceed on behalf of the obligee to enforce his right of support against the obligor. Whenever the state [or a political subdivision thereof] furnishes support to an obligee, it has the same right as the obligee to whom the support was furnished, for the purpose of securing reimbursement and of obtaining continuing support.<sup>50</sup>

These provisions appear to be wholly consistent with Maryland law, as embodied in the Child Support Enforcement subtitle of the Social Services Administration Article<sup>51</sup> and the Support of Dependents Article.<sup>52</sup>

Enactment of the Uniform Act would, it is submitted, have no practical effect on the collection of support money as, in the final analysis, the same sanction would apply in the enforcement of a civil support order in equity as now applies in enforcement of a criminal order for support. Decriminalizing non-support, however, would obviate the necessity of procuring renewal of a criminal order for support every three years, as a comparable civil support order in equity not only provides the same sanction after the fact, but also continues.

---

49. 37 Md. App. 120, 121-22, 376 A.2d 115, 117 (1977).

50. 9 UNIFORM LAWS ANN. 135, 141 (1973).

51. MD. ANN. CODE art. 88A, § 59 (Supp. 1977).

52. *Id.* art. 89C (1969 & Supp. 1977).

V. UNIFORM ACT: SECTION 10 (EVIDENCE OF HUSBAND AND WIFE)

Section 10 of the Uniform Act reads as follows:

§ 10. (Evidence of Husband and Wife)

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this act. Husband and wife are competent witnesses to testify to any relevant matter, including marriage and parentage.<sup>53</sup>

This section is substantially similar to Section 21 of the Uniform Reciprocal Enforcement of Support Act<sup>54</sup> adopted in Maryland in 1951, and thus appears to be consistent with Maryland law.

Although Section 9-105 of the Courts and Judicial Proceedings Article of the Code renders a spouse incompetent to disclose "any confidential communication between the spouses occurring during their marriage", the fact of spousal non-support is no more a "confidential communication" than is, for example, assault and battery; and both are frequently alleged in bills for divorce or alimony. In *Raymond v. State ex rel. Younkens*,<sup>55</sup> a criminal case involving assault and battery by a husband on his wife, the court held that the predecessor statute did not apply, and that the wife was competent to testify to the offense committed against her by her husband. Moreover, in the recent case of *Harris v. State*,<sup>56</sup> the Maryland Court of Special Appeals held, in considering on appeal whether the trial judge erred in admitting into evidence alleged confidential communications between the appellant and his wife, that the spouse/incompetency rule<sup>57</sup> was inapplicable when the confidential communication constitutes a threat or crime against the other spouse, and that in those situations the statute itself is rendered inapplicable.

---

53. 9 UNIFORM LAWS ANN. 135, 142 (1973).

54. MD. ANN. CODE art. 89C, § 21 (1969 & Supp. 1977).

55. 195 Md. 126, 72 A.2d 711 (1950).

56. 37 Md. App. 180, 376 A.2d 1144 (1977).

57. MD. CTS. & JUD. PROC. CODE ANN. § 9-105 (1974).

## VI. CONCLUSION

Re-examination of the Uniform Civil Liability for Support Act indicates that its terms are fully consistent with Maryland law, and that it provides a simple vehicle for effectuating modern and comprehensive civil liability for support of spouses, children and parents-in-need, readily available for adaptation in the event the general assembly should conclude that the time has come to decriminalize non-support.

*William F. Ryan, Jr.*