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Criminal Law - Requiring Citizens to Aid a Peace Officer

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CONCLUSION

There is a paramount need for proper seat belt legislation. The existing statutes, enacted by less than half of our fifty states, have not met the urgency of the situation. Except for certain provisions of a few statutes, the legislatures have not proceeded far enough.[48]

A comprehensive, effective seat belt statute does not presently exist. Such an enactment would insure that all occupants of every motor vehicle are afforded the protection of seat belts. In addition, this model legislation would establish quality standards for the belts and provide penalties in such manner that the statute would realize its protective purpose.

James Nolan

CRIMINAL LAW–REQUIRING CITIZENS TO AID A PEACE OFFICER

The power of the sheriff to summon private citizens to his assistance was first granted by English statutes dealing with the suppression of unlawful assemblies and the pursuit of felons.[1] From these statutes the authority of the sheriff to summon the *posse comitatus* was ultimately developed.[2] At common law it was held that every person who refused to assist an officer in the execution of his duty was guilty of a common law misdemeanor.[3] This doctrine was applicable only in cases involving breach of the peace, where there existed a reasonable necessity for requesting such aid and where the person summoned was not prevented from assisting by any physical incapacity or legal excuse.

While primarily legal in nature, some courts have recognized that the obligation of private citizens to aid peace officers has strong moral overtones. In *Krueger v. State*,[4] the decedent, who had voluntarily responded to a call for assistance by a marshall's deputy, was killed in a gun battle between the defendants and the posse. In rejecting the defendant's contention that the decedent lacked authority to assist the marshall because he had not been formally summoned, the court expressed the opinion that anyone who responded to the marshall's request was authorized to assist him

[48] Some legislatures seem reluctant to proceed at all. Seat belt legislation was proposed, but not enacted, in the legislatures of the following states in 1963 and 1964: Alaska, Alabama, Arkansas, Arizona, Colorado, Florida, Iowa, Kansas, Kentucky, Nevada, New Hampshire, North Dakota, Pennsylvania, South Dakota and Texas.

[1] 1 HOLDSWORTH, HISTORY OF ENGLISH LAW § 294 (4th Ed. 1931); 1 BLACKSTONE'S COMMENTARIES § 343 (Chitty Ed. 1836).

[2] HOCHHEIMER, CRIMINAL LAW § 115 (1911); IV BLACKSTONE'S COMMENTARIES § 122 (Lewis Ed. 1902).

[3] *Re:* Quales, 158 U.S. 532 (1895); Comfort v. Commonwealth, 5 Wharton 437 (Pa. 1840); PERKINS, CRIMINAL LAW 877 (1957).

[4] 171 Wis. 566, 177 N.W. 917 (1926).

and that a formal request was unnecessary. In addition the court held that anyone who had knowledge of the call for assistance was duty bound to respond. The court stated that while there existed no penalty in Wisconsin at that time for refusing to assist the marshall, this obligation was a "moral duty incident to citizenship."[5]

Following this line of reasoning, the Attorney General of Maryland stated in a formal opinion that, because the peace officer is constantly being called upon to keep the peace and protect the lives and property of private citizens, he should be entitled to the assistance of his fellow citizens, both as a matter of law and as a moral duty on the part of such citizens.[6]

By statute, forty-six states have specifically recognized the power of the sheriff to request the assistance of a private citizen or to call a *posse comitatus*.[7] Forty-two of these states have imposed sanctions on those who refuse such requests.[8] It is the purpose of this note to compare and

[5] *Id.* at 583, 177 N.W. at 924.

[6] Baltimore Daily Record, Aug. 7, 1964, p. 4, col. 2; ___Opinions of Maryland Attorney General___ (1964).

[7] ALA. CODE ANN. § 14-403, § 14-404, § 15-156 (Supp. 1963); ALASKA STAT. ANN. § 11.30.200, § 12.25.090 (Supp. 1962); ARIZ. REV. STAT. ANN. § 13-542, § 13-1410 (Supp. 1963); ARK. STAT. ANN. § 42-202, § 42-204, § 42-208, § 43-415 (Supp. 1963); CAL. PEN. CODE § 150, § 839, (Supp. 1963); COLO. REV. STAT. § 40-7-49 (Supp. 1961); CONN. STAT. ANN. § 6-31, § 53-173 (Supp. 1963); DEL. CODE ANN. tit. 10 § 2723 (Supp. 1962); FLA. STAT. § 843.06, § 901.18 (Supp. 1963); GA. CODE ANN. § 27-206 (Supp. 1963); IDAHO CODE ANN. § 18-707, § 19-606 (Supp. 1961); ILL. REV. STAT. Ch. 38 § 31-8, § 107-8 (Supp. 1963); IND. ANN. STAT. § 9-10-12, § 10-1006 (Supp. 1964); IOWA CODE ANN. § 742.2, § 742.3, § 742.5 (Supp. 1963); KAN. GEN. STAT. ANN. § 13-514 (Supp. 1961); KY. REV. STAT. § 70.060, § 432.530 (Supp. 1962); LA. REV. STAT. § 15.65, § 15.65-1, (Supp. 1962); ME. REV. STAT. ch. 89 § 201, ch. 135 § 19 (Supp. 1954); MASS. GEN. LAWS ANN. § 37:13, § 268:24 (Supp. 1963); MICH. STAT. ANN. tit. 27 § 218, tit. 28 § 751 (Supp. 1963); MINN. STAT. ANN. § 629.403 (Supp. 1964); MISS. CODE ANN. § 2468 (Supp. 1962); MO. ANN. STAT. § 542.170, § 542.200, § 542.210, § 544.230 (Supp. 1963); MONT. REV. CODES ANN. § 16-2702, § 94-35-177, § 94-5301 (Supp. 1963); NEB. REV. STAT. § 23-1704, § 28-728, § 28-805 (Supp. 1963); NEV. REV. STAT. § 199.420 (Supp. 1963); N.H. REV. STAT. ANN. § 594:6 (Supp. 1963); N.M. STAT. ANN. § 39-1-8, § 40A-22-2 (Supp. 1953); N.Y. JUDICIARY CODE § 400, N.Y. PEN. CODE § 1848, § 1849 (Supp. 1963); N.C. GEN. STAT. § 14-224, § 15-45 (Supp. 1963); N.D. CENT. CODE ANN. § 12-17-02, § 12-17-04 (Supp. 1963); OHIO REV. CODE ANN. § 2833, § 2917.32, § 4386 (Supp. 1963); OKLA. STAT. ANN. tit. 19 § 516, tit. 21 § 537, tit. 22 § 91, § 181 (Supp. 1963); ORE. REV. STAT. § 93-9-38 (Supp. 1947) § 162.530, § 206.050 (Supp. 1963); PA. STAT. ANN. tit. 18 § 4313, § 4314 (Supp. 1963); R.I. GEN. LAWS ANN. § 42-29-25 (Supp. 1963); S.C. CODE § 53-199 (Supp. 1963); S.D. CODE tit. 34 § 1601 (Supp. 1960); TENN. CODE ANN. § 8-822, § 39-3105 (Supp. 1964); TEXAS CIVIL STAT. ANN. tit. 12 § 6876, § 6886 (Supp. 1963); UTAH CODE ANN. § 76-28-57, § 77-5-1 (Supp. 1963); VT. STAT. ANN. tit. 24 § 300, § 301 (Supp. 1963) VA. CODE ANN. § 15-514, § 18-301 (Supp. 1964); WASH. REV. CODE ANN. § 9.69.030, § 9.69.050 (Supp. 1963); W. Va. Code § 56-3-18, § 61-5-14 (Supp. 1964); WIS. STAT. ANN. § 59:24, § 946:40 (Supp. 1964); WYO. STAT. ANN. § 6-181, § 6-182 (Supp. 1963).

[8] Those four states which do not impose sanctions for refusing assistance are Alabama, Deleware, Mississippi and South Dakota. While Maryland is one of the states which has not enacted any statutes on this point, the Attorney General of Maryland

analyze this type of statute in regard to such factors as who may be summoned, possible civil liability of those summoned and whether there exist any defenses for refusing to aid an officer. The note will also examine the problems faced by the legislature in determining the nature of the sanction to be imposed.

WHO MAY BE SUMMONED

The statutes all identify those persons who may be summoned to assist an officer or to join a *posse comitatus*. In nine states, only males over eighteen may be called.[9] While the other states do not place an age limit on those who may be summoned, they require, in essence, that anyone called must assist. Obviously, when a person is called upon by an officer, he may be required to exert various degrees of physical force. It is reasonable to assume that older persons might well be unable to assist in situations where physical force is required to subdue an offender or to quell a riot. Louisiana, recognizing the existence of such situations, has provided that only persons of ages over eighteen and under forty-five may be summoned.[10] Those states which have utilized a lower age limit have tacitly recognized the fact that persons below a given age are not capable of reasonably assisting an officer. Because elderly persons are not generally able to render such assistance as could a person of a more vigorous age, the legislatures of the various states would be wise to follow Louisiana's lead and affix an upper age limitation to their statutes.

SANCTIONS

A wide variety of sanctions have been imposed by the legislatures of the various states, ranging from small fines to imprisonment.[11] The fines of $200 and $500 which have been imposed by Wyoming[12] and Vermont[13] seem to be about average.

Because of the peculiar nature of the obligation, the type of sanction imposed should not be de-emphasized. By imposing an excessive penalty the legislature is in effect attempting to compel an individual to perform

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has expressed the opinion that the duty to aid a peace officer was part of the state's common law; Baltimore Daily Record, Aug. 7, 1964, p. 4, col. 2.

[9] Arizona, Colorado, Idaho, Illinois, Louisiana, Montana, Nevada, Utah and Wyoming limit those who may be called upon to aid an officer or to join a *posse comitatus* to males over eighteen.

[10] LA. REV. STAT. § 15.65.1 (Supp. 1962).

[11] For example, Kentucky imposes only a nominal fine of $15, while states such as Arizona and California impose fines of up to $1,000. Virginia prescribes imprisonment of six months and a fine, while Michigan and New York, among other states, make refusal to assist a misdemeanor under state law.

[12] WYO. STAT. ANN. § 6-182 (Supp. 1963).

[13] VT. STAT. ANN. tit. 24 § 301 (Supp. 1963).

a moral act which he may not wish to perform. Conversely, if the penalty is too light, citizens might get the impression that the legislature imposed only a nominal sanction because the duty was unimportant. If the courts were also to interpret the duty as unimportant, then a situation could result wherein these statutes would be ineffective no matter what they provided. If the courts felt the duty to be unimportant, and local prosecutors agreed, they might well elect not to prosecute for violations of the statute.[14] Therefore, since a statute is only as effective as the enforcement behind it, the legislatures should provide a sanction strict enough to discourage non-compliance with its provisions.

POSSIBLE CIVIL LIABILITY

Most statutes fail to answer the question of whether a person aiding a peace officer may incur civil liability to the arrestee. Illinois has provided that if the person rendered aid which was reasonable under the circumstances, he would not incur civil liability.[15] This statute would seem to follow the reasoning adopted by the majority of the courts with similar problems.[16] Those courts have stated that if a person renders aid to a known officer which is reasonable under the circumstances, he incurs no liability to the arrestee, even though the officer may have exceeded his authority or acted without justification in regard to the arrestee.

In *Dietrichs v. Shaw*,[17] an attempt was made to distinguish between situations where the officer was and was not known as such to the person summoned. Upholding the conviction of parties who assisted an "officer" acting without authority, the court held that persons aiding a "supposed officer" (one who is not known as a peace officer to the person summoned) are bound to know whether he is authorized to act. If he be not authorized, then those assisting him would also lack authority to act.[18]

[14] Letter dated August 31, 1964, from Edward J. Egan, First Assistant State's Attorney of Cook County, Illinois, addressed to DE PAUL LAW REVIEW and on file in De Paul University Law Library. The letter states that while the State's Attorney's office keeps no records of such prosecutions, no one in that office could remember any such prosecutions in the last 25 years.

[15] ILL. REV. STAT. ch. 38 § 107-8 (Supp. 1963).

[16] Kagel v. Brugger, 19 Wis. 2d 1, 119 N.W.2d 394 (1963); Peterson v. Robison, 43 Cal. 2d 690, 277 P.2d 19 (1954); Moyer v. Foster, 205 Okla. 415, 234 P.2d 415 (1951); Moyer v. Mieir, 205 Okla. 405, 238 P.2d 338 (1951); State v. Parker, 355 Mo. 916, 199 S.W.2d 338 (1947); Mackie v. Ambassador Hotel & Investment Co., 123 Cal. App. 215, 11 P.2d 3 (1932); Presley v. Ft. Worth & D.C. Ry. Co., 145 S.W. 669 (Tex. Civ. App. 1912); Commonwealth v. Sadowsky, 80 Pa. Super 496 (1923); Robinson v. State, 193 Ga. 77, 18 S.E. 1018 (1893); Firestone v. Rice, 71 Mich. 377, 38 N.W. 885 (1888). This view was also adopted by the RESTATEMENT, TORTS § 139 (2) §139(2) comment *d* (1939). *Contra,* Martin v. Houck, 141 N.C. 317, 54 S.E. 291 (1906); Pew v. Beckner, 3 Ind. 475 (1852).

[17] 43 Ind. 174 (1873).

[18] *Cf.* Hooker v. Smith, 19 Vt. 151 (1847); Oystead v. Shed, 12 Tying (Mass.) 505 (1815).

An interesting problem exists with regard to civil liability and the sanctions imposed for refusing to assist. It would seem a direct relationship might develop between civil liability and the sanction imposed. Should the sanction be too light, a person might tend more readily to accept a small fine than to possibly incur civil liability, either for failing to assist reasonably, or for acting without discovering the capacity or justification of the person requesting assistance. An associated problem exists concerning the steps a person must take to discover whether the person requesting assistance is in fact a peace officer. An example of this would be a situation where the officer is out of uniform, or where he may be so involved in apprehending an offender, that he could not take the time to identify himself. While there is no specific authority covering this point, undoubtedly, if the person acts reasonably under the circumstances in attempting to learn the officer's capacity, he should not be found civilly liable for any acts which he may perform.

These problems may be resolved by a clarification of the circumstances under which civil liability may result, for example, if the person rendering assistance acts in an unreasonable or wanton manner.[19] Another deterrent to inaction by citizens would be the provision of an effective sanction to discourage non-compliance with the assistance statute.

DEFENSES: REASONABLE GROUNDS FOR REFUSAL TO AID

Reasonable grounds for refusing to come to the assistance of an officer have been recognized in the statutes of only six states.[20] In addition, the statutes of eight states provide that only if one *wilfully* neglects or refuses to render assistance should he be punished.[21] The balance of the states which have enacted statutes make no mention of defenses. A possible reason for their failure to so do would seem to follow the reasoning of *Dougherty v. State*,[22] which held that the duty was of an absolute nature.[23] Nothwithstanding adherence to the "absolute duty theory," Arkansas has recognized that physical incapacity of the party summoned constitutes a valid defense.[24] By statute, Georgia has specifically recog-

[19] State v. Parker, 355 Mo. 916, 199 S.W.2d 338 (1947); People v. Brooks, 131 Cal. 311, 63 Pac. 464 (1901).

[20] Arkansas, Indiana, Kentucky, Oklahoma, Wisconsin and Wyoming recognize a reasonable cause for refusing.

[21] Iowa, New York, North Carolina, North Dakota, Oklahoma, Oregon, Tennessee and Washington punish those who wilfully neglect or refuse to render assistance to an officer.

[22] 106 Ala. 63, 17 So. 393 (1895).

[23] *Accord*, State v. Ditmore, 177 N.C. 592, 99 S.E. 368 (1919), Mitchell v. State, 12 Ark. 50, 50 Am. Dec. 253 (1851). *Cf.* Kindred v. Stitt, 51 Ill. 401 (1869).

[24] Greenwood v. Smothers, 103 Ark. 158, 146 S.W. 109 (1912).

nized that physical incapacity is a defense to a person summoned to quell mob violence.[25] While the *Dougherty* case determined that danger to the person summoned was not a valid defense, it would be reasonable for those states which recognize defenses to include danger to the person summoned, since they obviously did not intend the duty to be absolute.[26]

Another logical defense would be that the party summoned did not know that the person requesting assistance was a peace officer. However, with the exception of Illinois[27] and Wisconsin,[28] the statutes do not recognize it. Both Illinois and Wisconsin provide that only if the person summoned by a *known* peace officer refuses assistance shall he be punished. Again the problem is raised as to the extent to which a party must proceed to discover the authority of the officer.

In the light of the combined legal-moral nature of this duty, it follows that the duty should not be held as absolute, but that if reasonable grounds for refusal to assist exist, then one should not be punished under the statute.

CONCLUSION

An ideal statute defining the duty to aid a peace officer should take into account the age and sex of those who may be summoned, the nature of the sanction to be imposed as well as the problem of possible civil liability. It should also determine whether a reasonable ground for refusing is allowable as a defense and whether or not the person requesting assistance must be known as a peace officer to the party summoned.

Such a statute might provide that all persons above the age of 18, but below a certain age, *e.g.*, 50, may be called by a person whom they reasonably believe to be a peace officer. Further, it should be stated in the statute that one who assists will not incur liability if the aid rendered is reasonable under the circumstances. The concept that persons should not be punished for refusing assistance if a valid reason for doing so existed should be incorporated in the enactment. And finally, the sanction imposed should be one strict enough to discourage non-compliance.

Floyd Krause

[25] GA. CODE ANN. § 27-206 (Supp. 1963).

[26] Whether or not the duty is regarded as absolute, should the person responding to the call for assistance be injured or killed as a result of such response, it has generally been held that he or his estate may recover for such injuries. Blackman v. City of Cincinnati, 66 Ohio App. 495, 35 N.E.2d 164 (1941); Babington v. Yellow Taxi Corp., 250 N.Y. 14, 164 N.E. 726 (1928). *Cf.* Riker v. City of New York, 126 N.Y.S.2d 229 (1953). An example of a statute which allows such recovery may be found in ILL REV. STAT. ch. 24, § 1-4-5 (Supp. 1963).

[27] ILL. REV. STAT. ch. 38, § 31-8 (Supp. 1963).

[28] WIS. STAT. ANN. § 946.40 (Supp. 1961).