

Honorable T. J. S. Waxter, Director, Department of Public Welfare (cont'd)

By provision of Article 27, Section 89, of the Maryland Code, criminal prosecution is provided for desertion or non-support of wife or child. This is the section, along with others, used with great frequency in our criminal courts against husbands who have failed to provide support. Although the section has never been applied against the wife for failure to support a child, there does not seem to be anything in the language which would bar such prosecution for the section specifically applies to "any person", does not relate specifically to husbands alone and the use of the masculine pronoun in any statute does not bar the inclusion of the feminine gender. However, we are advised by the office of the State's Attorney for Baltimore City that there have been no prosecutions of a mother under this section and that they have hesitated to bring such prosecutions on the theory that in criminal cases statutes must be strictly construed in favor of the accused.

I also call to your attention Article 27, Section 97 which provides:

"any person having the care, custody or possession of any child under the age of 12 years who shall desert or abandon such child with the intent that it shall become a public charge, or without making provision of its proper support and maintenance for at least three years with some responsible person or institution duly authorized to take and care for infants * * *"

shall be guilty of misdemeanor punishable by a fine of \$100.00 or one year in jail.

The 1951 Legislature passed Senate Bill No. 400 which materially changes the provisions of the above sections and adds new sub-section (b) to Section 89. If signed by the Governor, this act will take effect on June 1, 1951, and will directly clarify the subject of discussion in this opinion. Section 89 (a) as re-enacted will provide penalties and provisions for support orders solely for desertion and non-support of a wife. Section 89 (b) will provide penalties and provisions for support orders against

"any parent who shall desert or wilfully neglect to provide for the support or maintenance of his or her minor child."

Section 97 is changed to provide for prosecution of any person deserting or abandoning any minor child; the phrase "under the age of 12 years" was stricken from the section. Incidentally either or both parents may be prosecuted for non-support of a mentally or physically infirm adult child under the provisions of Sections 97 A to 97 G, Article 27.

The reported cases of prosecution under these sections turn on questions of evidence and add nothing to the question of liability as to support.