

## FILIAL SUPPORT LAWS IN THE MODERN ERA: DOMESTIC AND INTERNATIONAL COMPARISON OF ENFORCEMENT PRACTICES FOR LAWS REQUIRING ADULT CHILDREN TO SUPPORT INDIGENT PARENTS

*Katherine C. Pearson*

*Family responsibility and support laws have a long but mixed history. When first enacted, policy makers used such laws to declare an official policy that family members should support each other, rather than draw upon public resources. This*

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Professor Katherine C. Pearson is a professor of law at the Pennsylvania State University Dickinson School of Law. She founded and directed the Elder Protection Clinic for Penn State, before moving more deeply into the research side of elder law. She is an affiliated faculty member of the John A. Hartford Center of Geriatric Nursing Excellence at Penn State University. Professor Pearson is a scholar of legal issues facing older adults, with an emphasis on interdisciplinary and comparative approaches to elder care. Her recent scholarship focuses on protection of older adults from abuse, including financial exploitation, regulation of continuing care retirement communities, and resource management. Professor Pearson has prepared numerous articles, speeches, policy briefs, and books, and is a widely cited authority on elder law issues. She has a B.A. from University of Arizona and a J.D. from University of Miami.

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*Article tracks modern developments with filial support laws that purport to obligate adult children to financially assist their parents if they are indigent or needy. Professor Pearson diagrams filial support laws that have survived in the twenty-first century and compares core components in the United States (including Puerto Rico) and post-Soviet Union Ukraine. While the laws are often similar in wording and declared intent, this Article demonstrates that enforcement practices are quite different among the two countries, even as both countries struggle with aging populations and recessions. In addition, Professor Pearson analyzes a potentially disturbing trend emerging in at least two U.S. states, most significantly Pennsylvania, where filial support laws are now a primary collection tool for nursing homes, with decisions against adult children running to thousands of dollars in retroactive "support." The Article closes with concerns for policy makers in any state or country considering filial support as an alternative or supplement to public funding for long-term care or health care for the elderly.*

## I. Introduction

In the United States, financial obligations under family law are primarily a matter for the states rather than the federal government, and the rules are usually provided by specific state statutes, rather than common law.<sup>1</sup> All fifty states have statutes that obligate certain adults to care for or financially support certain other family members.<sup>2</sup> For example, state laws in the United States routinely provide for awards of alimony among divorced or separated spouses (spousal support) and obligate noncustodial parents to pay support for their minor-aged children (child support).<sup>3</sup> In addition, in some instances, parents can also be obligated to pay support for adult-aged children, although usually that obligation is tied to a continuing disability that preexisted age eighteen, the usual age of emancipation.<sup>4</sup>

When asked by colleagues working in Ukraine to write an article on U.S. family law for Ukrainian lawyers and academics, the author recognized this was an opportunity to analyze an additional category of support obligation laws that exist in some but not all U.S. states,

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1. HOMER H. CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 250–58 (2d ed., West Publishing Co. 1988).

2. *Id.* at 250–85, 619–754 §§ 6,16,17 (discussing jurisdiction for divorce, alimony and child support).

3. *Id.*

4. *E.g.*, *Hastings v. Hastings*, 841 So. 2d 484 (Fla. Dist. Ct. App. 2003) (concluding there is a common law right of support for a dependent adult child, disabled since his minority); *see also* Sande L. Buhai, *Parental Support of Adult Children with Disabilities*, 91 MINN. L. REV. 710, 725–26 (2007).

and to compare these state laws to Ukrainian law.<sup>5</sup> State laws that obligate adult children to support their parents are sometimes called “parental support,” “family responsibility,” “family support,” or “filial support” laws,<sup>6</sup> and the latter title will be used in this Article. Slightly more than half of the American states (plus Puerto Rico, a U.S. territory) have statutes that in theory can be used to require adult children to provide financial support for their parents.<sup>7</sup>

The current filial support statutes in the U.S. can be traced back in time to poverty measures in the first American colonies and, earlier, to the system of “Poor Laws” enacted during the sixteenth century reign of Queen Elizabeth in England.<sup>8</sup> At one time as many as forty-five of the fifty U.S. states had filial support statutes.<sup>9</sup> In some instances, the laws created mutual financial assistance obligations, not only among adult children and parents, but also to and from grandparents.<sup>10</sup> England repealed its filial support provisions (requiring children to “relieve and maintain” their parents) entirely in 1948.<sup>11</sup> As this Article explains, many U.S. states also repealed filial support statutes as Medicaid became the dominant focus of relief for the poor.

Section II analyzes a typical, surviving filial support statute in the United States and compares it to filial support laws in Ukraine. Section III compares the current uses of the laws, looking at the trend

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5. This Article is an expansion on an article titled “Filial Support Laws in the United States and Ukraine: A Modern Comparison of Laws Requiring Adult Children to Support Indigent Parents,” to be published in the Ukrainian language.

6. See *infra* Table.

7. *Id.*

8. 43 Eliz. c. 2, 2 Eng. Stat. at L.702, sec. 7; see also *Carleson v. Superior Court of Sacramento County*, 100 Cal. Rptr. 635, 643 (Dist. Ct. App. 1972) (tracing the statutory origins of California’s public policy on filial support), *opinion vacated by Swoap v. Superior Court*, 10 Cal. 3d 490 (1973); Buhai, *supra* note 4, at 713.

9. Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 FAM. L.Q. 195, 196 (1992).

10. The statutory language involving grandparents was largely repealed in the mid-twentieth century. *E.g.*, *Commonwealth ex rel. Bradley v. Bradley*, 146 A.2d 147, 149 (Pa. Super. Ct. 1958) (discussing the 1948 amendment to Pennsylvania law eliminating support obligations for grandparents); see also KERMIT L. HALL ET AL., *AMERICAN LEGAL HISTORY* 45–46 (2d ed. 1996); WALTER I. TRATTNER, *FROM POOR LAW TO WELFARE STATE: A HISTORY OF SOCIAL WELFARE IN AMERICA* 11 (6th ed. 1999).

11. L. Neville Brown, *National Assistance and the Liability to Maintain One’s Family*, 18 MOD. L. REV. 110, 113, 116 (1955) (noting the provisions for children to “relieve and maintain” their parents were part of the Poor Law Act of 1927, which was repealed by the Poor Law Act of 1930, and the National Assistance Act of 1948 replaced the Poor Law Act in its entirety); see also National Assistance Act, 1948, 11 & 12 Geo., c. 29, (Eng.).

in the United States and sample cases in Ukraine.<sup>12</sup> To assist readers in identifying the varying discussions in filial support, the author provides a table of filial support laws currently on the books in U.S. states, as well as citations to U.S. cases discussing their application.

Despite a lengthy history of U.S. laws that purport to mandate support for indigent parents, enforcement of the surviving filial support laws against adult children in the United States is rare in modern times, especially compared with enforcement of minor child or spousal support laws.<sup>13</sup> Section IV explains how public benefit systems became the dominant focus for relief of elders, with states struggling to resolve questions about individual eligibility and family obligations, particularly in determining whether to mandate any obligation for families to reimburse the public purse. From the 1960s on—a time during which enforcement of child support and spousal support laws increased substantially—enforcement of filial support laws waned, with surviving laws largely ignored, both by individual citizens and courts in the United States.<sup>14</sup>

As one commentary observes in discussing family support provisions contained in early legislative efforts to address poverty in America, “[t]here was nothing gentle or humane about the colonial poor laws by the standards of the late twentieth century. Over all of them hung the odor of moral disapproval.”<sup>15</sup> And yet there may be new reasons for American courts to be called upon to enforce filial support laws.<sup>16</sup> “Baby boomers” (persons born during the post-World

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12. For comparative purposes, Ukraine’s physical size (603,550 square kilometers) is roughly equivalent to the size of Texas (696,200 square kilometers), the second largest state in the United States. *Background Note: Ukraine*, U.S. DEP’T OF STATE, <http://www.state.gov/r/pa/ei/bgn/3211.htm> (Jan. 4, 2012); Robert Piocheck, *Facts*, TEX. STATE HISTORICAL ASS’N TEX. ALMANAC, <http://www.texasalmanac.com/topics/facts-profile> (last visited Nov. 22, 2012). The population of Ukraine, estimated in 2012 as 45.8 million, is approximately fifteen percent of the total U.S. population recorded by the 2010 Census (308.7 million). *Background Note: Ukraine*, *supra*; U.S. Census Bureau *Announces 2010 Census Population Counts—Apportionment Counts Delivered to President*, U.S. CENSUS BUREAU (Dec. 21, 2010), <http://2010.census.gov/news/releases/operations/cb10-cn93.html>.

13. See generally Gordon L. Clark et al., *Pension and Retirement Income in a Global Environment*, in THE OXFORD HANDBOOK OF PENSIONS AND RETIREMENT INCOME 10, 10–27 (2006) (giving a history of pensioned retirement plans meant to support the elderly); see also *infra* notes 23–45 and accompanying text.

14. See *infra* notes 23–45 and accompanying text.

15. HALL, *supra* note 10.

16. Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL’Y 709, 720–22 (2001) (discussing the respective merits of opposing arguments for the enforcement of filial responsibility laws).

War II baby boom, between 1946 and 1964) have begun to reach their senior years, potentially posing a huge need for expensive health and long-term care, especially dementia-related care.<sup>17</sup> The U.S. National Institutes of Health estimates there are now five million Americans with Alzheimer's disease, an amount that could more than double by 2050.<sup>18</sup> What role should a family's resources play in age-related care in the twenty-first century, and should contribution be mandated?

Health care costs and long-term care costs for older adults are factors not well captured by traditional measures of poverty used for younger persons.<sup>19</sup> One report predicts that about sixteen percent of the 38 million Americans over age sixty-five may already need financial assistance under a more realistic, revised poverty formula.<sup>20</sup> Thus, the demographics of aging citizens, the associated potential for costly long-term care, and the economic recession that began in 2008, combine to trigger new considerations of ways to finance age-related care. For some policy makers, this includes reconsideration of filial support laws.<sup>21</sup> Indeed, as set forth in Section V of this Article, case reports and news reports from Pennsylvania demonstrate a potentially significant trend, where third-party creditors are using filial support laws to compel payment or cooperation by adult children to cover their parents' costs in nursing homes or similar care settings.<sup>22</sup> While the Pennsylvania trend is echoed in at least one other state, South Dakota, Section VI of this Article demonstrates that a lack of national consensus in application of filial support laws can create inconsistent results among U.S. states, which may increase the potential for results that seem surprising or unfair.

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17. *Long-Term Care: Aging Baby Boom Generation Will Increase Demand and Burden on Federal and State Budgets*, General Accounting Office Testimony before the Special Comm. on Aging, U.S. Senate (2002) (statement of David M. Walker, Comptroller General), <http://www.gao.gov/new.items/d02544t.pdf>.

18. HHS Press Office, *We Can't Wait: Administration Announces New Steps to Fight Alzheimer's Disease*, NAT'L INST. ON AGING (Feb. 7, 2012), <http://www.nia.nih.gov/newsroom/2012/02/we-cant-wait-administration-announces-new-steps-fight-alzheimers-disease>.

19. KATHLEEN SHORT, THE RESEARCH SUPPLEMENTAL POVERTY MEASURE: 2010, 6 tbl.1 (U.S. Census Bureau, 2011), available at <http://www.census.gov/hhes/povmeas/methodology/supplemental/research.html>.

20. *Id.* at 5 fig.1.

21. See, e.g. Lynda Yamamoto, Note, *Overcrowded Prisons and Filial Responsibility: Will States Utilize "Support of the Indigent" Statutes to Solve the Baby Boomer and Prison Crises?*, 41 RUTGERS L.J. 435 (2009).

22. E.g., Alice Gomstyn, *Pay Your Parents' Bills or Else*, ABC NEWS, (Sept. 24, 2012), <http://abcnews.go.com/Business/story?id=8074570&page=1#.T75vIr8lY6X>

In Section VII, the author returns to comparisons of enforcement practices in the United States and the Ukraine. The seemingly systematic approach of Ukraine, a post-Soviet Union country faced with daunting financial demands, contrasts sharply with the inconsistent, and at times dramatic, examples of enforcement in the United States, and the comparison suggests concerns for future decision-makers in both countries.

## II. Comparison of U.S. and Ukrainian Filial Support Laws Affecting Duties of Adult Children to Parents

In the United States, the filial support law of Virginia is typical of the surviving civil laws that have their roots in colonial times.<sup>23</sup> The Virginia statute, codified in Virginia Code Annotated Section 20-88, opens with a broad statement of duty and scope:

It shall be the . . . duty of all persons eighteen years of age or over, of sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father, he or she being then and there in necessitous circumstances.<sup>24</sup>

The statute goes on to provide courts with the power to determine and order payment, including allocating contributions among several children.<sup>25</sup>

Virginia's statute permits the adult child to raise a defense based on "substantial evidence of desertion, neglect, abuse or willful failure" by the parent to support the child as a minor.<sup>26</sup> In addition to civil liability for support payments, the statute provides that an adult child who violates an order requiring support for the parent is liable for a misdemeanor.<sup>27</sup>

Virginia's law was amended in the 1970s and 80s to restrict primary filial responsibility if the parent became eligible for public benefits under Medicaid, while permitting the state the option of seeking reimbursement from a child or children for "a parent receiving such assistance or services . . . as the court may determine to be reasona-

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23. Andrea Rickles-Jordan, *Filial Responsibility: A Survey Across Time and Oceans*, 9 MARQ. ELDER'S ADVISOR 183 (2007).

24. VA. CODE ANN. § 20-88 (2008 & Supp. 2010).

25. *Id.*

26. *Id.*

27. *Id.*

ble.”<sup>28</sup> The reimbursement potential was capped in Virginia, providing that “children shall in no case be responsible for such costs for more than sixty months of institutionalization.”<sup>29</sup>

The structure of the Virginia statute can be seen as a fairly typical example of surviving filial support laws found in several U.S. states.<sup>30</sup> There are at least seven important components that should be (but are not always) addressed by the surviving statutes:

- (1) a general statement of obligation of the adult child to the parent (which may or may not be reciprocal);
- (2) language establishing grounds for financial liability (such as Virginia’s grounds, the parent’s “necessitous circumstances,” or Pennsylvania’s undefined “indigent” status);<sup>31</sup>
- (3) a provision prioritizing liability among several children or other obligors (such as Virginia’s language providing obligated parties shall “jointly and severally share . . . duty”);<sup>32</sup>
- (4) a statement of any exceptions to liability (such as a child who was not cared for sufficiently by the parent while a minor);
- (5) a provision for who has standing as claimants;
- (6) a provision harmonizing the law with any relief provided by welfare programs, such as Medicaid; and
- (7) a mechanism for enforcement.

Some states, such as Virginia, have an eighth component, a criminal sanction or other penalty for failure to satisfy the identified civil duty.<sup>33</sup> Attached to this Article is a table of all U.S. states (plus Puerto Rico and Washington D.C.), providing citations to the laws of twenty-nine states that impose some form of filial support obligation. Of these states, including Virginia, only twenty have language that ap-

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28. *See generally id.* (“A proceeding may be instituted in accordance with this section in the name of the Commonwealth by the state agency administering the program of assistance or services in order to compel any child of a parent receiving such assistance or services to reimburse the Commonwealth for such portion of the costs incurred in providing the assistance or services as the court may determine to be reasonable.”).

29. *Id.*

30. *See infra* Table (Alaska, California, Delaware, Georgia, Indiana, Iowa, Louisiana, Maryland, Mississippi, Montana, New Hampshire, New Jersey, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, and West Virginia; in addition, Puerto Rico provides for a direct right of action by the parent against the child).

31. *Compare* VA. CODE ANN. § 20–88 (2008 & Supp. 2010), *with* 23 PA. CONS. STAT. ANN. § 4603(a) (West 2010).

32. VA. CODE ANN. § 20–88 (2008 & Supp. 2010).

33. *Id.*

pears to give an indigent or otherwise needy parent legal standing to bring a direct action for support against one or more children.<sup>34</sup>

Some states provide an express list of statutory factors to be used in deciding the amount of any adult child's liability.<sup>35</sup> For example, in California, the court is required to consider the "circumstances of each party," including "[e]arning capacity and needs," "[o]bligations and assets," "[a]ge and health," "[s]tandard of living," and "[o]ther factors the court deems just and equitable."<sup>36</sup> Other states appear to trust the discretion of the court or place a cap on overall liability.<sup>37</sup> Puerto Rico, an unincorporated territory of the United States, provides that in addition to "financial capacity" of the obligated child, the court shall take into account "non-monetary factors such as the company, care, and services" provided by family members.<sup>38</sup>

Several states, Kentucky, Massachusetts, North Carolina, and Ohio, have a criminal sanction only for failure to support, thus providing the parent with no direct right of action against an adult child.<sup>39</sup> Some states impose financial obligations on adult children in very limited circumstances, such as Arkansas's law providing that children can be secondarily liable, after the state, for a needy parent's mental health care,<sup>40</sup> or Connecticut's law limiting the child's legal liability for failure to support a needy parent *under* the age of sixty-five.<sup>41</sup> In Nevada, the child's duty to cover certain expenses assumed by the county is triggered only by a child's written promise to support

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34. See *supra* note 31.

35. CAL. FAM. CODE § 4404 (West, Westlaw through Sept. 2012 Leg. Sess.); see also P.R. LAWS ANN. tit. 8, § 712(f) (WestlawNext through 2009 legislation); P.R. LAWS ANN. tit. 8, § 712(d) (WestlawNext through 2009 legislation); P.R. LAWS ANN. tit. 8 § 736 (WestlawNext through 2009 legislation).

36. See *supra* note 35.

37. Compare VA. CODE ANN. § 20-88 (2008 & Supp. 2010) (sixty months), with 23 PA. CONS. STAT. ANN. § 4603(b) (West, WestlawNext through 2012 Leg. Sess.) (providing that for "medical assistance for the aged other than public nursing home care," the obligated party is liable for the lesser of actual costs or an amount to be determined under a statutory formula).

38. See *supra* note 35.

39. KY. REV. STAT. ANN. § 530.050(2) (West, WestlawNext through 2012 legislation); MASS. GEN. LAWS ANN. ch. 273, § 20 (West, WestlawNext through 2012 legislation); N.C. GEN. STAT. § 14-326.1 (West, WestlawNext through 2012 Legis. Sess.); OHIO REV. CODE ANN. § 2919.21 (West, WestlawNext through 2011 legislation).

40. ARK. CODE ANN. § 20-47-106 (West, Westlaw through end of 2012 Fiscal Sess.).

41. CONN. GEN. STAT. ANN. § 53-304 (West, Westlaw through July 1, 2012).



the parent.<sup>42</sup> In Tennessee, the Department of Health may have standing to require reimbursement from responsible children, but the statute does not appear to provide a direct cause of action for parents against children.<sup>43</sup>

One state, Idaho, actually repealed its filial support law recently, in 2011.<sup>44</sup> The sponsors of the Idaho repeal explained that the statute was obsolete and could confuse potential applicants for public benefits or nursing home care.<sup>45</sup>

By comparison, Ukrainian law sets forth a general obligation of the adult child to parents and provides courts with the power to enforce the laws. Article 172 of the Family Code of Ukraine provides a "Duty of Child and Daughters and Sons Who Have Reached Majority to be Concerned about Parents."<sup>46</sup> Section 1 of Article 172 appears to be a statement of both moral obligation and financial responsibility, declaring that "[a] child and son and daughter who have reached majority shall be obliged to be concerned about parents, display concern for them, and render assistance to them."<sup>47</sup> Section 3 of Article 172 authorizes court enforcement of financial obligations, providing that "[i]f a daughter or son who has reached majority is not concerned about his parents unable to work and infirm, means to cover expenses connected with rendering such concern may be recovered from them by decision of the court."<sup>48</sup>

Ukrainian law sets forth more detailed financial obligations of sons and daughters to their parents at Articles 202 through 206 of the Family Code of Ukraine.<sup>49</sup> In these sections, Ukrainian law permits the court to award alimony in a fixed monetary amount and/or as a share of earnings, taking into account the positions of the parties.<sup>50</sup> If

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42. NEV. REV. STAT. ANN. § 428.070 (West, Westlaw through 2011 Legis. Sess.) (emphasis added).

43. TENN. CODE ANN. § 71-5-115 (2004).

44. IDAHO CODE ANN. § 32-1002 (repealed July 2011).

45. S.B. 1043, 61st Leg., 1st Reg. Sess. (Id. 2011).

46. The Duty of Child, Adult Daughter and Sons to Care for Parents, Family Code of Ukraine, Art. 172. The English translation used here is from WILLIAM E. BUTLER, FAMILY CODE OF UKRAINE 60 (Editorial Office of the Legal Journal Law of Ukraine 2011). In addition, a Ukrainian language source for Ukrainian law is available on the internet, at [http://kodeksy.com.ua/simejnj\\_kodeks\\_ukraini/statja-172.htm](http://kodeksy.com.ua/simejnj_kodeks_ukraini/statja-172.htm) (last visited Nov. 22, 2012). Hereinafter the citations for the Ukrainian Family Code will be to the Butler text only.

47. BUTLER, *supra* note 46.

48. *Id.*

49. *Id.* art. 202–206, at 72–73.

50. *Id.* art. 202.

the parent is gravely ill or has severe disabilities, the court can also decree that a child with sufficient earnings or revenue must cover expenses for treatment and care of the parent.<sup>51</sup>

Ukrainian law appears to recognize two possible defenses to liability.<sup>52</sup> Under Article 202 (2) of the Family Code of Ukraine, the child does not have an obligation to maintain a parent who was deprived of parental rights by the court, and under Article 204 the child may be relieved of a duty to maintain parents or pay expenses "if it is established that the mother or father evaded the performance of their parental duties."<sup>53</sup>

Thus, the plain language of statutes in Virginia (and in other states in the United States)<sup>54</sup> and Ukraine is similar on the question of whether adult children have a legally enforceable obligation to provide financial support for parents who are unable to support themselves.<sup>55</sup> As will be discussed in Section III, the difference is in how the plain language is enforced.

### III. Comparison of Enforcement of Filial Support Laws in Requiring Adult Children to Support Parents

As summarized in the attached table, only twenty-nine of the fifty states currently have any form of filial support statutes that address adult children of indigent parents. As U.S. courts explain, there is no general common law obligation of support running from adult child to parent, regardless of need.<sup>56</sup> Therefore, in the absence of a statute, a needy parent in the United States has no legal recourse against an adult child for financial support.<sup>57</sup>

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51. *Id.*

52. *Id.*

53. *Id.*

54. See *supra* note 31; *infra* Table.

55. BUTLER, *supra* note 46.

56. *E.g.*, Dawson v. Dawson, 12 Iowa 512, 514–16 (1861) (distinguishing the "perfect" common law duty of a parent to support minor children from the need for a statute in order to impose a legal duty on an adult child to support the parent, regardless of whatever obligation may exist "by the law of nature" and refusing to permit third parties to invoke statutory duty of the adult child to support parent as grounds for payment of parent's accrued debt); Sharpe v. Sharpe, 163 A.2d 923, 924–25 (Pa. Super. Ct. 1960) (Wright, J., concurring).

57. See *infra* Table.

In all but two of the twenty-nine states,<sup>58</sup> it has become rare for the appellate courts to address the question of filial support. Research in twenty-seven states reveals no officially reported appellate decisions affirming an award of filial support against adult children during the last thirty or more years.<sup>59</sup> For example, Virginia, as described above, has a long-standing filial support law that could be used to obligate adult children to pay support for an indigent parent.<sup>60</sup> Research in Lexis and Westlaw legal databases for both officially and unofficially published decisions decided under the Virginia statute discloses episodic enforcement over the full history of the statute.<sup>61</sup> During the last fifty years, however, only one lower court decision imposed financial liability on an adult child. In *Peyton v. Peyton*, a Virginia trial court case from 1978, an adult man sued his adult brother, seeking contribution towards the cost of nursing home care for their incapacitated mother.<sup>62</sup> The reluctant brother was making voluntary payments of \$150 per month in support for his mother, but the court determined that based on the respective incomes of the parties, the defendant son would also be responsible to reimburse his brother for an additional \$8,000 for costs of past care.<sup>63</sup>

In the United States, it can be difficult to research whether contemporary courts are being asked to enforce filial support laws. First, the courts of primary jurisdiction (state trial courts), do not routinely publish their opinions in official reporters.<sup>64</sup> Second, unlike child

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58. The exception states are Pennsylvania and South Dakota, as discussed *infra* Part V.

59. See *infra* Table.

60. VA. CODE ANN. § 20-88 (2008 & Supp. 2010).

61. *E.g.*, *Mitchell-Powers Hardware Co. v. Eaton*, 198 S.E. 496, 498 (Va. 1938) (recognizing that prior to 1927 there was no legal obligation running from child to parent, and that this was changed by the adoption of the Virginia statute, thus requiring remand for further proceedings).

62. *Peyton v. Peyton*, 8 Va. Cir. 531, 531 (Cir. Ct. 1978).

63. *Id.* Research also reveals one recent case enforcing filial support laws in Puerto Rico. In *Chavez v. Hernandez et al.*, Civil Núm. KAL 2005-1188, 2008 WL 5561018 (TCA) (P.R. Cir. 2008) (in Spanish, using a translation, with assistance from Google Translate and Research Assistant Matthew McDonald), four family members were ordered to contribute to the support of their mother by paying a total of \$1,846.32 monthly, with each paying \$461.58. The equal amounts were confirmed on appeal despite evidence the mother had a long interval of no contact with one daughter, "abandonment" that was later "reconciled." The appellate court also ordered the children responsible for a total of \$19,026.80 in retroactive payments. *Id.*

64. As noted by legal researchers willing to tackle the daunting challenge of creating statistical records by mining unpublished trial court opinions, it is possible that perceptions about the American legal system become distorted because

support, filial support laws do not have a single, identifiable label to assist researchers when using unofficial reporting tools.<sup>65</sup> Thus, it is possible that filial suits *are* filed in state trial courts, but are difficult to identify because the cases are resolved, settled, and never appealed. Nonetheless, it seems unlikely that there are significant numbers of such cases because of the absence of reported appellate case decisions citing to the filial support laws. Further, the author's search for "parental support," "filial support," "family responsibility," or "family support" reveals hundreds of cases in both official and unofficial reporters, but the cases usually involve a parent's obligation to pay child support for a minor dependent or a spouse's obligation to pay spousal support.<sup>66</sup> The relatively few appellate cases that discuss application of specific state filial support laws are captured in the attached table and suggest that in most U.S. states during the last thirty to fifty years, the surviving laws have rarely been used to establish filial support orders.<sup>67</sup>

By comparison, in Ukraine, research conducted on the electronic data bank at <http://reyestr.court.gov.ua>, which covers cases decided during or after 2004, reveals 113 cases citing Section 172, Family Code of Ukraine.<sup>68</sup> The Ukrainian cases demonstrate that when the statute is invoked, the courts will impose liability on the adult child to care for or financially support a parent in need. Examples of cases decided recently under Section 172 include:

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legal analysts so often depend on published, appellate opinions, which may be comparatively few in number and tied to narrow issues. See Theodore Eisenberg & Michael Heise, *Plaintiphobia in State Courts? An Empirical Study of State Court Trials on Appeal*, 38 J. LEGAL STUD. 121 (2009); see also J. Thomas Sullivan, *Unpublished Opinions and No Citation Rules in the Trial Courts*, 47 ARIZ. L. REV. 419, 421 (2005) (arguing that unpublished decisions by appellate courts, even though unofficial in terms of precedent, could provide important guidance to trial judges and trial attorneys); THE FEDERAL COURTS STUDY COMMITTEE, REPORT OF THE FEDERAL COURTS STUDY COMMITTEE, 130 (1990) (discussing the practical reasons for unpublished opinions at the appellate level).

65. For example, Virginia's filial support statute, VA. CODE ANN. § 20-88 (2008 & Supp. 2010), has the title "Support of parents by children." A search using terms such as "parent and child and support" will result in thousands of cases on Westlaw or Lexis for Virginia cases using those terms results in more than one thousand cases, because of the overlapping use of these terms for cases involving minor child support.

66. *Id.*

67. See *infra* Table.

68. SINGLE STATE REGISTER OF JUDGMENTS, <http://reyestr.court.gov.ua> (last visited Nov. 22, 2012).

- The 2011 decision by the court in the Khortytskyi District in the Zaporizhzhya region (Case Number 2-2382/2011, decided November 16, 2011), where a son, employed as a foreman in a factory, was found liable to pay one quarter of his monthly income to support his mother, who was seriously ill with heart disease and kidney disease, for as long as his mother was in need of medical supplies, food, and other material assistance.<sup>69</sup>
- The 2011 decision by the court in the Kirov District in the Dnipropetrovsk region (Case Number 2-824/2011r, decided May 20, 2011), where an adult son was held liable to pay 1,000 hrivna (Ukrainian currency) monthly to his father who was elderly and had disabilities, which was roughly equivalent to \$125 per month. The court noted that the father, a World War II veteran with high expenses for medicine, had made repeated requests for assistance to his son, a director at a regional music and drama theater. The son, who was married with no minor children, reportedly refused. The lump sum awarded by the court appeared to be slightly less than one-quarter of the son's monthly income of 4,447 hrivna.<sup>70</sup>
- The 2010 decision by the court in the Sniguivska District of the Mykolayiv region, (Case Number 2-295/2010, decided April 14, 2010), where the son (who was also paying child support for a minor child) was held liable to pay one-third of his income to assist his father and mother, who have disabilities and are living on a combined pension at a subsistence minimum level equivalent to approximately \$200 per month.<sup>71</sup>
- The 2009 decision by the court in the Novomoskovsk District of the Dnipropetrovsk region (Case Number 2-1863/09, decided March 18, 2009), where the son was ordered to contribute one-quarter of his monthly income to supplement his divorced mother's monthly pension because she was retired,

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69. 2-2382, *Single State Register of Judgments* (2011), <http://reyestr.court.gov.ua/Review/19487697>.

70. 2-824p, *Single State Register of Judgments* (2010), <http://reyestr.court.gov.ua/Review/16234296>.

71. 2-295, *Single State Register of Judgments* (2011) <http://reyestr.court.gov.ua/Review/8893598>.

living alone, lacked funds for medicine and utilities, and was unable physically to stand in lines.<sup>72</sup>

- The 2009 decision by the court in the Dicanskogo District of the Poltava region (Case Number 2-322/09, decided October 8, 2009), where the court ordered a son to pay a lump sum in Ukrainian currency, roughly equivalent to \$10 per month, to assist his elderly parent with the purchase of food and medicine.<sup>73</sup>

By U.S. standards, the percentages of income (one-quarter to one-third of the adult child's income) awarded in three of the five cases appear to be surprisingly large shares.<sup>74</sup> In these cases, the courts do not report the adult child's total monthly salary, only the percentage awarded. The monetary value of the percentages, however, when converted to U.S. currency equivalents, appear to be modest in size and similar to the lump sum amounts awarded in the other two Ukraine cases.<sup>75</sup> For example, in the first case reported above, the court ordered the child to pay one-quarter of his monthly income to his parent.<sup>76</sup> According to government statistics, the average 2011 salary for the region in question, the Zaporizhzhya region of Ukraine, is 2,607 hrivna per month.<sup>77</sup> One-quarter of that average monthly income (650 hrivna) would be the equivalent of approximately \$81, using the applicable exchange rate of \$1 to 8 hrivna.<sup>78</sup> This calculation, of course, does not take into account taxes or the potential for unreported income in Ukraine.<sup>79</sup> Nonetheless, the comparatively high percentages of incomes involved in Ukrainian filial awards demonstrate the potential hardship on the adult child from an award of support. At the same

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72. 2-1863, *Single State Register of Judgments* (2009), <http://reyestr.court.gov.ua/Review/10793926>.

73. 2-322, *Single State Register of Judgments* (2009), <http://reyestr.court.gov.ua/Review/5428486>.

74. 2-2382, *Single State Register of Judgments* (2010), <http://reyestr.court.gov.ua/Review/19487697>; 2-295, *Single State Register of Judgments* (2011) <http://reyestr.court.gov.ua/Review/8893598>; 2-1863, *Single State Register of Judgments* (2009), <http://reyestr.court.gov.ua/Review/10793926>.

75. 2-322, *Single State Register of Judgments* (2009), <http://reyestr.court.gov.ua/Review/5428486>.

76. 2-295, *Single State Register of Judgments* (2010), <http://reyestr.court.gov.ua/Review/8893598>.

77. ST. STAT. SERVICES OF UKRAINE (Sept. 24, 2012), <http://www.ukrstat.gov.ua>.

78. 2-295, *Single State Register of Judgments* (2011), <http://reyestr.court.gov.ua/Review/19487697>.

79. ST. STAT. SERVICES OF UKRAINE, *supra* note 77.

time, the cases demonstrate the impact of poverty—and the importance of even a few “dollars” extra per month—for the elder parent.

In addition to direct support awards, the Ukrainian Family Code also supports denial of inheritance rights where the adult child is shown to have failed to provide the parent with adequate financial support and consideration.<sup>80</sup> The following case summaries from recent trials in the Ukraine provide examples:

- In a 2010 decision in the Dniproviskiy District in Kiev (Case Number 2-1905/09, decided April 15, 2010), the court denied a statutory inheritance to one daughter, permitting the mother’s entire estate (including an apartment and money in a savings account) to go to another daughter who had provided care, in accordance with terms in the mother’s will. The evidence showed the mother had a heart condition and died at the age of eighty-nine. The court ordered denial of the inheritance even though the daughter testified that she lived some distance away, did visit her mother, had a good relationship with her mother, and that offers of help were refused, possibly because of the influence of the local daughter. The court noted that sons and daughters must take care of parents in order to satisfy Article 172’s obligation to show concern and offer assistance.<sup>81</sup>
- In a 2009 decision in the Perchersk District in Kiev (Case Number 2-3842/09, decided December 24, 2009), the court permitted neighbors who provided care to a ninety year old man before his death to inherit fully under the man’s will. The court rejected the statutory inheritance claim of the son, citing the son’s failed duties under Article 172. The court observed that the evidence established that the father had suffered a stroke and was confined to his apartment. The son’s phone calls to his father were not adequate to show he gave his father necessary consideration, and the court rejected evidence that the son’s failure to visit could be explained by be-

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80. BUTLER, *supra* note 46.

81. 2-1905, *Single State Register of Judgments* (2010), <http://reyestr.court.gov.ua/Review/9511622>.

ing unaware of his father's worsening health, or by the fact the son had a sick wife and was living in another city.<sup>82</sup>

The author's examination of Ukrainian cases has been limited and constrained by lack of personal familiarity with the context and language, as well as reliance on translations. Therefore, the author is cautious in offering observations. At the same time, however, interesting questions are raised by modern research demonstrating comparatively greater use of the filial support law in Ukraine than in the United States. In part, the difference may be explained by the historical role of Medicaid in the United States in paying for health care for the poor as well as being the primary payer for long-term care costs in nursing homes, as discussed in the next section.

#### **IV. The Impact of Public Benefit Systems for Older Adults in the United States**

Adult children in the United States frequently provide direct care for their aging parents, or alternatively, finance in whole or in part the care that is provided by third parties.<sup>83</sup> A 2011 study by AARP, the largest American advocacy organization for older adults, reports that "[t]wo out of three (66 percent) older people with disabilities who receive [long-term services and supports] at home get *all* their care exclusively from their family caregivers, mostly wives and adult daughters."<sup>84</sup> In addition, another twenty-six percent receive "some combination of family care and paid help; only 9 percent received paid help [in the home] alone."<sup>85</sup> The same study concluded that the "'average' U.S. caregiver is a 49-year-old woman who works outside the home and spends nearly 20 hours per week providing unpaid care to her mother for nearly five years."<sup>86</sup> An estimated value for uncompensated care provided by family members to elders in the United States was 450 billion dollars in 2009, up from 375 billion in

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82. 2-3842, *Single State Register of Judgments* (2009), <http://reyestr.court.gov.ua/Review/7261574>.

83. See LYNN FEINBERG ET AL., AARP PUB. POLICY INST., VALUING THE INVALUABLE: 2011 UPDATE ON THE GROWING CONTRIBUTIONS AND COSTS OF FAMILY CAREGIVING 1 (2011), <http://assets.aarp.org/rgcenter/ppi/ltc/i51-caregiving.pdf>.

84. *Id.* at 8.

85. *Id.*

86. *Id.* at 1.



2007.<sup>87</sup> In the absence of significant evidence of state court cases seeking compelled parental support orders, it seems reasonable to conclude that such care provided by adult children is voluntary, resulting from feelings of personal devotion or moral duty.

Research suggests that filial support laws have long been, at best, a minor tool in providing practical, financial assistance to older adults.<sup>88</sup> Looking to England in 1909, a Poor Law Commission evaluated the impact of England's long-standing filial support laws.<sup>89</sup> The majority of the Commission suggested that "the weakness of a sense of filial responsibility in the present generation" was caused by common misconceptions about the policy of the long-standing laws.<sup>90</sup> In the commission report, while there were differences of opinion about solutions to the problem of poverty among the "aged and infirm," it was apparent that filial support laws were largely viewed as more symbolic than practical, and the report cited instances of uneven application leading to harsh results in individual cases.<sup>91</sup> England repealed its filial support provisions in 1948.<sup>92</sup>

In the United States, filial support laws became less significant after the implementation of a national system of Social Security in 1935, providing payments to any adult who had earned sufficient quarters of credit during his or her working years.<sup>93</sup> In 1965, the United States enacted a national system of health insurance for older adults, Medicare, and a combined federal/state system of health-related benefits including long-term care for elders who are low-income or have disabilities, known nationally as Medicaid.<sup>94</sup> With the rise in availability and dependence on Medicare and Medicaid, the likelihood that courts would be called upon to determine filial sup-

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87. *Id.*

88. See generally POOR LAW COMM'N, NEW POOR LAW OR NO POOR LAW, BEING A DESCRIPTION OF THE MAJORITY AND MINORITY REPORTS OF THE POOR LAW COMMISSION (1909), available at <http://babel.hathitrust.org/cgi/pt?id=mdp.35112104276599> (explaining that filial support laws have never provided much assistance to older adults).

89. *Id.* at 102–11.

90. *Id.* at 107.

91. *Id.* at 102–111.

92. See *supra* note 11.

93. Peter A. Corning, *The Evolution of Medicare . . . from Idea to Law*, SOC. SEC. ADMIN. <http://www.ssa.gov/history/corningchap2.html> (last visited Nov. 24, 2012) (Chapter 2: The Second Round—1927 to 1940 Report).

94. Peter A. Corning, *The Evolution of Medicare . . . from Idea to Law*, SOC. SEC. ADMIN. <http://www.ssa.gov/history/corningchap4.html> (last visited Nov. 24, 2012) (Chapter 4: The Fourth Round—1957 to 1965).

port orders decreased.<sup>95</sup> The general U.S. prosperity of the latter half of the twentieth century, including a long period when workers were able to qualify for defined benefit retirement programs, also undoubtedly served to ease financing concerns for many families.<sup>96</sup>

Public benefits under state and federal old-age programs could be viewed as the more important safety net for indigent older adults.<sup>97</sup> Case law in the United States, however, often demonstrates a tension in attitudes towards the public's willingness to fund public benefit programs rather than insist on private responsibilities of families.<sup>98</sup> For example, one trial judge felt compelled to enforce a long-standing filial support law against an adult son, despite evidence the father "was not worthy of any help," commenting, "[b]oth this kind of case and this type of defense now appear frequently before this court by reason of the attempt of the relief authorities to compel children to support their parents before they become a public charge."<sup>99</sup> The judge nonetheless awarded only "\$1 per week" for the father's support, which even in 1940 was probably of minimal practical benefit.<sup>100</sup> At various times, questions have been raised about whether states should seek reimbursement from adult children for public benefits paid to their parents.<sup>101</sup>

The history of California's filial support laws demonstrates the tension over whether support of older adults should primarily be a public or private obligation, and whether any private obligation should include other family members. California's filial support laws date back to 1872, with the surviving obligation now set forth in the California Family Code at Section 4400.<sup>102</sup> In *County of San Mateo v. Boss*, decided in 1971, the Supreme Court of California relied on a con-

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95. Peter A. Corning, *The Evolution of Medicare . . . from Idea to Law*, SOC. SEC. ADMIN. <http://www.ssa.gov/history/corningchap5.html> (last visited Nov. 24, 2012) (Chapter 5: Who Makes Social Welfare Policy?).

96. See generally Clark et al., *supra* note 13.

97. Lynda Yamamoto, *Overcrowded Prisons and Filial Responsibility: Will States Utilize "Support of the Indigent" Statutes to Solve the Baby Boomer and Prison Crises?*, 41 RUTGERS L. J. 435, 444 (2009).

98. See Renae Reed Patrick, *Honor Thy Father and Mother: Paying the Medical Bills of Elderly Parents*, 19 RICH. L. REV. 69 (1984-1985).

99. *Commonwealth v. Auman*, 39 Pa. D & C 448, 448 (Mun. Ct. 1940) (enforcing The Support Law of 1937, 62 PA. STAT. § 1973 (1937) (current version at 23 PA. CONS. STAT. § 4603)).

100. *Id.* at 451.

101. Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 865 (2005).

102. CAL. FAM. CODE § 4400 (West 2012).

stitutional theory of equal protection to hold that an adult son was not obligated to reimburse the state for an “unequally large portion of the costs of providing . . . welfare assistance.”<sup>103</sup> The court concluded that it was “clear a person can qualify to receive aid to the aged and yet not be so destitute that his children will owe him a duty of support” under the California statute.<sup>104</sup>

Following the California Supreme Court decision in *County of San Mateo*, the California legislature amended its filial support statute to provide more clearly that all adult children of persons receiving aid to the aged would have a duty to support their parent, thereby obligating adult children to reimburse the state for public benefits paid to their parent.<sup>105</sup> The revision provided a reciprocal duty to support parents or children “in need,” instead of only those deemed “poor.”<sup>106</sup> In 1973, the California Supreme Court then concluded in *Swoap v. Superior Court of Sacramento County* that the revised statute provided a rational, enforceable basis for California to require adult children to reimburse the state for aid granted to their parents.<sup>107</sup> In so ruling, the court reversed its decision in *County of San Mateo*,<sup>108</sup> noting that it was “not unmindful that these provisions may involve harsh results in certain instances and we are indeed sympathetic with the plight of such persons,” but the “amelioration of any harsh results” was left to the state’s administrative authorities.<sup>109</sup>

In light of the above history and the fact that the filial support law remains on California’s books, one would expect to find cases where either parents or the state were seeking to enforce California’s filial support rules against adult children. However, in 1975, the California legislature acted again, amending its welfare code to provide that notwithstanding filial support or other family-member support provisions in California law, relatives cannot be held liable to support needy parents or reimburse the state if the parent or other family member was applying for or receiving welfare aid.<sup>110</sup> If the parent qualifies for public funding, the state is barred from seeking reim-

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103. *County of San Mateo v. Boss*, 479 P.2d 654, 659–60 (Cal. 1971).

104. *Id.*

105. Old Age Security Law, CAL. WELF. & INST. CODE § 12000 et seq. (current version at CAL. FAM. CODE § 4400 (West 2012)).

106. *Id.*

107. *Swoap v. Superior Court*, 516 P.2d 840, 852 (Cal. 1973).

108. *County of San Mateo*, 479 P.2d at 654.

109. *Swoap*, 519 P.2d at 852.

110. CAL. WELF. & INST. CODE § 12350 (West 2012).

bursement from the child.<sup>111</sup> Thus, California's filial support law is on the books, but currently has limited practical utility at least in situations where the elder is eligible to receive public aid.<sup>112</sup> Research reveals no appellate cases addressing enforcement of California's filial support law since 1975.

Medicaid, the joint state-federal program "designed to pay for the medical expenses of low income individuals who are aged, blind or disabled"<sup>113</sup> was added as a component of the overall Social Security structure in 1965.<sup>114</sup> In the mid-1960s, it became the statutory policy of the federal government that states cannot consider an adult child's resources in determining the "eligibility" of the parent for Medicaid.<sup>115</sup> Further, for a period of time, federal administrative policy directed that states could not require the children of elder Medicaid recipients to "reimburse" either the federal or state governments for the costs of those services.<sup>116</sup> Many states, including California, repealed or limited their filial support laws because of the federal policies, and even when the federal restriction reportedly changed in 1983 to permit reimbursement claims,<sup>117</sup> there has been little appetite in most states' welfare agencies to tie Medicaid to filial support from reluctant children.<sup>118</sup> Virginia's filial support law expressly permits the state to seek Medicaid reimbursement from adult children to the extent per-

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111. *Id.*

112. See George F. Indest III, *Legal Aspects of HCFA's Decision to Allow Recovery from Children for Medicaid Benefits Delivered to their Parents through State Financial Responsibility Statutes: A Case of Bad Rule Making Through Failure to Comply with the Administrative Procedure Act*, 15 S.U. L. REV. 225, 236 (1998).

113. LAWRENCE A. FROLIK & RICHARD KAPLAN, *ELDER LAW IN A NUTSHELL* 110 (5th ed. 2010).

114. Patricia P. Martin & David A. Weaver, *Social Security: A Program and Policy History*, 66 SOC. SECURITY BULL. (2005), <http://www.socialsecurity.gov/policy/docs/ssb/v66n1/v66n1p1.html>.

115. 42 U.S.C. § 1396A(a)(17)(D); 42 C.F.R. § 435.602(a)(1); see also 42 U.S.C. §§ 1395i-3(c)(5)(A)(ii) and 1396r(c)(5)(A)(ii) (prohibiting Medicare/Medicaid certified nursing homes from requiring third-party guarantees of payment as condition of admission).

116. Indest, *supra* note 112, at 226-27.

117. See *State Welfare Commission v. Mintz*, 280 N.Y.S. 2d 1007, 1009-10 (App. Div. 1967) (discussing reasons for New York's 1966 elimination of "filial obligation to indigent parents" in order to participate in "the Federal Medicare program"); see also Indest, *supra* note 112, at 302.

118. See, e.g., 62 PA. STAT. ANN. § 447(a) (West 2005). Pennsylvania law, providing that while determination of an adult's eligibility for Medicaid (Medical Assistance) can take into account, as appropriate, the resources of a spouse, "financial responsibility" of other family members cannot be considered. *Id.*

mitted by federal law, but there are no modern cases suggesting that reimbursement has been pursued by state authorities.<sup>119</sup>

Significantly, Medicaid “foots the bill for almost half of the paid long-term care provided in the United States.”<sup>120</sup> Arguments over how to control or cut such public expenditures, however, are growing louder in the United States.<sup>121</sup> For example, in 2006, Congress enacted the Deficit Reduction Act, Public Law No. 109-171, with increased penalties on individuals who transfer assets for less than fair market value before applying for Medicaid, as well as other limitations on eligibility for long-term care benefits.<sup>122</sup> With the financial crisis that began in 2008, the pressure on the states to cut public funding for old-age care is ever increasing.<sup>123</sup> With the pressure to cut public funding in the United States, filial support laws have generated renewed interest on at least a theoretical or academic level.<sup>124</sup>

## V. Enforcement of Pennsylvania’s Filial Support Law and Claims by Third-Parties for Care Costs

As documented in the table and discussed above, research suggests that in most states during the last fifty years the surviving filial support statutes have been used infrequently against adult children.<sup>125</sup> However, in Pennsylvania, the modern trend has been quite different.<sup>126</sup>

119. Patrick, *supra* note 98, at 82–83.

120. MARSHALL B. KAPP, *LEGAL ASPECTS OF ELDER CARE* 221 (2010).

121. E.g., Aaron E. Carrol & Maya MacGuineas, *Should the Eligibility Age for Medicare be Raised?*, WALL ST. J. (Sept. 18, 2012), <http://online.wsj.com/article/SB10000872396390443864204577623700185012824.html>.

122. Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4, (2006).

123. Phillip Shishkin, *States Cut Services for Elderly, Disabled*, WALL ST. J. (Nov. 20, 2008), <http://online.wsj.com/article/SB122714130153442755.html>.

124. See Pakula, *supra* note 101, at 876–77 (urging a consistent, national policy); Andrea Rickles-Jordan, *Filial Responsibility: A Survey Across Time and Oceans*, 9 MARQ. ELDER’S ADVISOR 183, 188 (2007) (urging enforcement of filial support laws to help impoverished seniors, while citing support for the concept in the tradition of Judaism, Christianity, Muslims, Roman Law, and English law); Yamamoto, *supra* note 97, at 478 (reaching a unique conclusion, that enforcement of filial support laws is necessary to prevent the overcrowding of prisons with geriatric, impoverished prisoners).

125. See *infra* Table.

126. KATHERINE C. PEARSON, *Filial Support Obligations in Pennsylvania: Adult Children, Parents, and Spouses*, in *ELDER LAW IN PENNSYLVANIA* 957 (Jeffrey A. Marshall ed., PBI Press, 3d ed. 2011); Katherine C. Pearson, *Rethinking Filial Support Laws in a Time of Medicaid Cutbacks*, 76 PA. B.Q. 162, 165–70 (2005).

The key language in Pennsylvania's family support statute provides that "all of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether the indigent person is a public charge: (i) The spouse of the indigent person. (ii) A child of the indigent person. (iii) A parent of the indigent person."<sup>127</sup> Spousal and parental obligations in this section overlap obligations contained elsewhere in the Pennsylvania domestic relations code that cover obligations to provide spousal support and parental support of children.<sup>128</sup> Therefore, as with the more narrowly focused Virginia statute discussed above, the key language of the Pennsylvania law is the filial support language, which obligates the child of the indigent person.<sup>129</sup> Pennsylvania's statute expressly permits a lawsuit to be filed by "an indigent person" or by "any other person or public body or public agency having any interest in the care, maintenance or assistance of such indigent person."<sup>130</sup>

Despite structural changes, Pennsylvania's filial support language setting forth the obligation of the child (interpreted practically as the "adult" child) remained largely intact since first enacted.<sup>131</sup> Between 1937 and 2005, Pennsylvania's filial support provisions were part of its public welfare laws.<sup>132</sup> For a period of time, the viability of the filial support language was masked by the use of "repealed" in an explanatory paragraph attached to the statute in 1976.<sup>133</sup> In 2005, the statute was modified slightly by the state legislature and moved to the domestic relations code.<sup>134</sup>

127. 23 PA. CONS. STAT. ANN. § 4603 (West 2012).

128. 23 PA. CONS. STAT. ANN. § 4321 (West 2010).

129. 23 PA. CONS. STAT. ANN. § 4603 (West 2010). The plain language of Pennsylvania's statute makes the care and financial assistance obligation reciprocal, running to "indigent" parents or "indigent" children, without limitation on age. *See, e.g.,* Verna v. Verna, 432 A.2d 630 (Pa. Super. Ct. 1981) (holding father liable to pay medical expenses for his adult daughter under 62 P.S. § 1973, the predecessor statute to Section 4603 in the domestic relations code). However, recent rulings have ignored the reciprocal parent/child language of Section 4603. *See* Shaffer-Doan v. Dep't of Public Welfare, 960 A.2d 500, 513 n.25 (Pa. Super. Ct. 2008).

130. 23 PA. CONS. STAT. ANN. § 4603(c) (West 2012).

131. *See, e.g.,* 1937 PA. LAWS 2045 (partially repealed in 1985, fully repealed in 2005). The substantive law was then moved from the welfare laws to the Domestic Relations Code. *See* 23 PA. CONS. STAT. ANN. § 4603 (West 2012) (enacted in 2005).

132. 62 PA. CONS. STAT. ANN. §§ 1971-76 can be traced further to the Colonial Laws of Pennsylvania 1705-6, ch. CLIV, § II, at 251-53.

133. *See* discussion in Savoy v. Savoy, 641 A.2d 596, 597-98 (Pa. Super. Ct. 1994).

134. The transfer of the statute, accomplished by repealing the original text at 62 PA. CONS. STAT. ANN. §§ 1971-76 (West 2012), and enacting 23 PA. CONS. STAT. ANN. §§ 4601-06 (West 2012), was described as being part of a long-range effort to

The modern era for filial support enforcement in Pennsylvania arguably began in 1994 with the case of *Savoy v. Savoy*, where an adult son was sued by his divorced mother.<sup>135</sup> The mother had a series of health problems, including surgery on her neck and a fall that resulted in a broken ankle.<sup>136</sup> She received a lump sum worker's compensation benefit, and she had monthly income of \$438 in the form of Social Security benefits.<sup>137</sup> She also, however, had unpaid medical expenses in excess of \$10,000.<sup>138</sup> Her son was a part-owner and manager of a family-owned furniture manufacturing business and had no dependents.<sup>139</sup> According to evidence presented at trial, the son had \$2,327 in monthly income but also reported monthly expenses of \$2,583.<sup>140</sup> He implicitly argued that under the language of Pennsylvania's law he could not be liable to financially assist his mother because he did not have "sufficient financial ability."<sup>141</sup> The court rejected this argument and concluded that even though the mother had some monthly income, she was "indigent" for purposes of the filial support statute because her "reasonable living expenses" exceeded her monthly income.<sup>142</sup> The appellate court affirmed the trial court's order that the son must pay \$125 per month towards his mother's past medical expenses.<sup>143</sup> The court rejected the son's final argument that the statute in question had been repealed through two decades of changes in the overall welfare law.<sup>144</sup>

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"codify" old laws that existed in an unofficial compilation, known as Laws of Pennsylvania. The timing of the legislative action, however, proved to be controversial, as discussed by the author elsewhere. See Pearson, *Rethinking Filial Support Laws*, *supra* note 126; see also PEARSON, *Filial Support Obligations in Pennsylvania*, *supra* note 126.

135. 23 PA. CONS. STAT. ANN. § 4603(c) (West 2012).

136. *Savoy*, 641 A.2d at 598. Other potentially important decisions involving adult children and parents were issued by the Superior Court in 1955, 1968, and 1981, but the precedential value of those rulings for adult children's liability for support of a parent was unclear in light of the "repealed" label applied to the statute in 1976. See *Commonwealth ex rel. Home for the Jewish Aged v. Kotzker*, 118 A.2d 271 (Pa. Super. Ct. 1955) (holding the adult child liable); *Albert Einstein Med. Ctr. v. Forman*, 243 A.2d 181 (Pa. Super. Ct. 1968) (holding the adult child liable); *Verna v. Verna*, 432 A.2d 630 (Pa. Super. Ct. 1981) (holding the parent liable to the adult child for support).

137. *Savoy*, 641 A.2d at 598.

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.* at 600.

142. *Id.* at 599-600.

143. *Id.* at 598.

144. *Id.* at 599.

The *Savoy* case can be seen as a turning point for two reasons. First, it was a modern era case permitting the parent to sue the adult child directly for support and concluding that liability could not be avoided by a superficial demonstration that the child's expenses exceeded his income.<sup>145</sup> Second, even though the parent sued the child, seeking a "parental support order," the court ordered the son to pay the mother's past health care providers, not the mother.<sup>146</sup> The mother was the plaintiff; the hospital was to be the actual recipient of the award.<sup>147</sup>

The next case was *Presbyterian Medical Center v. Budd* decided in 2003.<sup>148</sup> In this case, a nursing home sued the daughter of a resident on several theories, including the filial support law, breach of contract, fraud, and equitable theories such as restitution.<sup>149</sup> The nursing home alleged that at the time of the mother's death there was an outstanding balance of \$96,000.<sup>150</sup> The nursing home claimed that the daughter had promised to apply for Medicaid to pay for the long-term care for her mother, but instead she used a power of attorney to transfer more than \$100,000 from her mother's bank accounts to herself.<sup>151</sup> The Court of Appeals was asked to decide whether any of the theories alleged by the nursing home could be used to recover the unpaid care costs from the daughter.<sup>152</sup> The court found that technical reasons defeated all but one of the nursing home's claims.<sup>153</sup> On the filial support claim, the court ruled that the nursing home could use the filial

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145. Pennsylvania's law is reciprocal, permitting either the child or the parent, if indigent, to seek support. 23 PA. CONS. STAT. ANN. § 4603 (West 2012). In deciding the adult son's liability for his mother's medical expenses in *Savoy*, the Superior Court viewed its prior holding that a father was obligated to contribute \$50 per month towards his emancipated daughter's uninsured medical expenses as precedent. *Savoy*, 641 A.2d at 598. In the thirteen year interval between the two cases, there were changes in the Public Welfare Code that raised a question as to whether the filial support language had been repealed or limited; however, these arguments were rejected by the Superior Court in the *Savoy* decision. *Id.*

146. *Savoy*, 641 A.2d at 598.

147. The outcome, arguably, was unsatisfactory to all concerned in *Savoy*. If the mother's primary financial concern was the back debt, her most direct relief might have been bankruptcy; obligating the reluctant son to make the payment on the back debt for many months into the future most likely ensured that he would not reunite and care for his mother; the hospital would probably have preferred to make its own arrangements for payment of the back debt.

148. *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066, 1069 (Pa. Super. Ct. 2003).

149. *Id.* at 1069.

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*



support law to recover the cost from the daughter of caring for the “indigent” mother.<sup>154</sup>

The *Budd* case was important because it confirmed that a company could make a direct claim against an adult child for filial support as a “person . . . having interest in the care, maintenance or assistance” of the parent.<sup>155</sup> The case was also important because the court commented on the fault of the daughter in making her mother indigent.<sup>156</sup> By permitting the case to go forward on the filial support law, however, the court authorized a potential recovery without requiring the claimant to prove fraud, breach of contract, or other fault as the basis of the child’s liability.<sup>157</sup>

In 2005, two years after the decision in *Budd*, the Pennsylvania legislature moved the filial support law from the public welfare code to the domestic relations code, a move that further raised the visibility of the law.<sup>158</sup> The Governor described the action as “[updating] provisions requiring that immediate family members contribute to the cost of care, thus decreasing the burden on the Medical Assistance program, when possible.”<sup>159</sup> Nursing homes and other long-term care facilities began using the law to sue relatives of residents with greater frequency. The author’s 2008 search on Westlaw, Lexis, and in three

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154. *Id.* at 1075.

155. 23 PA. CONS. STAT. ANN. § 4603 (West 2010).

156. *Budd*, 832 A.2d at 1069.

157. *Id.* at 1077. In the *Budd* case, the daughter was alleged to have had direct contact with her mother’s nursing home, falsely assuring the facility she was making an application for Medicaid on her mother’s behalf. *Id.* at 1069. Past cases permitting the use of filial support claims against an adult child by third-party claimants had relied on the doctrine of *assumpsit*, an implied contract theory, to permit retroactive recovery for pre-suit support. See, e.g., *Albert Einstein Med. Ctr. v. Forman*, 243 A.2d 181 (Pa. Super. Ct. 1968).

158. Pearson, *Rethinking Filial Support Laws*, *supra* note 126, at 165 (tracing history).

159. Governor Edward G. Rendell, Address to the 189<sup>th</sup> General Assembly (Penn.) (Jul. 31, 2005). Despite the likely political popularity of this announcement, federal law prohibits states from taking “into account the financial responsibility of any individual for any applicant or recipient of assistance under the [state Medicaid] plan unless such applicant or recipient is such individual’s spouse or such individual’s child who is under age 21” when determining eligibility for Medicaid (also known as Medical Assistance in Pennsylvania). See 42 U.S.C. § 1396A(a)(17)(D) (2012); see also 42 C.F.R. § 435.602(a)(1) (2012); 62 P.S. § 447(a) (2012), a Pennsylvania administrative code provision providing that “[n]otwithstanding any other provision of law, no repayment shall be required of any medical assistance paid in behalf of any person for which he was eligible; and, with respect to the determination of eligibility for such assistance, no relative . . . shall be required to contribute to the cost of the care for which such assistance is provided.”

county courthouse electronic databases identified fifteen pending lawsuits filed by third-parties, such as nursing homes, against adult children or spouses for costs of care provided to older adults, citing Pennsylvania's filial support law as one of the alternative grounds for liability.<sup>160</sup>

The post-2005 spotlight on the law led members of the Pennsylvania Bar Association to unite in opposition to the emerging pattern of enforcement practices, with the Bar Association calling for repeal of Pennsylvania's filial support language.<sup>161</sup> A bill was introduced by legislators in the Pennsylvania House of Representatives for the 2011–2012 Legislative Session and is still pending as of June 2012; if passed without changes, the bill would repeal the filial support provision.<sup>162</sup>

The Pennsylvania cases filed against children also began attracting media attention about the use of the filial support law as a collection tool. In an ABC News report, a thirty-nine year old woman from Pennsylvania said she was “stunned” when a nursing home sued her for over \$300,000, the amount of her parents' unpaid bills.<sup>163</sup> The suit was eventually settled.<sup>164</sup> In commenting on such suits, a national spokesperson for the long-term care industry implied that tightened reimbursement rules for Medicaid were squeezing nursing homes and thus requiring them to pursue all available options to cover expenses.<sup>165</sup> In the same news story, an attorney who represented Pennsylvania nursing homes explained that he used Pennsylvania's filial support laws to persuade adult children to do the paperwork necessary to establish Medicaid eligibility for their parents.<sup>166</sup> This news article,

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160. KATHERINE C. PEARSON & TRISHA A. COWART, *THE LAW OF FINANCIAL ABUSE AND EXPLOITATION* 152–54 nn.21–23 (2011).

161. See Recommendation and Report to the Pennsylvania Bar Association calling for repeals of Sections 4603 and 4606 of Title 23 of the Pennsylvania Consolidated Statutes Annotated (also known as Act 43) (copy on file with the author), approved by the Pennsylvania Bar Association, as documented in the Bill Status Report for the Pennsylvania Bar Association at [http://www.pabar.org/public/legislative/Boxscore/bar\\_box.htm](http://www.pabar.org/public/legislative/Boxscore/bar_box.htm) (last visited Nov. 22, 2012).

162. Pennsylvania House Bill 321 (Printer's No. 276) introduced in the Pennsylvania House of Representatives in the Regular Session 2011–12. H.B. 321, 2011 Sess. (Pa. 2011). An earlier version of this bill, H.B. 2749 (Printer's No. 4396), was introduced in 2006 and passed the House of Representatives by a large margin (191 to 4) before being blocked in the Senate when the Pennsylvania Department of Public Welfare opposed the repeal. H.B. 2749, 2005 Sess. (Pa. 2006).

163. Gomstyn, *supra* note 22.

164. *Id.*

165. *Id.* (referencing comments made by David Hebert, AHCA's senior vice president for policy and government affairs).

166. *Id.*

along with others, suggests that even in Pennsylvania, there is little public awareness or understanding of filial support laws, which may lead to seemingly harsh or surprising results. In January 2009, the AARP published a nationally scoped article, concluding that “few people are aware that filial support laws exist.”<sup>167</sup>

A fairly dramatic example of the modern trend was the May 2012 decision by Pennsylvania’s Superior Court in *Health Care & Retirement Corp. of America (HCR) v. Pittas*.<sup>168</sup> In the case, an adult son was held liable for his mother’s outstanding debt from approximately six months of care in a nursing home, totaling close to \$93,000.<sup>169</sup> The court accepted the son’s argument on appeal that the nursing home, rather than the son, had the burden of establishing the “ability” to pay the indigent parent’s expenses;<sup>170</sup> however, the court concluded the burden was satisfied by introduction of joint tax returns, bank account statements and testimony that the son’s “net income was in excess of \$85,000.00, and that he had recently paid-off a tax lien by making monthly payments of \$1,100.00.”<sup>171</sup>

The Superior Court also concluded that the son was not liable because of a pending application for Medicaid to cover the mother’s nursing home expenses,<sup>172</sup> nor did the plaintiff have any obligation to join the mother’s husband or other siblings in the suit as additional or alternative sources of support.<sup>173</sup> The court said it was applying the plain language of the law, observing that “while sympathetic with [the son’s] obligation to support his mother without the assistance of

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167. Beth Baker, *Paying for Mom: Little-Known Laws Force Families to Fund Parents’ Care*, AARP (Jan. 2009), [http://www.aarp.org/relationships/caregiving/info-01-2009/paying\\_for\\_mom/little\\_known\\_laws\\_force\\_families\\_to\\_fund\\_parents\\_care\\_.html](http://www.aarp.org/relationships/caregiving/info-01-2009/paying_for_mom/little_known_laws_force_families_to_fund_parents_care_.html).

168. *Health Care & Retirement Corp. of America v. Pittas*, 46 A.3d 719 (Pa. Super. Ct. 2012).

169. *Id.* The mother resided in the facility from sometime in September 2007 until March 2008 for assistance with on-going care needs following a car accident that injured herself and her husband. *Id.* at 720. When the mother left the facility, she relocated to Greece with the assistance of her daughter, a Greek resident, leaving a “large portion of the bills incurred . . . due and owing to HCR.” *Id.* Not documented or addressed in the Superior Court opinion, but described in the son’s brief on appeal, was a pending suit for medical malpractice in connection with the mother’s care, filed by the mother and her husband against the nursing home. See Brief for Appellant at \*6, *Health Care & Retirement Corp. of America v. Pittas*, 46 A.3d 719 (Pa. Super. Ct. 2012) (No. 536 EDA 2011).

170. *Pittas*, 46 A.3d at 721.

171. *Id.*

172. *Id.* at 722.

173. *Id.*

this mother's husband or her other children, we note that if [the son] had desired to share his support-burden, he was permitted to do so by joining those individuals in this case."<sup>174</sup>

The Superior Court decision in *Pittas* is significant because unlike in *Budd*, where the daughter's substantial potential liability for the mother's accrued debt was tied to evidence showing the daughter's own fault,<sup>175</sup> there was no suggestion in the court opinion that the *Pittas* son was at fault in accruing debt. Further, while the court in *Savoy* had imposed liability on the son to cover the mother's accrued debt, the dollar obligation was expressed in monthly sums of \$150, to be paid over the course of future months, not as a lump sum of \$10,000.<sup>176</sup> By holding the son liable for a lump sum of close to \$93,000 in *Pittas*, the Superior Court appears to confirm a significant tool for certain creditors of individuals who are unable to pay their debts personally; by permitting the filial support statute to be applied retroactively to substantial accrued debt, the Court does not require evidence of fault on the part of the targeted family member.<sup>177</sup> The award gives the nursing home potentially significant leverage in collection.<sup>178</sup> This

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174. *Id.* at 723.

175. *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066, 1069 (Pa. Super. Ct. 2003).

176. *Savoy v. Savoy*, 641 A.2d 596 (Pa. Super. Ct. 1994).

177. *Pittas*, 46 A.3d at 719.

178. The Superior Court decision in *Pittas* did not address whether "support" awards can be applied properly to compel payment of pre-complaint debts. See *Commonwealth ex rel. Sharpe v. Sharpe*, 163 A.2d 923 (Pa. Super. Ct. 1960) (holding that trial court's order that son pay \$150 to sixty-five year old father for debts predating the complaint was an improper, retroactive order); see also *Commonwealth ex rel. Price v. Campbell*, 119 A.2d 816 (Pa. Super. 1956) (holding that although evidence supported award of support from son to mother, that award should not operate retroactively). But see *Albert Einstein Med. Ctr. v. Forman*, 243 A.2d 181 (Pa. Super. 1968) (observing that a third-party may seek future support, or alternatively, may file an action for *assumpsit*, a type of implied contract claim, based on the statutory duty). In addition, for claims for "medical assistance for the aged," another question not addressed by the court in *Pittas* is whether a formula that appears to operate as a statutory cap on liability should have been applied. See 23 PA. CONS. STAT. ANN. §§ 4603(b)(2) which provides that the amount of liability in any twelve-month period must be the "lesser" of the actual cost, or "six times the excess of the liable individual's average monthly income over the amount required for the reasonable support of the liable individual and other persons dependent upon the liable individual." *Id.* An example of the potential significance of this formula: assuming the son's annual after-tax income was \$90,000 (\$7,500 per month), and his "reasonable" support expenses for his wife and two children were as low as \$3,500 per month, the son's maximum liability for a year's worth of care would be \$24,000 (\$4,000 per month of income in excess of reasonable expenses, multiplied by six months, significantly less than the close to \$93,000 awarded). See additional discussion of fundamental fairness issues in PEARSON, *Filial Support Obligations in Pennsylvania*, *supra* note 126.

dollar claim in *Pittas* does not appear to be unique; for example, trial court records demonstrate other pending cases seeking substantial sums.<sup>179</sup>

Unlike the single case example from Virginia,<sup>180</sup> the decision rendered in Puerto Rico in 2008,<sup>181</sup> or the multiple, recent examples from Ukraine, where family members were seeking direct support to benefit struggling parents, the cases in Pennsylvania demonstrate a growing pattern of commercial entities as plaintiffs, seeking the costs of care. The Pennsylvania cases may predict a new focus for filial support laws, one that is significant in a nation of aging baby boomers.

One other state, South Dakota, has reported similar decisions involving commercial entities as plaintiffs.<sup>182</sup> In 1998, the Supreme Court of South Dakota ruled that a hospital was entitled to void a transfer of real estate by the patient to his adult son on the ground the transfer was a fraudulent attempt to avoid the parents' creditors.<sup>183</sup> The court also ruled that the hospital could claim payment against the son for the father's health care debt under that state's version of a filial support statute.<sup>184</sup> Four years earlier, South Dakota issued a similar ruling, which permitted a nursing home to collect a mother's unpaid care costs from an adult child.<sup>185</sup> Specifically, the court found that the son had the ability to pay the bills from funds held in a trust inherited from his mother.<sup>186</sup>

Decisions such as those made by the Pennsylvania Superior Court in 2003<sup>187</sup> and the South Dakota Supreme Court in 1998<sup>188</sup> are usually generated by "gaps" in Medicare or Medicaid coverage.<sup>189</sup> Arguably, these gaps could have been avoided with proper advice at

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179. HCR ManorCare Huntingdon Valley v. Santore, No. 10-22179, 2010 WL 3215949 (Pa. Ct. Com. Pl., Montgomery Cnty., Aug. 6, 2010) (alleging son's liability for more than \$196,000).

180. Peyton v. Peyton, 8 Va. Cir. 531, 531 (1978).

181. See *supra* note 62; Chavez v. Hernandez et al., Civil Núm. KAL 2005-1188, 2008 WL 5561018 (TCA), at \*1, (P.R. Cir. 2008).

182. Prairie Lakes Health Care Sys., Inc. v. Wookey, 583 N.W.2d 405 (S.D. 1998).

183. *Id.* at 417.

184. *Id.* at 418 (citing S.D. CODIFIED LAWS § 25-7-27 (West 2004)).

185. Americana Healthcare Ctr. v. Randall, 513 N.W.2d 566, 567 (S.D. 1994).

186. *Id.* at 571.

187. Presbyterian Med. Ctr. v. Budd, 832 A.2d 1066, 1076 (Pa. Super. Ct. 2003).

188. Wookey, 583 N.W.2d at 405.

189. See generally 42 U.S.C. 7 §§ 1395c -1395i5 (Medicare Part A, statute covering nursing home care and coverage limits, i.e. "gaps").

the time of admission to the facilities. Such rulings perhaps seem fair when the record demonstrates that the targeted defendant-child (a) was responsible for helping to create the gap, (b) manipulated the parent or the facility while helping him- or herself to the parent's funds, or (c) simply benefited from actions that moved the parents' assets from out of the parents' estate and into the child's hands without payment of the debt of the parent.<sup>190</sup> The filial support cases that are more troubling, however, are those where it appears the adult child was targeted for no reason other than familial status and an unpaid, accrued debt. It is possible that harsh outcomes are simply the result of Pennsylvania's simplistic statute, which does not define "indigency" and does not provide express factors, such as comparative equities or unclean hands of parties, as relevant to a determination of liability.<sup>191</sup> Certainly, it seems clear that the larger the accrued debt of the parent, the greater the impact on the sandwiched generation, thus signaling the importance for statutory caps or limits on retroactive enforcement. In Pennsylvania, as demonstrated by the Superior Court's 1994 decision in *Savoy* and to an even greater extent in the 2012 decision in *Pittas*, enforcement of the plain language in surviving filial support laws can have harsh results, affecting both the individual and the larger family dynamic.<sup>192</sup>

## VI. Challenges for Cross-Border Enforcement of U.S. Filial Support Laws

As demonstrated in the attached table and discussed in this Article, only a portion of U.S. states and territories have filial support laws that can be used to mandate that adult children must pay support for needy parents. In the United States, with its large, highly mobile national population, a key development favoring enforcement of child support and spousal support was the Uniform Interstate Family Support Act (UIFSA).<sup>193</sup> Further, for child support matters there is a growing, national system for interstate enforcement of state court rulings, mandated by specific federal law, including the Full Faith and

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190. *Randall*, 513 N.W.2d at 566.

191. Compare CAL. FAM. CODE § 4404 (West 2012), with P.R. LAWS ANN. Tit. 8 § 712(f) (2009).

192. See *Savoy v. Savoy*, 641 A.2d 596 (Pa. Super. Ct. 1994); *Health Care & Ret. Corp. of Am.*, 46 A.3d 719 (Pa. Super. Ct. 2012).

193. See Unif. Interstate Family Support Act, 9 U.L.A. 469 (1992) (current version at 9 U.L.A. 72 (Supp. 208)).

Credit for Child Support Orders Act, 28 U.S.C. § 1738B.<sup>194</sup> The network may not apply, however, to filial support laws when used against adult children.<sup>195</sup> Parties seeking interstate enforcement of state judgments against adult children would instead need to argue enforcement under the general Full Faith and Credit language of federal law, including the Full Faith and Credit Act at 28 U.S.C. § 1738, and Article IV, Section 1 of the United States Constitution.<sup>196</sup>

Further, states that have repealed or rejected filial support laws in their own states, have also ruled that out-of-state laws are unenforceable against adult children living within their borders. In *State Welfare Commissioner v. Mintz*, a New York court concluded that a Connecticut award of support for an indigent parent residing in Connecticut could not be enforced against the adult child living in New York because New York had repealed its filial support law in 1966.<sup>197</sup> Similarly, in *Commonwealth of Pennsylvania v. Mong*, the Ohio Supreme Court refused to permit a Pennsylvania order compelling a son to support his father to be enforced in Ohio, recognizing a defense based on abandonment that was available under Ohio but not Pennsylvania law.<sup>198</sup> Such rulings have not been tested under the Full Faith and Credit provisions of federal law.

Such cases show the potential impact of a lack of national consensus in the United States about enforcement of filial support laws, a problem that does not exist in a smaller country with a single national law, such as Ukraine. In the United States, prior to changes in child support enforcement laws, the fact that parents who were determined to evade child support orders would cross state lines to avoid or delay enforcement, motivated law reformers to sanction “deadbeat” obligors nationally.<sup>199</sup> In the United States, there is no national consensus about enforcement of support orders for indigent parents against adult children.<sup>200</sup>

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194. See 28 U.S.C. § 1738B (1997).

195. Patrick C. Murphrey, *A Look at Filial Responsibility Laws in 2011*, 31 FAMILY L. NEWS, 1, 4 (2011), available at <http://www.vsb.org/docs/sections/family/summernews2011.pdf>.

196. See RUSSELL J. WEINTRAUB, COMMENTARY ON THE CONFLICT OF LAWS 363–67 (6th ed. 2010) (citing U.S. CONST. art. IV, § 1 and the Full Faith and Credit Act, 28 U.S.C. § 1738 (2003)).

197. *State Welfare Comm’n v. Mintz*, 280 N.Y.S.2d 1007, 1010 (App. Div. 1967).

198. *Commonwealth v. Mong*, 117 N.E.2d 32, 34 (Ohio 1954).

199. WEINTRAUB, *supra* note 196, at 365.

200. *Id.*

## VII. Conclusion

An uneven U.S. history of using filial support laws to compel adult children to provide financial support for their needy parents may represent conflicting—or changing—views over how to allocate public and private responsibility for helping the poor. In the United States and Ukraine, the language of the filial support statutes is similar, expressing a broad duty that many people agree with on a moral basis—children should support and assist their needy parents. The difference is in the willingness to use the statutes to mandate support against reluctant children.

Differing current enforcement practices may in part reflect the difference in governance and economic pressures. Ukraine was a core economic component of the Soviet Union, until it delivered the final nail in the coffin of the communist empire in December 1991, with close to ninety percent of the Ukrainian population voting for independence.<sup>201</sup> The country has both modernized and struggled with its emerging economy, weighed down by the legacy of the Chernobyl nuclear plant meltdown in 1986.<sup>202</sup> Internal challenges for political control, including the so-called Orange Revolution in 2004, have continued, sometimes accompanied by allegations of fraud and corruption.<sup>203</sup> The world-wide economic collapse of financial markets that began in 2008 hit the country hard, making it difficult for public welfare programs to provide an adequate safety net for the poor.<sup>204</sup> Ukraine's current willingness to enforce filial support laws against adult children may be a modern day echo of the Elizabethan-era Poor Laws, policies which were abandoned by England in the mid-twentieth century with the rise of its welfare state.<sup>205</sup>

Comparison of recent enforcement practices among the U.S. states and Ukraine reveals at least five approaches:

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201. Excellent English-language histories of Ukraine are available, including ANNA REID, *BORDERLAND: A JOURNEY THROUGH THE HISTORY OF UKRAINE* 224 (1999) and OREST SUBTELNY, *UKRAINE: A HISTORY* 583 (4th ed., 2009).

202. SUBTELNY, *supra* note 201.

203. *Id.* at 636–39 (discussing the political climate and the Ukrainian presidential election of 2004).

204. One estimate of poverty concludes that as of 2009, thirty-five percent of Ukraine's population was below the poverty line. *The World Factbook: Ukraine*, CENT. INTELLIGENCE AGENCY (Nov. 14, 2012), <http://www.cia.gov/library/publications/the-world-factbook/g8os/up.html>.

205. See Abe Bortz, *Historical Development of the Social Security Act*, SOC. SEC. ONLINE, <http://www.ssa.gov/history/bortz.html> (last visited Nov. 22, 2012).



- Systematic enforcement of filial support in the form of predictable (and usually modest) monthly sums, used to relieve what appears to be fundamental poverty, usually triggered by direct requests for support made by the indigent elder or caregiving individuals (usually other family members), as demonstrated by recent Ukrainian cases.
- Episodic enforcement, targeting adult children who have benefited from self-directed transfers of family resources that could have been used to pay health care or long-term care providers, with the claimants being third-party, commercial care-givers, such as hospitals or nursing homes, as demonstrated by the cases in South Dakota<sup>206</sup> and the *Budd* case<sup>207</sup> in Pennsylvania.
- Episodic enforcement of filial support laws, without regard to the defendant-child's fault or lack thereof, used by commercial entities as debt collection tools, as demonstrated by the post-2005 reports of suits filed in Pennsylvania, including the decision in the *Pittas* case.<sup>208</sup>
- No significant attempts at enforcement, either on the part of needy elders, family members or commercial third-parties, as demonstrated by research in the states of Alaska, California, Delaware, Georgia, Indiana, Iowa, Louisiana, Maryland, Mississippi, Montana, New Hampshire, New Jersey, North Dakota, Oregon, and Rhode Island.
- Formal rejection of filial support policies, as evidenced by the repeal of statutory law, occurring in Idaho in 2011.

There may be a sixth approach, although it is one more difficult to document with objective research. The author served as the director of the Elder Protection Clinic at Pennsylvania State University's Dickinson School of Law from 2001 to 2012, in which law students working as certified legal interns represented older adults on a wide range of legal matters. A number of the matters arose from financial abuse or exploitation, sometimes at the hands of adult children, usual-

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206. *Prairie Lakes Health Care Sys., Inc. v. Wookey*, 583 N.W.2d 405 (S.D. 1998); *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566 (S.D. 1994).

207. *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066, 1069 (Pa. Super. Ct. 2003).

208. *Health Care & Retirement Corp. of America v. Pittas*, 46 A.3d 719 (Pa. Super. Ct. 2012).

ly involving the parent's home being transferred in exchange for an unfulfilled promise of care. One of the tools used by the Clinic to combat financial abuse of an elderly parent by an adult child was to present the child with two options: pay monthly support for the remainder of the impoverished elder's life, as required by Pennsylvania's filial support law, or return the house.<sup>209</sup>

It seems reasonable to conclude that when a nation is both willing and financially able to provide adequate *public* support to assist poor elders, filial support laws are less important and less frequently used. In the United States, when the federal government was willing to fully fund Medicare and Medicaid for elders' health care and long-term care in nursing homes, federal policies led states to repeal or limit the use of filial support laws to mandate financial support for parents by their adult children. However, as the large demographic cohort of baby boomers ages, thus increasing the likelihood of costly health care and long-term care, there may be heightened interest among the U.S. states in using filial support laws against adult children.

In Ukraine, research of cases decided from 2004 forward demonstrates that filial support laws are used in a direct manner to mandate that adult children share their income with their needy parents. Some of the cases demonstrate that application of the law against a brother or sister may also serve to relieve disproportionate financial burdens voluntarily assumed by one child, often the child who is physically or emotionally closer to the parent. On the other hand, while the proportion of the child's income allocated to support of parents by court orders may be significant and thus may be seen by the adult child as a harsh burden, the total amount of money awarded is fairly low. Are the sums enough to relieve economic hardship for the parent without creating economic hardship for the adult child? The opportunity for the author of this Article to comment on Ukrainian law is narrow and is based on limited research. Nonetheless, two potential concerns emerge from the Ukrainian research: whether the dollar benefit of enforcement of filial support laws ever outweighs the enforcement costs, and whether policy-makers adequately consider the potential impact

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209. The Clinic experiences are documented in the author's book, co-written with Trisha Cowart. See KATHERINE C. PEARSON & TRISHA A. COWART, *THE LAW OF FINANCIAL ABUSE AND EXPLOITATION* (2011), with Chapter 6 covering the use of filial support laws in Pennsylvania.

of enforcement on the larger family dynamic. These same concerns may exist for any U.S. state tempted to commit to modern era enforcement of filial support laws.

In the United States, filial support laws have not been used frequently in recent years to require adult children to provide direct financial assistance to needy parents. As demonstrated by the recent history of decisions and cases filed in Pennsylvania and South Dakota, however, where third-party claims for support of parents are permitted, the sums of money involved can be very large. The facts of these cases sometimes demonstrate fraud, manipulation, or other fault on the part of the adult child, and as one commentator observes, "enforcement . . . may be appropriate in egregious individual situations,"<sup>210</sup> but in most states, filial support laws do not require proof of such fault. Are filial support laws being used to avoid proof requirements for fraud or other fault-based theories of recovery? And what does that mean for "innocent" defendant-family members who are sued for huge arrearages in long-term care or health costs? In the United States, filial support statutes are not currently tied to "fault" grounds and thus comparatively "innocent," if estranged, adult children could become subject to claims for substantial care costs for their parents.

Significantly, in the United States, filial support laws are not well known or understood by the general public in the twenty-first century. The inconsistency in the laws among the U.S. states, the episodic nature of enforcement during the last fifty years, and the evidence of a new trend of third-party enforcement of filial support laws by debt collectors raise important concerns, including the question of whether filial support laws are serving appropriate public policy goals.

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210. Moskowitz, *supra* note 16, at 731.

**FILIAL SUPPORT STATUTES in the UNITED STATES***Updated June 7, 2012*

STATE	STATUTE	MOST RECENT CASES RELEVANT TO ISSUE OF ADULT CHILD'S LIABILITY FOR SUPPORT OF PARENT
Alabama	No Current Statute	
Alaska	Alaska Stat. § 25.20.030 (Duty of parent & child when poor) Alaska Stat. § 47.25.230 (Persons liable for support and burial) Alaska Stat. § 11.51.210 (Crime)	
Arizona	No Current Statute	
Arkansas	Ark. Code Ann. § 20-47-106 (Duty limited to mental health services)	<i>Alcorn v Ark. State Hospital</i> , 367 S.W.2d 737 (Ark. Supreme 1963) (decided under prior law, discussing limits on secondary liability of family member (father) for costs of mental health care to family member (adult daughter) in state hospital) <i>Stewart v. Stewart</i> , 1990 WL 48886 (Ark. App. 1990) (dicta, discussing parents' financial liability for mentally disabled adult son)

*Continued on next page*

TABLE 1—CONTINUED

California	Cal. Fam. Code 4400-4405 (Duty to Support Parents) Cal. Fam. Code 4410-4414 (Relief from Duty to Support Parents) Cal. Welf. & Inst. Code §& 12350 & 12351 (Including Releases of Obligation to Reimburse State) Cal. Penal Code § 270(c) (Crime)	<i>Swoap v. Superior Ct. of Sacramento Co.</i> , 516 P.2d 840 (Cal. 1973) (decided under prior version of statute, holding statutory duty of children to support needy parents and reimburse state for support is constitutional and does not deny equal protection of laws) <i>People v. Heizman</i> , 886 P.2d 1229 (Cal. 1994) (discussing filial duties in context of criminal case of elder abuse filed against adult daughter)
Colorado	No Current Statute	<i>In re Marriage of Sendinsky</i> , 740 P.2d 521 (Colo. 1987) (discussing impact of voluntary contributions by adult children to mother in divorce)
Connecticut	Conn. Gen. Stat. Ann. § 53-304 (Crime, for refusing reasonable necessary support to parent <i>under</i> age 65)	
Delaware	Del. Code Ann. Tit. 13 § 503 (Duty to support poor person includes spouse, parents & children). Del. Code Ann. Tit. 13 § 506 (Just cause defense to failure to support)	<i>Dutton v. Wolhar</i> , 809 F. Supp. 1130 (D. Del. 1992) (holding debt collectors not entitled to misrepresent effect of statute in attempting to collect deceased parents' debts from adult children)
Florida	No Current Statute	

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Georgia	GA. Code Ann. § 36-12-3 (Children of full age shall support paupers)	<i>Davenport v. Davenport</i> , 111 S.E. 2d 57 (Ga. 1959) (declining to permit wife/mother to seek both spousal support and support from children)
Hawaii	No Current Statute	
Idaho	No Current Statute	Idaho Code § 32-1002 was repealed effective July 1, 2011
Illinois	No Current Statute	
Indiana	Ind. Code Ann. §§ 31-16 -17-1 thru 7 (Liability of children for support of parents & contribute to burials) Ind. Code Ann. § 35-46-1-7 (Crime)	<i>Pickett v. Pickett</i> , 251 N.E.2d 684 (Ind. App. 1969) (upholding obligation of son to support mother under prior version of statute) <i>Davis v. State</i> , 240 N.E.2d 54 (Ind. 1968) (holding son's gainful employment did not mean son was able to support mother under prior version of statute)
Iowa	Iowa Code Ann. § 252.1 (Defining "poor" person) Iowa Code Ann. § 252.2 (Liability) Iowa Code Ann. § 252.5 (Remote relatives - Grandparents)	
Kansas	No Current Statute	<i>In re Erikson</i> , 180 P.263 (Kan. 1919) (no statute; no duty)
Kentucky	KY. Rev. Stat. Ann. § 530.050 (Crime)	<i>Wood v. Wheat</i> , 11 S.W. 2d 916 (Ky. Ct. App. 1928) (Child voluntarily providing support cannot compel contribution from other children)

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Louisiana	La. C.C. Art. 229 (Reciprocal duties; parents & children) La. C.C. Art. 239 (Reciprocal duties; illegitimate children) La. R.S. 13: 4731 (Alimony from children or grandchildren)	<i>In re Succession of Elie</i> , 50 So. 3d 262 (La. Ct. App. 2010) (denying mother's claims for funds from deceased son's estate under Art. 229)
Maine	No Current Statute	
Maryland	MD. Code Ann. Fam. Law §§ 13-101 thru 13-109 (Support claims by destitute parent or adult children)	<i>Corby v. McCarthy</i> , 840 A.2d 188 (Md. 2003) (recognizing parents' duty to support adult disabled child)
Massachusetts	Mass. Gen. Laws Ann. ch. 273, § 20 (Crime)	
Michigan	No Current Statute	
Minnesota	No Current Statute	
Mississippi	Miss. Code Ann. § 43-31-25 (Liability of parents, grandparents, brothers & sisters)	
Missouri	No Current Statute	<i>Roth v. Roth</i> , 571 S.W.2d 659 (Mo. App. 1978) (no statute; no duty)
Montana	Montana Code Ann. § 40-6-214 (Reciprocal duties of parents & children) Montana Code Ann. § 40-6-301 (Duty to support indigent parents)	<i>In re Marriage of Howard</i> , 840 P.2d 1217 (Mont. 1992) (holding that in calculating father's liability for child support, court did not have to deduct sums voluntarily paid by him to his mother, absent showing mother was indigent)
Nebraska	No Current Statute	

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Nevada	Nev. Rev. Stat. Ann. § 428.070 (Child's duty to reimburse for county hospitalization of indigent parents, where child promised to support parent in writing) Nev. Rev. Stat. Ann. §439B.310 (Defining indigent)	
New Hampshire	N.H. Rev. Stat. Ann. § 167:2 (Reimbursement to state or county for public assistance to parent) N.H. Rev. Stat. Ann. § 546-A:2 (Liability of spouses, parent, child for reasonable subsistence)	
New Jersey	N.J. Stat. Ann. §§ 44:4-100 thru 44:4-103 (Liability of parents, spouses and children of poor persons) N.J. Stat. Ann. §§ 44:1-139 thru 44:1-142 (Compelling assistance from relatives including children)	<i>Terenzio v. Nelson</i> , 258 A.2d 20 (N.J. Super. Ct. App. Div. 1969) (permitting cross-border enforcement of prior New York law to recover mother's hospitalizations costs from N.J. son) <i>Pavlick v. Teresinski</i> , 149 A.2d 300 (Juv. & Dom. Rel. 1959) (upholding mother's claim against two sons).
New Mexico	No Current Statute	

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New York	No Current Statute	<i>Matter of Will of Surut</i> , 535 N.Y.S. 2d 922 (N.Y. Sur. 1988) (daughter had no duty to support mother) <i>In re Mintz</i> , 280 N.Y.S 2d 1007 (N.Y. Sup. 1967) (declining to enforce out-of-state filial law against in-state child)
North Carolina	N.C. Gen. Stat. § 14-326.1 (Crime)	
North Dakota	N.D. Cent. Code § 14-09-10 (Reciprocal duties of parents and child; promise of adult child to pay for necessities furnished to parent is binding)	<i>Trinity Medical Ctr. v. Rubbelke</i> , 389 N.W. 2d 805 (N.D. 1986) (holding medical center's release of parents also released children of any obligation under statute).
Ohio	Ohio Rev. Code Ann. § 2919.21 (Crime)	<i>State v. Flontek</i> , 693 N.E.2d 767 (Ohio 1998) (reversing conviction of daughter for manslaughter & nonsupport of her mother) <i>St. Clare Center, Inc. v. Mueller</i> , 517 N.E.2d 236 (Ohio Ct. App.1986) (holding statute criminalizing failure to provide support for parent does not create civil liability counterpart)
Oklahoma	No Current Statute	

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Oregon	OR. Rev. Stat § 109.010 (Duty of support for children and parents) Or. Rev. Stat. § 163.205 (Crime)	<i>In re Estate of Hines</i> , 573 P.2d 1260 (Or. 1978) (discussing filial support statute in wrongful death claim, finding statute does not make parents dependents of child) <i>State v. Nolen</i> , 260 P.3d 810 (Or. Ct. App. 2011) (holding that in absence of agreement between mother and son, son had no duty to care for mother and therefore no liability for failing to provide her with care)
Pennsylvania	23 Pa. C.S.A. §§ 4601 thru 4606 (Duty of parents to indigent child and child to indigent parents)	<i>Savoy v. Savoy</i> , 641 A.2d 596, 600 (Pa. Super. Ct. 1994) (holding son liable for \$150 per month to pay mother's hospital expenses) <i>Presbyterian Med. Ctr. v. Budd</i> , 832 A.2d 1066 (Pa. Super. 2003) (holding statute may be used by nursing home to seek recovery from adult daughter who misused power of attorney and failed to use mother's money to pay for care) <i>Health Care &amp; Retirement Corp. of America v. Pittas</i> , 46 A.3d 719 (Pa. Super. Ct. 2012) (holding son liable to nursing home for \$93,000 for mother's six months of care)

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Rhode Island	R.I. Gen. Laws §§ 15-10-1 thru 15-10-7 (Penalty for unreasonable neglect of destitute parents) R.I. Gen. Laws §§ 40-5-13 thru 40-5-21 (Obligation of kindred for support)	<i>Landmark Med.Ctr. v. Gauthier</i> , 635 A.2d 1145 (R.I. 1994) (upholding medical center's claim against wife and children for expenses incurred by wife and husband before his death, and children would be liable under both sets of statutes if mother's assets insufficient to cover debt)
South Carolina	No Current Statute	
South Dakota	S.D. Codified Law § 25-7-27 (Adult child's duty to support parent) S.D. Codified Law § 25-7-28 (Right of contribution from brothers and sisters) S.D. Codified Laws § 28-13-1.1(Defining "indigent or poor person")	<i>Prairie Lakes Health Care Sys. v. Wookey</i> , 583 N.W.2d 405 (S.D.1998) (holding hospital entitled to make statutory claim against son for father's health care debt, where real estate transfer deemed fraud) <i>Americana Healthcare Ctr. v. Randall</i> , 513 N.W.2d 566 (S.D. 1994) (permitting mother's nursing home to make statutory claim against son to be paid from trust funds inherited from mother) <i>Accounts Management Inc. v. Nelson</i> , 663 N.W. 2d 237 (S.D. 2003) (holding that where hospital's patient (or his estate) was able to provide for himself, the children of the deceased patient were not obliged to pay)

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Tennessee	Tenn. Code Ann. § 71-5-103 (Definition of responsible parties includes children) Tenn. Code Ann. § 71-5-115 (Welfare Department may require reimbursement from responsible parties)	
Texas	No Current Statute	<i>Missouri-Kansas-Texas R. Co. v. Fierce</i> , 519 S.W.2d 157 (Tex. Civ. App. 1975) (Son had no legal obligation to parent)
Utah	Utah Code Ann. § 17-14-2 (Support of Poor by Relatives: children; parents, brothers and sisters, grandchildren, grandparents)	
Vermont	VT. Stat. Ann. Tit. 15, §§ 202 & 203 (Penalties for nonsupport)	
Virginia	VA. Code Ann. § 20-88 (Support of parents by children)	<i>Peyton v. Peyton</i> , 8 Va. Cir. 531, 1978 Va. Cir. Lexis 19 (1978) (holding son liable to reimburse brother for mother's past care expenses)
Washington	No Current Statute	
Wisconsin	No Current Statute	
Wyoming	No Current Statute	
West Virginia	W. VA. Code § 9-5-9 (Liability of relatives for support, including children, parents, brothers & sisters)	

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Puerto Rico	8 L.P.R.A. § 712 (Duty of descendants to the elderly ( <i>translated from Spanish</i> ))	<i>Chavez v. Hernandez et al.</i> , Civil Núm. KAL 2005–1188, 2008 WL 5561018 (TCA) (P.R. Cir. 2008) (holding four siblings liable equally to pay for mother’s care, totaling \$1,800 per month plus retroactive payments of \$19,000)
District of Columbia	No Current Statute	

