

**TAKING CARE OF OUR CARETAKERS:
USING FILIAL RESPONSIBILITY LAWS TO
SUPPORT THE ELDERLY BEYOND THE
GOVERNMENT'S ASSISTANCE**

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Parents bear moral, legal, and ethical responsibilities to care for their children. However, once parents reach an age where they can no longer look after themselves, the duties of their adult children to support them is less clear. In this Note, Ms. Allison Ross examines U.S. criminal and civil filial responsibility laws, which require adult children to financially support their elderly parents, and analyzes why these laws are not actively enforced by reviewing current filial responsibility laws and their close relationship to Medicaid. Next, this Note demonstrates the economic need for filial responsibility laws and analyzes how to improve their enforcement. Finally, Ms. Ross proposes a model civil filial responsibility statute with effective enforcement procedures and powerful incentives.

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I. Introduction

In the summer of 2005, Pennsylvania recodified its filial responsibility law and reaffirmed that adult children are required to provide support to their indigent, elderly parents.¹ During the same period, Pennsylvania tightened the eligibility requirements for Medicaid, making it more difficult for some people to gain access to necessary medical services.² While technically unrelated, these combined acts suggest that as governments look to curtail spending, the role of families in financially supporting each other will be expanding.

Nearly thirty states have enacted either criminal or civil filial responsibility laws requiring adult children to financially support their parents in financial need.³ Yet eleven states have never enforced these laws, and most of the other states only rarely do so.⁴ This Note discusses filial responsibility laws and why states do not actively enforce them. Part II examines which states have filial responsibility laws, why legislatures initially enacted them, provides a background on Medicaid, and explains why Medicaid and filial responsibility laws are closely related. Part III focuses on the economic need for filial responsibility laws, the benefits and barriers to enforcement, examples of enforcement, and other countries' treatment of this issue. Part IV advocates for a model civil filial responsibility statute that provides effective enforcement procedures and incentives to families who contribute to the care of elderly family members.

II. Background

A. What Are Filial Responsibility Laws?

Filial responsibility laws create a statutory duty for adult children to financially support their parents who are unable to provide for themselves.⁵ The requirements vary from state to state, but typically the statutes obligate adult children to pay for necessities such as

1. Katherine C. Pearson, *Re-thinking Filial Support Laws in a Time of Medicaid Cutbacks—Effect of Pennsylvania's Recodification of Colonial-Era Poor Laws*, 76 PA. B. ASS'N Q. 162, 166 (2005).

2. *Id.* at 163–65.

3. Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 862 (2005).

4. *Id.*

5. *Id.* at 861.

food, clothing, shelter, and medical attention for their parents in financial need.⁶ The obligation to support a parent is triggered by financial need; although the trigger is usually defined broadly in the statutes.⁷

Historically, a person was considered indigent if he was “so poor that he must be supported at public expense.”⁸ However, this definition of indigency has been expanded; indigency no longer means that a person is necessarily helpless, destitute, or on public welfare programs.⁹ For purposes of filial responsibility laws, indigence includes people with limited income and other means that are not adequate to provide for their basic maintenance and care.¹⁰

There are a few ways in which adult children can avoid liability for the support of their indigent parents. First, before an adult child is held responsible for payment of her parent’s expenses, the party seeking enforcement must establish the financial ability of the adult child.¹¹ Courts will consider several factors when determining whether a child can support the parents and to what extent the child can pay. In addition to the adult child’s income, courts will consider the responsibilities owed by the adult child to their own family and the family’s overall financial situation.¹² Courts hesitate to force an adult child to support her parents when doing so would deprive the child of being able to provide for her own necessities and thereby render her nearly destitute.¹³ Additionally, an adult child can seek contribution from her siblings to aid in the support of their parents.¹⁴ When there are multiple children who could provide financial support, courts will consider the financial situation of each child and determine how much support each child owes based on his or her ability to pay.¹⁵ The law does not consider the spouse of an adult child as a source of support for his or her parents-in-law.¹⁶

6. Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL’Y 709, 715 (2001) [hereinafter Moskowitz, *Filial Responsibility*].

7. *Id.*

8. Pearson, *supra* note 1, at 166 (quoting *Case of Rising*, 29 York 146 (1915)).

9. *Id.*

10. Pakula, *supra* note 3, at 863.

11. Robin M. Jacobson, Note, *Americana Healthcare Center v. Randall: The Renaissance of Filial Responsibility*, 40 S.D. L. REV. 518, 536–37 (1995).

12. *Id.* at 537–38.

13. *Id.* at 536–37.

14. *Id.* at 536.

15. *Id.* at 535–36.

16. *Id.* at 536.

Second, an adult child can avoid financial responsibility if she can demonstrate that the parent abandoned him. In California, the abandonment defense requires proof of three elements: “(1) the abandonment occurred during the child’s minority; (2) the abandonment continued for a period of at least two years before the child became 18; and (3) during the period of abandonment the parent was physically and mentally able to support the child.”¹⁷ In practice, however, abandonment may be a difficult defense to establish.¹⁸ If the parent had a good cause for abandoning the child, such as putting her child into foster care so she could earn a living and one day support the child, the child may not be able to rely on the abandonment defense.¹⁹ However, simple abandonment is sufficient in some cases. As a California appellate court noted,

love, respect, loyalty, devotion and the natural and inevitable desire of a child to recompense a parent for the love, service, support and sacrifice usually lavished by a parent upon a child, cannot be legislated nor should the law force a child to make recompense for an assumed standard of upbringing, when a trial court finds on credible evidence that it never existed.²⁰

Third, when a civil filial responsibility law does not provide an applicable defense, the adult child may seek a partial support order to reduce the amount of support. Under an unclean hands doctrine, the parent’s prior conduct could be a relevant factor in determining the requisite support.²¹ When a parent’s prior bad acts would suggest

17. Priscilla Day, *The Abandonment Defense to a Claim for Parental Support*, 11 J. CONTEMP. LEGAL ISSUES 380, 380 (2000).

18. *Id.* at 382–83. Day discusses two abandonment cases from the 1960s in California to support her position that abandonment has stringent requirements. In *In re Stark*, a daughter was required to support her mother even though her mother left her with her father at the age of three due to an “illness.” *Id.* at 382. The mother visited the daughter a few times a year at most, but there was no two-year period before the daughter turned eighteen where the mother failed to see her daughter at all. *Id.* She did not pay any financial support for the daughter and was able to raise three other children, but the court still required the daughter to pay. *In re Stark*, 182 Cal. App. 2d 20, 26 (1960). In *Chryst v. Chryst*, a son was required to support his parents even though the parents relinquished physical custody of the child and did not communicate with him for over a period of two years, because the parents did not intend to completely sever the relationship. 204 Cal. App. 2d 620, 622–23 (1962). They felt that they could not provide for the children and that the best interests of the child would be served if he lived with an aunt. *Id.*

19. Jacobson, *supra* note 11, at 534 (citing *Denny v. Pub. Welfare Div.*, 483 P.2d 463 (Or. Ct. App. 1971)).

20. *Id.* at 533 (citing *Gluckman v. Gaines*, 71 Cal. Rptr. 795, 797 (Cal. Dist. Ct. App. 1968)).

21. *Radich v. Kruly*, 226 Cal. App. 2d 683, 687 (1964).

that a child should have no moral or equitable obligation to support his parent, and yet the statutory obligation still remains, the court can limit the amount of support to the parent's minimum needs.²² The courts may also have discretion based on fairness to establish appropriate remedies after examining each party's circumstances.²³ Factors a court may consider when determining how much support a child owes are: if a parent previously abandoned the child and later returned,²⁴ past treatment of the child,²⁵ and whether the parent paid child support while the child was a minor.²⁶

State statutes vary as to who has standing to bring a claim for parental support. States with civil statutes list several different interested parties with the ability to bring a claim on behalf of an indigent parent.²⁷ Some states only permit the parent to file a claim, some permit the parent or the county, some permit state public agencies to file a claim, and others permit the parent's creditors to initiate the action.²⁸ When the statute does not specify who can bring a claim, "the right to bring a claim is often the responsibility of the organization or entity providing services to the indigent elderly parent."²⁹

22. *Id.*

23. Amber Spataro, "Prodigal Parent" as a Defense to Proceedings Brought to Require Support from a Child, 11 J. CONTEMP. LEGAL ISSUES 385, 387-89 (2000).

24. Jacobson, *supra* note 11, at 533-34 (discussing *Gierkont v. Gierkont*, 134 A.2d 10 (N.J. Super. Ct. App. Div. 1957), where the father abandoned his son for half of the child's minority but eventually returned, and the court determined that the child could be responsible for the amount of support equivalent to the percentage of time the father was present in the son's childhood).

25. *Id.* at 534-35. The author cites *Radich v. Kruly*, where a father seeking support physically and mentally abused his daughter and spread rumors that she was unchaste. *Id.* The court determined that she was liable, but limited the support to the minimum. *Radich*, 226 Cal. App. 2d at 683.

26. Jacobson, *supra* note 11, at 533-34 (citing *Pelletier v. White*, 371 A.2d 1068, 1069-70 (Conn. Super. Ct. 1976)).

27. See Pakula, *supra* note 3, at 863.

28. See *id.* at 863-64. In California, either the indigent parent or the county can bring a support claim. CAL. FAM. CODE § 4403 (Deering 2007). Alaska, Mississippi, and Nevada permit public agencies of the state to bring the lawsuit, while Connecticut and Tennessee allow welfare authorities to initiate an action. ALASKA STAT. §§ 25.20.030, 47.25.230 (2007); CONN. GEN. STAT. § 46b-215 (2007); MISS. CODE ANN. § 43-31-25 (2007); NEV. REV. STAT. § 428.070 (2007); TENN. CODE ANN. §§ 71-15-115, -25-103 (2007). North Carolina permits a parent's creditor to bring the claim against the adult child, and New Jersey requires that if welfare directors bring a claim, the directors must raise the claim for the benefit of the township and not for the benefit of the parent. N.J. STAT. ANN. § 44:7-19 (2007); N.C. GEN. STAT. § 14-326 (2007).

29. Pakula, *supra* note 3, at 864.