

Filial Responsibility Laws— Codifying a Qualified Quid Pro Quo of Care

DANIELLE ERICKSON^{†*}

Parents are expected—rather, required—to provide for the basic care and needs of their minor children.¹ “All fifty states have statutes that obligate certain adults to care for or financially support certain other family members.”² As parents grow older, there is a moral expectation that children will provide reciprocal care for their aging parents. This is evidenced by how two-thirds of older adults with disabilities receive care solely from family caregivers.³ Family members also provide other types of reciprocal support on their own volition, “such as grocery shopping, cooking and transportation.”⁴ However, there is not always the same legal requirement for children to support their parents as there is for parents to support their minor children.⁵ At common law, there is no duty for children to provide for their indigent parents.⁶ The Elizabethan Poor Act of 1601 is cited as the first effort in Western culture to codify the moral obligation of children to care for their parents.⁷ This system was imported to America and adopted by the colonies and later the individual states.⁸

Filial responsibility laws continue to be regulated at the state level, and there is no present federal statute.⁹ As of 2023, twenty-five states plus Puerto Rico have statutes codifying a filial responsibility for children to provide care or support to their aging and indigent parents. That means there are

[†] Danielle Erickson is a 2023 J.D. candidate at the University of Connecticut School of Law. She is an alumna of Boston College, with a B.A. in Sociology and Political Science.

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¹ Shannon Frank Edelstone, *Filial Responsibility: Can the Legal Duty to Support Our Parents Be Effectively Enforced?*, 36 FAM. L.Q. 501, 501 (2002). Mari Park, *The Parent Trap: Health Care & Ret. Corp. of Am. v. Pittas, How it Reinforced Filial Responsibility Laws and Whether Filial Responsibility Laws Can Really Make You Pay*, 5 EST. PLAN. & CMTY. PROP. L.J. 441, 442 (2013). CHILD WELFARE INFO. GATEWAY, *State Laws on Child Abuse and Neglect*, U.S. DEP’T HEALTH & HUM. SERVS., <https://www.childwelfare.gov/topics/systemwide/laws-policies/can/> (last visited May 7, 2022).

² Katherine C. Pearson, *Filial Support Laws in the Modern Era: Domestic and International Comparison of Enforcement Practices for Laws Requiring Adult Children to Support Indigent Parents*, 20 ELDER L.J. 269, 270 (2013).

³ *Id.* at 284; Matthew Pakula, *A Federal Filial Responsibility Statute: A Uniform Tool to Help Combat the Wave of Indigent Elderly*, 39 FAM. L.Q. 859, 864–65 (2005).

⁴ Edelstone, *supra* note 1, at 506.

⁵ Pakula, *supra* note 3, at 864–65.

⁶ *Id.* at 861; *Albert Einstein Med. Ctr. v. Forman*, 212 Pa. Super. 450, 454 (1968).

⁷ Daniel H. Brown, *Picking Up the Tab for Mom and Dad: The Clash of Filial Laws with Liberty, Morality, and Culture*, 11 J. INT’L AGING L. & POL’Y 1, 2 (2020); Park, *supra* note 1, at 444; Pakula, *supra* note 3, at 861.

⁸ Brown, *supra* note 7, at 2–3.

⁹ Pakula, *supra* note 3, at 860; Edelstone, *supra* note 1, at 502.

twenty-six different systems of filial duty laws, each with their own nuances. This paper seeks to review these statutes and relevant case law in a coherent manner, finding themes and commonalities in statutes while highlighting notable differences. Section I looks at upon whom the different state laws impose the responsibility. Section II considers the different situations when the responsibility arises, such as the condition of the parent and the situation of the child. Section III explores the different enforcement mechanisms that state statutes create. Section IV investigates whether filial responsibility statutes are enforceable, and if they are actually enforced. Last, in Section V, I make the argument that states should change their statutes and the filial responsibility laws should only be enforced when the indigent parent is under the age of sixty-five.

I. WHO HAS THE RESPONSIBILITY?

The word “filial” means “of or relating to a son or daughter.”¹⁰ It follows that filial responsibility laws place the duty of care on the child of indigent parents. The majority of states with filial duty statutes place the responsibility on the child of the indigent parent. Some states do this by creating a reciprocal responsibility of support for both parents and children.¹¹ Other states have specific statutes focusing on a situation where the adult child must provide support to the indigent parent.¹² Several states use the word “children” instead of or in addition to “child,” indicating that if an indigent parent has multiple children, all of the children have this legal filial responsibility.¹³ However, as discussed below, only a handful of states specifically provide means for how multiple children can be held liable. If a child becomes incapacitated and unable to provide for their indigent parent, the parent may be able to collect from that child’s legal guardian or conservator. In an old Georgia case, the court held that where a bank was the guardian of her son’s property, the mother could collect support payments from her son through the bank.¹⁴

¹⁰ *Filial*, MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/filial> (last visited May 7, 2022).

¹¹ ALASKA STAT. ANN. § 25.20.030 (West 2022); CONN. GEN. STAT. ANN. § 53-304(a) (West 2022); GA. CODE ANN. § 36-12-3 (West 2022); KY. REV. STAT. ANN. § 530.050 (West 2022); NEV. REV. STAT. ANN. § 428.070 (West 2009); OHIO REV. CODE ANN. § 2919.21 (West 2019); 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005); VT. STAT. ANN. tit. 15, § 202 (West 2022).

¹² CAL. FAM. CODE § 4400 (West 2020); IND. CODE ANN. § 31-16-17-1 (West 2022); LA. STAT. ANN. § 13:4731(2022); MASS. GEN. LAWS ch. 273, § 20 (West 2022); N.C. GEN. STAT. ANN. § 14-326.1 (West 2022); 15 R.I. GEN. LAWS ANN. § 15-10-1 (West 2022); S.D. CODIFIED LAWS § 25-7-27 (West 2000).

¹³ ALASKA STAT. ANN. § 47.25.230 (West 2022); DEL. CODE ANN. tit. 13, § 503 (West 2022); LA. STAT. ANN. § 13:4731 (2022); N.J. STAT. ANN. § 44:4-102 (West 2022); N.D. CENT. CODE ANN. § 14-09-10 (West 2022); OR. REV. STAT. ANN. § 109.010 (West 2022); TENN. CODE ANN. § 71-5-103 (West 2022); UTAH CODE ANN. § 17-14-2 (West 2022); W. VA. CODE ANN. § 9-5-9 (West 2022).

¹⁴ *Citizens & S. Nat’l Bank v. Cook*, 185 S.E. 318, 318 (Ga. 1936).

A handful of states specifically provide that if there are multiple children, the children are jointly and severally liable for the parent’s care. A New Jersey statute provides that children are “severally and respectively” responsible for the maintenance of an indigent parent.¹⁵ A North Carolina statute states: “If there be more than one person bound . . . to support the same parent or parents, they shall share equitably in the discharge of such duty.”¹⁶ Rhode Island and South Dakota each have a specific section establishing a right of contribution from siblings if one child is providing support to their parents.¹⁷ Lastly, Virginia law states that children have a “joint and several duty” to provide support and maintenance for their parents.¹⁸ In *Peyton v. Peyton*, this duty was enforced when the court held that the defendant had to pay \$8,000 to his brother for costs of past care where the brother was paying monthly support payments to the mother.¹⁹

In addition, some states provide that other family members are responsible for the support of indigent adults. Alaska, Louisiana, Rhode Island, and Utah specify that grandchildren may have a filial responsibility in addition to the children of an indigent adult.²⁰ Utah specifically provides that children have the primary responsibility and grandchildren have a secondary responsibility.²¹ Mississippi and Puerto Rico take a broader approach and place the filial duty on any descendant of the indigent adult.²² Alaska, Mississippi, Utah, and West Virginia also place liability on the indigent adult’s siblings; Utah and West Virginia provide that the siblings are secondarily liable to the children.²³ Notably, many of these states expanding the filial duty beyond just the children overlap, possibly reflecting certain values in those states. Once *who* holds the duty has been established, the next issue is to determine *when* the responsibility arises.

¹⁵ N.J. STAT. ANN. § 44:4-102 (West 2022).

¹⁶ N.C. GEN. STAT. ANN. § 14-326.1 (West 2022).

¹⁷ 15 R.I. GEN. LAWS ANN. § 15-10-7 (West 2022); “Any child making more than his or her share of a proper and reasonable contribution toward the support of his or her destitute parents shall have a right of contribution from other children over the age of eighteen (18) years of the parents, who have been supported by the parents, in a civil action” *Id.* S.D. CODIFIED LAWS § 25-7-28 (West 2022); “In the event necessary food, clothing, shelter, or medical attendance is provided for a parent by a child, he shall have the right of contribution from his adult brothers and sisters, who refuse or do not assist in such maintenance, on a pro rata share to the extent of their ability to so contribute to such support; provided that no right of contribution for support shall accrue except from and after notice in writing is given by the child so providing for his parent.” *Id.*

¹⁸ VA. CODE ANN. § 20-88 (West 2022).

¹⁹ *Peyton v. Peyton*, 8 Va. Cir. 531, 534 (Va. Cir. Ct. 1978).

²⁰ ALASKA STAT. ANN. § 47.25.230 (West 2022); LA. STAT. ANN. § 13:4731 (2022); 40 R.I. GEN. LAWS ANN. § 40-5-13 (West 2022); UTAH CODE ANN. § 17-14-2 (West 2022).

²¹ UTAH CODE ANN. § 17-14-2 (West 2022).

²² MISS. CODE ANN. § 43-31-25 (West 2022); P.R. LAWS ANN. tit. 8, § 712 (2022).

²³ ALASKA STAT. ANN. § 47.25.230 (West 2022); MISS. CODE ANN. § 43-31-25 (West 2022); UTAH CODE ANN. § 17-14-2 (West 2022); W. VA. CODE ANN. § 9-5-9 (West 2022).

II. WHEN DOES THE RESPONSIBILITY ARISE?

Parents are required to care for their children throughout the first eighteen years of the child's life no matter the circumstance.²⁴ However, the same is not necessarily expected from children for their parents. While parents must care for their children in multiple ways with little regard to their means, there are limitations in place for when children are required to provide for their parents. These qualifications relate to the qualities of the children, the parent's needs and situation, and statutory defenses.

A. *Qualities of the Children*

Most states with filial duty laws specify that children are only required to provide support to the extent of their means. Some states provide that the obligation for support arises when the adult child has the general ability to offer support,²⁵ while others specify that the duty arises when the adult child has the financial means to provide support.²⁶ The fact that an adult child is gainfully employed may not be sufficient to establish that the child is capable of providing support.²⁷ Furthermore, in *Gluckman v. Gaines*, the California Appellate Court held that the adult child's capacity to support their indigent parent must be weighed against the adult child's other commitments, and that the adult child must be able to provide for their own necessities before being required to provide for their indigent parent.²⁸ Courts make "allowances for the special needs of the adult child, such as financing their [own] child's college education, and for contributions to the adult child's savings and retirement."²⁹ However, the fact that an adult child is unable to pay a parent's medical bill in full at one time does not release them from that responsibility; the child could be made to pay the bill in

²⁴ Edelstone, *supra* note 1, at 501.

²⁵ ALASKA STAT. ANN. § 47.25.230 (West 2022); CAL. FAM. CODE § 4400 (West 2020); KY. REV. STAT. ANN. § 530.050 (West 2021); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2022); N.J. STAT. ANN. § 44:4-101 (West 2023); N.D. CENT. CODE ANN. § 14-09-10 (West 2019); P.R. LAWS ANN. tit. 8, § 712 (2023); UTAH CODE ANN. § 17-14-2 (West 2022); W. VA. CODE ANN. § 9-5-9 (West 2018).

²⁶ ARK. CODE ANN. § 20-47-106 (West 2017); IND. CODE ANN. § 31-16-17-1 (West 2022); NEV. REV. STAT. ANN. § 428.070 (West 2009); N.C. GEN. STAT. ANN. § 14-326.1 (West 2022); OHIO REV. CODE ANN. § 2919.21 (West 2019) (issue of financial ability to support an affirmative defense); 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005); S.D. CODIFIED LAWS § 25-7-27 (West 2023); VT. STAT. ANN. tit. 15, § 202 (West 2022); VA. CODE ANN. § 20-88 (West 2009).

²⁷ *Davis v. State*, 240 N.E.2d 54, 56 (Ind. 1968) (reversing the conviction of the defendant for failing to support his mother, reasoning that the mere fact that the defendant was gainfully employed did not establish that he was financially able to support his mother).

²⁸ *Gluckman v. Gaines*, 266 Cal. App. 2d 52, 59-60 (1968).

²⁹ Edelstone, *supra* note 1, at 503. *Thornsberry v. State Dep't Pub. Health & Welfare*, 295 S.W.2d 372, 376 (Mo. 1956) (holding that the adult child had a right to decide to provide for son's college education over providing for mother's support) (note that Missouri does not have a filial responsibility statute).

installments.³⁰ Connecticut and Vermont laws additionally provide that a child may not be liable if they can show that they have a physical incapacity or another good cause which prevents them from providing support.³¹ This ability to provide support is balanced with the parent’s needs, as discussed below.³²

The age of the child is another quality that some states account for in their statutes. Several state statutes include something about the filial responsibility falling on an “adult child.”³³ Ohio’s statute does not provide any age limitation, but a case from Ohio concedes that the duty falls on an adult child.³⁴ North Carolina simply requires that the child be “of full age” without providing a specific age.³⁵ A handful of states require that the adult child be at least eighteen years of age.³⁶ Oddly, even though Connecticut does not have a minimum age requirement for the child, it is the only state that places an upper limit on the parent’s age, requiring support only for parents under the age of sixty-five.³⁷

There is a question of whether an adult child must pay for the support of a parent living in another state, and whether that state can compel the child to pay. The treatment of this question varies state by state. A case from New York—which does not have a filial responsibility statute—held that because New York does not have a parental support law, an action against a son for the support of his mother residing in another state could not be brought.³⁸ Kentucky’s statute places the duty only on those adult children living in the state with parents living in the state.³⁹ On the other hand, a case from South Dakota held that even though a son did not live in that state, he could have an action for support brought against him in South Dakota because he had “numerous contacts with the state.”⁴⁰ Other states only provide that either the parent or child need to reside in the state, but do not suggest whether the other party needs to live in the state.⁴¹ It is unclear what will happen in these

³⁰ *Prairie Lake Health Care Sys. v. Wookey*, 583 N.W.2d 405, 419 (S.D. 1998). “We recognize that Dwight has a compelling moral and legal duty to also support his wife and children, but the trial court reasoned, and we think correctly, that even if Dwight cannot pay the entire medical bill at one time, he could pay in installments.” *Id.*

³¹ CONN. GEN. STAT. ANN. § 53-304 (West 2022); VT. STAT. ANN. tit. 15, § 202 (West 2022).

³² *Edelstone*, *supra* note 1, at 503. *See also* *Pickett v. Pickett*, 251 N.E.2d 684 (Ind. App. 1969). “The two basic concerns are the financial need of the parent and the ability of the child to pay.” *Id.* at 687–88.

³³ CAL. FAM. CODE § 4400 (West 2020); N.D. CENT. CODE ANN. § 14-09-10 (West 2019); S.D. CODIFIED LAWS § 25-7-27 (West 2023); VT. STAT. ANN. tit. 15, § 202 (West 2022).

³⁴ *State v. Flontek*, 693 N.E.2d 767 (Ohio 1998).

³⁵ N.C. GEN. STAT. ANN. § 14-326.1 (West 2022).

³⁶ KY. REV. STAT. ANN. § 530.050 (West 2021); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2022); 15 R.I. GEN. LAWS ANN. § 15-10-1 (West 2022); VA. CODE ANN. § 20-88 (West 2009).

³⁷ CONN. GEN. STAT. ANN. § 53-304 (West 2022).

³⁸ *State Welfare Comm’r v. Mintz*, 280 N.Y.S.2d 1007 (N.Y. Sup. 1967).

³⁹ KY. REV. STAT. ANN. § 530.050 (West 2021).

⁴⁰ *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566 (S.D. 1994).

⁴¹ ARK. CODE ANN. § 20-47-106 (West 2017); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2022); 15 R.I. GEN. LAWS ANN. § 15-10-1 (West 2022); W. VA. CODE ANN. § 9-5-9 (West 2018).

states when the other party resides in a different state, and the outcome may depend upon which jurisdiction the action is brought under. There are federal statutes extending the Full Faith and Credit Clause to child support orders; however, these likely do not apply to filial duty laws.⁴² Therefore, while obligation to support children can be enforced across state lines, this is not the case for filial support laws.

B. Support for What?

While parents are required to support their minor children in multiple ways, parental support laws do not require the same level of support from adult children. Most states with filial support laws create a duty for children to provide for the necessities of an indigent parent.⁴³ A Pennsylvania court held that “a person is indigent if her reasonable living expenses exceed her Social Security benefits, her sole source of income.”⁴⁴ The language compelling support of an indigent parent varies between states, but generally statutes require something along the lines of “providing support”⁴⁵ or “relieving and maintaining the pauper.”⁴⁶ South Dakota lists examples of the types of support to be provided, such as food, clothing, and shelter.⁴⁷ Another specific example of support is financial support. According to the Indiana Appellate Court, the financial need of the parent is determined on an individual basis, “according to the individual circumstances.”⁴⁸ Pennsylvania law specifically provides for financial support in its statute, and case law supports this.⁴⁹ A Puerto Rico statute requires that the child provide financial support first, and if they are unable to provide financial assistance, that the child make non-financial contributions.⁵⁰ The Ohio

⁴² 28 U.S.C.A. § 1738B (West 2017). Pearson, *supra* note 2, at 299.

⁴³ Edelstone, *supra* note 1, at 503.

⁴⁴ Savoy v. Savoy, 641 A.2d 596, 598 (Pa. Super. 1994).

⁴⁵ ALASKA STAT. ANN. § 47.25.230 (West 2022); CONN. GEN. STAT. ANN. § 53-304 (West 2022); DEL. CODE ANN. tit. 13, § 503 (West 2022); GA. CODE ANN. § 36-12-3 (West 2022); IND. CODE ANN. § 31-16-17-1 (West 2022); KY. REV. STAT. ANN. § 530.050 (West 2021); LA. STAT. ANN. § 13:4731 (West 2022); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2022); N.C. GEN. STAT. ANN. § 14-326.1 (West 2022); OHIO REV. CODE ANN. § 2919.21 (West 2019); P.R. LAWS ANN. tit. 8, § 712 (West 2023); UTAH CODE ANN. § 17-14-2 (West 2022); VT. STAT. ANN. tit. 15, § 202 (West 2022); W. VA. CODE ANN. § 9-5-9 (West 2018).

⁴⁶ MISS. CODE ANN. § 43-31-25 (West 2022); N.J. STAT. ANN. § 44:4-101 (West 2023); OR. REV. STAT. ANN. § 109.010 (West 2022); 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005).

⁴⁷ S.D. CODIFIED LAWS § 25-7-27 (West 2022).

⁴⁸ Pickett v. Pickett, 251 N.E.2d 684, 688 (Ind. App. 1969).

⁴⁹ 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005). Presbyterian Med. Ctr. v. Budd, 832 A.2d 1066 (Pa. Super. 2003). “[A] child . . . must maintain and financially assist an indigent parent.” *Id.* at 1075.

⁵⁰ P.R. LAWS ANN. tit. 8, § 712(d) (West 2002).

Supreme Court, however, held that the support called for under the statute was only financial support, and not other means of non-financial support.⁵¹

A minority of states have a specific filial obligation for children to pay their parent's medical bills when the parent cannot pay. Arkansas only requires that a child support a parent in need of state mental health services.⁵² Nevada law provides that a child could be liable for the payment of necessary health services.⁵³ To calculate the total amount that a child is liable for, Pennsylvania includes the cost of medical assistance (other than public nursing home care) provided to the parent.⁵⁴ Rhode Island's parental support law requires the child to pay the costs of care provided by a licensed nursing facility if the parent is unable to pay for it.⁵⁵ South Dakota, in addition to listing means for general support, includes in that list the "medical attendance for a parent who is unable to provide for oneself."⁵⁶ Tennessee only creates a financial filial responsibility in relation to medical assistance or benefits provided to a parent.⁵⁷

Four states impose a filial obligation requiring children or other relatives to pay for an individual's burial expenses when that individual cannot pay. Alaska requires that every needy person be given a decent burial by the family members of that person.⁵⁸ Indiana requires that the child provide financial support for their parent's burial.⁵⁹ Nevada does not require general support of a parent, but provides that the child will reimburse the county for the amount paid by the county for the individual's burial, entombment, or cremation.⁶⁰ Lastly, West Virginia requires the relatives of an indigent person to pay for the expenses of the person's burial when he dies.⁶¹

C. Defenses

Some states further qualify the filial duty by creating defenses for adult children so that they are excused from providing support in certain situations. In general, these defenses lift the duty from children whose parent abandoned them for a period of time during childhood. In Massachusetts,

⁵¹ *State v. Flontek*, 693 N.E.2d 767 (Ohio 1998). "Furthermore, we agree with appellee that an expansive interpretation of R.C. 2919.21(A)(3), as urged by appellant, could result in continued unwarranted prosecutions of adult children who have elderly parents who may be in need of medical attention or care but have refused to seek treatment for their conditions.... Hence, we can only presume that the General Assembly, in enacting R.C. 2919.21(A)(3), was aware of the endless problems that could possibly arise if the term "support" was intended to include nonfinancial factors." *Id.* at 771.

⁵² ARK. CODE ANN. § 20-47-106 (West 2017).

⁵³ NEV. REV. STAT. ANN. § 428.070 (West 2009).

⁵⁴ 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005).

⁵⁵ 15 R.I. GEN. LAWS ANN. § 15-10-1 (West 2004).

⁵⁶ S.D. CODIFIED LAWS § 25-7-27 (West 2000).

⁵⁷ TENN. CODE ANN. § 71-5-103 (West 2022).

⁵⁸ ALASKA STAT. ANN. § 47.25.230 (West 2022).

⁵⁹ IND. CODE ANN. § 31-16-17-1 (West 2022).

⁶⁰ NEV. REV. STAT. ANN. § 428.070 (West 2009).

⁶¹ W. VA. CODE ANN. § 9-5-9(g)-(h) (West 2018).

New Jersey, and Rhode Island, an adult child does not violate the filial duty when they fail to provide support if they were not supported by their parent during childhood.⁶² California's exception requires that (1) when the child was a minor, they were abandoned by the parent, (2) this abandonment lasted for two or more years before the child turned eighteen, and (3) that during this period of abandonment, the parent was otherwise physically and mentally able to provide support for the child.⁶³ Indiana's filial obligation only arises if the parent provided the child "with necessary food, shelter, clothing, medical attention, and education" before the child turned sixteen.⁶⁴ Indiana also creates an affirmative defense for the child to not provide support if the child was not supported by the parent for any time before the child turned eighteen, "unless the parent was unable to provide support."⁶⁵ An Indiana court has implemented this defense in a case where the father abandoned his wife and children; the court held that the filial responsibility statute did not apply to the children for this reason.⁶⁶ Ohio has an affirmative defense for nonsupport if "the parent abandoned the [child] or failed to support the [child] as required by law, while the [child] was under age eighteen, or was mentally and physically handicapped and under age twenty-one."⁶⁷ Pennsylvania's defense requires that the parent abandoned the child for at least ten years during the child's minority.⁶⁸ Virginia law provides that their filial duty does not apply "if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child."⁶⁹ By not requiring the child to support the parent if they were abandoned by the parent, this reinforces the notion that a filial responsibility is a reciprocal responsibility.

III. HOW IS THIS RESPONSIBILITY ENFORCED?

There are several different means of enforcement that state laws provide to enforce the filial responsibility. The most commonly provided for enforcement mechanism is civil action by the state. Thirteen states use this method of enforcement, and there is some variation where either the state seeks reimbursement from the child,⁷⁰ or where the state brings an action

⁶² MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2023); N.J. STAT. ANN. § 44:4-102 (West 2023); 15 R.I. GEN. ANN. § 15-10-1 (West 2023).

⁶³ CAL. FAM. CODE § 4411 (West 2022).

⁶⁴ IND. CODE ANN. § 31-16-17-1 (West 2022).

⁶⁵ IND. CODE ANN. § 35-46-1-7 (West 2022).

⁶⁶ *Lanham v. State*, 194 N.E. 625, 627 (Ind. 1935).

⁶⁷ OHIO REV. CODE ANN. § 2919.21 (West 2019).

⁶⁸ 23 PA. STAT AND CONS. STAT. § 4603 (West 2005).

⁶⁹ VA. CODE ANN. § 20-88 (West 2009).

⁷⁰ ALASKA STAT. Ann. § 47.25.230 (West 2022); CAL. FAM. CODE § 4403 (West 2020); GA. CODE ANN. § 36-12-3 (West 2022); MISS. CODE ANN. § 43-31-25 (West 2022); NEV. REV. STAT. ANN. § 428.070 (West 2009).

against the child to pay the parent or a medical provider directly.⁷¹ Mississippi requires that the child pay the county directly each month if they refuse to provide for their parent.⁷² Puerto Rico allows a public official to file a petition for support.⁷³

Another method to enforce parental support is through civil action brought by the indigent parents themselves. California, Indiana, Pennsylvania, Puerto Rico, and Rhode Island provide that a parent may bring an action against the child in addition to giving the state standing to bring a claim.⁷⁴ Louisiana law only allows a parent to bring an enforcement action against the child.⁷⁵ This method of enforcement—allowing or requiring the parent to bring an action—makes logical sense because the support is for the parent’s benefit, but may add to family contention or hinder an action from being brought in an effort to avoid further turmoil.⁷⁶

In addition, a handful of states provide that a third party can bring a civil action against a child for the payment or reimbursement of support already provided. New Jersey allows two residents of the county in which the parent resides to bring an action against the child to compel support.⁷⁷ North Dakota law provides that a creditor may recover financially from the child for medical services delivered to the indigent parent.⁷⁸ Specifically, a court in North Dakota allowed a medical center to bring an action against a child where the parent could not pay for their care and services.⁷⁹ Pennsylvania provides broadly that any other person or public body, “having any interest in the care, maintenance or assistance of such indigent person,” may file a petition for support with the court.⁸⁰ There is a question of who has sufficient interest under this statute to file a petition. A Pennsylvania court shed some light on this issue in *Presbyterian Medical Center v. Budd*, where the court held that a “nursing home providing an indigent parent with shelter, sustenance, and care has sufficient ‘interest’” under the statute.⁸¹ Rhode Island allows a licensed nursing facility to bring an action to recover the

⁷¹ IND. CODE ANN. § 31-16-17-2 (West 2022); IND. CODE ANN. § 31-16-17-4 (West 2022); N.J. STAT. ANN. § 44:4-100 (West 2022); 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005); 15 R.I. GEN. LAWS § 15-10-2 (West 2022); S.D. CODIFIED LAWS § 25-7-27; TENN. CODE ANN. § 71-5-103(7)–(8) (West 2022); VA. CODE ANN. § 20-88 (West 2009); W. VA. CODE § 9-5-9(e) (West 2018).

⁷² MISS. CODE ANN. § 43-31-25 (West 2022).

⁷³ P.R. LAWS ANN. tit. 8, § 712 (West 2002).

⁷⁴ CAL. FAM. CODE ANN. § 4403 (West 2022); IND. CODE ANN. § 31-16-17-2 (West 2022); IND. CODE ANN. § 31-16-17-4 (West 2022); 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005); P.R. LAWS ANN. tit. 8, § 712 (2022); 15 R.I. GEN. LAWS § 15-10-4 (2022).

⁷⁵ LA. STAT. ANN. § 13:4731 (2022).

⁷⁶ Edelstone, *supra* note 1, at 506.

⁷⁷ N.J. STAT. ANN. § 44:4-102 (West 2023).

⁷⁸ N.D. CENT. CODE ANN. § 14-09-10 (West 2022).

⁷⁹ *Trinity Med. Ctr. v. Rubbelke*, 389 N.W.2d 805 (N.D. 1986). Although the medical center could bring an action against the child, the action in this case was unsuccessful because the medical center, in a stipulated settlement, released the parents from the original obligation; because the parents were released from this obligation, the children were also released from any liability under state statute. *Id.*

⁸⁰ 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005).

⁸¹ *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066 (Pa. Super. 2003).

uncompensated costs of care.⁸² Rhode Island also allows the director of any licensed private charity to be a party to a lawsuit brought by an indigent parent or the state against the child.⁸³ While not specifically permitted in the state statute, a South Dakota court allowed a nursing home to bring an action against the child of an indigent parent to recover the costs of care.⁸⁴

The last enforcement mechanism provided for in state statutes is criminal liability, which does not actually enforce the filial responsibility, but rather creates an incentive to fulfill the duty by threatening punishment. Ten states create criminal liability or provide for criminal punishment as a part of their parental support statutes. Connecticut law only provides for criminal liability and the sentence for nonsupport is imprisonment of one year or less.⁸⁵ Indiana, in addition to creating civil liability, also makes nonsupport of a parent a Class A misdemeanor.⁸⁶ Kentucky only provides for criminal liability for nonsupport; a first offense for nonsupport is a Class A misdemeanor with subsequent offenses carrying longer sentencing time.⁸⁷ Kentucky also has a separate charge of flagrant nonsupport, which is a Class D felony.⁸⁸ Massachusetts and Rhode Island also make nonsupport a crime punishable by a fine of no more than \$200 and/or imprisonment of no more than one year.⁸⁹ North Carolina provides that nonsupport is a Class 2 misdemeanor for the first offense, and a Class 1 misdemeanor for any subsequent offense.⁹⁰ In Ohio, nonsupport is a misdemeanor of the first degree, with subsequent offenses being a felony of the fifth degree.⁹¹ Pennsylvania punishes intentional nonsupport with up to six months imprisonment.⁹² In Vermont, the penalty for criminal nonsupport is imprisonment of no more than two years and/or a fine of up to \$300.⁹³ Lastly, in addition to providing civil liability for nonsupport, Virginia makes

⁸² 40 R.I. GEN. LAWS ANN. § 40-5-13 (West 2022).

⁸³ 15 R.I. GEN. LAWS ANN. § 15-10-4 (West 2022).

⁸⁴ *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566 (S.D. 1994).

⁸⁵ CONN. GEN. STAT. ANN. § 53-304(a) (West 2022). There have been arguments that CONN. GEN. STAT. § 46b-215 imposes a civil liability for children to provide support for their aging parents. See Katherine C. Clark, *A Duty to Reform: Updating Connecticut's Filial Responsibility Statutes*, 29 QUINNIPIAC PROB. L.J. 45, 58–59 (2015). However, a judge in a recent Connecticut case rejected this argument, recognizing that § 46b-215 only creates a duty for spousal and child support, not parental support. See *Sechler-Hoar v. Tr. U/W of Gladys G. Hoart*, 3:17-CV-01968 (KAD), 2020 WL 292314 (D. Conn. Jan. 21, 2020).

⁸⁶ IND. CODE ANN. § 35-46-1-7 (West 2022).

⁸⁷ KY. REV. STAT. ANN. § 530.050 (West 2021). “For a second offense, the person shall receive a minimum sentence of seven (7) days in jail. For a third or any subsequent offense, the person shall receive a minimum sentence of thirty (30) days in jail.” *Id.*

⁸⁸ *Id.*

⁸⁹ MASS. GEN. LAWS ch. 273, § 20 (West 2022); 15 R.I. GEN. LAWS § 15-10-1 (West 2022).

⁹⁰ N.C. GEN. STAT. ANN. § 14-326.1 (West 2022).

⁹¹ OHIO REV. CODE ANN. § 2919.21 (West 2019).

⁹² 23 PA. STAT. AND CONS. STAT. § 4603 (West 2005).

⁹³ VT. STAT. ANN. tit. 15, § 202 (West 2022).

nonsupport a misdemeanor punishable by a fine of up to \$500 and/or a jail sentence of no more than twelve months.⁹⁴

IV. IS THE RESPONSIBILITY ENFORCEABLE? IS IT ACTUALLY ENFORCED?

Filial responsibility laws are enforceable, yet states and courts rarely enforce them. Filial duty laws have been challenged on Equal Protection and Due Process grounds, and courts have rejected these arguments and upheld the constitutionality of filial duty laws. In one California case, a son and his parents brought a suit against the government alleging a violation of their equal protection rights; they argued that the statute created suspect classifications by distinguishing between people on the basis of wealth and on the basis of ancestry.⁹⁵ The court rejected these arguments and upheld the statute creating a duty for children to support their indigent parents under rational basis review.⁹⁶ In a South Dakota case, the court rejected both the equal protection and due process arguments of a son challenging the statute's enforcement because he lived in a different state.⁹⁷ The court rejected both of these arguments and held that an action could be brought against him because he had numerous contacts with the state.⁹⁸

Even though filial responsibility statutes are enforceable, that does not mean that they are enforced. First, it is difficult to determine whether these laws are being enforced because cases are not always reported and there are no uniform labels to find filial duty cases.⁹⁹ However, it appears that parental support laws are rarely enforced, especially when compared to child or spousal support laws.¹⁰⁰ Second, enforcing these statutes would be an “administrative nightmare” because authorities would need to make individualized assessments for each case based on a myriad of factors.¹⁰¹ Third, the lack of enforcement against adult children is also due to the rise of federal and state support for older adults through Social Security and Medicare.¹⁰² These social programs not only give support to indigent older adults, but their rules also create issues such that if a child provides financial support, the older parent risks losing the federal funding because their income is over the statutory limit.¹⁰³

Pennsylvania and South Dakota are the two states where parental support laws are enforced most frequently.¹⁰⁴ However, the driving force

⁹⁴ VA. CODE ANN. § 20-88 (West 2022).

⁹⁵ Swoap v. Super. Ct., 10 Cal.3d 490, 504 (1973).

⁹⁶ *Id.*

⁹⁷ Americana Healthcare Ctr. v. Randall, 513 N.W.2d 566 (S.D. 1994).

⁹⁸ *Id.*

⁹⁹ Pearson, *supra* note 2, at 279–80.

¹⁰⁰ *Id.* at 272.

¹⁰¹ Edelstone, *supra* note 1, at 510.

¹⁰² Pearson, *supra* note 2, at 285–86.

¹⁰³ Edelstone, *supra* note 1, at 508.

¹⁰⁴ Pearson, *supra* note 2, at 273.

behind this enforcement is third-party creditors or nursing facilities seeking reimbursement for care already provided to the indigent parent.¹⁰⁵ Three cases arising out of Pennsylvania from the past thirty years required that the child of an indigent parent pay the medical center or nursing home for the cost of care of the parent.¹⁰⁶ Two South Dakota cases from the 1990s required the child of an indigent parent to pay either a hospital or nursing home for the costs of care for the parent under the state's filial duty statute.¹⁰⁷

V. SHOULD FILIAL RESPONSIBILITY LAWS BE ENFORCED ONCE THE PARENT REACHES THE AGE OF SIXTY-FIVE?

As noted above, Connecticut is the only state to restrict its filial responsibility law based on the age of the parent.¹⁰⁸ Section 53-304 of the Connecticut General Statutes only makes failure to support a parent a crime if that parent is under the age of sixty-five.¹⁰⁹ This age limitation was added in 1967 under Public Act 746, Section 6.¹¹⁰ The passage of this amendment to the Connecticut statute came only two years after the federal enactment of Medicare, which provides medical insurance coverage to Americans aged sixty-five and older.¹¹¹ In discussions by the Connecticut Joint Standing Committee on Public Welfare and Humane Institutions, there were conversations about adding this age limitation for parents because those over sixty-five would be receiving state aid.¹¹² Concern was expressed about the interests of the adult children and how this requirement to provide financial support to their indigent parents would take away from their ability to provide for their own families.¹¹³ Furthermore, at that time the state was spending large amounts of money to enforce this parental support requirement with negligible returns on that investment.¹¹⁴ This begs the

¹⁰⁵ *Id.*

¹⁰⁶ *Savoy v. Savoy*, 641 A.2d 596, 598 (Pa. Super. 1994) (requiring the son to provide monthly payments to cover his mother's past medical expenses; even though the mother brought the suit, the son had to make payments to the hospital). *Presbyterian Med. Ctr. v. Budd*, 832 A.2d 1066 (Pa. Super. 2003) (holding that a nursing home could recover against a daughter for the costs of the mother's care under the filial responsibility laws because the daughter failed to apply for Medicaid coverage after promising to do so). *Health Care & Ret. Corp. Am. v. Pittas*, 46 A.3d 719 (Pa. Super. Ct. 2012) (holding the son conditionally liable—pending Medicaid approval—for his mother's \$93,000 cost of care from a nursing home).

¹⁰⁷ *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566 (S.D. 1994) (requiring the son to pay for the costs of his mother's medical care from trust funds inherited from his mother). *Prairie Lakes Health Care Sys., Inc. v. Wookey*, 583 N.W.2d 405 (S.D. 1998) (holding that the hospital could collect for the costs of care provided to the father from the son under the filial responsibility law).

¹⁰⁸ CONN. GEN. STAT. ANN. § 53-304 (West 2022).

¹⁰⁹ *Id.*

¹¹⁰ 1967 Conn. Pub. Acts 19.

¹¹¹ *50 Years of Medicare: How Did We Get Here?*, THE COMMONWEALTH FUND, <https://interactives.commonwealthfund.org/medicare-timeline/> (last visited Nov. 4, 2022).

¹¹² CONN. JOINT STANDING COMM. ON PUB. WELFARE & HUMANE INSTS., STENOGRAPHER'S NOTES, at 208 (1967).

¹¹³ *Id.*

¹¹⁴ *Id.* at 209–10.

question of whether there should be a parental age limit for the filial responsibility, and whether other states should change their statutes to create an age limit, or whether courts should refuse to enforce these laws after the parent reaches the age of sixty-five.

Filial responsibility laws should only apply to indigent parents under the age of sixty-five. As shown by all of the state statutes on filial support, this responsibility is a qualified quid pro quo duty; adult children only need to provide care and support when the parent cannot provide it for themselves. Thus, another qualification to this duty would not be too far of a departure from the current statutory schemes. By placing an age limitation on the indigent parent, this guarantees that the adult child's interests will be protected as they themselves grow older, while accounting for state assistance to the elderly.

First, filial responsibility laws can impose undue burdens on the family members who are made to provide money and other support to their indigent parents.¹¹⁵ While state laws may condition support on the child's ability to pay and state courts are supposed to take ability to pay into consideration, this is not always the case.¹¹⁶ Additionally, as the parents get older, they are more likely to have older adult children who are nearing or already at retirement age and on a limited income. On the other hand, under some laws, if a child cannot pay for the medical care of the parent, they may be required to provide the care themselves.¹¹⁷ This disrupts the adult child's ability to earn income and has a gendered impact so that adult female children bear the burden more frequently.¹¹⁸ Thus, while it could be beneficial to indigent parents to require their adult children to provide some support, the interests of the adult children must also be weighed. While some state statutes try to impose a balancing requirement, they do not always work and may place other non-financial burdens on adult children. Therefore, once the parent reaches sixty-five and is eligible to receive Social Security and Medicare, any statutory requirement on the adult child to provide support should be lifted. Adult children are obviously free to continue providing support on their own volition, but the state should not impose a burden once the parent is receiving state financial support.

Second, on the rare occasion that filial responsibility laws are enforced, the parent is not a party to the action and is not receiving a direct benefit from the lawsuit. Rather, the recent trend is that the action is brought by a nursing home or third-party creditor.¹¹⁹ Cases such as *Pittas*, *Budd*, and

¹¹⁵ Clark, *supra* note 85, at 50; Kara Wenzl, *Losing Loved Ones and Your Livelihood: Re-Evaluating Filial Responsibility Laws*, 29 LOY. CONSUMER L. REV. 391, 391 (2017).

¹¹⁶ Wenzl, *supra* note 115 (discussing *Health Care & Ret. Corp. Am. v. Pittas*, 46 A.3d 719 (Pa. Super. Ct. 2012) (where the son was made to pay for his mother's nursing home bill despite not having the financial means to pay)).

¹¹⁷ Clark, *supra* note 85, at 50.

¹¹⁸ Wenzl, *supra* note 115, at 400–01.

¹¹⁹ See *supra* notes 106–09 and accompanying text.

Wookey should be concerning to adult children because in those cases it was the nursing homes, not the indigent parents, collecting from the children. This trend of nursing homes and other third-parties bringing lawsuits against adult children will continue so long as long-term care costs continue to rise and adults are ill-prepared for these costs.¹²⁰ Adult children should not continue to bear these costs because they need to save for their own retirement and long-term care for when they are elderly. Thus, as noted above, legislatures should amend their filial responsibility statutes to relieve the adult child of liability once the parent reaches sixty-five. However, this alone will not solve the issue. Something must be done to control the skyrocketing costs of long-term care in America, and Medicaid programs should be strengthened to provide better coverage for long-term care. Alternatively, Medicare could be improved to provide long-term care coverage to all elder adults in America, thus lifting the financial burden off of them and their families.

VI. CONCLUSION

The filial responsibility placed on children of indigent parents is not the same responsibility that parents have when raising their children. Only twenty-five states, plus Puerto Rico, have laws creating a legal duty for support of an indigent parent. Under these laws, filial obligations only arise when the child meets certain conditions, such as having sufficient means to provide support, being of sufficient age, or living in the same state as the parent. Furthermore, while children are generally required to provide for the general support of their indigent parents, some states limit this to only require children to pay for medical or burial expenses. On top of these statutory qualifications to the duty to provide care, these laws are rarely enforced. Only two states, Pennsylvania and South Dakota, have recently enforced their filial duty laws to make children pay for the care of their parents. However, the payments did not go to the parents; they went to the medical center providing the care. This reflects the trend of allowing the state or third parties to bring claims against the child, while parents only have a civil cause of action in six states. Therefore, states should amend their filial responsibility statutes to only impose a duty on adult children whose parents are under sixty-five; this provides a solution so that the needs and interests of the parents and children are weighed and balanced.

¹²⁰ Wenzl, *supra* note 115, at 397.