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## MOM, DAD, HERE'S YOUR ALLOWANCE: THE IMPENDING REEMERGENCE OF PENNSYLVANIA'S FILIAL SUPPORT STATUTE AND AN APPEAL FOR ITS AMENDMENT\*

### I. INTRODUCTION

Aristotle once said:

This is why it would not seem open to a man to disown his father (though a father may disown his son); being in debt, he should repay, but there is nothing by doing which a son will have done the equivalent of what he has received, so that he is always in debt.<sup>1</sup>

Who knew something stated in 350 BC would have such staying power over two thousand years later? It is hard to tell whether there continues to be credence in these “wise” words once uttered by Aristotle. Is an adult child really forever indebted to his father (or mother)? What for exactly? Is it wise to subscribe to a value statement made when family meant something completely different, when lack of transportation kept parents and children side by side for a lifetime, and when most children thought they would fall off the edge of a flat world if they veered too far from home?

The answers to these questions, if asked to some courts, particularly in South Dakota and (especially) Pennsylvania, are as outdated as the maps depicting the once formidable flat earth. This is because the statutes used to enforce this debt, referred to as filial support statutes, are products of a different time themselves.<sup>2</sup> First adopted from England in colonial times, filial support laws were used to enforce the assumed natural duty that an adult child had to support his or her elderly indigent parent during a time when public support was disfavored.<sup>3</sup> This made sense at the time, but as times change, so do people, ideals, and notions of family.

Jumping forward a few hundred years brings the United States to the Great Depression—a time where financial instability was widespread and familial stress was high. Rather than continuing to enforce filial support statutes and assuming that the statutes could be approached in the same manner they were in colonial times, the United States government began providing public benefits.<sup>4</sup> The Social Security system, Medicare, and Medicaid greatly decreased the need for filial support enforcement and lessened the burden once placed on adult children who were also

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1. ARISTOTLE, THE NICOMACHEAN ETHICS 162 (Lesley Brown ed., David Ross trans., 2009).

2. See *infra* Part II.A for a discussion of the history of filial support statutes.

3. See *infra* Part II.A for a discussion of the pre-public benefit system jurisprudence and its preference for private rather than public filial support.

4. See *infra* Part II.B for a discussion of the emergence of public benefit systems, particularly Social Security, Medicare, and Medicaid.

reeling from the Great Depression.<sup>5</sup>

Unfortunately, the public support systems used to fight the economic plights of the Great Depression have fallen out of favor.<sup>6</sup> States are beginning to tighten their public assistance budgets, in turn leading them back to the remnants of this country's colonial past.<sup>7</sup> Instead of relying on the government for support, the indigent elderly (as well as nursing homes, hospitals, and the like) are looking to adult children to foot the bill.<sup>8</sup> Questions remain, however, about the correct way of going about this—are these statutes suited for the present time? What protection do we want to provide families, and how should legislatures account for changes within the family? How can these statutes be amended to provide a crutch to struggling public benefit systems yet not overburden innocent adult children?

This Comment addresses all of these questions. Section II provides an overview of the history of filial support statutes as well as the reasoning behind their existence. Furthermore, Section II chronicles the way filial support statutes have changed throughout the history of the United States, addressing their enforcement in both pre- and post-public benefit economies.

Part II.A provides the history of filial support laws and explains their origin, past enforcement, and the conflicting rationales that have governed filial support law jurisprudence within the United States. Next, Part II.B accounts for the emergence of public benefit systems and the effect of those systems on the enforcement and sustainability of filial support laws. Part II.C goes on to highlight the reemergence of filial support laws and explains the different ways courts have approached the statutes in the pre- and post-public benefit periods.

Drawing from the background provided in Section II, Section III highlights the problems with filial support laws and provides recommendations to align them with current economic and familial needs. Part III.A uses Pennsylvania's filial support statute to illustrate both how broad a filial support statute can be and the problems that such breadth can cause. Part III.B concludes with suggestions and a proposed statute based on the Pennsylvania filial support statute model that could help solve the problems facing filial support statute enforcement and bring the statutes' enforcement in line with today's economic and familial climates.

## II. OVERVIEW

This Section provides an overview of the history of filial support laws in the United States as well as a summation of the legal scholarship that has been written on the topic. Specifically, Part II.A explains the origin of filial support laws and the

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5. See *infra* Part II.B for a discussion of the decreased use of filial support statutes after the implementation of public benefit systems.

6. See *infra* Part II.C.3 for a discussion of recent filial support statute enforcement and how some states are increasing their enforcement in light of tightened budgets for public benefit systems.

7. See *infra* Part II.C.3.c for a discussion of Pennsylvania's recent filial support jurisprudence and its similarity to filial support statute enforcement during colonial times when the statutes were first adopted in the United States.

8. See *infra* Part II.C.3 for a discussion of filial support statutes and their enforcement in the last twenty years, particularly in California, South Dakota, and Pennsylvania.

reasoning behind them, which dates back to common law England. Part II.B explains how the emergence of public benefit systems, particularly Social Security, Medicare, and Medicaid, has affected the enforcement of filial support statutes. Part II.C highlights the case law on filial support statutes and how court decisions have changed since the laws were first created. Part II.C also focuses on the policies behind the laws' enforcement in the United States prior and subsequent to the implementation of public benefit systems. Finally, Part II.C highlights the recent changes that have occurred in response to the United States' struggling economy and tightened public assistance funding.

A. *History of Filial Support Statutes*

Rules that require adult children to support their elderly parents have existed for over a thousand years.<sup>9</sup> Both Jewish and Christian scriptures allude to a requirement that children honor and care for their parents.<sup>10</sup> The Gospel of Matthew states: "Why do thy disciples transgress the tradition of the elders? . . . For God commanded, saying, Honour thy father and mother: and, He that curseth father or mother, let him die the death."<sup>11</sup> Furthermore, Roman law articulated a support obligation.<sup>12</sup> Several theologians and philosophers also embraced the idea that "children have a moral duty to care for their parents based on a theory of reciprocity."<sup>13</sup> For example, Saint Thomas Aquinas stated that parents are the "closest sources of our existence and development" next to God, and, because of this, children owe their parents "respect, reverence, and services."<sup>14</sup> Aristotle believed that children had an obligation to their aged parents due to "historical reciprocity."<sup>15</sup> Aristotle stated:

This is why it would not seem open to a man to disown his father (though a father may disown his son); being in debt, he should repay, but there is nothing by doing which a son will have done the equivalent of what he has received, so that he is always in debt. But creditors can remit a debt; and a father can therefore do so too.<sup>16</sup>

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9. Seymour Moskowitz, *Filial Responsibility Statutes: Legal and Policy Considerations*, 9 J.L. & POL'Y 709, 710 (2001).

10. *Id.*; see also Allison E. Ross, *Taking Care of Our Caretakers: Using Filial Responsibility Laws To Support the Elderly Beyond the Government's Assistance*, 16 ELDER L.J. 167, 172 (2008) (explaining that the moral obligation to support one's elderly parents is "historically rooted in Eastern, Roman, and Biblical laws").

11. *Matthew* 15:2, 4 (King James); see also *Exodus* 20:12 (King James) ("Honour thy Father and thy Mother: that thy days may be long upon the land which the LORD thy God giveth thee.").

12. See, e.g., Jean Van Houtte & Jef Breda, *Maintenance of the Aged by Their Adult Children: The Family as a Residual Agency in the Solution of Poverty in Belgium*, 12 LAW & SOC'Y REV. 645, 649 (1978) (explaining how the Roman Empire's transformation from a militaristic to commercial civilization weakened the Empire and prompted the Roman Emperor to create filial support laws). By the third century AD, the Roman Empire had laws in place that created a mutual responsibility between parents and children for care. *Id.*

13. Ross, *supra* note 10, at 172.

14. Moskowitz, *supra* note 9, at 710 n.4 (citing 13 THOMAS AQUINAS, *SUMMA THEOLOGICA* 101.1 (Blackfriars ed. 1968)).

15. *Id.* at 710; see also Ross, *supra* note 10, at 172 (explaining that Aristotle advocated for a reciprocal duty to exist between a child and his or her parents).

16. ARISTOTLE, *supra* note 1, at 162.

One of the earliest legislative responses to the traditional obligation to support one's elderly parents was England's Elizabethan Poor Relief Act of 1601.<sup>17</sup> This Act was the response to centuries of "searching for ways to address the plight of the underprivileged."<sup>18</sup> Referred to as "Elizabethan Poor Laws," these rules had no basis in the common law and were derived completely from statute.<sup>19</sup> The law stated that the "father and grandfather and the mother and the grandmother, and *the children of every poor, old, blind, lame, and impotent person*" had a duty to support that relative to the extent of their means.<sup>20</sup> The rationale behind these laws was to place the burden on one's relatives, rather than the general public, to support an indigent family member when one had the ability to do so.<sup>21</sup> Furthermore, the idea that children had a "natural and moral duty" to support their elders drove the Elizabethan Poor Laws' implementation.<sup>22</sup> Indeed, according to one court, "the [Elizabethan] Poor Laws merely transformed the imperfect moral duty into a statutory and legal liability."<sup>23</sup>

The Elizabethan Poor Laws are the closest descendants to the filial support laws introduced to the American colonies as early welfare systems.<sup>24</sup> For example, an early Pennsylvania filial support law used similar language to the Elizabethan Poor Laws, stating that "overseers of the poor" could impose a duty to support an indigent family member upon a "father and grandfather and the mother and grandmother and the children of every poor, old, blind, lame, and impotent person."<sup>25</sup> State-initiated poor relief was based on the same policy rationales that drove the Elizabethan Poor Laws, namely, that children, rather than the state, should support their parents.<sup>26</sup> During the colonial period, the majority of the country had a filial support statute based on the

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17. See Moskowitz, *supra* note 9, at 711 (discussing the origination of the Elizabethan Poor Laws and describing them as the predecessor to American filial support statutes); James L. Lopes, *Filial Support and Family Solidarity*, 6 PAC. L.J. 508, 509 (1975) (explaining that the Elizabethan Poor Laws were a legislative enactment that was antecedent to a larger movement toward private support for the elderly).

18. Robin M. Jacobson, *Americana Healthcare Center v. Randall: The Renaissance of Filial Responsibility*, 40 S.D. L. REV. 518, 527 (1995).

19. *Id.*

20. Moskowitz, *supra* note 9, at 711 (quoting 43 Eliz. 1, ch. 2, IV (Eng.) (1601)); see also Terrance A. Kline, *A Rational Role for Filial Responsibility Laws in Modern Society?*, 26 FAM. L.Q. 195, 197 (1992) (stating that the Elizabethan Poor Laws "reflected a desire to . . . [keep] public expenditures down"); Lopes, *supra* note 17, at 511 (explaining that the purpose of the Elizabethan Poor Laws was to place the burden of caring for the elderly on one's family rather than the state).

21. Jacobson, *supra* note 18, at 527.

22. *Id.*

23. *Id.* (quoting *People v. Hill*, 46 N.E. 796, 797 (Ill. 1896)) (internal quotation mark omitted).

24. Moskowitz, *supra* note 9, at 711; see also Ross, *supra* note 10, at 173 (explaining that during colonial times in America the principles behind the Elizabethan Poor Laws were used to establish early welfare systems); Andrea Rickles-Jordan, *Filial Responsibility: A Survey Across Time and Oceans*, 9 MARQ. ELDER'S ADVISOR 183, 190-91 (2007) (explaining that the Elizabethan Poor Laws served as a "prototype" for early American welfare systems).

25. Moskowitz, *supra* note 9, at 712 (quoting Colonial Laws of Pennsylvania, 1705-06, ch. CLIV, Section V, at 253).

26. Ross, *supra* note 10, at 173; see also Moskowitz, *supra* note 9, at 710-11 (explaining that the rationale behind Elizabethan Poor Laws, which was subsequently adopted by American colonies, was that "blood relatives were the primary source of support for family members").

English model.<sup>27</sup> The popularity of filial support laws continued until the New Deal in the 1930s.<sup>28</sup>

*B. Emergence of Public Benefit Systems: Social Security, Medicare, and Medicaid*

The emergence of public benefit systems began in the 1930s after the New Deal and led to reduced enforcement of filial support statutes.<sup>29</sup> This Part provides a history and overview of three public benefit systems that have affected the use of filial support laws. First, this Part explains the emergence of the Social Security system in 1935. Next, this Part explains the advent of the Medicare and Medicaid systems that were put into place thirty years later in 1965.

1. Social Security

The federal government introduced the national system of Social Security in 1935.<sup>30</sup> This caused filial support to become less significant in the United States.<sup>31</sup> The Social Security system was a component of the federal government's response to the financial instability of the Great Depression.<sup>32</sup> It sought to offer a minimum standard of living to those who could not afford it, such as the elderly, the disabled, and their dependent survivors.<sup>33</sup> The system also strived to moderate the decline in living standards that often occurred upon retirement, disability, or death of a family member.<sup>34</sup> It accomplished this objective by providing "retirement benefits, disability insurance, and life insurance protection."<sup>35</sup>

A mandatory, flat-rate payroll tax funds the Social Security system.<sup>36</sup> This tax applies to all cash earnings up to a certain amount and is paid evenly by employers and employees.<sup>37</sup> The Social Security system has proven to be an effective tool for minimizing poverty throughout the United States' elderly population.<sup>38</sup>

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27. 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, 271 (2013).

28. See Moskowitz, *supra* note 9, at 713–14 (explaining that the advent of Social Security in the 1930s, as well as the subsequent developments of Medicare, Medicaid, and private pension plans, resulted in a decrease in the use of filial support laws).

29. Pearson, *supra* note 27, at 285.

30. *Id.*

31. *Id.*

32. Ross, *supra* note 10, at 178; see also John Burritt McArthur, *Private Pensions and the Justification for Social Security*, 48 S. TEX. L. REV. 1, 4–11 (2006) (explaining that before the Social Security system, elderly Americans filled most of the poorhouses—particularly when they could not rely on the “vestiges of England’s Elizabethan age”).

33. Ross, *supra* note 10, at 178.

34. Regina T. Jefferson, *Privatization: Not the Answer for Social Security Reform*, 58 WASH. & LEE L. REV. 1287, 1314–15 (2001).

35. Ross, *supra* note 10, at 178; see also Jefferson, *supra* note 34, at 1290 (explaining the benefits that accrue to the elderly from the Social Security system).

36. Jefferson, *supra* note 34, at 1291.

37. *Id.* Self-employed individuals must pay the tax themselves. *Id.*

38. See *id.* (explaining how the poverty rate amongst elderly Americans decreased fifteen percent in the

However, Social Security's flat-rate, pay-as-you-go system has led to recent problems in light of the population's aging workforce.<sup>39</sup> While the Social Security system was not implemented to provide the primary earnings for retirees, the majority of retired Americans rely on this program as their only means of income.<sup>40</sup> This is problematic because as Americans continue to rely solely on Social Security, the program may become unsustainable and "force older Americans to look for other ways to supplement their income."<sup>41</sup>

Some scholars predict the reemergence of filial support laws in light of the concerns pertaining to Social Security's sustainability for future generations.<sup>42</sup> This concern comes primarily from the impending retirement of the "baby boomer generation."<sup>43</sup> Projections indicate that a revenue shortage is possible by 2032 because more Americans will be at the age of benefit entitlement than will be working and funding the program.<sup>44</sup> The future of the Social Security system suggests that there will be a necessity to reattach the legal bonds that once stood between adult children and their indigent parents.<sup>45</sup>

## 2. Medicare and Medicaid

The Medicare and Medicaid programs provide a system of care for poor and disabled elders and diminish the need for filial support statutes.<sup>46</sup> Congress enacted

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twenty-five years after Social Security's implementation and even further after Social Security benefits were increased during the 1960s and 1970s).

39. See Ross, *supra* note 10, at 178–79 (expressing concern about the sustainability of the program in the face of the baby boomer generation's impending retirement).

40. See *id.* (explaining that the majority of retirees depend solely on Social Security income although the system was designed to provide only forty-five percent of retirees' preretirement wages); see also Jefferson, *supra* note 34, at 1291 n.14 (stating that although Congress never intended for Social Security to be a source of primary income, a majority of America's retired households rely on the program for more than half of their total income); McArthur, *supra* note 32, at 4 (explaining that Social Security benefits are the largest source of income for over ninety percent of Americans over sixty-five).

41. Ross, *supra* note 10, at 184; see also Patricia M. Wald, *Looking Forward to the Next Millennium: Social Previews to Legal Change*, 70 TEMP. L. REV. 1085, 1086 (1997) (explaining that by the year 2030 there will be two or three workers paying into the Social Security system for every retiree compared to sixteen workers per retiree in 1950).

42. See Seymour Moskowitz, *Adult Children and Indigent Parents: Intergenerational Responsibilities in International Perspective*, 86 MARQ. L. REV. 401, 434 (2002) (discussing the argument that filial support laws ensure adequate care of the elderly, especially in light of the financial insecurity of the Social Security system); Ross, *supra* note 10, at 178–79 (arguing that Social Security was once an effective tool for eradicating poverty, but with strained funding, its effectiveness is waning).

43. See Ross, *supra* note 10, at 179 (questioning whether the Social Security system will remain viable in its present form in light of the increased amount of baby boomers that will be dependent upon Social Security in the near future).

44. Moskowitz, *supra* note 9, at 720.

45. *Id.* at 721.

46. Pearson, *supra* note 27, at 285–86; see also PETER A. CORNING, *THE EVOLUTION OF MEDICARE . . . FROM IDEA TO LAW*, at Ch. 4 (1969), available at <http://www.ssa.gov/history/corningchap4.html> (recounting the passage of Medicare and how America "finally joined the many other nations that provided health insurance protection for the aged").

Medicare in 1965 to make health care affordable for the elderly.<sup>47</sup> Americans aged sixty-five and older automatically qualify for the hospital insurance program, which does not cover all medical costs.<sup>48</sup> An individual can elect to pay a monthly premium, which causes Medicare to act as a health insurance provider that provides additional services.<sup>49</sup> Either way, the elderly are still financially liable for some of their own care because the Medicare system does not cover all possible medical expenditures.<sup>50</sup>

In 1965, Congress also enacted Medicaid, which is a need-based program that extends medical services to the poor.<sup>51</sup> One can qualify for Medicaid if he or she is considered “categorically needy” or “medically needy.”<sup>52</sup> To be categorically needy, one must have an income low enough to qualify for governmental income assistance under the Social Security Act.<sup>53</sup> Conversely, medically needy individuals need not live below the poverty line but can qualify for Medicaid because “they have incurred medical and long-term care costs that reduce their expendable financial resources.”<sup>54</sup> In many states, prior to qualifying, the medically needy must calculate their income and assets and then “spend down” their excess income and assets in order to be eligible for Medicaid.<sup>55</sup> The term “spend down” requires one to reduce excess income and assets by committing it to outstanding debts or obligations, which can be achieved by paying off health care expenses or providing spousal support.<sup>56</sup>

While Medicare and Medicaid try to assist the elderly in receiving adequate care, these programs, similar to Social Security, may become unworkable as the baby boomer generation approaches retirement.<sup>57</sup> A study predicts that Medicare’s growth will be unmanageable over time and could account for as much as 7.3% of the gross domestic product by the year 2035.<sup>58</sup> Medicaid is also an expensive program to maintain—it cost \$298 billion in 2004 alone.<sup>59</sup> Advocates for the increased use of filial

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47. Ross, *supra* note 10, at 179.

48. *See id.* (observing that the “hospital insurance program” covers only “inpatient hospital care, skilled nursing facility care, home health care, and hospice care” for the first sixty days, after which the individual must make co-payments for the care that they are receiving).

49. *Id.* The additional services provided include costs for physicians’ care, emergency room visits, laboratory or diagnostic testing, therapy, home health care, outpatient rehabilitation, psychiatric services, and particular drugs, transplants, and medical equipment. *Id.*

50. *Id.* at 180.

51. *Id.*; *see also* Alison Barnes, *An Assessment of Medicaid Planning*, 3 HOUS. J. HEALTH L. & POL’Y 265, 266 (2003) (explaining that “[o]nly those who are poor, according to various federal and state guidelines, are eligible to receive Medicaid assistance”).

52. Barnes, *supra* note 51, at 270.

53. *Id.* (citing 42 U.S.C. § 1396a(a)(10)(A) (West Supp. 2002)).

54. Ross, *supra* note 10, at 180.

55. *Id.*

56. *Id.* at 180 n.99.

57. *Id.* at 181.

58. U.S. GOV’T ACCOUNTABILITY OFFICE, HIGH-RISK SERIES: AN UPDATE 87 (2007), <http://www.gao.gov/new.items/d07310.pdf>; *see also* Ross, *supra* note 10, at 182 n.112 (explaining that the Government Accountability Office placed Medicare on the “high-risk list” because of its “size and complexity making it vulnerable to inefficiencies and abuse”).

59. U.S. GOV’T ACCOUNTABILITY OFFICE, *supra* note 58, at 89; *see also* Ross, *supra* note 10, at 182 n.113 (explaining that Medicaid was put on the “high-risk list” because of concerns that the protections to safeguard against inappropriate spending were inefficient).

support laws contend that using the laws to mitigate some of the costs related to Medicare and Medicaid would be well advised.<sup>60</sup> They believe that filial support laws provide additional protection to the elderly by ensuring that they will be able to afford requisite care in light of the hardships experts predict will occur in funding the already expensive Medicare and Medicaid systems.<sup>61</sup>

C. *The Enforcement of Filial Support Statutes in the United States from Colonial Times to Present*

To understand the history of filial support laws and how public benefit systems affected their enforcement, it is helpful to understand the way that courts have dealt with filial support issues throughout the laws' history. This Part outlines the way courts have enforced filial support laws since they were introduced as early welfare systems during the colonial era. First, this Part describes the case law prior to the implementation of public benefit systems, when courts expressed the policy that governmental support should only be used as a last resort when close family members could not provide sufficient care. It then outlines the use of filial support statutes after the implementation of Social Security, Medicare, and Medicaid, when courts were hesitant to enforce filial support laws as a result of the Senate Finance Committee's belief that their enforcement was harmful to families. Finally, it provides an overview of the court decisions from the last thirty years and what seems like a reemergence of the use of filial support laws in light of predicted deficits in the public benefit systems. Each Part also provides the conflicting policies of governmental reliance and familial reliance that guided courts during these respective eras of filial support enforcement.

1. Filial Support Statutes and Case Law Prior to Public Support Systems

Prior to the 1960s, filial support laws in the United States reflected the Elizabethan Poor Laws.<sup>62</sup> Filial support laws were enforced primarily in furtherance of the policy that governmental support to the elderly should only be provided in the absence of support from one's close family members.<sup>63</sup> At this time, nearly every state had some form of law requiring adult children to provide filial support to their elderly parents.<sup>64</sup> Courts viewed the filial support statutes as "designed to relieve state and local authorities from the burden of supporting poor persons who had relatives of financial means who could care for them."<sup>65</sup>

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60. Ross, *supra* note 10, at 181–83.

61. *Id.*; see also Kline, *supra* note 20, at 208 (contending that states should enforce filial support laws when governmental programs are unable to provide requisite care to an adult child's indigent elderly parent).

62. Usha Narayanan, *The Government's Role in Fostering the Relationship Between Adult Children and Their Elder Parents: From Filial Responsibility Laws to . . . What?, A Cross-Cultural Perspective*, 4 ELDER L.J. 369, 373 (1996).

63. *Id.*

64. Ross, *supra* note 10, at 173; see also Kline, *supra* note 20, at 196 n.9 (stating that prior to the 1960s every state had some form of filial support statute with the exception of Florida, Kansas, Texas, Washington, and Wyoming).

65. *Albert Einstein Med. Ctr. v. Forman*, 243 A.2d 181, 183 (Pa. Super. Ct. 1968).

Three cases, from Pennsylvania, New Jersey, and North Dakota, provide a good illustration of the policies underlying the enforcement of filial support laws during the period prior to the implementation of public benefit systems.<sup>66</sup> In 1955, the Superior Court of Pennsylvania affirmed a decision that imposed a duty on an adult son to contribute ten dollars per week to the expense of his parents' upkeep in a nursing home.<sup>67</sup> The nursing home initiated the support action because the Pennsylvania Department of Public Assistance refused to contribute to the elderly couple's support until after the nursing home sought support from the couple's children under the state's filial support law.<sup>68</sup> In siding with the nursing home, the court reasoned that the adult son should be required to pay ten dollars per week in support of his indigent parents because it was one of his "primary responsibilities" under the state's filial support statute.<sup>69</sup>

Similarly, in 1959, a New Jersey court denied two adult sons' motion to dismiss an action filed by their elderly mother requesting support in addition to the twenty dollars they each voluntarily contributed each month toward her care.<sup>70</sup> The court explained that denying the elderly mother the support she requested would render her a "public charge," forcing the state to assume the costs of her support.<sup>71</sup> To avoid this, the court placed the obligation on her two adult sons.<sup>72</sup>

Likewise, in 1938, North Dakota's Supreme Court affirmed a decision compelling an adult son to pay for the medical expenses that his deceased mother accrued before her death.<sup>73</sup> The court held that such a rule was proper because when the state "furnishes necessities to the indigent and helpless [elderly parent] . . . it ought to and may recover therefor against the children whose duty it was to furnish the same, but who neglected and refused to do so."<sup>74</sup>

Despite the rigid enforcement of filial support laws that was characteristic of this era, courts were wary to enforce them when the adult child in question had insufficient finances to support his or her elderly indigent parent.<sup>75</sup> For example, a Louisiana court imposed a duty on two adult sons to support their elderly indigent mother but refrained from imposing a duty on the elderly woman's two daughters because they had no property or income of their own.<sup>76</sup> The court concluded that "justice would be best [served]" by placing the obligation on the elderly woman's financially able sons.<sup>77</sup>

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66. The three cases provided as examples of pre-public benefit filial support statute enforcement were decided subsequent to the implementation of the Social Security Act but prior to Medicare and Medicaid, therefore still illustrating the policies underlying filial support statutes prior to public benefit systems.

67. *Commonwealth ex rel. Home for the Jewish Aged v. Kotzker*, 118 A.2d 271, 273 (Pa. Super. Ct. 1955).

68. *Id.* at 272.

69. *Id.* at 273.

70. *Pavlick v. Teresinski*, 149 A.2d 300, 301 (N.J. Super. Ct. 1959).

71. *Id.* at 302.

72. *Id.*

73. *Bismarck Hosp. & Deaconesses Home v. Harris*, 280 N.W. 423, 424 (N.D. 1938).

74. *Id.* at 425 (quoting *McCook Cnty. v. Kammoss*, 64 N.W. 1123, 1123 (S.D. 1895)).

75. *Kline*, *supra* note 20, at 198.

76. *Mangin v. Mangin*, 113 So. 864, 864 (La. 1927).

77. *Id.*; *accord* *Gluckman v. Gaines*, 71 Cal. Rptr. 795, 800-01 (Cal. Ct. App. 1968) (holding that an

## 2. Filial Support Statutes and Case Law After the Advent of Public Support Systems

The Great Depression prompted state and federal legislatures to begin considering public support systems to assist the elderly.<sup>78</sup> The advent of the Social Security system, Medicare, and Medicaid reduced the need for children to financially support their indigent parents and, as a result, diminished the need for filial support statute enforcement.<sup>79</sup> Furthermore, in between World Wars I and II, the economic turmoil in the United States eroded the use of filial support laws.<sup>80</sup>

Some commentators attribute the decline in the use of filial support statutes primarily to the advent of the Medicaid system.<sup>81</sup> Medicaid prohibited states from considering the income of any other individual when determining an applicant's eligibility unless the individual was the applicant's spouse or child less than twenty-one years of age.<sup>82</sup> Thus, the elderly could receive government assistance without determining the availability of resources from their kin.<sup>83</sup> The Senate Finance Committee justified this requirement by stating that enforcement of filial support statutes was harmful and destructive to familial relationships.<sup>84</sup> Most states complied with this requirement so as not to jeopardize their federal funding for medical assistance programs for the poor.<sup>85</sup> In addition, although the Medicaid statute only applied to eligibility for the program, its implementation caused several states to completely repeal their filial statutes.<sup>86</sup> As a result, the enforcement and existence of filial support statutes greatly diminished with the enactment of Medicaid.<sup>87</sup>

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adult son did not have a duty to support his elderly indigent father where imposing such a duty would cause the adult son to become a public charge himself due to his lack of financial stability).

78. Kline, *supra* note 20, at 199; *see also* Katie Wise, *Caring for Our Parents in an Aging World: Sharing Public and Private Responsibility for the Elderly*, 5 N.Y.U. J. LEGIS. & PUB. POL'Y 563, 580 (2002) (stating that public benefit systems date back to the Great Depression when many elderly Americans faced economic insecurity).

79. Kline, *supra* note 20, at 199.

80. *Id.* at 198–99.

81. *Id.* at 199; *see also* 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, 234–35 (1988) (stating that the mores relating to the duty to support one's indigent parent changed in the twentieth century in favor of public benefit systems).

82. 42 U.S.C. § 1396a(a)(17)(D) (2012).

83. *Id.*

84. S. REP. NO. 89-404, at 2018 (1965).

85. Kline, *supra* note 20, at 199.

86. Moskowitz, *supra* note 9, at 715; *see also* Art Lee, Comment, *Singapore's Maintenance of Parents Act: A Lesson To Be Learned from the United States*, 17 LOY. L.A. INT'L & COMP. L.J. 671, 681 (1995) (stating that after the advent of Medicaid some states "had no choice but to drop their filial support laws").

87. Kline, *supra* note 20, at 199. In 1983, the Medicaid legislation was altered to allow states to "require adult family members to support adult relatives without violating the Medicaid statute." *Id.* at 199–200 (quoting MEDICAID MANUAL TRANSMITTAL NO. 2, HCFA Pub. 45-3, no. 3812, Medicare & Medicaid Guide (CCH) ¶ 32,457 (Feb. 1983)). Still, even after the 1983 revision, states were wary about enforcing their filial support laws. *See id.* at 200 (explaining that both Idaho and New York considered utilizing their filial support laws after the 1983 Medicaid revision but "quickly dropped the idea").

### 3. Filial Support Statutes in the Last Twenty Years and Recent Trends in Their Enforcement

Twenty-nine states currently have some form of a filial support statute that requires adult children to support their elderly parents.<sup>88</sup> Filial support statutes vary from state to state; currently, four states have provisions that provide both criminal and civil actions,<sup>89</sup> while eight states provide only a criminal remedy,<sup>90</sup> and fifteen states provide only a civil remedy.<sup>91</sup> Despite the number of states that have filial support statutes, very few states actively enforce these laws.<sup>92</sup> In fact, eleven states have yet to enforce them at all.<sup>93</sup> However, the same number of jurisdictions have enforced, or at least considered, their filial support statutes.<sup>94</sup>

Three of these states' courts—California, South Dakota, and Pennsylvania—provide a good indication of the current state of active filial support laws.<sup>95</sup> This Part contains a brief overview of California's and South Dakota's recent filial support jurisprudence to provide an example of how some states approach filial support.<sup>96</sup> The remainder of this Comment then focuses on Pennsylvania's filial support jurisprudence as it is the most alarming and provides a good starting point for changes that can be made to bring filial support statutes in line with today's economic and familial climates.

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88. Pearson, *supra* note 27, at 275. Puerto Rico also has a filial support statute. *Id.*

89. See CAL. FAM. CODE § 4400 (West 2014) (civil); CAL. PENAL CODE § 270c (West 2014) (criminal); CONN. GEN. STAT. ANN. § 46b-215 (West 2014) (civil); CONN. GEN. STAT. ANN. § 53-304 (West 2014) (criminal); IND. CODE ANN. § 31-16-17-1 (West 2014) (civil); IND. CODE ANN. § 35-46-1-7 (West 2014) (criminal); MONT. CODE ANN. § 40-6-301 (West 2013) (civil); MONT. CODE ANN. § 45-5-621 (West 2013) (criminal).

90. KY. REV. STAT. ANN. § 530.050 (West 2014); MD. CODE ANN., FAM. LAW. §§ 13-101–102 (West 2014); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 2014); N.C. GEN. STAT. ANN. § 14-326.1 (West 2014); OHIO REV. CODE ANN. § 2919.21 (West 2014); R.I. GEN. LAWS ANN. § 15-10-1 (West 2014); VT. STAT. ANN. tit. 15, § 202 (West 2014); VA. CODE ANN. § 20-88 (West 2014).

91. ALASKA STAT. ANN. §§ 25.20.030, 47.25.230 (West 2014); ARK. CODE ANN. § 20-47-106 (West 2014); DEL. CODE ANN. tit. 13, § 503 (West 2014); GA. CODE ANN. § 36-12-3 (West 2014); LA. REV. STAT. ANN. § 13:4731 (West 2014); LA. CIV. CODE ANN. art. 229 (West 2014); MISS. CODE ANN. § 43-31-25 (West 2014); NEV. REV. STAT. ANN. § 428.070 (West 2014); N.H. REV. STAT. ANN. §§ 167:2, 546-A:2 (2014); N.D. CENT. CODE ANN. § 14-09-10 (West 2013); OR. REV. STAT. ANN. § 109.010 (West 2014); 23 PA. CONS. STAT. ANN. § 4603 (West 2014); S.D. CODIFIED LAWS §§ 25-7-27–28 (2014); TENN. CODE ANN. § 71-5-115 (West 2014); UTAH CODE ANN. § 17-14-2 (West 2014); W. VA. CODE § 9-5-9 (West 2014).

92. See Lee, *supra* note 86, at 677–78 (discussing the disconcertingly high percentage of states that have filial support laws that have never been invoked).

93. Ross, *supra* note 10, at 174. The eleven states referred to include Alaska, Delaware, Idaho, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Tennessee, Utah, and Vermont. *Id.*

94. Filial support statutes have been enforced in Pennsylvania, South Dakota, California, New York, Louisiana, New Jersey, Georgia, the District of Columbia, Illinois, Rhode Island, and Wisconsin. Lee, *supra* note 86, at 677–78. It is interesting to note that Michigan had a filial support law that was subsequently repealed in 1967 right after it was enforced for the first time since the 1930s. *Id.*

95. Ross, *supra* note 10, at 174.

96. See *infra* Parts ILC.3.a–b for a discussion of California's and South Dakota's recent filial support statute jurisprudence.

a. *California's Filial Support Statute*

The use of filial support statutes in California since the 1970s demonstrates the tension over whether the support of elderly indigent individuals should be a private or public burden.<sup>97</sup> In one case dating back to 1971, the California Supreme Court did not impose a duty on an adult son to support his elderly mother who was receiving assistance from the state's Old Age Security Law.<sup>98</sup> The court concluded that "a person can qualify to receive aid [from the state] . . . yet not be so destitute that his children will owe him a duty of support" under California's filial support statute.<sup>99</sup> The court made this decision in light of California's filial statute, which provided that "the adult children of a recipient of aid to the aged shall be required to contribute to the recipient's support *to the extent of the child's ability*."<sup>100</sup> California's Supreme Court held that forcing an adult child to contribute disproportionately to the state's old age security benefits system violates his or her equal protection rights when his parent is not considered "poor" under the statute.<sup>101</sup>

In response to this decision, California's legislature amended its filial support statute in order to clarify that adult children do have a duty under the statute to support an elderly parent who is receiving state aid.<sup>102</sup> The legislature was particularly careful to change the statute to provide a reciprocal duty to support parents "in need" rather than parents who were deemed "poor" by statutory definition.<sup>103</sup> California courts seemed satisfied with this revised statute, at least for the time being, and the California Supreme Court stated that the revised statute had a rational basis that was properly based on the Anglo-American tradition of requiring adult children to aid their elderly parents.<sup>104</sup>

Today, California's filial support law remains on the books, but a search of online databases reveals that it has not been used since it was amended in the early 1970s.<sup>105</sup> Some speculate that a 1975 change to California's Welfare Code has deterred needy parents from suing their unwilling adult children for filial support.<sup>106</sup> According to the amended Welfare Code, a relative cannot be held accountable to reimburse the state or provide care for a needy parent if the needy parent applied for or is receiving aid from the state.<sup>107</sup> This legislative change placed filial support on the back burner because a

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97. Pearson, *supra* note 27, at 286.

98. *Cnty. of San Mateo v. Boss*, 479 P.2d 654, 659 (Cal. 1971), *overruled sub nom.* *Swoap v. Superior Court*, 516 P.2d 840 (Cal. 1973).

99. *Id.*

100. *Id.* at 655–56 (emphasis added).

101. *Id.* at 659.

102. *See* Pearson, *supra* note 27, at 287 (discussing CAL. FAM. CODE § 4400 and its requirement that an adult child support his or her "in need" rather than "poor" parent); *see also Swoap*, 516 P.2d at 848 n.10 (overruling *Boss*). The court in *Swoap* recognized what overruling *Boss* meant and expressed sympathy toward the people who may be faced with "harsh results" yet left any solution to California's legislature. *Id.* at 852.

103. Pearson, *supra* note 27, at 287.

104. *Swoap*, 516 P.2d at 852.

105. *See* Pearson, *supra* note 27, at 286–88 (discussing the legislative history of California's filial support laws and the lack of cases seeking to enforce these laws since 1975).

106. *Id.* at 287–88.

107. CAL. WELF. & INST. CODE § 12350 (West 2014).

parent who needed aid could receive state funds rather than sue his or her own child.<sup>108</sup>

California's history illustrates one way that a state's legislature and judiciary can struggle with the question of who (or what) should be responsible for supporting indigent elderly people. As for California, it still places that responsibility on the state, rather than the family.<sup>109</sup>

*b. South Dakota's Filial Support Statute*

South Dakota's judiciary also recently interpreted the state's filial support statute.<sup>110</sup> South Dakota's filial support statute provides that "[a]ny adult child, having the financial ability to do so, shall provide necessary food, clothing, shelter, or medical attendance for a parent who is unable to provide for oneself."<sup>111</sup> South Dakota's statute is unique in that it requires the elderly parent to provide written notice to the adult child indicating need before a claim can be made.<sup>112</sup>

In 1994, the South Dakota Supreme Court upheld the constitutionality of this statute, indicating its preference that family members provide elderly support—rather than the state.<sup>113</sup> In *Americana Healthcare Center v. Randall*,<sup>114</sup> a health care center sued the adult son of a deceased patient for unpaid medical expenses.<sup>115</sup> Five years before the patient died, she created a trust for the benefit of her son that included the entirety of her estate.<sup>116</sup> As a result, the nursing home sued the son for payment of the deceased patient's bills as an individual and a trustee under South Dakota's filial support law.<sup>117</sup> The court found in favor of the nursing home, holding that the patient's inability to pay her medical costs was a direct result of the trust she created five years earlier.<sup>118</sup> The court believed it was appropriate to find an adult child liable for his or her elderly parent's outstanding debt, especially when the child is in control of the elderly parent's assets.<sup>119</sup>

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108. Pearson, *supra* note 27, at 288.

109. *See id.* (indicating that there have been no appellate decisions concerning California's filial support laws since 1975).

110. *See generally* *Americana Healthcare Ctr. v. Randall*, 513 N.W.2d 566 (S.D. 1994) (upholding the constitutionality of South Dakota's filial support statute by allowing a health care center to recover the cost of a deceased patient's unpaid medical bills from her adult son).

111. S.D. CODIFIED LAWS § 25-7-27 (2014).

112. *See id.* (indicating that "no claim may be made against . . . [an] adult child until the adult child is given written notice that the child's parent is unable to provide for oneself, and such adult child has refused to provide for the child's parent").

113. *Randall*, 513 N.W.2d at 573.

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

115. *Randall*, 513 N.W.2d at 573.

116. *Id.* at 569.

117. *Id.* at 570.

118. *Id.* at 573; *see also* Ross, *supra* note 10, at 196 (discussing the importance of the South Dakota Supreme Court's decision that children must provide for their parents when they have the financial ability to do so and are in control of their parent's assets).

119. *Randall*, 513 N.W.2d at 571.

South Dakota's filial support statute allows an adult child who is liable for his or her parent's medical expenses to seek contribution from siblings.<sup>120</sup> Still, this right of contribution is limited by the sibling's "ability to so contribute to such support," and the proponent must provide notice to the sibling prior to an action for contribution.<sup>121</sup> Unlike California, which places the burden of filial support on public benefit systems, South Dakota favors privatized funding for the elderly. This is especially true when the adult child had some hand in his or her parent's indigence.<sup>122</sup>

*c. Pennsylvania's Filial Support Statute*

While Pennsylvania's interpretation of its filial support law is more akin to South Dakota's approach than California's, Pennsylvania's enforcement of its filial support law has recently gone a step further than the other two states and is the most egregious. Furthermore, Pennsylvania's use of its filial support statute is especially notable: the statute was recently modified by the state legislature and moved from Pennsylvania's Public Welfare Laws to its Domestic Relations Code.<sup>123</sup> One commentator describes the timing of this legislative action as "controversial"<sup>124</sup> and believes it is an indication of current priorities in public policy as many states are "tightening the budget belt on Medicaid."<sup>125</sup>

Pennsylvania's filial support law states explicitly that an adult child has a responsibility to care for and financially assist his or her indigent parent.<sup>126</sup> To be considered "indigent" in Pennsylvania, the person "need not be helpless and in extreme want, [or] so completely destitute of property, as to require assistance from the public."<sup>127</sup> Pennsylvania defines indigent persons by the common law definition of "those who do not have sufficient means to pay for their own care and maintenance."<sup>128</sup> Thus, in contrast to California's filial support statute, under Pennsylvania's statute an individual can be considered indigent when they are unable to support themselves yet are not destitute enough to qualify for public support.<sup>129</sup>

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120. S.D. CODIFIED LAWS § 25-7-28 (2014).

121. *Id.*

122. See *Randall*, 513 N.W.2d at 574 (stating that the health center should be able to recover from a deceased woman's adult son because he had "control of [her] purse strings" and decided to spend the money elsewhere).

123. See Pearson, *supra* note 27, at 290 (explaining the statute's recodification within 23 PA. CON. STAT. ANN. §§ 4601-4606 (West 2014)).

124. *Id.* at 290-91 n.134.

125. 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.A. Q. 162, 169 (2005).

126. 23 PA. CONS. STAT. ANN. § 4603(a)(1)(ii) (West 2014).

127. *Savoy v. Savoy*, 641 A.2d 596, 599-600 (Pa. Super. Ct. 1994).

128. *Id.* (quoting *Verna v. Verna*, 432 A.2d 630, 633 (Pa. Super. Ct. 1981)).

129. Compare *Cnty. of San Mateo v. Boss*, 479 P.2d 654, 659 (Cal. 1971) (expounding California's definition of indigence and concluding that "a person can qualify to receive aid [from the state] . . . yet not be so destitute that his children will owe him a duty of support"), *overruled sub nom.* *Swoap v. Superior Court*, 516 P.2d 840 (Cal. 1973), with *Savoy*, 641 A.2d at 599-600 (defining indigence under Pennsylvania law as not requiring one to be so destitute "as to require assistance from the public").

The Pennsylvania statute provides two exceptions to this financial responsibility: if the adult child does not have “sufficient financial ability to support the indigent person,” or if the parent “abandoned the child and persisted in the abandonment for a period of ten years during the child’s minority.”<sup>130</sup> Thus, an adult child with little to no income has no duty to support his or her indigent elderly parent. Likewise, a child who was abandoned by his or her indigent parent before turning eight years old has no duty to provide financial support, while any abandonment that occurs for fewer than ten years will not absolve an adult child under Pennsylvania’s filial support statute.<sup>131</sup>

Pennsylvania’s statute also contains a broad standing provision.<sup>132</sup> The statute allows an indigent elderly person or “any other person or public body or public agency [that has] *any interest* in the care, maintenance or assistance of such indigent person” to bring a support action.<sup>133</sup> Therefore, a cause of action is not limited to an indigent elderly person bringing a support action on his or her own behalf.<sup>134</sup> Other entities, such as nursing homes, hospitals, or other interested individuals, can also initiate a support action under the statute.<sup>135</sup>

In 2005, Pennsylvania’s legislature recodified its filial support statute and moved it from the Welfare Code to the Domestic Relations Code.<sup>136</sup> The recodification of Pennsylvania’s filial support statute kept practically the same language as the prior statute but inspired modern commentators to assess the liberal aspects of the law.<sup>137</sup>

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130. 23 PA. CONS. STAT. ANN. § 4603(a)(2)(i–ii). In Pennsylvania, abandonment has been defined as follows:

[A]ny conduct on the part of the parent which evidences a settled purpose to forego all parental duties and relinquishes all parental claim to the child. For a mother to abandon her child means to give it up absolutely with the intent of never again claiming her right to it. Mere neglect does not necessarily constitute abandonment; ordinarily, to have that effect, it must be coupled with affirmative acts or declarations on her part indicating a positive intention to abandon. Abandonment may therefore be effected, sometimes by a mere formal legal instrument, sometimes by a course of conduct. *It is a matter of intention*, to be ascertained by what the parent says and does, viewed in the light of the particular circumstances of the case. Even where the natural parental right has been nullified by abandonment that right may be retrieved if its reassertion is beneficial to the welfare of the abandoned child.

Adoption of Harvey, 99 A.2d 276, 278–79 (Pa. 1953) (internal citations omitted).

131. See *Commonwealth ex. rel. Maceroyal v. Cunningham*, 28 Pa. D. & C.2d 466, 469–71 (1962) (holding that an adult child was not absolved from supporting his elderly indigent mother who had been absent throughout his childhood for two to three years at a time but never gave “positive intention” that she wanted to relinquish her parental rights completely).

132. See 23 PA. CONS. STAT. ANN. § 4603(c)(1)–(2) (conferring jurisdiction upon any indigent person or any entity with an “interest in the care, maintenance or assistance” of an indigent person).

133. *Id.* (emphasis added).

134. *Id.*

135. *Id.* Beyond civil liabilities, the statute also provides a criminal penalty for an individual who intentionally fails to comply with the statute. See *id.* § 4603(d) (“If an individual liable for support under this section fails to comply with an order under this section . . . [and] the court determines that the individual liable for support has intentionally failed to comply . . . the court may hold the individual in contempt of court and may sentence the individual to up to six months’ imprisonment.”).

136. See Pearson, *supra* note 125, at 166 (explaining how Pennsylvania’s Act 43 shifts the key language of Pennsylvania’s filial support law from the Welfare Code to the Domestic Relations Code and how this change coincided with the enactment of Act 42, which tightened Pennsylvania’s Medicaid funding).

137. *Id.* at 167.

Since there is no common law obligation for an adult child to support an elderly parent,<sup>138</sup> a commentator viewed this legislative change as a “revitalization of a mostly dormant statutory support obligation running from parents to adult children.”<sup>139</sup>

For example, Professor Katherine Pearson discussed the provision for the amount of liability to be provided under the statute, which provides that “the amount of liability shall be set by the court in the judicial district in which the indigent person resides.”<sup>140</sup> Pearson compared this provision to the guidelines courts use when determining parental obligations to their minor children.<sup>141</sup> She indicated that the provision’s wording gave trial courts significant leeway in determining the amount of a support order and that the support obligation will “be case specific and dependent on the trial judge’s response to the comparative assertions of hardship.”<sup>142</sup> The statute’s recodification brought awareness to how broad Pennsylvania’s filial support statute is and how the broad net it casts reflects the Department of Public Welfare’s desire for “estate recovery.”<sup>143</sup>

Since the early 1990s, Pennsylvania courts have had several occasions to interpret Pennsylvania’s filial support statute but have failed to provide clear precedent indicating the way the statute should be utilized. One of the first in this line of cases is *Savoy v. Savoy*.<sup>144</sup> In 1994, a woman filed a complaint for support against her adult son after she had experienced several medical problems that led to unpaid medical expenses in excess of \$10,000.<sup>145</sup> This woman received Social Security benefits and Supplemental Security Income benefits, but this public funding did not cover her monthly expenses.<sup>146</sup>

The Superior Court of Pennsylvania determined that the elderly woman was indigent because her monthly income was less than half of her monthly expenses.<sup>147</sup> Furthermore, the court found that her adult son, who had a net monthly income of \$2,327, could financially assist his mother by paying \$125 per month to her medical care providers.<sup>148</sup> The fact that the son’s own monthly expenses were over \$200 more than his monthly income did not affect the court’s decision.<sup>149</sup> The court held that the trial court did not abuse its discretion “in view of [the] [s]on’s sufficient financial ability to assist [his mother].”<sup>150</sup>

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138. *Id.* at 166.

139. *Id.*

140. *Id.* at 167 (quoting 23 PA. CONS. STAT. ANN. § 4603(b)(1)).

141. *Id.*

142. *Id.*

143. *See id.* at 168 (providing, as an example of the federal government’s request for estate recovery, 42 U.S.C. § 1396p(b)(1), which states that under certain circumstances the state may seek adjustment or recovery for any medical assistance paid for by the state from a decedent’s estate).

144. 641 A.2d 596 (Pa. Super. Ct. 1994).

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

146. *Id.* The woman received \$362 per month from Social Security and an additional \$76.40 per month from Supplemental Security Income while her monthly expenses amounted to \$940. *Id.*

147. *Id.* at 600.

148. *Id.* at 598, 600.

149. *Id.* at 598.

150. *Id.* at 600.

This case is significant because it is a modern case that allowed an adult child to be sued by his elderly parent, notwithstanding the fact that he earned less than he paid out in expenses each month.<sup>151</sup> Also, although the adult son's mother initiated the action, he was required to make payments to the medical provider rather than to his mother—a result “unsatisfactory to all concerned” because the son's filial support payments were not actually providing filial support but were used to pay his indigent mother's creditors.<sup>152</sup>

The Superior Court of Pennsylvania was once again called upon to interpret Pennsylvania's filial support law in 2003. In *Presbyterian Medical Center v. Budd*,<sup>153</sup> a nursing home sued a deceased elderly woman's adult daughter for repayment of an outstanding balance of \$96,000.<sup>154</sup> The nursing home brought this suit on several theories, but the court found the home's only viable claim to be one based on Pennsylvania's filial support statute.<sup>155</sup> According to the nursing home, the adult daughter promised to apply for Medicaid benefits for her mother because her mother was unable to pay for her own medical expenses as a result of her “exhausted” means.<sup>156</sup> Her promise went unfulfilled, though, because all involved knew that the elderly mother's assets exceeded the threshold of Medicaid eligibility.<sup>157</sup> Because her assets exceeded the Medicaid threshold, the adult daughter had made another promise; this time she promised to “spend down” her mother's assets in order to qualify her mother for Medicaid.<sup>158</sup> The daughter's efforts to spend down her mother's assets, however, came in the form of using her power of attorney to transfer money into her own bank account.<sup>159</sup>

The court held that the adult daughter was liable to the nursing home for reimbursement of \$68,000 because her “Mother became ‘indigent’ during her stay at the nursing home when [the daughter] removed more than \$100,000 from [her] Mother's various bank accounts.”<sup>160</sup> The court, using a rationale similar to that of South Dakota's Supreme Court in *Randall*, believed that such a holding was proper because the daughter played a major role in creating her mother's indigent status.<sup>161</sup>

The court's holding in *Budd* is significant because it confirmed the ability of a company, as a public entity that has an “interest” under the statute, to make a direct

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151. See Pearson, *supra* note 27, at 292 (citing *Savoy* as a “turning point” in that it allowed a parent to initiate a suit against the child for the parent's support despite the fact the child's expenses already exceeded his income).

152. *Id.* at 292 n.147.

153. 832 A.2d 1066 (Pa. Super. Ct. 2003).

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

155. *Id.* at 1069–70. The nursing home also brought claims of fraud, breach of contract, and negligent misrepresentation. *Id.*

156. *Id.* at 1069.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 1076.

161. *Id.* at 1077.

claim against an adult child for reimbursement.<sup>162</sup> This case also illustrates one of the policies initiating the use of Pennsylvania's filial support statute—namely, fault.<sup>163</sup> Here, the daughter's role in causing her mother's indigence provided sound justification for her liability.<sup>164</sup>

The Superior Court of Pennsylvania took its interpretation of Pennsylvania's filial support statute a step further in 2012. In *Health Care & Retirement Corp. of America v. Pittas*,<sup>165</sup> a nursing home brought a filial support action against a patient's son for outstanding debt incurred following his mother's stay at the home.<sup>166</sup> The court held that the patient's son was liable under the Pennsylvania statute for approximately \$93,000 after finding that he made \$85,000 per year and was not abandoned as a child.<sup>167</sup> The court denied reargument, despite the fact that the patient's son had no fault in creating the debt and had siblings who could also assist in providing support.<sup>168</sup> The court stated that if the patient's son wanted to share his support burden with any of his family members, "he was permitted to do so by joining [them into the] case."<sup>169</sup> While the court was "sympathetic" toward the son, it justified its decision by indicating that it was following the plain language of Pennsylvania's filial support statute.<sup>170</sup>

It is possible that nursing homes will use *Pittas* to extend *Budd* in order to leverage repayment of outstanding debts because *Pittas* allowed Pennsylvania's filial support statute to apply retroactively to accrued debt without evidence of fault on the part of the adult child.<sup>171</sup> Without much explanation, the court in *Pittas* determined the adult son was financially capable of repaying his mother's nursing home debts, despite his assertion that he did not have the means to pay the debt.<sup>172</sup> Furthermore, *Pittas* was the only child out of three required to repay his mother's debt; if he wanted either of his siblings or parents to indemnify him, he would have to initiate suit against them.<sup>173</sup>

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162. Pearson, *supra* note 27, at 293; see also 23 PA. CONS. STAT. ANN. § 4603(c)(2) (West 2014) (stating that any person, public body, or public agency who is "interest[ed]" in the care of the indigent person can bring action under the statute). An investigation into the current statute's "Notes of Decision" on Westlaw indicates that a Pennsylvania court had not, prior to *Budd*, granted standing to a nursing home in a filial support dispute since *Commonwealth ex rel. Home for the Jewish Aged v. Kotzker*, 118 A.2d 271, 272 (Pa. Super. Ct. 1955).

163. Pearson, *supra* note 27, at 293.

164. *Budd*, 832 A.2d at 1077.

165. 46 A.3d 719 (Pa. Super. Ct. 2012).

166. *Pittas*, 46 A.3d at 720.

167. *Id.* at 723–24. The court determined that the son had the financial ability to support his indigent mother after looking at his tax returns as well as the fact that he had recently paid off a \$1,100 per month tax lien. *Id.* at 722. The court also held that the trial court was correct in considering the elderly mother indigent and that the burden was on the son to provide evidence of her financial stability if her indigent status was to be rebutted. *Id.* at 724.

168. *Id.* at 722–24.

169. *Id.* at 723.

170. *Id.*

171. See Pearson, *supra* note 27, at 293 (explaining that, in *Budd*, the court relied on the adult child's role in causing her mother's indigence to rationalize its decision to hold the adult child liable for her mother's medical debt).

172. *Pittas*, 46 A.3d at 723. More specifically, *Pittas* argued that he was unable to pay for his mother's debts because he had other bills to pay. *Id.* The court found that his testimony lacked credibility because he failed to substantiate his claims with physical evidence of these other bills. *Id.*

173. *Id.*

This result is quite contrary to the Senate Finance Committee's statement in 1965 forbidding states from using filial support statutes to seek repayment of state funds expended for an elderly parent's care because their enforcement was "destructive and harmful" to familial relationships.<sup>174</sup>

### III. DISCUSSION

While there is something to be said about the durability of filial support statutes since colonial times, *tempora mutantur nos et mutamur in illis*—times change and we change with them.<sup>175</sup> Filial support statutes have been treated differently as the United States has entered different economic and familial climates.<sup>176</sup> The statutes have turned into misguided pieces of legislation. They are overly broad and prone to causing more problems than they prevent—a far cry from their original purpose as a means of enforcing the "natural and moral duty" of an adult child to his or her elderly parent.<sup>177</sup> Contemporary filial support laws do not incentivize adult children who are capable of paying for their elderly parents' care to assist their parents.<sup>178</sup> Instead, public entities, such as nursing homes, now have an incentive to use filial support statutes as leverage against adult children to seek reimbursement for liabilities the children had no part in creating.<sup>179</sup>

This Discussion first focuses on Pennsylvania's filial support statute as an example of the overly broad language that is typical of filial support laws. The language of the Pennsylvania statute is used to illustrate how the breadth of these statutes leaves too much discretion to courts and provides no real basis, or necessity, for creating guidelines for future filial support disputes.<sup>180</sup> The statute's language allows courts to follow the black letter law by practically checking off each requirement without having to consider the tension that enforcement of these statutes can create within a family.<sup>181</sup>

Second, this Discussion criticizes particular provisions of the Pennsylvania statute for their vulnerability to abuse and inability to address the issues they are meant to prevent.<sup>182</sup> Specifically, one provision requires that the adult child be financially

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174. See Kline, *supra* note 20, at 199 (quoting S. Rep. No. 404 (1965) and explaining how the 1965 Medicaid statute contributed to the decline of filial responsibility laws).

175. *Tempora Mutantur Nos Et Mutamur In Illis Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/temporamutanturnosetmutamurinillis>.

176. See *supra* Part II.C for a discussion of the way filial support statutes have been enforced since their first enactment in colonial times.

177. Jacobson, *supra* note 18, at 527.

178. See *infra* Part III.A for a discussion of the broad language of today's filial support statutes and how this breadth disfavors an elderly indigent parent's adult children.

179. See *supra* notes 165–73 and accompanying text for a discussion of *Pittas*, which placed \$93,000 of debt on an elderly woman's adult child who had no part in creating the debt yet was held to be a proper recipient of the debt under Pennsylvania's filial support statute.

180. See *infra* Part III.A for a discussion of Pennsylvania's filial support statute and the inconsistent manner that Pennsylvania courts have approached its enforcement.

181. See *infra* Part III.A for a discussion of the practical problems created by Pennsylvania courts' interpretation of the statute.

182. See *infra* Part III.A for a discussion of the multiple deficiencies in the pertinent provisions of the

capable of providing filial support in order to be held liable under the statute, yet it provides no meaningful guidelines for determining financial capability.<sup>183</sup> Another provision is a loophole of sorts that immunizes an adult child from the filial support statute if the child was abandoned for more than ten years during his or her minority.<sup>184</sup> This loophole is difficult to utilize due to the definition of “abandonment” and its failure to account for significant periods of abandonment that may have occurred for less than ten years.<sup>185</sup>

Finally, this Discussion concludes with suggested amendments that can be made to Pennsylvania’s filial support law that account for the statute’s shortcomings without completely dissolving it of its purpose.<sup>186</sup> In today’s world, it may sometimes be appropriate for an elderly indigent individual to call upon his or her family members for support rather than the state. However, filial support statutes should be tailored so that they are not abused or enforced for the wrong reasons. These suggestions try to strike a balance between relieving public benefit systems of some of their burden of support while simultaneously taking into account different relational and economic circumstances within varying family units.<sup>187</sup>

A. *An Illustration of an Overly Broad Filial Support Statute: Free Range in Pennsylvania*

1. Determining “Indigence”

Pennsylvania’s filial support statute sets forth four requirements to properly bring an action for filial support.<sup>188</sup> First, it requires that the elderly parent, who either needs support going forward or has accrued debt for support received in the past, be indigent.<sup>189</sup> While courts look to the common law definition of “indigent” to inform this first requirement, they are not required to seek out a particular degree of indigence for this statute to apply.<sup>190</sup> Logically, one would assume that a child called upon to support his or her indigent parent is not indigent in his or her own right because someone who has insufficient means to support oneself cannot be expected to support another person. But, this consideration is not one weighed by the court.<sup>191</sup> The statute

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statute.

183. See *infra* Part III.A.2 for a discussion of 23 PA. CONS. STAT. ANN. § 4603(a)(2)(i) (West 2014).

184. See *infra* Part III.A.3 for a discussion of the courts’ interpretation of the abandonment requirement.

185. See *infra* Part III.A.3 for a discussion of the difficulties in interpreting the abandonment provision.

186. See *infra* Part III.B for proposed amendments to Pennsylvania’s filial support statute as well as a draft of the proposed statute.

187. See *infra* Part III.B for a discussion of how the proposed changes achieve that balance.

188. See generally 23 PA. CONS. STAT. ANN. § 4603 (West 2014).

189. See *id.* § 4603(a)(1) (“[A]ll of the following individuals have the responsibility to care for and maintain or financially assist an *indigent* person . . .” (emphasis added)).

190. See *supra* Part II.C.3.c for a discussion of *Savoy*, a Pennsylvania case that defined indigence based on the common law definition of “those who do not have sufficient means to pay for their own care and maintenance.”

191. See *supra* Part II.C.3.c for a discussion of *Savoy*, *Budd*, and *Pittas*, all Pennsylvania cases in which the court did not consider whether the adult child being compelled to support his or her indigent parent could be considered indigent in his or her own right. Instead, Pennsylvania courts look primarily to whether the adult

plainly states that particular individuals have the responsibility to assist an “indigent person” without regard to whether the individual responsible for providing the support could fall within the same definition of indigence.<sup>192</sup>

Pennsylvania’s statute does not stipulate whether an adult child’s responsibility to an indigent parent should only arise at a certain degree of indigence, which gives courts free range in deciding when a person is indigent.<sup>193</sup> Thus, courts can automatically activate the responsibility on the adult child.<sup>194</sup> While it can be argued that the language allows courts to go both ways—to read in a requirement that the elderly individual meet a certain degree of indigence, particularly in comparison to the adult child whose aid is sought—case law indicates that courts do not compare an elderly parent’s indigence to the adult child’s indigence prior to making a support order.<sup>195</sup> In fact, courts simply move to the statute’s next requirement when there is any indication that the indigent elderly person does “not have sufficient means to pay for [his or her] own care and maintenance.”<sup>196</sup>

## 2. A Child’s “Sufficient Financial Ability”

Next, the statute requires that the adult child have “sufficient financial ability to support the indigent person.”<sup>197</sup> While this seems like a way out for adult children who cannot afford to support their indigent parents, courts’ interpretations of this requirement have been less than sympathetic toward children in unfortunate financial situations.<sup>198</sup> In determining one’s financial ability to provide filial support, case law directs courts to consider “actual income, the property, assets and earning ability, as well as other attendant circumstances.”<sup>199</sup> Despite this “test,” Pennsylvania’s filial support statute gives the factfinder significant leeway in determining financial ability. For example, in *Savoy*, an elderly woman’s adult child qualified as financially able, yet the evidence showed that his monthly expenses exceeded his monthly income.<sup>200</sup> The

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child has “sufficient financial ability,” a standard that has been used indiscriminately by courts without any real definition to use as guidance. *See, e.g., Savoy v. Savoy*, 641 A.2d 596, 600 (Pa. Super. Ct. 1994) (finding that the son had “sufficient financial ability” without any further guidance).

192. 23 PA. CONS. STAT. ANN. § 4603(a)(1).

193. *See id.* (requiring certain people to provide support for an indigent person without specifying level of indigence that triggers the requirement).

194. While indigence does activate the responsibility of support on one’s adult child, this responsibility can be rebutted by evidence that the adult child is financially incapable of providing financial support or evidence that the adult child was abandoned by his parents for ten or more years as a minor. *See id.* § 4603(a)(2) (providing two exceptions to the support requirement). These methods of avoiding filial responsibility will be addressed in Parts III.A.2–3.

195. *See, e.g., Savoy*, 641 A.2d at 600 (focusing on the mother’s monthly expenses exceeding her income while ignoring the same with regard to the son when determining whether the son could support his mother).

196. *Id.* at 599–600 (quoting *Verna v. Verna*, 432 A.2d 630, 633 (Pa. Super. Ct. 1981)).

197. 23 PA. CONS. STAT. ANN. § 4603(a)(2)(i).

198. *See supra* Part II.C.3.c for a discussion of *Savoy* and *Pittas*, two Pennsylvania cases where adult children were ordered to pay their indigent parents’ debt despite having financial difficulties of their own.

199. *Commonwealth ex rel. Goldman v. Goldman*, 119 A.2d 631, 633 (Pa. Super. Ct. 1956).

200. *See Savoy*, 641 A.2d at 598 (indicating that the adult child’s monthly net income was \$2,327, yet his monthly expenses amounted to \$2,583).

Superior Court of Pennsylvania in *Savoy* improperly weighed the adult child's income, property, assets, earning ability, and other attendant circumstances when determining that Savoy was financially able to pay \$125 dollars per month to his mother's medical care providers when he could not even afford to pay his own monthly bills.<sup>201</sup>

*Pittas* is another example of the court's wide and misguided discretion to determine an adult child's financial ability to provide filial support to an indigent parent. In *Pittas*, a nursing home sued a man under Pennsylvania's filial support statute for \$93,000 and was successful.<sup>202</sup> In making its decision, the Superior Court of Pennsylvania determined that John Pittas was able to pay for his mother's past debt after finding that he made \$85,000 per year and had recently paid off a \$1,100 per month tax lien.<sup>203</sup> While Pittas does seem to be in a better financial position than his counterpart in *Savoy*, the court made no mention of the fact that Pittas was a father of two and a restaurant owner.<sup>204</sup> In fact, in response to Pittas's assertions that his other bills would prevent him from being able to contribute to his mother's accrued debt, the court stated that his testimony lacked credibility because he failed to substantiate his claims with physical evidence of other bills.<sup>205</sup> Again, the Superior Court of Pennsylvania failed to consider Pittas's income along with his assets, earning ability, and *other attendant circumstances*—such as the expenses of fatherhood and maintaining a business—when requiring him to pay back his mother's creditors.<sup>206</sup>

These cases indicate the wide discretion that Pennsylvania courts have and their partiality toward privatized rather than state funding for an elderly person's care.<sup>207</sup> This sentiment parallels the reasoning behind the enforcement of the earliest filial support laws—that the burden of supporting the elderly should be on one's family, when possible, rather than on the state.<sup>208</sup> In some circumstances, this policy is not a

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201. See *id.* at 600 (affirming the trial court's judgment that the adult child was financially able and could pay \$125 per month to his mother's medical providers).

202. *Health Care & Retirement Corp. of Am. v. Pittas*, 46 A.3d 719, 720 (Pa. Super. Ct. 2012). The Pennsylvania Superior Court denied re-argument in July 2012.

203. *Id.* at 722–23.

204. See Susanna Kim, *Pennsylvania Man Appeals to Court To Avoid Paying Mom's \$93,000 Nursing Home Bill*, ABC NEWS (May 23, 2012), <http://abcnews.go.com/Business/pennsylvania-son-stuck-moms-93000-nursing-home-bill/story?id=16405807> (interviewing John Pittas, who told the reporter that his wife was pregnant with their second child and that he was concerned about the fate of his restaurant in the current economy).

205. *Pittas*, 46 A.3d at 723. The opinion did not indicate what was required in order for Pittas to “substantiate” his claims that his other bills disabled him from being able to afford his mother's medical bills, and it is unclear why he did not try to provide evidence of these other bills. Still, it is interesting to note that the court did consider one of his past bills, namely a tax lien requiring him to pay \$1,100 per month, in determining that he was financially able. *Id.*

206. *Id.*

207. See, e.g., *Savoy v. Savoy*, 641 A.2d 596, 598 (Pa. Super. Ct. 1994) (requiring the adult son to pay \$125 per month to his mother's medical provider, not to his mother directly, after deciding in favor of the mother). The fact that Savoy was required to pay the medical director rather than his mother, who brought the action, is troublesome to one commentator who stated that the outcome was “unsatisfactory to all concerned.” Pearson, *supra* note 27, at 292 n.147.

208. See *supra* Part II.A for a discussion of early filial support statutes and the reasoning behind their enforcement.

terrible thing.<sup>209</sup> Nevertheless, it can be troubling and illogical when a court considers an elderly person indigent when her monthly income is less than her monthly expenses, while simultaneously determining an adult child financially able to provide filial support under similar financial hardships.<sup>210</sup>

### 3. Abandonment Exception

The third requirement under Pennsylvania's filial support statute is that the adult parent seeking support must not have abandoned his or her child for more than ten years during the child's minority.<sup>211</sup> This requirement, although facially reassuring that abandoned children will not have to pay for their indigent parents, is a façade. In fact, in the small amount of case law dealing with abandonment, this requirement has been wholly ineffective. For example, in *Commonwealth ex rel. Maceroyal v. Cunningham*,<sup>212</sup> an indigent woman sued her adult son for support under Pennsylvania's filial support statute.<sup>213</sup> The son, who had lived with his grandmother his whole life, tried to raise the issue of abandonment in an effort to avoid liability under the statute.<sup>214</sup> Despite the court's findings that that the son's mother had been absent from his grandmother's home several times, and for as long as two to three years at a time, it ruled that the indigent mother's behavior did not rise to the level of abandonment required by the statute.<sup>215</sup>

The court held that there was no proof that the indigent mother was absent for upwards of ten years and that she made no "positive intention" that she wanted to relinquish all of her parental rights with no intent of claiming her right to her son.<sup>216</sup> It is hard to come up with an example where an absent parent would give an unequivocal positive intention that would absolve an adult child from supporting a parent who abandoned the child for fewer than ten years in the child's minority. It is obvious that the court, in ruling on filial support, was focusing only on the perspective of the indigent elderly parent rather than that of the adult child who was forced to pay support to a parent who had been absent for the majority of his life.<sup>217</sup> In light of *Cunningham's*

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209. If an adult child is financially able to provide support to his or her indigent parent, yet refuses to, it would be logical for the burden to be placed on the unwilling adult child rather than the already overburdened state. Assuming that the indigent parent did not abandon the adult child during his or her minority, Aristotle's "historical reciprocity" theory, discussed *supra* Part II.A, in some ways makes sense: The parent provided for the child when the child was growing up, and it is now the child's turn to repay the "debt."

210. See *Savoy*, 641 A.2d at 598, for a good illustration of this problem. There, the adult child was "financially able" to support his indigent parent yet had monthly expenses that were higher than his monthly income—a circumstance that would surely qualify him under Pennsylvania's definition of indigence. *Id.*; see also *Verna v. Verna*, 432 A.2d 630, 633 (Pa. Super. Ct. 1981) (defining indigent persons as "those who do not have sufficient means to pay for their own care and maintenance").

211. 23 PA. CONS. STAT. ANN. § 4603(a)(2)(ii) (West 2014).

212. 28 Pa. D. & C.2d 466 (1962).

213. *Cunningham*, 28 Pa. D. & C.2d at 466.

214. *Id.* at 468–69.

215. See *id.* (relying on the definition of abandonment provided in *Adoption of Harvey* as "any conduct on the part of the parent which evidences a settled purpose to forego all parental duties and relinquishes all parental claim to the child").

216. *Id.* at 470–71.

217. *Id.*

holding, it is clear that Pennsylvania prefers private elderly support rather than public.

Pennsylvania courts' approach to the state's abandonment provision mirrors the perspective used by the courts to determine whether an elderly person is indigent and an adult child is financially able to contribute to an elderly parent's care.<sup>218</sup> Courts look only to the elderly parent's perspective without considering that of the adult child.<sup>219</sup> What is particularly troubling about using this elderly parent perspective in considering the issue of abandonment is that, at this point in the analysis, courts presumably have already passed the financial ability analysis and determined that the adult child was capable of providing support.<sup>220</sup> If, after this hurdle has been overcome, the adult child is still opposed to providing support because of a claim of abandonment, would it not be logical to give deference to this assertion? Thus far the answer to this question is no, absent positive intentions that the *elderly parent* intended to abandon the child.<sup>221</sup> Consequently, adult children are left with an unsustainable burden of proof when defending against elderly parents, or their creditors, neither of whom have any problem requesting support from a child who clearly does not think too fondly of the parent.

#### 4. Broad Standing Provision

Another provision in Pennsylvania's filial support statute that is worth noting is the provision that indicates who has standing under the statute to bring a filial support action.<sup>222</sup> Beyond the indigent parent, who naturally has standing, the statute also provides that "any other person or . . . public agency having *any interest* in the care, maintenance or assistance of such indigent person" can bring a support action.<sup>223</sup> At first glance, one might think that this provision provides an opportunity for parties to seek support from an elderly indigent parent's offspring when the parent may be incapacitated or unable to bring the action on his or her own behalf. On second glance, and after a reading of Pennsylvania's recent case law, this provision looks more like an open door for a wide variety of an indigent parent's *creditors* to bring a "support action" with little to none of the support payments actually going to the indigent parent's present care.<sup>224</sup> In both *Savoy* and *Pittas*, an adult son was required to make payments to his indigent parent's creditors (in both instances, a nursing home), who had standing as interested parties.<sup>225</sup> In neither case did the adult son make a direct

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218. See *supra* notes 189–210 and accompanying text for a discussion of how Pennsylvania's courts determine whether an elderly parent is indigent and an adult child is financially able under the statute.

219. See *supra* notes 212–16 and accompanying text for the *Cunningham* court's reasoning behind its conclusion that there was no abandonment because the *absent parent* gave no positive indications that she wanted to completely relinquish her parental responsibilities during the statutory period.

220. See *supra* Part III.A.2 for a discussion of Pennsylvania's requirement that a child have "sufficient financial ability" under its filial support statute.

221. *Cunningham*, 28 Pa. D. & C.2d at 469.

222. 23 PA. CONS. STAT. ANN. § 4603(c)(1–2) (West 2014).

223. *Id.* § 4603(c)(2) (emphasis added).

224. See *supra* Part II.C.3.c for a discussion of Pennsylvania's filial support statute and its recent enforcement, indicating a trend where third-party entities, such as nursing homes and hospitals, bring a support action to recover debt accrued by an adult child's indigent parent.

225. See *supra* notes 144–52 and accompanying text for a detailed discussion of *Savoy* and notes 165–73 and accompanying text for a detailed discussion of *Pittas*.

payment to his parent for continued care and maintenance.<sup>226</sup>

It is difficult to determine how Pennsylvania's statute, which allows creditors to collect from adult children on their own behalf, effectuates the legislative intent behind a statute that was first promulgated as a descendent of the Elizabethan Poor Laws of 1601.<sup>227</sup> How are adult children reciprocating the care that their parents provided them by paying back creditors on behalf of their parents? Furthermore, are there any limitations on creditor standing? If Pennsylvania's statute allows a nursing home to go after a former resident's adult child for debts, what is stopping other entities from doing the same? As written and interpreted, there is no clear line indicating when this filial duty between adult children, their elderly indigent parents, and the parents' creditors dissipates.

*B. Making Filial Support Laws Work in Modern Society*

While, in an ideal world, the U.S. economy would be healthy enough to handle the burden of filial support through Social Security, Medicaid, and Medicare, reality dictates otherwise. Public benefit systems are no longer sustainable in their current form.<sup>228</sup> As a result, some states have begun to resort to their filial support statutes to pick up the slack.<sup>229</sup> Over half of the fifty states have a filial support statute, but as this Comment has explained, many have not and do not enforce them.<sup>230</sup> Three states that have recently enforced them—California, South Dakota, and Pennsylvania—provide three different approaches to filial support.<sup>231</sup> Unfortunately, the three approaches used by these states provide a filial support version of the fairy tale “Goldilocks and the Three Bears.”

California's approach, which favors public support, accounts for today's changing family structure and echoes the Senate Finance Committee's concern that private filial support carries the risk of harming familial units.<sup>232</sup> South Dakota takes a middle approach and prefers private filial support, which accounts for today's economic realities and tightened public benefit budgets, yet also provides a notice requirement within its statute that militates the potential harm filial disputes can have on families.<sup>233</sup>

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226. It should be noted that in *Pittas* the adult child's indigent parent had moved to Greece by the time the creditors brought action against the child. *Health Care & Retirement Corp. of Am. v. Pittas*, 46 A.3d 719, 720 (Pa. Super. Ct. 2012).

227. See *supra* Part II.A for a discussion of the origin of the United States' filial support laws as descendants of the Elizabethan Poor Laws of 1601.

228. See *supra* Part II.B for a discussion of public benefit systems and possible problems with their sustainability in future generations.

229. See *supra* Part II.C.3 for a discussion of recent filial support statute enforcement, particularly in California, South Dakota, and Pennsylvania, which indicates a trend toward private filial support.

230. See *supra* notes 88–95 and accompanying text listing the twenty-nine states that currently have filial support statutes as well as which have and have not enforced them.

231. See *supra* Part II.C.3 for a discussion of the filial support regimes in California, South Dakota, and Pennsylvania and their respective approaches to enforcing their filial support statutes.

232. See *supra* Part II.C.3.a for a discussion of California's filial support jurisprudence, including its preference for public filial support rather than private.

233. See *supra* Part II.C.3.b for a discussion of South Dakota's filial support jurisprudence, including its notice requirement that requires an indigent individual or third party to provide ninety days' notice before

Finally, Pennsylvania seems to have taken a trip back to colonial times, preferring private filial support above all else—an approach that accounts for today’s economic stresses but does not account for modern familial units.<sup>234</sup> Furthermore, Pennsylvania’s filial support statute, not unlike South Dakota’s or California’s, allows third parties to bring support actions.<sup>235</sup> This is particularly troubling in Pennsylvania where courts are placing large “support” orders on adult children that are in reality just debts cloaked under a veil of filial support.<sup>236</sup> Three different approaches, yet none of them are, as Goldilocks put it, “just right.”<sup>237</sup>

This Section proposes a filial support statute based on Pennsylvania’s current statute. It aims to lessen the United States’ reliance on public benefit systems without abusing adult children who either cannot afford to pay for their parents or have reason not to (e.g., abandonment for fewer than ten years). It creates a filial support statute that borrows different aspects of Pennsylvania’s, California’s, and South Dakota’s filial support regimes as well as other modifications that are not contemplated by these states. Each aspect of this hybrid filial support statute is explained before a draft of this proposed statute is provided as a whole.

1. Correlating Elderly “Indigence” with Adult Children’s “Sufficient Financial Ability”

Two of Pennsylvania’s requirements when deciding a filial support dispute are whether the elderly individual is “indigent” and whether the adult child has “sufficient financial ability.”<sup>238</sup> When considering the first requirement, indigence, Pennsylvania courts are guided by a vague, common-law definition that creates an easy burden to fulfill.<sup>239</sup> In *Savoy*, a Pennsylvania court determined that an elderly woman was indigent simply because her monthly expenses were more than her monthly income.<sup>240</sup> Nevertheless, in the same case, the court determined that the indigent woman’s adult son was financially capable under the statute despite his own monthly expenses exceeding his monthly income.<sup>241</sup>

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filing a filial support action.

234. See *supra* Part II.C.3.c for a discussion of Pennsylvania’s filial support jurisprudence, including its preference for private filial support—a preference that mirrors the policies underlying the origin of filial support statutes in the 1600s.

235. See *supra* notes 132–35 and accompanying text for an explanation of standing under Pennsylvania’s filial support statute.

236. See *supra* notes 144–52 and 165–75 and accompanying text for a discussion of two Pennsylvania cases holding that an adult child must make support payments to a creditor rather than provide support directly to an indigent parent.

237. *The Story of Goldilocks and the Three Bears*, STORY BUS, [http://www.storybus.org/stories\\_and\\_activities/goldilocks\\_and\\_the\\_three\\_bears/story](http://www.storybus.org/stories_and_activities/goldilocks_and_the_three_bears/story) (last visited Nov. 4, 2014).

238. 23 PA. CONS. STAT. ANN. § 4603 (West 2014).

239. See *supra* Part II.C.3.c. for a discussion of *Savoy*, a Pennsylvania case that defined indigence based on the common law definition of “those who do not have sufficient means to pay for their own care and maintenance.”

240. *Savoy v. Savoy*, 641 A.2d 596, 598 (Pa. Super. Ct. 1994).

241. *Id.*

It is hard to pinpoint how Pennsylvania courts resolve this inconsistency; one possible explanation is the “test” of sorts set out by *Commonwealth ex rel. Goldman v. Goldman*<sup>242</sup> to measure “sufficient financial ability.”<sup>243</sup> The court in *Goldman* stated that an adult child’s financial capability to aid his or her indigent parent should be determined by considering income, property, earning ability, assets, and other attendant circumstances.<sup>244</sup> When this test is compared with the common law definition of indigence used under the statute, it is (marginally) clearer why courts come out differently on these two similar terms within the same statute.

The definition of indigence provided by *Savoy* is broad and sweeping; all that a party has to prove is that the indigent person does not have “sufficient means to pay for [his or her] own care and maintenance.”<sup>245</sup> However, when an adult child tries to establish that he or she is financially incapable of providing filial support, it is a much more difficult burden.<sup>246</sup> Beyond providing information about income, assets, property, and earning capacity, an adult child has the opportunity to prove financial incapability by “other attendant circumstances.”<sup>247</sup> In light of *Savoy*, the “other attendant circumstances” factor proves ineffective because an adult child’s own indigence, using the same common law definition, is not a strong enough attendant circumstance to change the result under the statute.<sup>248</sup>

The most logical solution to this problem would be to modify Pennsylvania’s filial support statute to use the same language when referring to the elderly person seeking support and the adult child from whom support is sought. Rather than providing an exception for adult children that states that the statute does not apply “[if] an individual does not have sufficient financial ability to support the indigent [elderly parent],” the statute should read that it does not apply if the adult child is indigent in his or her own right. This change would protect adult children who do not have the means to provide filial support because they are indigent themselves, while preserving an outlet of private filial support in cases where an adult child is financially capable to assist his or her indigent parent.<sup>249</sup>

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242. 119 A.2d 631, 633 (Pa. Super. Ct. 1956).

243. *Goldman*, 119 A.2d at 633.

244. *Id.*

245. *Savoy*, 641 A.2d at 599–600 (quoting *Verna v. Verna*, 432 A.2d 630, 633 (Pa. Super. Ct. 1981)).

246. See *Goldman*, 119 A.2d at 633 (explaining that the test for financial ability requires consideration of several factors, including but not limited to actual income and property). It can be inferred that the financial ability test, which takes notice of far more factors than simply expenses and income, makes for a higher burden than the indigency test described in *Savoy*. See *supra* note 239 and accompanying text for a description of the indigency standard.

247. *Goldman*, 119 A.2d at 633.

248. See *Savoy*, 641 A.2d at 598 (holding that an adult child was financially able to support his indigent parent yet had monthly expenses that were higher than his monthly income—a circumstance that would surely qualify him under Pennsylvania’s definition of indigence).

249. See *id.* (providing an exception for adult children who do not have “sufficient financial capability” to support their indigent elderly parents without defining what it means to be financially capable).

## 2. Taking Notes from South Dakota's "Notice" Requirement

One of the main problems with Pennsylvania's filial support statute is that it is largely unknown to those who can be found liable under it, which often results in an adult child being blindsided by a filial dispute and possible support order.<sup>250</sup> Not only is this troubling for adult children from a financial standpoint, but it also has the ability to make an already vulnerable familial situation more contentious because the first time an adult child is notified about a filial dispute is through a lawsuit.

One way to reduce (albeit, slightly) the financial ramifications of a filial support action and mediate the possible familial dispute is to provide a notice requirement. For example, South Dakota's filial support statute currently states: "no claim may be made against . . . [an] adult child until the adult child is given written notice that the child's parent is unable to provide for oneself, and such adult child has refused to provide for the child's parent."<sup>251</sup> If Pennsylvania provided a similar provision in its filial support statute, it would not only provide people like John Pittas a chance to weigh his options from a financial, legal, and familial standpoint, but it would also take filial disputes out of the courtroom into less contentious settings. Providing notice before a filial support action could initiate mediation between family members and third parties—a course of action that has proven successful in other aspects of family law.<sup>252</sup>

A notice provision would also steer Pennsylvania away from enforcing policies better suited for the 1600s.<sup>253</sup> Taking note from South Dakota's notice requirement could make Pennsylvania more akin to California—a state where private filial support is an option that yields to public support—because adult children could consult lawyers, public assistance programs, other family members, and third-party entities before being burdened with a support order.<sup>254</sup>

## 3. Redefining Abandonment as Abandonment

Section (a)(2)(ii) of Pennsylvania's filial support statute states that "[a] child shall not be liable for the support of a parent who abandoned the child and persisted in the abandonment for a period of ten years during the child's minority."<sup>255</sup> Within the realm of filial support, Pennsylvania case law informs that abandonment requires a "positive intention" that a parent wants to relinquish all parental rights—a burden so high that it requires an adult son to provide filial support to his indigent mother who left him at his grandmother's house, with no contact, for two to three years at a time during his

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250. See *Health Care & Retirement Corp. of Am. v. Pittas*, 46 A.3d 719, 721 (Pa. Super. Ct. 2012) (affirming the imposition of a \$92,943.41 support order on an adult son, John Pittas, under Pennsylvania's filial support statute); Kim, *supra* note 204 (noting that the Superior Court's ruling left John Pittas "devastated" and "in shock").

251. S.D. CODIFIED LAWS § 25-7-27 (2014).

252. See Susan W. Harrell, *The Mediation Experience of Family Law Attorneys*, 20 NOVA. L. REV. 479, 490 (1995) (explaining the benefits of mediation in family law).

253. See *supra* Part II.C.3.c for a discussion of the policies currently underlying Pennsylvania's filial support enforcement and their similarity to the policies used when filial support statutes were first enacted.

254. See *supra* Part II.C.3.a for a discussion of California's filial support jurisprudence, including its preference for public filial support rather than private.

255. 23 PA. CONS. STAT. ANN. § 4603(a)(2)(ii) (West 2014).

childhood.<sup>256</sup>

It is unclear where Pennsylvania adopted its abandonment definition from and how it came up with the ten-year statutory period currently provided under the statute.<sup>257</sup> First, Webster's Dictionary defines "abandon" as "to withdraw protection, support, or help."<sup>258</sup> Second, Pennsylvania's statute providing grounds for involuntary termination of parental rights contains a far less stringent standard for abandonment.<sup>259</sup> Not only does a petitioner requesting termination of parental rights only have to show that the parent has "refused or failed to perform parental duties," but the statutory period for showing a dereliction of parental duty is six months.<sup>260</sup>

Pennsylvania's filial support statute would better serve modern interests if it based its abandonment exception on Webster's definition and Pennsylvania's own adoption and child custody legislation. If Pennsylvania is going to choose to adopt the same policies that guided filial support in colonial times, such as Aristotle's reciprocation theory, it should apply such theories consistently.<sup>261</sup> An abandonment provision similar to the one used in the adoption and child custody contexts would absolve adult children from having to support parents who failed to provide any support that deserves to be reciprocated.<sup>262</sup> Pennsylvania's own legislature indicated that a child's natural parent gives enough positive intention to relinquish his or her parental rights when they refuse to perform parental duties for at least six months when adoption or child custody is being contemplated.<sup>263</sup> The same standard should be applied when considering a filial support order.

#### 4. Third Party Standing and Filial Support Disputes—A Proposal for Cosigning Before Elderly Care

Pennsylvania's filial support statute currently provides that "any . . . person or . . . public agency having any interest in the care, maintenance or assistance of . . . [an] indigent person" can bring a support action.<sup>264</sup> This language permits third parties, such as nursing homes or hospitals, standing under the filial support statute to request reimbursement for debts accrued by an adult child's indigent parent.<sup>265</sup> This is

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256. See *Commonwealth ex rel. Maceroyal v. Cunningham*, 28 Pa. D. & C.2d 466, 467–68, 470–71 (1962) (finding these facts and holding that defendant nevertheless had not proved abandonment).

257. While Pennsylvania's statute is the focus of this Section, South Dakota and California, the other states with recent filial support statute enforcement, could benefit from the proposed abandonment provision in their statutes.

258. *Abandon Definition*, MERRIAM-WEBSTER DICTIONARY, <http://www.merriam-webster.com/dictionary/abandon>.

259. 23 PA. CONS. STAT. ANN. § 2511(a)(1).

260. *Id.*

261. See *supra* Part II.C.3.c for a discussion of how Pennsylvania's current filial support jurisprudence mirrors that of the colonial era.

262. See *supra* notes 259–60 and accompanying text for a description of the abandonment standard applicable in the context of involuntary termination of parental rights.

263. 23 PA. CONS. STAT. ANN. § 2511(a)(1).

264. *Id.* § 4603(c)(2).

265. See *supra* Part II.C.3.c for a discussion of filial support cases in Pennsylvania where support orders were placed on adult children requiring them to pay back their indigent parents' debt to third parties such as

problematic for a few different reasons: (1) when standing is granted to third-party entities such as nursing homes and hospitals, filial support actions become even more surprising to an adult child who may have had no clue that his or her parent was accruing debt, and (2) it robs filial support statutes of their primary purpose—to provide support to indigent parents—by instead just serving as debt collection mechanisms.<sup>266</sup>

For a state that defers to the policies behind the colonial enactment of the state's first filial support statute, Pennsylvania's broad standing provision misses the mark and indicates another instance where Pennsylvania is inconsistent. How are adult children reciprocating the care that they were once provided by their indigent parents when, as in John Pittas's case, the child is just paying thousands of dollars to a nursing home rather than to his or her poor parent? A logical solution to this problem is to narrowly define who has an interest under the Pennsylvania statute.

One way to do this is to establish who or what has an interest before a filial dispute is contemplated. For instance, an entity, such as a nursing home or hospital, would only be able to prove that it has an interest under the statute if the adult child cosigned to his or her parent's care. If this approach, which is similar to what is done when cosigning for a loan, is adopted, it would alleviate part of the notice problem and would justify making adult children liable to third parties under the statute. If Pennsylvania wants to continue mimicking the policies endorsed when filial support statutes were first enacted, such as the reciprocation theory, it would be better able to justify the reciprocation if the adult child agrees to the support beforehand.

5. Proposed Filial Support Statute Based on Pennsylvania's Current Statute

**23 PA. CONS. STAT. ANN. § 4603: Relatives' Liability (Proposed)**<sup>267</sup>

**(a) Liability.—**

- (1) Except as set forth in paragraph (2), all of the following individuals have the responsibility to care for and maintain or financially assist an indigent person, regardless of whether an 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.
- (2) Paragraph (1) does not apply in any of the following cases:
  - (i) If an individual is considered indigent in his or her own right and, therefore, lacks sufficient financial ability to support the indigent person.
  - (ii) A child shall not be liable for the support of a parent if, at any point during the child's minority, the parent's parental rights could have been involuntarily terminated under 23 PA. CONS.

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nursing homes and health care facilities.

266. See *supra* notes 153–71 for a discussion of Pennsylvania cases holding a child financially liable for the parent's debts to third parties.

267. Because the proposed changes to Pennsylvania's filial support statute are contained only in parts (a) and (c) of the current statute, the other parts of the statute are omitted from this section.

STAT. ANN. § 2511(a)(1) (West 2012).

- (3) To initiate a filial support action under Paragraph (1), the petitioner must give notice to the individual whose assistance is being sought at least ninety days prior to initiating the suit that explains the indigent person's need, and the individual must have refused to provide the requested support.

**(c) Procedure.** — A court has jurisdiction in a case under this section upon petition of:

- (1) an indigent person; or
- (2) any other person or public body or public agency having any interest in the care, maintenance, or assistance of such indigent person.
  - (i) For a petitioner to establish “interest” under this section, he or she must provide proof of a prior written contract obligating the person whose assistance is being sought to provide the requested support. If such proof cannot be provided, the petitioner is barred from bringing a filial support action and only the indigent person can compel the requested support upon a successful, self-initiated petition under Paragraph (1).

#### IV. CONCLUSION

The question of who or what should provide support to the United States' elderly indigent population is a question likely to remain unsettled. However, the history of filial support statutes and the fact that they have been around in some form since biblical times suggests that they have some value. Still, it is important that statutes, particularly ones that can have a great impact on one's familial and financial situations, are in line with the ideals of any given time and do not result in injustice.

The undesirable result that a Pennsylvania court produced in *Pittas* is sure to provide a long-lasting impact on John Pittas's life.<sup>268</sup> Despite this, it took the Pennsylvania court very little to make the decision—all it had to do was follow the black letter law of Pennsylvania's statute to come to the conclusion that it did.<sup>269</sup> Therein lies the problem: the easy road is often the one most traveled, and courts will continue to place the burden on adult children in these trying economic times as long as the state's statute permits it. This observation may seem obvious, but it is the lack of change in something that is so obviously wrong that is most troubling about recent filial support jurisprudence.

Aristotle will forever be known as an influential philosopher whose words have endured lifetimes upon lifetimes. Nevertheless, it is important, especially in the legal profession, to read statutes and understand them within the context for which they were meant. Aristotle believed that a child is forever in his or her parent's debt.<sup>270</sup> However, Aristotle could not possibly have anticipated the complicated interplay among family, law, medicine, and finance that exists today. Aristotle, as forward thinking as he was, could not have contemplated abandoned children being forced to pay for their negligent

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268. See *supra* notes 165–73 and accompanying text for a discussion of *Pittas*.

269. See generally 23 PA. CONS. STAT. ANN. § 4603 (West 2014).

270. ARISTOTLE, *supra* note 1, at 162.

parent's care simply because the parent abandoned the child for less than ten years.<sup>271</sup> Aristotle could not have contemplated private institutions—rather than the indigent elderly—as the recipient of “support” from the adult child.<sup>272</sup> Change is necessary not only in the language of filial support statutes but also in their enforcement. Ultimately, one can only hope that *Pittas* and its predecessors ring in the ears of state legislatures as a siren rather than the sound of a jackpot so that the necessary changes can be made.

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271. See *Commonwealth ex rel. Maceroyal v. Cunningham*, 28 Pa. D. & C.2d 466, 470–71 (1962) (holding that an adult child was not abandoned during his minority despite being left at his grandmother's house for two to three years at a time because the mother never gave “positive intention” that she intended to give up her parental rights).

272. See *supra* Part II.C.3.c for a discussion of Pennsylvania's filial support jurisprudence and a summation of two Pennsylvania cases that placed a large support order on an adult child that required the child to repay a third-party debtor rather than provide “support” to an indigent parent.