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America's Best Kept Secret: An Adult Child's Duty to Support Aged Parents

ANN BRITTON*

It is probably the best kept secret in America that individuals can be held financially responsible for aged, poor relatives.¹ This support obligation is in addition to the many statutes that require financial assistance from relatives of persons in state institutions² or those that require relatives of poor persons to pay funeral expenses.³ Usually the duty is limited to support of parents, but grandparents and brothers and sisters may also be included. A person adopted as an adult may still have a duty to support the natural parent.⁴ Use of duty-to-support statutes to establish the parent's dependency on the adult child as a basis for other claims, such as death benefits,⁵ workers' compensation⁶ or wrongful death⁷ or survival,⁸ is beyond the scope of this article.⁹

This responsibility for support, usually called "filial support," is created by statute.¹⁰ It is surprising that the secret is so well-kept, since statutes creating the responsibility have been in existence since 1597.¹¹ However, this duty has never received much public

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1. This article does not address the related issue of parents' obligation to support adult children. See Annotation, *Parent's Obligation to Support Adult Child*, 1 A.L.R.2d 910 (1948); Annotation, *Postmajority Disability as Reviving Parental Duty to Support Child*, 48 A.L.R.4th 919 (1986).

2. See, e.g., Annotation, *Constitutionality of Statute Imposing Liability upon Estate or Relatives of Insane Person for His Support in Asylum*, 20 A.L.R.3d 363 (1968).

3. E.g., N.Y. SOC. SERV. LAW § 141 (McKinney 1983).

4. E.g., N.C. GEN. STAT. § 48-36 (1984).

5. E.g., *Bays v. Mahan*, 362 S.W.2d 732 (Ky. Ct. App. 1962).

6. E.g., *Shealy v. Associated Transp.*, 252 N.C. 738, 114 S.E.2d 702 (1960).

7. E.g., *Nieto v. City of Los Angeles*, 138 Cal. App. 3d 464, 188 Cal. Rptr. 31 (1982); *New York Cent. RR Co. v. Johnson*, 234 Ind. 457, 127 N.E.2d 603 (1955); *In re Estate of Pashruk*, 562 P.2d 329 (Alaska 1977). See also Joselson, *Parents' "Pecuniary Injuries" for the Wrongful Death of an Adult Child: Where Is the Love?*, 12 Vt. L. Rev. 57, 80-81 (1987).

8. *Lum v. Fullaway*, 42 Haw. 500 (1958), cited in *Chapman v. Brown*, 198 F. Supp. 78, 106 (1961).

9. See Note, *Responsibility of Adult Child for the Support of Needy Parents*, 33 NOTRE DAME L. REV. 108, 117-19 (1957) [hereinafter NOTRE DAME L. REV.].

10. All authorities agree that there is no common law duty to support one's parents, e.g., 67A C.J.S. *Parent and Child* § 97 (1978).

11. ELIZABETHAN POOR LAW, 43 Eliz. 1, c. 2, § VI (1597), list of responsible relatives expanded in 1601, quoted in full in AREEN, *FAMILY LAW* 1119-20 (2d ed. 1985)

approbation, and the statute has been essentially unenforced in England.¹² Similarly, the statutes are mostly unenforced in the United States. Perhaps the lack of enforcement reflects the democratic process at work, since the statutes are generally unpopular.¹³

We all cringe at the thought of a well-to-do middle-aged couple enjoying travel and leisure while their parents languish in poverty.¹⁴ We also balk at the thought that an elderly person might give property to a child in exchange for lifelong treatment and have that child fail to fulfill the support obligation.¹⁵ Principles of contract law speak to the latter situation, but they pose problems of proof and of the willingness of the older person to initiate legal action. Having duty-to-support statutes on the books, but only enforcing them in egregious cases, is perhaps the most morally satisfying approach.

Relying on this sort of benign enforcement, however, has not always worked historically. At the end of the nineteenth century, when England began vigorous enforcement, judgments were made against adult children "who were living well below the meager poverty levels" themselves.¹⁶ Selective enforcement also raises some questions of constitutionality, but this may only become an issue when protected classes are involved.¹⁷ The problem is somewhat ameliorated by statutes that specify that the duty only exists in those who are able to bear the expense; some states even set out

[hereinafter AREEN]; history discussed in Lopes, *Filial Support and Family Solidarity*, 6 PAC. L.J. 508, 509-14 (1975).

12. The statute had brief enforcement in England for the period of approximately 1870-1900. Thomson, *'I am not my father's keeper': Families and the Elderly in Nineteenth Century England*, 2 LAW & HISTORY REV. 265 (1984) [hereinafter Thomson].

13. See discussion, *infra* note 22 and accompanying text.

14. It should be noted, however, that it is just as offensive morally for the older couple to live at ease while the middle-aged couple struggles and perhaps fails to meet the expenses of a young family. Some of the statutes are worded so as to be applicable in this situation as well; fortunately, it does not appear to arise very often. "[T]he proportions of old people who give help to their children tend to exceed the proportions who receive help from their children," R.C. ATCHLEY, *SOCIAL FORCES AND AGING* 145 (1988) [hereinafter R.C. ATCHLEY], *quoting* RILEY & FONER, 1 *AGING AND SOCIETY: AN INVENTORY OF RESEARCH FINDINGS* 551-52 (1968).

15. The fear that this will be done collusively is guarded against by statutes that make persons ineligible for welfare benefits for a period of two or more years following the gift or sale of assets for less than market value. See e.g., 42 U.S.C. § 1382b (1983) (SSI ineligibility for two years); OKLA. STAT. ANN. tit. 56, § 164(a)(4) (West 1988 Supp.) (five years ineligibility for welfare); Annotation, *Eligibility for Welfare Benefits under Maximum-Assets Limitations, as Affected by Expenditures or Disposal of Assets*, 19 A.L.R.4th 146 (1983), and Annotation, *Validity of Statutes or Regulations Denying Welfare Benefits to Claimants Who Transfer Property for Less than Its Full Value*, 24 A.L.R.4th 215 (1983).

16. Thomson, *supra* note 12, at 280.

17. LAFAYE & ISRAEL, *CRIMINAL PROCEDURE* § 13.4 (1985); SALTZBERG, *AMERICAN CRIMINAL PROCEDURE* 640-44 (1988).

tables for determining the amount of the liability based on income and number of dependents.¹⁸

The statutes in the various states exist in several varieties: (1) those that impose criminal sanctions; (2) those that provide for reimbursement of government agencies that support the indigent person or for other third parties who provide for them; and (3) those that include the duty in the section that requires parents to support children. In this last category, enforcement mechanisms are usually not specified but follow the same lines of enforcement that child support orders follow.

Many of the statutes were repealed in the late 1960s and early 1970s when the Medicaid program was inaugurated. With increasing clarity, the Medicaid regulations agree with an early case¹⁹ and prohibit states from attributing to the applicant the resources of relatives or collecting reimbursement from relatives.²⁰ Contrary to these regulations, however, the Department of Health and Human Services issued a Transmittal in 1983 that permitted states to require family members to support adults if the state imposed a general duty to support and did not make the requirement apply only to Medicaid recipients.²¹ Because states need to reduce budget deficits, this could have caused a resurgence of these general duty statutes and their enforcement, but it did not. This new approach of including support from relatives in determining an applicant's eligibility for Medicaid has not been through the legislative or administrative process, however, so its legal status is questionable. There are apparently no cases challenging the Transmittal or showing that Medicaid eligibility is being determined in any different way from the past. It was a politically unpopular administrative decision to resurrect use of the filial support obligation²² and, therefore, enforcement was not pressed. The policy still exists in print, but its effect remains as yet minimal, its future a matter for speculation.

18. *E.g.*, OR. REV. STAT. § 416.061 (1985) (see appendix).

19. *Owens v. Parham*, 350 F. Supp. 598 (N.D. Ga. 1972).

20. 42 U.S.C. § 1396a(a)(17)(D) (1983), 42 C.F.R. § 435.602 (1987). History discussed in Patrick, *Honor Thy Father and Mother: Paying the Medical Bills of Elderly Parents*, 19 U. RICH. L. REV. 69 (1984) [hereinafter Patrick].

21. State Medicaid Manual (HCFA Pub. 45-3, § 3812, Feb. 1983, 1983-1 Transfer Binder Para. 32,457, 3 Medicare and Medicaid Guide (CCH) Para. 14,311, discussed in Patrick, *supra* note 20.

22. Akron Beacon-Journal, Apr. 3, 1983, at G1, col. 1; Whitman & Whitney, *Are Children Legally Responsible for the Support of Their Parents?*, 123 TRUSTS & ESTATES 43 (Dec. 1984).

I. TYPES OF STATUTES

A. Criminal Laws

California,²³ Massachusetts,²⁴ Maryland,²⁵ North Carolina,²⁶ Ohio,²⁷ Rhode Island,²⁸ South Dakota,²⁹ Vermont,³⁰ and Virginia³¹ all make it a crime to fail to support one's needy parents. What triggers enforcement of these statutes is not clear. In one case³² enforcement was precipitated by the elderly person's adult child contacting the attorney general to receive support help from siblings.³³ If a reason for having these legal duties is to strengthen the family,³⁴ it is more likely that bringing criminal charges or other legal action against one's children or siblings would violate family harmony. Indeed, the elderly person needing the support would almost surely be loath to seek enforcement of the right if it meant putting one's child in the criminal justice system.

With respect to criminal statutes, there is a continuing obligation to support; therefore, some statutes specify an increased penalty for a second offense.³⁵ Thus, an adult child cannot simply pay the fine and thus be absolved of the duty to support.

23. CAL. PENAL CODE § 270c (West 1970). "Except as provided in Section 206.5 of the Civil Code, every adult child who, having the ability so to do, fails to provide necessary food, clothing, shelter, or medical attendance for an indigent parent, is guilty of a misdemeanor." *Id.*

24. MASS. GEN. STAT. ANN. ch. 273, § 20 (West 1987 Supp.).

25. MD. FAM. LAW CODE ANN. § 13-102 (1984).

26. N.C. GEN. STAT. § 14-326.1 (1986).

27. PAGE'S OHIO REV. CODE ANN. § 2919.21(A)(3) (1987).

28. R.I. GEN. LAWS § 15-10-1 ff. (Michie 1981).

29. S.D. CODIFIED LAWS ANN. §§ 25-7-16, 27 & 29 (1984).

30. VT. STAT. ANN. tit. 15, § 202 (1987 Supp.).

31. VA. CODE § 20-88 (1987 Supp.).

32. *Hale v. State*, 44 Md. App. 376, 408 A.2d 772 (1979), reversing convictions of nonsupport.

33. This case is discussed at length in Garrett, *Filial Responsibility Laws*, 18 J. FAM. L. 793, 796-98 (1979-80) [hereinafter Garrett]. The statute involved is also discussed in Comment, *Decriminalization of Non-Support in Maryland—A Re-Examination of a Uniform Act Whose Time Has Arrived*, 7 BALT. L. REV. 97 (1977).

34. That does seem to be the reason enforcement was precipitated in England in the late nineteenth century. Campaign for enforcement was headed by a group "who saw in moral regeneration of family life the means to uplift and revitalize British society." Thomson, *supra* note 12, at 276.

35. *E.g.*, Page's OHIO REV. CODE ANN. § 2919.21(E) (1987).

Whoever violates division (A) of this section is guilty of nonsupport of dependents, . . . the court, in addition to any other sentence imposed, shall assess all court costs arising out of the charge against the person and require the person to pay any reasonable attorney's fees of any adverse party other than the state, as determined by the court, that arose in relation to the charge.

Id.

B. Reimbursement Laws

In the same way that child support obligors can be made to reimburse the welfare agency, some states require adult children or other designated relatives to reimburse the state when it has been satisfying the elderly person's need for support.³⁶ California,³⁷ Georgia,³⁸ Idaho,³⁹ Iowa,⁴⁰ Mississippi,⁴¹ Nebraska,⁴² New Jersey,⁴³ North Dakota,⁴⁴ Tennessee,⁴⁵ Virginia,⁴⁶ and West Virginia⁴⁷ are all such states. Mississippi extends the list of liable relatives to grandparents, siblings and all descendants.⁴⁸ New Jersey exempts children who are over the age of 55 from supporting their parents.⁴⁹ In most of these states, the enforcement process is triggered when the elderly person applies for benefits.⁵⁰

Sometimes the reimbursement is in the form of paying for goods and services supplied to the elderly person directly.⁵¹ California,⁵² Idaho,⁵³ North Dakota,⁵⁴ and Oklahoma⁵⁵ all have statutory provisions specifying that contracts to supply "necessaries" for the relative are binding. This "contract" can be enforced even if it is not an express contract.⁵⁶ Determining exactly what

36. Annotation, *Right of Public to Reimbursement from Recipient, His Estate or Relatives, of Old Age Assistance Payments*, 125 A.L.R. 712 (1940); Annotation, *Reimbursement of Public for Financial Assistance to Aged Persons*, 29 A.L.R.2d 731 (1953).

37. CAL. WELF. & INST. CODE § 18511 (West 1980).

38. GA. CODE ANN. § 36-12-3 (1987).

39. IDAHO CODE § 32-1002 (1983).

40. IOWA CODE ANN. § 252.2 (West 1985). "The father, mother, and children of any poor person, who is unable to maintain the poor person's self by labor, shall jointly or severally relieve or maintain such person in such manner as, upon application to the board of supervisors of the county where such a person has a residence or may be, they may direct." *Id.*

41. MISS. CODE ANN. § 43-31-25 (1987 Supp.).

42. 1984 NEB. LAWS 68-214.

43. N.J. REV. STAT. ANN. § 44:1-140 (West 1987 Supp.).

44. N.D. CENT. CODE § 50-01-19 (2d Repl. vol. 10 1982).

45. TENN. CODE ANN. § 71-5-115 (Repl. vol. 1987).

46. VA. CODE § 20-88 (1987 Supp.).

47. W. VA. CODE § 9-5-9 (1984).

48. MISS. CODE ANN. § 43-31-25 (1987 Supp.).

49. N.J. REV. STAT. ANN. § 44:1-140 (West 1987 Supp.).

50. Collection methods under Michigan's now-repealed statute are described in Virtue, *Operative Relationships among Various Courts, Law Enforcement & Welfare Agencies in the City of Detroit*, 49 MICH. L. REV. 1, 31 (1950).

51. Annotation, *Right of Third Person Not Named in Bond or Other Contract Conditioned for Support of, or Services to, Another, to Recover Thereon*, 11 A.L.R.2d 1010 (1950).

52. CAL. CIV. CODE § 206 (West 1982).

53. IDAHO CODE § 32-1002 & 32-1008A (1983).

54. N.D. CENT. CODE § 14-09-10 (Repl. vol. 3A 1981).

55. OKLA. STAT. ANN. tit. 10, § 12 (West 1987).

56. Annotation, *Statute Imposing Duty To Maintain or Aid Indigent Relative as Supporting Action by Third Person*, 116 A.L.R. 1281 (1938).

"necessaries" are has been the subject of much litigation in other contexts,⁵⁷ and the debate will likely continue in matters involving support for the aged as well. Food, clothing, and shelter are the easy determinations; especially difficult in the context of the elderly would be expenses for medical care, since those costs may be so excessive.

C. General Duty-to-Support Laws

Some of the laws seem to view filial support as part of a reciprocal contract obligation—that is, since the parent supported the child, the adult child owes support to the needy parent. Consistent with this theory, the adult child may be excused from the duty if his or her parent failed to support him or her during childhood or was guilty of abuse or neglect.⁵⁸ California,⁵⁹ New York,⁶⁰ Pennsylvania⁶¹ and Virginia⁶² have allowed this to excuse the child. Indiana⁶³ and Louisiana⁶⁴ are two other states that seem to use a contract theory for imposing the responsibility. Louisiana's statute is interesting in that it requires support by and for all ascendants and descendants. Six jurisdictions, Alaska,⁶⁵ Arkansas,⁶⁶ Delaware,⁶⁷ Montana,⁶⁸ New Hampshire,⁶⁹ and Oregon,⁷⁰ simply establish a duty of support, leaving it open as to how this is to be enforced.

Whether based on contract or tort theory, it is a burden on the older person to expect him or her to sue a relative for support.

57. CLARK, DOMESTIC RELATIONS 271 & 316 (2d. ed. 1988).

58. AREEN, *supra* note 11; Garrett, *supra* note 33, at 805.

59. CAL. CIV. CODE §§ 206 & 206.5 (West 1982). Statute discussed in ten Broek, *The Impact of Welfare Law upon Family Law*, 42 CALIF. L. REV. 458, 469 (1954); and Zumbum, Mombousse, & Findley, *Welfare Reform: California Meets the Challenge*, 4 PAC. L.J. 739, 774-76 (1973). Father's abandoning the daughter reduced to amount of support owed in Radich v. Kruly, 226 Cal. App. 2d 683, 38 Cal. Rptr. 340 (1964).

60. Lasher v. Decker, 43 Misc. 2d 211, 250 N.Y.S.2d 615 (1964). *Contra*: Trussell v. Kostiw, 35 Misc. 2d 60, 229 N.Y.S.2d 263 (1962).

61. PA. STAT. ANN. tit. 62, § 1973 (West 1968) "No child shall be liable for the support of any parent who abandoned the child and persisted in the abandonment for a period of ten years during the child's minority." discussed at length in Comment, *Pennsylvania's Family Responsibility Statute—Corruption of Blood and Denial of Equal Protection*, 77 DICK. L. REV. 331 (1972). Commonwealth v. Simpson, 49 Berks. 144 (Pa. Mun. 1957). *Contra*: Commonwealth v. Auman, 39 D & C 448 (Pa. Mun. 1941).

62. VA. CODE § 20-88 (1987 Supp.).

63. IND. CODE ANN. § 31-2-9-1 (Michie 1987). Statute discussed in *Indiana Legislation—1947*, 22 IND. L.J. 293, 405-07 (1947).

64. LA. CIV. CODE ANN. art. 229 (West 1987 Supp.).

65. ALASKA STAT. § 25.20.030 (1983).

66. ARK. STAT. ANN. § 20-47-106 (1987).

67. DEL. CODE tit. 13, § 503 (1981).

68. MONT. CODE ANN. § 40-6-301 (1987).

69. N.H. REV. STAT. ANN. § 546-A:2 (Repl vol 5 1974).

70. OR. REV. STAT. § 109.010 (1984).

First, if the person is, as all the statutes require, indigent, where will the expenses for the lawsuit be borne? The financial expense may be the lesser deterrent, considering the emotional cost of suing a relative, especially a child. Not only is such a suit inherently repugnant to most persons, but the publicity of a lawsuit bringing to public scrutiny the family's ability and willingness to care for one another further raises the emotional cost.

Financial feasibility is also a concern when government agencies are charged with the duty of enforcement, since most of these agencies are likely to operate on limited budgets. Since a principal issue will always be the ability of the adult child to provide support, litigation may not be cost-effective. Furthermore, society then has the additional problem to solve of paying the litigation expenses of the adult child-defendant when it is found that the adult child does not, in fact, have the means to support the elderly parent.

Tort obligations can also be implied by criminal statutes and could form a basis for a direct suit by the parent against the non-supporting child. In Ohio, however, one of the few jurisdictions with an exclusively criminal statute, a civil cause of action has never been found, despite several efforts.⁷¹

D. Other Jurisdictions

Missouri does not affirmatively require capable adult children to support their indigent parents, but the child's ability to do so affects the eligibility of the parent to receive welfare.⁷² Florida, Kansas, Texas, Washington, and Wyoming are the only states that do not have, and apparently never have had, any statutory duty to support. Cases in Texas⁷³ and Washington⁷⁴ specifically hold that no duty exists.

71. *St. Clare Center, Inc. v. Mueller*, 34 Ohio App. 3d, 517 N.E.2d 236 (1986) (rest home against daughter, paid on contract grounds); *Slapin v. Slapin*, 233 F. Supp. 716 (S.D. Ohio 1964) (sibling against sibling for contribution); *Gardner v. Hines*, 46 Ohio L. Abs. 241, 34 O.O. 25, 68 N.E.2d 397 (1946) (son-in-law against son for services to mother); *Webster v. Denman*, 9 Ohio Abs. 460 (1931) (landlady against son).

72. MO. ANN. STAT. § 208.010 subd. 3 (Vernon date); e.g., *Howlett v. Social Security Comm'n*, 347 Mo. 784, 149 S.W.2d 806 (1941); *Thornsberry v. State Dep't of Pub. Health & Welfare*, 365 Mo. 1217, 295 S.W.2d 372 (1956). *But see Achor v. State Social Security Comm'n*, Mo. App., 191 S.W.2d 259 (1945) (granddaughter's earnings not a basis to deny assistance to grandmother).

73. *Missouri-Kansas-Texas RR Co. v. Pierce*, 519 S.W.2d 157 (Tex. Civ. App. 1975); 40 Tex. Jur.3d Family Law § 633 (1975).

74. *Conant v. State*, 197 Wash. 21, 84 P.2d 378 (1938) (mother is entitled to old age benefits when she meets eligibility criteria even though supported by her daughter); case discussed in *Case Notes*, 12 So. CAL. L. REV. 464, 482 (1939).

E. Trends

The number of filial support statutes is dwindling. The seminal work discussing the statutes, written in 1956, cites 39 of them;⁷⁵ this research, 23 years later, finds 28.⁷⁶ These counts are less than helpful, however, as the various published lists have shown themselves to be inaccurate; sometimes they include family liability for institutionalized persons or repealed statutes and fail to include others.

Two things make researching the state statutes fraught with difficulty. First, states may have multiple sections addressing the issue. For example, at one time California had a Civil Code section creating a duty,⁷⁷ a Penal Code section for nonsupport,⁷⁸ two Welfare and Institutions Code sections permitting reimbursement of government agencies that aid the indigent person,⁷⁹ and a third Welfare and Institutions Code section that set forth a chart to determine the amount of support required from a family for reimbursement purposes.⁸⁰ Only the chart and one of the reimbursement sections have been repealed. The lesson is that finding all the applicable sections in all the states, or even in one state, is formidable.

As another example, Utah repealed its section requiring relatives to support poor family members, but the section listing the order in which relatives are liable, that states, "Children shall first be called upon to support their parents," remains in force.⁸¹

75. Mandelker, *Family Responsibility under the American Poor Laws: I*, 54 MICH. L. REV. 497 (1956), at 497 n. 1; see also Mandelker, *Family Responsibility under the American Poor Laws: II*, 54 MICH. L. REV. 607 (1956).

76. ALASKA STAT. § 25.20.030 (1983); ARK. STAT. ANN. § 20-47-106 (1987); CAL. CIV. CODE § 206 (West 1982), CAL. PENAL CODE § 270c (West 1970), CAL. WELF. & INST. CODE § 18511 (West 1980); DEL. CODE ANN. tit. 13, § 503 (1981); GA. CODE ANN. § 36-12-3 (1987); IDAHO CODE §§ 32-1002 & 32-1008A (1983); IND. CODE ANN. § 31-2-9-1 (Burns 1987); IOWA CODE ANN. § 252.2 (West 1985); LA. CIV. CODE ANN. art. 229 (West 1987 Supp.); MD. FAM. LAW CODE ANN. § 13-102 (1984); MASS. GEN. LAWS ANN. ch. 273, § 20 (West 1987 Supp.); MISS. CODE ANN. § 43-31-25 (1987 Supp.); MONT. CODE ANN. §§ 40-6-214 and -301 (1987); 1984 Neb. Laws 68-214; NEV. REV. STAT. § 428.030 (1985); N.H. REV. STAT. ANN. § 546-A:2 (Repl. vol. 5 1974); N.J. REV. STAT. ANN. § 44:1-140 (West 1987 Supp.); N.C. GEN. STAT. § 14-326.1 (1986); N.D. CENT. CODE § 14-09-10 (Repl. vol. 3A 1981) and 50-01-19 (2d Repl. vol. 10 1982); PAGE'S OHIO REV. CODE ANN. § 2919.21(A)(3) (Baldwin 1987); OR. REV. STAT. § 109.010 (1984) and 416.061 (1987 Supp.); PA. STAT. ANN. tit. 62, § 1973 (West 1968); R.I. GEN. LAWS § 15-10-9 (1981); S.D. CODIFIED LAWS ANN. §§ 25-7-16, 27 & 29 (1984); TENN. CODE ANN. § 71-5-115 (Repl. vol. 1987); UTAH CODE ANN. 17-14-2 (1953); VT. STAT. ANN., tit. 15, § 202 (1987 Supp.); VA. CODE § 20-88 (1987 Supp.); W. VA. CODE § 9-5-9 (1984).

77. CAL. CIV. CODE § 206 (West 1982).

78. CAL. PENAL CODE § 270c (West 1970).

79. CAL. WELF. & INST. CODE §§ 17300 & 18511 (West 1970).

80. CAL. WELF. & INST. CODE § 12350 (West 1970).

81. UTAH CODE ANN. § 17-14-1, repealed in 1975. UTAH CODE ANN. § 17-14-2 (1953).

The second difficulty in making the lists accurate is the poor availability of state legislative history. State codes are revised, with consequent renumbering, with some regularity. Finding the current version of a previous code section, often listed as repealed when it has been both repealed and replaced, or finding out the date of repeal of that section, is frequently frustrating. Therefore, comparing various lists of statutes is not a very reliable way of determining trends concerning these statutes. It is significant, however, that discussion of the statutes has completely disappeared from the latest edition of the standard Family Law hornbook,⁸² an indication that that author sees a decline in their importance.

Determining which states have duty-to-support statutes is complicated by poorly cross-referenced statutes. States that adopt the Model Penal Code section on criminal non-support impose liability for failing to support a spouse, child, or "other dependent"⁸³ make it particularly difficult to determine whether needy parents are included.

Even in states with filial support statutes, they are often unenforced. In fact, ironically, there actually seems to be some relationship between enforcement attempts and repeal. For example, it is fairly clear that the enforcement effort in the California case of *Swoap v. Superior Court of Sacramento*⁸⁴ led to the repeal⁸⁵ of the tables determining relative's contributions.⁸⁶ In 1965 Michigan had its first case since 1932; in 1967 its statute was repealed. The District of Columbia had one case in 1966 that did not require payment; in 1970 a case did require a son to pay, and in 1970 the statute was repealed. Connecticut had two attempts to use the statute in 1975 and 1976, after a hiatus since 1949; in 1986 its statute was repealed.

If cases are resolved in the early stages, then the true status of the use of the statutes is difficult to detect.⁸⁷ However, lack of appellate cases does indicate something about the disuse into

82. CLARK, DOMESTIC RELATIONS (1968) devoted a whole section (seven pages) to the topic [hereinafter CLARK]; CLARK, DOMESTIC RELATIONS (2d. ed. 1988) omits the topic entirely. Note, too, that the dates of the American Law Reports Annotations are all rather old.

83. 10 UNIFORM LAWS ANN. § 230.5 (Master ed. 1974).

84. 10 Cal. 2d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1973).

85. AREEN, *supra* note 11, at 1120; full discussion at *Review of Selected 1975 California Legislation*, 7 PAC. L.J. 237, 419-21 (1976). At the same time the statute requiring adult child support of mentally retarded parents was repealed, CAL. WELF. & INST. CODE § 17300 (1976 Supp.).

86. Note, however, that the underlying obligation remains, CAL. CIV. CODE § 206 (West 1982) and CAL. PENAL CODE § 270c (West 1970).

87. NOTRE DAME L. REV., *supra* note 9, reports vigorous enforcement in Chicago in the mid-1950s.

which these statutes have fallen.

II. APPLICATION OF STATUTES

A. *Use of Existing Statutes*

Twelve states have existing statutes that have apparently never been invoked: Alaska, Arkansas, Delaware, Idaho, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Tennessee, Utah, and Vermont.⁸⁸ Nine more have existing statutes that have been used minimally: Georgia,⁸⁹ Indiana,⁹⁰ Iowa,⁹¹ Massachusetts,⁹² Nebraska,⁹³ North Dakota,⁹⁴ Rhode Island,⁹⁵ Virginia,⁹⁶ and West Virginia.⁹⁷ South Dakota merits special mention, since its only successful case on record is from 1895.⁹⁸ Its one unsuccessful claim was between siblings in 1947.⁹⁹ Nonetheless, the statute remains in force.

Oregon and California are notable exceptions; both have been enforcing their existing statutes. Oregon has a current statute requiring contributions to support based on a table of income/number of dependents, and the state through the welfare agency regu-

88. Statutes cited at *supra* note 76,

89. *Davenport v. Davenport*, 215 Ga. 496, 111 S.E.2d 57 (1959); *Citizens & Southern Nat'l Bank v. Cook*, 182 Ga. 240, 185 S.E. 318 (1936) (both successful actions by parent against child).

90. Parent against child: *Pickett v. Pickett*, 145 Ind. 555, 251 N.E.2d 684 (Ind. App. 1969) (successful); *Haskamp v. Swenger*, 85 Ind. App. 255, 153 N.E. 815 (1926), (unsuccessful, criminal law implying no civil cause of action); *State v. Hoffman*, 213 Ind. 125, 11 N.E.2d 698 (1937) (criminal indictment upheld though amounts for each child not specified).

91. *Dunlop v. Hemingway*, 245 Iowa 696, 63 N.W.2d 901 (1954) (nieces and nephews have no duty to support aunt so may be reimbursed from her estate); *Schneberger v. State Bd. of Social Welfare*, 228 Iowa 399, 291 N.W. 859 (1940) (parents not eligible for welfare since son able to pay support).

92. *Czelusniak v. Ossolinski*, 273 Mass. 441, 173 N.E. 590 (1930) (contribution among siblings allowed based on contract).

93. *David City Hosp. v. Gilmore*, 184 Neb. 342, 167 N.W.2d 397 (1969).

94. *Trinity Medical Center v. Rubbelke*, 389 N.W.2d 805 (N.D. 1986) (hospital may have been successful against children but for release of parents); *Bismarck Hosp. & Deaconesses Home v. Harris*, 68 N.D. 374, 280 N.W. 423, 116 A.L.R. 1274 (1938) (successful claim of hospital against children) (case discussed at *Recent Cases*, 23 MINN. L. REV. 213, 243 (1938)).

95. *Eustis v. Hempstead*, 114 R.I. 219, 330 A.2d 898 (1975) (mother against son, remanded to determine son's ability to pay).

96. *Mitchell-Powers Hardware Co. v. Eaton*, 171 Va. 255, 198 S.E. 496 (1938) (creditor's claim against son remanded to determine son's ability to pay).

97. *Connell v. Connell*, 131 W. Va. 209 46 S.E.2d 724 (1948) (unsuccessful claim by brother for support from sister; statute only applies to reimbursement of county).

98. *McCook County v. Kammos*, 7 S.D. 558, 64 N.W. 1123 (1895) (children had to reimburse county for welfare payments to parents).

99. *Application of Mach*, 71 S.D. 460, 25 N.W.2d 881 (1947) (claim by a non-supporting son seeking to prohibit the supporting son from being reimbursed from the deceased parent's estate).

larly enforces it. Oregon cases consistently require payment (payment was not required in only one out of ten cases since 1956).¹⁰⁰ This consistency may explain why no cases have reached the appellate level since 1975.

In California the support civil duty was invoked, usually successfully, since at least 1906. Most cases are the welfare agency's seeking reimbursement from the adult child;¹⁰¹ some are the parent's proceeding directly against the child.¹⁰² One case involves a third party creditor's seeking to recover from the adult child.¹⁰³ Despite these civil actions, the crime of non-support has apparently never been prosecuted. Generally, the action was initiated by the parent and enforced through the courts by a system that used tables to set the amount of the contribution required. However, as previously mentioned, in 1973 enforcement of the tables actually led to their repeal. The fact that no California cases have reached the appellate level since 1973 may indicate that enforcement of the underlying duty has also ceased.

Other states with a fair amount of enforcement activity are Louisiana, New Jersey, Ohio, and Pennsylvania. In Louisiana the enforcement is among family members rather than with government involvement. Three of its six cases are among siblings seeking contribution for their share in supporting the parent (none of

100. McDonald v. Public Welfare Div., 21 Or. App. 290, 534 P.2d 1158 (1975); Reed v. Public Welfare Div., 19 Or. App. 927, 529 P.2d 941, 75 A.L.R. 1156 (1974); Mitchell v. Public Welfare Div., 19 Or. App. 689, 528 P.2d 1371 (1974); Smith v. Juras, 14 Or. App. 442, 513 P.2d 824 (1973); Freitag v. Juras, 14 Or. App. 683, 514 P.2d 908 (1973); Wilkinson v. Juras, 9 Or. App. 295, 496 P.2d 931 (1972) (abandoned as a child means no duty to support parent now); Drugg v. Juras, 11 Or. App. 90, 501 P.2d 1313 (1972) (remanded to see if son abused when a child); Cheatham v. Juras, 11 Or. App. 108, 501 P.2d 988 (1972); Kerr v. State Pub. Welfare Comm'n, 3 Or. App. 27, 470 P.2d 167 (1970), *cert. den.*, 402 U.S. 950 (1971); Denny v. Pub. Welfare Div., 5 Or. App. 226, 483 P.2d 463 (1971); Mallat v. Luihn, 206 Or. 678, 294 P.2d 871 (1956).

101. County of Lake v. Forbes, 42 Cal. App. 2d 744, 109 P.2d 972 (1941); Garcia v. Superior Court, 45 Cal. App. 2d 31, 113 P.2d 470 (1941); Los Angeles County v. La Fuente, 20 Cal. 2d 870, 129 P.2d 378 (1942); County of Contra Costa v. Lasky, 43 Cal. 2d 506, 275 P.2d 452 (1954); County of San Bernardino v. Simmons, 287 P.2d 868 (Cal. Super. 1955), *rev'd* 46 Cal. 2d 394, 296 P.2d 329 (1956); Stark v. County of Alameda, 182 Cal. App. 2d 20, 5 Cal. Rptr. 839 (1960); County of Alameda v. Clifford, 187 Cal. App. 2d 714, 10 Cal. Rptr. 144 (1960); County of San Mateo; Swoap v. Superior Court of Sacramento, 10 Cal. 2d 490, 516 P.2d 840, 111 Cal. Rptr. 136 (1973).

102. Duffy v. Yordi, 149 Cal. 140, 84 P. 838 (1906); Parshall v. Parshall, 56 Cal. App. 553, 205 P. 1083 (1922); Janes v. Edwards, 4 Cal. App. 2d 611, 41 P.2d 370 (1935); Grace v. Carpenter, 42 Cal. App. 2d 301, 180 P. 701 (1941); Johns v. Kleinkopf, 189 Cal. App. 2d 711, 11 Cal. Rptr. 412 (1961); Chryst v. Chryst, 204 Cal. App. 2d 620, 22 Cal. Rptr. 459 (1962); Britton v. Steinberg, 208 Cal. App. 2d 358, 24 Cal. Rptr. 831 (1962); Kruly v. Superior Court of Los Angeles County, 216 Cal. App. 2d 589, 31 Cal. Rptr. 122 (1963); Radich v. Kruly, 226 Cal. App. 2d 683, 38 Cal. Rptr. 340 (1964); Gluckman v. Gaines, 266 Cal. App. 2d 52, 71 Cal. Rptr. 795 (1968).

103. Huntoon v. Powell, 88 Cal. App. 657, 263 P. 1030 (1928).

the claims was successful),¹⁰⁴ and the other three were mothers suing their children directly for support (all of which were successful).¹⁰⁵

New Jersey reports seven cases: four are the parent suing the child directly (one successfully),¹⁰⁶ and in three the welfare agency sought reimbursement from the adult child (two were successful).¹⁰⁷ Still, its most recent case is nearly 25 years old. Ohio's statute is exclusively criminal non-support. There are only two reported cases using the statute directly, both upholding the conviction.¹⁰⁸ Four other Ohio cases are all failed attempts to imply a civil cause of action from the criminal statute.¹⁰⁹ One is an attempt by a Pennsylvania resident to obtain support from his Ohio-resident son; here, Ohio law was applied, and that permitted the father's desertion of the son to be a defense.¹¹⁰

The existence of numerous Pennsylvania cases is somewhat misleading because county courts are courts of record in Pennsylvania; consequently, more information is available on enforcement activity in Pennsylvania than in other states. There are eighteen Pennsylvania cases. Enforcement is concentrated between 1954 and 1961, with eleven of the cases reported then. The most recently reported case is a direct action by a hospital against the adult children of a patient (a successful claim).¹¹¹ It is difficult to classify Pennsylvania cases because of the state's extensive use of the relator or private attorney general system.¹¹² Of those that can

104. *Jennings v. Goldsby*, 480 So. 2d 354 (La. App. 1985); *In re Estate of Glaudi*, 469 So. 2d 1127 (La. App. 1985); *Muse v. Muse*, 215 La. 238, 40 So. 2d 21 (1949).

105. *Tolley v. Karcher*, 196 La. 685, 200 So. 4 (1941); *Steib v. Owens*, 190 La. 517, 182 So. 660 (1938); *Mangin v. Mangin*, 164 La. 326, 113 So. 864 (1927).

106. *Pavlick v. Teresinski*, 54 N.J. Super. 478, 149 A.2d 300 (1959) (successful); *Gierkont v. Gierkont*, 46 N.J. Super. 112, 134 A.2d 10 (1957); *Glassman v. Essex County Juvenile Court*, 9 N.J. Misc. 519, 154 A. 722 (1931); *State ex rel. Ackerman v. Ackerman*, 55 N.J.L. 503, 27 A. 807 (1893) (problems were procedural, but case was not remanded).

107. *Monmouth County Welfare Bd. v. Coward*, 86 N.J. Super. 253, 206 A.2d 610 (1964); *Slocum v. Krupy*, 11 N.J. Super. 81, 77 A.2d 871 (1951); *Morris County Welfare Board v. Gilligan*, 133 N.J. Eq. 287, 31 A.2d 805 (1943) (unsuccessful on procedural grounds, but not remanded).

108. *State v. Kelly*, 2 Ohio App. 2d 174, 207 N.E.2d 387 (1965); *Beutel v. State*, 36 Ohio App. 73, 172 N.E. 838 (1930).

109. *St. Clare Center, Inc. v. Mueller*, 34 Ohio App. 3d, 517 N.E.2d 236 (1986) (rest home against daughter, paid on contract grounds); *Slapin v. Slapin*, 233 F. Supp. 716 (S.D. Ohio 1964) (sibling against sibling for contribution); *Gardner v. Hines*, 46 Ohio Abs. 241, 34 O.O. 25, 68 N.E.2d 397 (1946) (son-in-law against son for services to mother); *Webster v. Denman*, 9 Ohio Abs. 460 (1931) (landlady against son).

110. *Commonwealth ex rel. Dept. Public Assistance v. Mong*, 160 Ohio St. 455, 117 N.E.2d 32 (1954).

111. *Albert Einstein Medical Center v. Forman*, 212 Pa. Super. 450, 243 A.2d 181 (1968).

112. *Commonwealth v. Auman*, 39 D. & C. 448 (Pa. Mun. 1940); *Commonwealth v. Chiara*, 60 D. & C. 547 (Pa. Q.S. 1947); *Commonwealth v. Ruckle*, 1 D. & C.2d 51 (Pa. Mun. 1954); *Commonwealth ex rel. Home for the Jewish Aged v. Kotzker*, 179 Pa. Super.

be classified, however, one was brought between siblings,¹¹³ and one was brought to reimburse the welfare agency.¹¹⁴ Two are criminal cases.¹¹⁵ It is noteworthy that the most recent reported case is over 20 years old.

B. Use of Former Statutes

Several states have repealed statutes that apparently were not being used at all or were used only minimally. They are Alabama,¹¹⁶ Arizona,¹¹⁷ California,¹¹⁸ Colorado,¹¹⁹ District of Columbia,¹²⁰ Connecticut,¹²¹ Hawaii,¹²² Illinois,¹²³ Kentucky,¹²⁴

521, 118 A.2d 271 (1955); Commonwealth ex rel. Price v. Campbell, 180 Pa. Super. 518, 119 A.2d 816 (1956); Commonwealth ex rel. Goldman v. Goldman, 180 Pa. Super. 337, 119 A.2d 631 (1956); Commonwealth ex rel. Harkins v. Harkins, 72 Montg. Co. L. Rep. 566 (Pa. Q.S. 1956); Commonwealth v. Brown, 22 D. & C.2d 509 (Pa. Q.S. 1958); Commonwealth ex rel. Kendrick v. Kendrick, 9 Ches. Co. Rep. 400 (Pa. Q.S. 1960); Commonwealth ex rel. Sharpe v. Sharpe, 193 Pa. Super. 161, 163 A.2d 923 (1960).

Pennsylvania's most unusual case is Commonwealth v. Romberger, 25 D. & C.2d 445 (Q.S. Pa. 1961) in which the adult daughter instituted the action herself to determine the amount of her liability.

113. *In re Chesko*, 40 Erie 257 (Pa. Q.S. 1955).

114. *Henry's Estate*, 28 Pa. Super. Ct. 541 (1905).

115. Commonwealth v. Morrissey, 150 Pa. Super. 202, 27 A.2d 446 (1942); Commonwealth v. Simpson, 49 Berks. 144 (Q.S. 1957) (action to vacate order imposed in previous prosecution).

116. *Atkins v. Curtis*, 6 Div. 452, 66 So.2d 455 (Ala. 1953) (the only case; ALA. CODE tit. 44, § 8 and tit. 49, §§ 109-116 (1940), formerly tit. 34, § 90-104 (1915), repealed ca. 1971).

117. *Maricopa County v. Douglas*, 69 Ariz. 35, 208 P.2d 646 (1949) (the only case; Ariz. Rev. Stat. Ann. 46-236, formerly 70-605, repealed 1962).

118. *County of San Bernardino v. Simmons*, 287 P.2d 868 (Cal. Super. 1955), *rev'd* 46 Cal. 2d 394, 296 P.2d 329 (1956); CAL. WELF. & INST. CODE § 17300, portion applicable to adult children repealed 1973 and 1976.

119. *Board of County Comm'rs v. Kohrell*, 100 Colo. 445, 68 P.2d 32 (1937) (the only case; COLO. REV. STAT. § 30-17-107 and 108, formerly 36-10-7, repealed 1975).

120. *Groover v. Essex County Welfare Board*, 264 A.2d 143 (D.C.App. 1970) (reimbursement of welfare agency held constitutional); *Stone v. Brewster*, 218 A.2d 41 (D.C. App. 1966) (no back support required). D.C. CODE § 3-218, formerly § 46-211, repealed 1970.

121. *Condon v. Pomeroy-Grace*, 73 Conn. 607, 48 A. 756 (1901); *Rogers v. Kinnie*, 134 Conn. 58, 54 A.2d 487 (1947); *Page v. Welfare Comm'r*, 170 Conn. 258, 365 A.2d 1118 (1976); *Pelletier v. White*, 33 Conn. Supp. 769, 371 A.2d 1068 (1976); CONN. STAT. §§ 617-320 & 46b-215, formerly § 1444d, formerly § 1111c, repealed 1986.

122. No cases; HAW. REV. STAT. § 577-5, formerly 330-22, formerly ch. 298, § 12290, repealed 1969).

123. Father against son (unsuccessful): *Schwerdt v. Schwerdt*, 235 Ill. 386, 85 N.E. 613 (1908); sister against sister for contribution (unsuccessful): *Shapiro v. Chernoff*, 3 Ill. App. 3d 396, 279 N.E.2d 454 (1972) (the statute was repealed effective 1969; this claim was for support given prior to date of repeal); sister against brother for support (both successful): *People v. Hill*, 163 Ill. 186, 46 N.E. 796 (1896); *Shaver v. Brierton*, 1 Ill. App. 2d 192, 117 N.E.2d 298 (1954). *But see* enforcement reported in the mid-1950s, NOTRE DAME L. REV., *supra* note 9, at 119. ILL. STAT. ch. 23, § 436-12 repealed 1967, effective 1969 (ILL. STAT. ch. 23, § 2-11 (1988)).

124. *Louisville Trust Co. v. Saunders*, 374 S.W.2d 511 (Ky. 1964); *Woods v. Ashland Hospital Corp.*, 340 S.W.2d 594 (Ky. 1960); *Wood v. Wheat*, 226 Ky. 762, 11

Maine,¹²⁵ Massachusetts,¹²⁶ Michigan,¹²⁷ Minnesota,¹²⁸ New Mexico,¹²⁹ Oklahoma,¹³⁰ and South Carolina.¹³¹ Wisconsin did have some use of its statute prior to its repeal in 1973.¹³²

New York enforced its three duty-to-support statutes from at least 1912 up until their repeal in 1966.¹³³ It is one of the few places that used its criminal non-support law, but only in its earliest cases.¹³⁴ Only in its next earliest cases does a parent proceed directly against the child.¹³⁵ Most of New York's cases are successful claims of reimbursement of the welfare agency.¹³⁶ Two of three claims by third parties were unsuccessful.¹³⁷

S.W.2d 916 (1928) (the only three cases, all unsuccessful claims; 1955 KY. REV. STAT. § 405.080 repealed 1974). Statute discussed in Comment, *Civil Liability of Child To Support Indigent Parent in Kentucky*, 39 KY. L.J. 451 (1950-51).

125. No cases; ME. REV. STAT. ANN. tit. 19, §§ 442, 443, and tit. 22, § 4467, formerly ch. 94, § 20, repealed 1983.

126. *Town of Stow v. Libby*, 18 Mass. App. Dec. 188 (Ma. D.C. 1960); *Town of Brookline v. Doyle*, 18 Mass. App. Dec. 29 (Ma. Mun. Ct. 1959); welfare reimbursement law MASS. GEN. LAWS ch. 117 § 6, repealed 1974.

127. *Kogan v. Stone*, 376 Mich. 21, 135 N.W.2d 384 (1965); *In re Shassberger*, 257 Mich. 1, 239 N.W. 862 (1932); *Schwanz v. Wujek*, 163 Mich. 492, 128 N.W. 731 (1910); (only three cases; MICH. STAT. ANN. §§ 16.121 and 16.122 repealed 1967).

128. No cases; MINN. STAT. 261.01 repealed 1973.

129. No cases; N.M. STAT. ANN. §§ 13-1-45 to 50 repealed 1967.

130. No cases; OKLA. STAT. tit. 10, §§ 11 and 12 repealed 1943.

131. No cases; S.C. CODE §§ 15-1228-30 repealed "by implication" in 1976 recodification (22 S.C. Code of 1976 (Rev. 1988) 187).

132. *Schwemer v. Heck*, 225 Wis. 636, 275 N.W. 520 (1937) (parent against child); *Town of Saxville v. Bartlett*, 126 Wis. 655, 105 N.W. 1052 (1906); *Green Lake County Dept. of Public Welfare v. Henninger*, 270 Wis. 100, 70 N.W.2d 30 (1955); *Hansis v. Brougham*, 10 Wis. 2d 629, 103 N.W.2d 679 (1960); *Ponath v. Hedrick*, 22 Wis. 2d 382, 126 N.W.2d 28 (1964); *Spies v. Peterson*, 271 Wis. 505, 74 N.W.2d 148 (1956) (welfare reimbursement cases; only *Hansis* successful).

133. N.Y. DOM. REL. CODE § 32; N.Y. Inferior Criminal Courts Act § 74; N.Y. Soc. WELF. CODE § 101.

134. *In re Conklin*, 78 Misc. 269, 139 N.Y.S. 449 (1912); *City of New York v. Wasserman*, 196 N.Y.S. 325 (N.Y. Crim. Ct. 1922) (conviction reversed; mother not proved needy).

135. *Ketcham v. Ketcham*, 176 Misc. 993, 29 N.Y.S.2d 773 (1941), *Couteau v. Couteau*, 77 N.Y.S.2d 113 (Fam. Ct. 1948) (both successful); *Kullman v. Wyrzten*, 266 A.D. 791, 41 N.Y.S.2d 682 (1943) (unsuccessful since the daughter had no ability to pay).

136. *In re Cook*, 22 Misc. 2d 479, 198 N.Y.S.2d 582 (1960); *Anonymous v. Anonymous*, 41 Misc. 2d 533, 246 N.Y.S.2d 227 (1963); *In re Estate of Errico*, 49 Misc. 2d 1055, 269 N.Y.S.2d 62 (1966); *In re Rowan's Guardianship*, 11 Misc. 2d 759, 174 N.Y.S.2d 538 (1958) (reimbursement granted from minor child; wrong court to order prospective support). *Whalen v. Downs*, 10 A.D.2d 148, 197 N.Y.S.2d 849 (1960) and *Dumpson v. Cembalist*, 23 A.D.2d 647, 257 N.Y.S.2d 412 (1965) both remanded to determine ability to pay. Unsuccessful: *Lasher v. Decker*, 43 Misc. 2d 211, 250 N.Y.S.2d 615 (1964) (daughter had been deserted as a child).

137. *West v. Charles*, 46 Misc. 2d 200, 259 N.Y.S.2d 493 (1965) (funeral expenses not covered by support law); *Albany Medical Ctr. Hosp. v. Ray*, 39 Misc. 2d 328, 240 N.Y.S.2d 920 (1963) (hospital can't collect against son because parent was not on public assistance). Successful: *Trussell v. Kostiw*, 35 Misc. 2d 60, 229 N.Y.S.2d 263 (1962) (hospital collected from son even though father had abandoned him).

C. Types of Cases

Relatively few cases of criminal prosecution can be found at all historically,¹³⁸ and there are only three within the last twenty years.¹³⁹ Of the cases that do exist concerning this duty, most are claims of third parties,¹⁴⁰ especially hospitals,¹⁴¹ for payment from the adult child, or claims between siblings to apportion the support.¹⁴² There are some cases of the parent's proceeding against the child.¹⁴³ Only two cases were found that required a brother to

138. *Condon v. Pomeroy-Grace*, 73 Conn. 607, 48 A. 756 (1901); *State v. Hoffman*, 213 Ind. 125, 11 N.E.2d 698 (1937); *In re Conklin*, 78 Misc. 269, 139 N.Y.S. 449 (1912); *City of New York v. Wasserman*, 196 N.Y.S. 325 (N.Y. Crim. Ct. 1922); *Beutel v. State*, 36 Ohio App. 73, 172 N.E. 838 (1930); *State v. Kelly*, 2 Ohio App. 2d 174, 207 N.E.2d 387 (1965); *Commonwealth v. Morrissey*, 150 Pa. Super. 202, 27 A.2d 446 (1942); *Commonwealth v. Simpson*, 49 Berks. 144 (Q.S. 1957) (action to vacate order imposed in previous prosecution); *Hansis v. Brougham*, 10 Wis. 2d 629, 103 N.W.2d 679 (1960); *Ponath v. Hedrick*, 22 Wis. 2d 382, 126 N.W.2d 28 (1964); *Spies v. Peterson*, 271 Wis. 505, 74 N.W.2d 148 (1956); *Town of Saxville v. Bartlett*, 126 Wis. 655, 105 N.W. 1052 (1906); *Green Lake County Dept. of Public Welfare v. Henninger*, 270 Wis. 100, 70 N.W.2d 30 (1955).

139. *Pelletier v. White*, 33 Conn. Supp. 769, 371 A.2d 1068 (1976); *Page v. Welfare Comm'r*, 170 Conn. 258, 365 A.2d 1118 (1975); *Hale v. State*, 44 Md. App. 376, 408 A.2d 772 (1979).

140. *Huntoon v. Powell*, 88 Cal. App. 657, 263 P. 1030 (1928) (doctor); *West v. Charles*, 46 Misc. 2d 200, 259 N.Y.S.2d 493 (1965) (funeral expenses); *Webster v. Denman* 9 Ohio Abs. 460 (1931) (landlord); *St. Clare Center, Inc. v. Mueller*, 34 Ohio App. 3d, 517 N.E.2d 236 (1986) (rest home); *Commonwealth ex rel. Home for the Jewish Aged v. Kotzker*, 179 Pa. Super. 521, 118 A.2d 271 (1955) (rest home); *Nixon v. McCoy*, 155 Minn. 175, 193 N.W. 40 (1923) (doctor); *Mitchell-Powers Hardware Co. v. Eaton*, 171 Va. 255, 198 S.E. 496 (1938) (creditor).

141. *Woods v. Ashland Hospital Corp.*, 340 S.W.2d 594 (Ky. 1960); *Schwanz v. Wujek*, 163 Mich. 492, 128 N.W. 731 (1910); *David City Hospital v. Gilmore*, 184 Neb. 342, 167 N.W.2d 397 (1969); *Trussell v. Kostow*, 35 Misc.2d 60, 229 N.Y.S.2d 263 (1962); *Albany Medical Ctr. Hosp. v. Ray*, 39 Misc.2d 328, 240 N.Y.S.2d 920 (1963); *Trinity Medical Center v. Rubbelke*, 389 N.W.2d 805 (N.D. 1986); *Bismarck Hosp. & Deaconnesses Home v. Harris*, 68 N.D. 374, 280 N.W. 423, 116 A.L.R. 1274 (1938); *Albert Einstein Medical Center v. Forman*, 212 Pa. Super. 450, 243 A.2d 181 (1968).

142. *Wood v. Wheat*, 226 Ky. 762, 11 S.W.2d 916 (1928); *Czelusniak v. Ossolinski*, 273 Mass. 441, 173 N.E. 590 (1930); *Muse v. Muse*, 215 La. 238, 40 So. 2d 21 (1949); *Slapin v. Slapin*, 233 F. Supp. 716 (S.D. Ohio 1964); *Kogan v. Stone*, 376 Mich. 21, 135 N.W.2d 384 (1965); *In re Estate of Glaudi*, 469 So. 2d 1127 (La. App. 1985); *Jennings v. Goldsby*, 480 So. 2d 354 (La. App. 1985); *Howie v. Gangloff*, 165 Minn. 346, 206 N.W. 441 (1925); *Pechtl v. Schmid*, 172 Minn. 362, 215 N.W. 512 (1927); *Shapiro v. Chernoff*, 3 Ill.App.3d 396, 279 N.E.2d 454 (1972); *Gardner v. Hines*, 46 Ohio L. Abs. 241, 34 O.O. 25, 68 N.E.2d 397 (1946); *In re Chesko*, 40 Erie 257 (Pa. Q.S. 1955).

143. *Duffy v. Yordi*, 149 Cal. 140, 84 P. 838 (1906); *Janes v. Edwards*, 4 Cal. App. 2d 611, 41 P.2d 370 (1935); *Grace v. Carpenter*, 42 Cal. App. 2d 301, 180 P. 701 (1941); *Parshall v. Parshall*, 56 Cal. App. 553, 205 P. 1083 (1922); *Gluckman v. Gaines*, 266 Cal. App. 2d 52, 71 Cal. Rptr. 795 (1968); *Chryst v. Chryst*, 204 Cal. App. 2d 620, 22 Cal. Rptr. 459 (1962); *Britton v. Steinberg*, 208 Cal. App. 2d 358, 24 Cal. Rptr. 831 (1962); *Rogers v. Kinnie*, 134 Conn. 58, 54 A.2d 487 (1947); *Stone v. Brewster*, 218 A.2d 41 (D.C. App. 1966); *Davenport v. Davenport*, 215 Ga. 496, 111 S.E.2d 57 (1959); *Citizens & Southern Nat'l Bank v. Cook*, 182 Ga. 240, 185 S.E. 318 (1936) (both); *Schwerdt v. Schwerdt*, 235 Ill. 386, 85 N.E. 613 (1908); *Haskamp v. Swenger*, 85 Ind. App. 255, 153 N.E. 815 (1926); *Pickett v. Pickett*, 145 Ind. 555, 251 N.E.2d 684 (Ind. App. 1969); *Lou-*

support his sister.¹⁴⁴ Pennsylvania cases, as previously noted, are often difficult to classify because of that state's extensive use of the relator or private attorney-general action.¹⁴⁵

The duty is apparently not always absolute; that is, there are instances where the child who supported the parent has been permitted to recover the expenses from the parent's estate.¹⁴⁶ This is reasonable since, if sufficient assets remain in the estate, it casts doubt on the older person's actual need for support.

It has been twenty years since a case was successfully brought under these statutes in any of forty-nine states that did not lead to repeal of the statute. Except in Oregon (where there has been a consistent enforcement record from 1956-1975), the most recent successful claim in the nation was California's 1973 case to reimburse the welfare agency according to established tables.¹⁴⁷ Similarly, the District of Columbia case that led to the repeal of its statute in 1970 is the next most recent "successful" case. Thus, the most recent successful case that did not lead to repeal, and is not part of Oregon's established enforcement, is a 1969 Indiana claim of a mother against her son.¹⁴⁸

Why does enforcement in Oregon not result in similar outrage? Nothing in the research suggests an explanation.

D. Evaluation

In sum, twenty states have no cases at all despite authorizing statutes, and fourteen more have only one or two. The typical statute is one that imposes a civil duty to support a needy parent ac-

isville Trust Co. v. Saunders, 374 S.W.2d 511 (Ky. 1964); Tolley v. Karcher, 196 La. 685, 200 So. 4 (1941); Mangin v. Mangin, 164 La. 326, 113 So. 864 (1927); Steib v. Owens, 190 La. 517, 182 So. 660 (1938); Gierkont v. Gierkont, 46 N.J. Super. 112, 134 A.2d 10 (1957); Glassman v. Essex County Juvenile Court, 9 N.J. Misc. 519, 154 A. 722 (1931); State ex rel. Ackerman v. Ackerman, 55 N.J.L. 503, 27 A. 807 (1893); Pavlick v. Teresinski, 54 N.J. Super. 478, 149 A.2d 300 (1959); Ketcham v. Ketcham, 176 Misc. 993, 29 N.Y.S.2d 773 (1941); Kullman v. Wyrzten, 266 A.D. 791, 41 N.Y.S.2d 682 (1943); Couteau v. Couteau, 192 Misc. 736, 77 N.Y.S.2d 113 (1948); Commonwealth v. Morrissey, 150 Pa. Super. 202, 27 A.2d 446 (1942); Zimmerman v. Zimmerman, 129 Pa. 229, 18 A. 129 (1889); Commonwealth ex rel. Shive v. Cliff, 115 Pa. Super. 605, 176 A. 822 (1935); Eustis v. Hempstead, 114 R.I. 219, 330 A.2d 898 (1975); Schwemer v. Heck, 225 Wis. 636, 275 N.W. 520 (1937).

144. People v. Hill, 163 Ill. 186, 46 N.E. 796 (1896); Shaver v. Brierton, 1 Ill. App. 2d 192, 117 N.E.2d 298 (1954). *Contra* Connell v. Connell, 46 S.E.2d 724 (W. Va. 1948) (statute only applies to reimbursement of county).

145. See *supra* note 112.

146. E.g., Dunlop v. Hemingway, 245 Iowa 696, 63 N.W.2d 901 (1954); Ulrich v. Ulrich, 136 N.Y. 120, 32 N.E. 606 (1892).

147. Swoap v. Superior Court of Sacramento Co., 10 Cal. 2d 490, 516 P.2d 840, 111 Cal. Rptr. 136, (1973). See *supra* note 85 and accompanying text, which indicate that the case may have been a pyrrhic victory.

148. Pickett v. Pickett, 145 Ind. App. 555, 251 N.E.2d 684 (1969).

ording to the child's ability to do so.

The first real question in evaluating these statutes is whether they are helpful. Financial contributions by families to the elderly are difficult to estimate because data on them are not collected, not even in the area of health care financing.¹⁴⁹ Research indicates that fewer than nine percent of older persons receive regular financial help from a son or daughter, but many more receive services in kind, such as help with shopping, housework, cooking, and financial matters.¹⁵⁰ Furthermore, the amount of this aid seems to increase with the need for it.¹⁵¹ Notably, this in-kind support may not satisfy the statutory requirement,¹⁵² so that the older person does not have to accept in-kind services in lieu of financial support.¹⁵³

If statutes require financial as opposed to other kinds of support, will it discourage families from providing in-kind services? Families that are disposed to helping each other probably will do so with or without a statute. Do the statutes increase helpfulness among adult children who otherwise would contribute nothing? In other words, are these laws needed to enable society to act against the recalcitrant few? Will more be lost by obtaining their coerced contribution than not?

The duty of support runs "counter to middle class notions of family structure,"¹⁵⁴ ideas that have been at work since at least the first century.¹⁵⁵ As such, receiving this aid exacts a price from both generations. "Because dependency on the part of older parents introduces a high potential for conflict, it is surprising that nearly all adult children do carry out their responsibilities. There is no evidence that any but a tiny minority of adult children neglect their older parents."¹⁵⁶

Perhaps a middle course of action could be adopted in which the statutes were only invoked in egregious cases of spendthrift, callous adult children. There is no guarantee of continued benign enforcement, however, especially in view of the increasing concern

149. R.C. ATCHLEY, *supra* note 14.

150. *Id.* at 145. *See also id.* at 151.

151. *Id.*

152. Annotation, *Nature of Care Contemplated by Statute Imposing General Duty to Care for Indigent Relatives*, 92 A.L.R.2d 348 (1963); CLARK, *supra* note 82, at 217. *Thome v. Juras*, 507 P.2d 1154 (Or. App. 1973) (petitioner had opportunity to argue mother's need for 24-hour nursing care during nursing home proceeding).

153. *E.g.*, *Steib v. Owens*, 190 La. 517, 182 So. 660 (1938).

154. CLARK, *supra* note 82, at 212.

155. "For the children ought not to lay up [support money] for the parents, but the parents for the children." II Corinthians 12:14b (King James Version).

156. R.C. ATCHLEY, *supra* note 14, at 146-47 [citations omitted].

over financing the aging population in America.¹⁵⁷ Commentators are almost unanimously opposed to the statutes.¹⁵⁸ The shortcomings identified are legion.

The statutes have consistently survived constitutional challenge in the courts, although most commentators disagree.¹⁵⁹ They do cause squabbling among siblings as to the share of support appropriate to each one¹⁶⁰ and litigation between parent and child.¹⁶¹ Often the adult child lives in a different state from the parent, complicating enforcement.¹⁶²

The issue of neglect or abuse of the child by the parent as a bar to the claim of support of the aged parent has been handled inconsistently.¹⁶³ Although even an unruly child is to be supported by a parent, and the parent's earlier misconduct is not relevant to his or her need for support now, states such as California and Pennsylvania both allow for parental desertion to bar the adult child's duty to support. While it is easy to understand the outrage of an abandoned child called upon in adulthood to support the parent that he or she may never have known, it may not be more outrageous than suing a child who lacks the financial means to provide support (support the child may have wished to be able to provide) or demanding financial support from someone already providing in-kind services.

Another major objection to the statutes is that they may prolong poverty. This occurs in two ways. First, the older person may simply forego seeking relief once it is known that applying for public relief will trigger enforcement against one's children. It is easy to see the potential chilling effect of exposing one's children to criminal charges or civil litigation on the older person's decision to apply for public relief.¹⁶⁴ "Most older people believe it is not

157. See *supra* note 10 and accompanying text.

158. Thomson, *supra* note 12; Patrick, *supra* note 20; Garrett, *supra* note 33; Butler, *A Generation at Risk: When the Baby Boomers Reach Golden Pond*, 20 ACROSS THE BOARD 37 (July-August 1983), reprinted in Cox, AGING: ANNUAL EDITIONS 13 (5th ed. 1987) [hereinafter Butler]. *Contra*, NOTRE DAME L. REV., *supra* note 9.

159. Cases are collected in Annotation, *Constitutionality of Statutory Provisions Requiring Reimbursement of Public by Child for Financial Assistance to Aged Parents*, 75 A.L.R.3d 1159 (1977). Garrett, *supra* note 33, at 809 and authorities cited therein; Patrick, *supra* note 20, at 78-81. *Contra*, CLARK, *supra* note 82, at 217-18.

160. *Supra* note 141 and accompanying text.

161. *Supra* note 142 and accompanying text.

162. E.g., *Pennsylvania ex rel. Mercer Co. v. Mong*, 160 Ohio St. 455, 117 N.E.2d 32 (1954).

163. AREEN, *supra* note 11, at 1120.

164. Thomson, *supra* note 12, at 282; Patrick, *supra* note 20, at 81, citing Acford, *Reducing Medicaid Expenditures Through Family Responsibility: Critique of a Recent Proposal*, 5 AM. J.L. & MED. 59, 62 n. 18 (Spring 1979); Garrett, *supra* note 33, at 816. This is seen as a positive result by one commentator, NOTRE DAME L. REV., *supra* note 9, at 119, citing with approval an Illinois statute permitting the welfare agency to require a

their children's responsibility to provide them with an adequate income; they see this as a government responsibility."¹⁶⁵

The second way the statutes may extend poverty is by forcing the younger generation to give up its resources and thus its ability to move beyond subsistence living, either now or in retirement or both.¹⁶⁶ One's parent's need for care usually comes at an awkward time in the life of the adult child. This is also the time when children need financial assistance "to get launched into adulthood"¹⁶⁷ either by going to college or needing capital to start a business. This problem is somewhat addressed by many of the statutes that limit the responsibility to those financially able to carry it out. Determining ability to pay, of course, is a difficult criterion to assess, and it is probably the most frequently litigated issue when enforcement is attempted.¹⁶⁸ Must a forty-year-old support a parent rather than send a child to college?¹⁶⁹

Modifying the number of relatives potentially liable, that is, limiting the category to just parents and children, is not much of an improvement. Enforcement will still be problematic, since increasingly we are seeing four and five generation families. "About ten percent of older Americans have adult children who are sixty-five or over."¹⁷⁰ A sixty-year-old, his eighty-year-old mother, and one hundred-year-old grandmother would all have legal responsibility to support one another.¹⁷¹ Even more likely than competing needs of first and third (or more) generations are competing needs of older parents and aging spouses. Butler gives the example of a 68-year-old daughter caring for both an 87-year-old mother and 72-year-old husband.¹⁷²

The statutes are also sharply criticized as creating disharmony in the family. Social scientists agree that having an aged person dependent on an adult child is disruptive to normal family interac-

needy person to institute legal action against his [sic] children before assistance will be given.

165. R.C. ATCHLEY HARRIS & ASSOC., *THE MYTH AND REALITY OF AGING IN AMERICA* (1975). See also NOTRE DAME L. REV., *supra* note 9, at 118 n. 91.

166. CLARK, *supra* note 82, at 213; Patrick, *supra* note 20, at 82.

167. R.C. ATCHLEY, *supra* note 14, at 140.

168. AREEN, *supra* note 11, at 1120; NOTRE DAME L. REV., *supra* note 9, at 111-13; Garrett, *supra* note 33, at 800-04.

169. *Thornsberry v. State Dept. of Public Health & Welf.*, 365 Mo. 1217, 295 S.W.2d 372 (1956).

170. R.C. ATCHLEY, *supra* note 14, at 144.

171. The first known seven-generation family in the U.S. was reported in April, 1989, when a baby was born in Wisconsin. The child's great-great-great-grandmother, aged 109, moved to a nursing home at age 107. 12 *Life* 89 (April, 1989) (NEXIS, Mags. file).

172. Butler, *supra* note 65, at 14.

tion.¹⁷³ This disruption occurs in both affected generations. "[P]arents resist, and often resent, having to depend on their children. They may become angry and frustrated by the changes in interaction brought on by the reversal of positions. They may feel guilty because they believe they should not be dependent."¹⁷⁴ The stress of having to care for an elderly relative is believed to be a factor in abuse of older persons.¹⁷⁵ Consider other possible effects on families which are already experiencing peculiar stresses at the point in the family cycle when older parents are likely to start needing assistance. Marital stress is usually great during middle age "when often there are teenagers at home, high job demands, and high community demands on one's time and energy."¹⁷⁶ With these other drains on energy, additional financial responsibility may cause the middle-aged couple to "resent having to provide for both their own children and their parents, yet at the same time they may feel guilty for harboring this resentment. And finally, the spouses of the adult children may not willingly accept the diversion of family resources to aged parents."¹⁷⁷ If the public policy is to strengthen family ties, then providing more financial aid for long-term care may be more appropriate.¹⁷⁸

The statutes have been described as "administrative nightmares."¹⁷⁹ They suffer from the same defects as our statutes for supporting minor children; it is no secret that our enforcement of child support orders is scandalous. One of the difficulties is enforcing support orders across state lines. In our mobile society, adult children and their parents may well live in different states. The Uniform Reciprocal Enforcement of Support Act (URESA) can be used to collect support for parents as it can for child support; however, it is unlikely that the foreign state either has a parent-support requirement or that it is sufficiently similar to the enforcing jurisdiction to permit effective use of URESA.¹⁸⁰ Furthermore, it is not clear that enforcement of support of aged parents is

173. Notes 160 and 161, *infra*.

174. R.C. ATCHLEY, *supra* note 14, at 123.

175. Robinson, *How Can We Protect Our Elderly?*, Philadelphia Inquirer, February 17, 1985, at Parade Magazine p. 4, *reprinted* in COX, AGING: ANNUAL EDITIONS 235 (1987), finding that 1 out of every 25 old people is abused.

176. R.C. ATCHLEY, *supra* note 14, at 136.

177. *Id.* at 123 (1988).

178. Smith and Bengtson, *Positive Consequences of Institutionalization: Solidarity Between Elderly Parents and Their Middle-Aged Children*, 19 GERONTOLOGIST 438 (1979), *reprinted* in H. COX (ED.), ANNUAL EDITIONS: AGING 182 (1987).

179. Butler, *supra* note 65, at 14.

180. Garrett, *supra* note 33, at 813; Patrick, *supra* note 20, at 82, n. 78. Repeal of N.Y. statute prevented enforcement of Conn. statute against a N.Y. resident, *State Welfare Comm'r v. Mintz*, 28 A.D.2d 14, 280 N.Y.S.2d 1007 (1967).

cost-effective.¹⁸¹ Estimates of welfare dollars recovered per dollar spent in enforcement vary considerably.¹⁸² Even where welfare budgets are shown to be reduced,¹⁸³ it may well be because of fewer applicants rather than efficient collections.

Garrett also points out the difficulty of establishing the need of the older person, especially when criminal proceedings require proof beyond a reasonable doubt.¹⁸⁴ Garrett states that the court ignored a claim by the defense that the mother "was enjoying a higher standard of living" than the children proceeded against in *Hale v. State*.¹⁸⁵

CONCLUSION

Although the moral obligation to support needy relatives is nowhere questioned, embodying this duty in a statute does seem to raise more difficulties than it solves. Even though legal enforcement against the malignant few might be desirable, that ability comes at too high a price for society.

Fairness demands that only those adult children who are able to pay be required to do so. Determining this is so complex, however, that it is best left to individual consciences and family peer pressure rather than to the law. In the several cases where the financial ability to support was the litigated issue, usually the holding was that the defendant was unable to provide support. In cases such as these, one must wonder what needs were given up to finance the legal defense.

Enforcement, even if cost-effective in terms of dollars recovered per expense of litigation, deters needy persons from seeking assistance. This is contrary to the idea of eradicating poverty. With cost-effectiveness doubtful, and costs of enforcement and defense making a further drain on resources, the better public policy would be to use the resources in improving services available to help, not older individuals, but to families with older persons in them.¹⁸⁶

181. Patrick, *supra* note 20, at 81; Garrett, *supra* note 33, at 815-6; *Review of Selected 1975 California Legislation*, 7 PAC. L.J. 237, 419-21 (1976); Lopes, *Filial Support and Family Solidarity*, 6 PAC. L.J. 508, 519-22 (1975). See also Baldus, *Welfare as a Loan: An Empirical Study of the Recovery of Public Assistance Payments in the United States*, 25 STAN. L. REV. 201 (1973).

182. Garrett, *supra* note 33, at 815-6.

183. NOTRE DAME L. REV., *supra* note 9, at 119.

184. Garrett, *supra* note 33, at 799-800.

185. 44 Md. App. 376, 408 A.2d 772 (1979), Garrett, *supra* note 33, at 803.

186. Cf. Smith & Bengtson, *Positive Consequences of Institutionalization: Solidarity Between Elderly Parents and Their Middle-Aged Children*, 19 GERONTOLOGIST 438 (1979), reprinted in H. COX (ED.), ANNUAL EDITIONS: AGING 182, at 189 (1987).

APPENDIX

Gross annual income of responsible relatives in one family in dollars		RELATIVES' CONTRIBUTION SCALE Number of persons dependent upon income			
		1	2	3	4
		MONTHLY PAYMENTS REQUIRED			
Over	But not over	(in dollars)			
6,500	7,000	26	0	0	0
7,000	7,500	32	13	0	0
7,500	8,000	39	20	0	0
8,000	8,500	46	26	13	0
8,500	9,000	52	32	20	0
9,000	9,500	59	39	26	13
9,500	10,000	65	45	32	20
10,000	10,500	71	52	39	26
10,500	11,000	78	59	45	32
11,000	11,500	85	65	52	39
11,500	12,000	91	71	59	45
12,000	12,500	97	78	65	52
12,500	13,000	104	85	71	59
13,000	13,500	110	91	78	65
13,500	14,000	117	97	85	71
14,000	14,500	131	111	99	85
14,500	15,000	145	125	113	99
15,000	15,500	159	139	127	113
15,500	16,000	173	153	141	127
16,000	16,500	187	167	155	141
16,500	17,000	208	188	176	162
17,000	17,500	229	209	197	183
17,500	18,000	250	230	218	204
18,000	18,500	271	251	239	225
18,500	19,000	292	272	260	246
19,000	19,500	Total	293	281	267
		Cost			
19,500	20,000	Total	Total	302	288
		Cost	Cost		
20,000	20,500	Total	Total	Total	309
		Cost	Cost	Cost	
20,500	21,000	Total	Total	Total	Total
		Cost	Cost	Cost	Cost
21,000	21,500	Total	Total	Total	Total
		Cost	Cost	Cost	Cost
21,500	22,000	Total	Total	Total	Total
		Cost	Cost	Cost	Cost

Source: Or. Rev. Stat. Ann. sec. 416.061 (1985).