

**To: Commission**  
**From: John Cannel; Jayne Johnson**  
**Re: Title 44, Poor Law; Financial Responsibility of Relatives**  
**Date: June 5, 2017**

## MEMORANDUM

At the May Commission meeting, Commissioner Hartnett raised a question about the general financial responsibility for relatives and whether the current statutes in Title 44 were legally relevant to that issue. The key statute on this subject is N.J.S. 44:140, which reads as follows:

### **44:1-140. Relatives chargeable.**

a. The father and mother of a person under 18 years of age who applies for and is eligible to receive public assistance, and the children, and husband or wife, severally and respectively, of a person who applies for and is eligible to receive public assistance, shall, if of sufficient ability, at his or their charge and expense, relieve and maintain the poor person or child in such manner as shall be ordered, after due notice and opportunity to be heard, by any county or municipal director of welfare, or by any court of competent jurisdiction upon its own initiative or the information of any person.

b. The provisions of this section shall apply to the minor children of a mother whose husband shall fail properly to support and maintain such children when by reason thereof they are likely to become a public charge.

c. The provisions of this section shall not apply to any person 55 years of age or over except with regard to his or her spouse, or his or her natural or adopted child under the age of 18 years.

Amended by L.1968, c. 446, s. 1, eff. Feb. 19, 1969; L.1975, c. 1, s. 1, eff. Jan. 14, 1975; L.1979, c. 401, s. 1, eff. Feb. 8, 1980.

A limitation of the duty to support parents is added in N.J.S. 44:1-141 where the poor person failed to support the person charged when that child was a child.<sup>1</sup>

Courts have stated that the support statute is based on a “common law” or “natural law” duty to support.<sup>2</sup> The direct antecedent of the provision is the English statute 46 Eliz, ch.2 sec.7; but N.J.S. 44:1-140 obligates fewer relatives.

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<sup>1</sup> See, *Gierkont v. Gierkont*, 46 N.J. Super. 112 (App. Div. 1957).

<sup>2</sup> *In re Rogers*, 96 N.J. Eq. 6 (Chancery 1924). *But see Monmouth Cnty. Welfare Bd. v. Coward*, 86 N.J. Super. 253 (Cty Ct. 1964).

A number of questions remain. First, is this statute still valid? While it was superseded by statutes for later welfare programs (*see* N.J.S. 44:4-101 and N.J.S. 44:7-19), it continued to be amended through 1979, and it was used in connection with the AFDC program in 1972.<sup>3</sup> Other cases have cited the statute as if it continued to be in effect.<sup>4</sup> However, there is no equivalent, or related, provision in the Work First Statutes. Staff has not found a case that has applied this statute since the enactment of Work First.

Regarding the support of children by their parents, 44:1-40 has been superseded by:

**2A:17-56.67 Termination of obligation to pay child support.**

1. a. Unless otherwise provided in a court order or judgment, the obligation to pay child support shall terminate by operation of law without order by the court on the date that a child marries, dies, or enters the military service. In addition, a child support obligation shall terminate by operation of law without order by the court when a child reaches 19 years of age unless:

(1) another age for the termination of the obligation to pay child support, which shall not extend beyond the date the child reaches 23 years of age, is specified in a court order;

(2) a written request seeking the continuation of child support is submitted to the court by a custodial parent prior to the child reaching the age of 19 in accordance with subsection b. of this section; or

(3) the child receiving support is in an out-of-home placement through the Division of Child Protection and Permanency in the Department of Children and Families.

b. (1) In response to a notice of proposed termination of child support issued in accordance with subsection d. of this section, a custodial parent may submit a written request, on a form and within timeframes promulgated by the Administrative Office of the Courts, with supporting documentation to the court, including a projected future date when support will terminate, seeking the continuation of child support beyond the date the child reaches 19 years of age in the following circumstances:

(a) the child is still enrolled in high school or other secondary educational program;

(b) the child is a student in a post-secondary education program and is enrolled for the number of hours or courses the school considers to be full-time attendance during some part of each of any five calendar months of the year; or

(c) the child has a physical or mental disability, as determined by a federal or State government agency, that existed prior to the child reaching the age of 19 and requires continued child support.

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<sup>3</sup> *Mulvahill v. Dept. of Inst. & Agencies*, 120 N.J. 546 (App. Div. 1972).

<sup>4</sup> *See eg. Morris Cnty. Welfare B. v. Gilligan*, 130 N.J.L. 83 (E & A 1943); *Crowe v. DeGioia*, 90 N.J. 126 (1982) (*in dissent*); *Gierkont v. Gierkont*, *supra*; *Pavlick v. Teresinski*, 54 N.J. Super. 478 (Juv. & Dom. Rel. Ct., 1959); *Fey v. Essex Cnty.* 23 N.J. Misc. 80 (Workman's Comp. Bureau, 1945).

(2) A custodial parent may file a motion with the court seeking to extend the obligation to pay child support beyond the date the child reaches 19 years of age due to exceptional circumstances as may be approved by the court.

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e. Notwithstanding the provisions of this section, the obligation to pay child support shall terminate by operation of law when a child reaches 23 years of age. The Probation Division and the State IV-D agency shall cooperatively provide both parents with a written notice of termination at least 90 days prior to the termination date and, to the extent feasible, the Probation Division and the State IV-D agency shall cooperatively provide additional notice to the parents by text message, telephone message, or other electronic means. Nothing in this section shall be construed to...

The connected question is whether N.J.S. 44:1-140 is limited to actions by welfare directors, or whether it allows actions by the poor person to get support from relatives. The determination of the Court in *Stark v. Overseer of Poor*, 90 N.J.L. 187 (E & A 1916) limits the statute to actions by the “overseer.” Dicta in the dissent of *Crowe v. DeGioia*, 90 N.J. 126, 143 (1982), would support that approach.

By contrast, in *Pavlick v. Teresinski*, 54 N.J. Super. 478 (Juv. & Dom. Rel. Ct., 1959), the court interpreted the statute to allow a mother to sue her two adult sons for support. Subsequently, the holding in *Gierkont v. Gierkont*, 46 N.J. Super. 112 (App. Div. 1957) supports the *Pavlick* interpretation. It is worth noting that in *Gierkont* the Welfare Director was a co-plaintiff in the case. Staff has not found any case that allows a third party, a person other than the beneficiary or the welfare agency, to make a claim under the statute. Such cases, however, exist in other jurisdictions.

If N.J.S. 44:1-140 is to be repealed, should it be replaced? If so, the question becomes the scope of the statute to replace it. The prospect of replacement raises additional questions: Should the right of reimbursement be limited to public agencies? Should poor persons be permitted to sue directly for support? Should third parties be allowed to make claims?

Staff has drafted a potential replacement statute which appears in the Appendix to this Memorandum. While it is based on potential answers to these questions, it should not be treated as guiding the Commission’s course of action. Instead, Staff seeks Commission guidance regarding this issue.

## **APPENDIX**

### **Support by spouse or adult children**

a. If a person applies for, and is eligible to receive public assistance, the public agency that provides the assistance may assess for a portion of the assistance:

- (1) the person's children who are at least 18 and less than 55 years of age; and
- (2) the person's spouse.

b. A child or spouse may be assessed for support only after notice, an opportunity to be heard and a court finding of the amount if any that the relative is financially able to provide considering the relative's personal and family obligations.

c. However, if the person receiving public assistance failed to support and maintain a child during the child's minority, the court may reduce the amount assessed against the child in proportion to the actual support and maintenance rendered by the person receiving public assistance.

d. This section shall not authorize an action for support by any party other than the public agency that provides assistance.

e. Nothing in this section shall affect the duty that a parent has to provide support for a child. That duty shall continue to be controlled by N.J.S. 2A:17-56.67.

## **APPENDIX II**

### **State Survey – Support statutes in other jurisdictions**

<b>STATE</b>	<b>STATUTE</b>	<b>RELATIONSHIP OF LIABLE PARTY TO INDIGENT ELDER</b>	<b>CONTRIBUTION REQUIRED</b>
<b>ALABAMA</b>	N/A		
<b>ALASKA</b>	Ak. Stat. § 25.20.030 Ak. Sec. 47-25-230	Spouse, children, parents, grandparents, grandchildren, or siblings	“Support” inc. necessary food, care, clothing, shelter, and medical attention
<b>ARIZONA</b>	N/A		
<b>ARKANSAS</b>	Ark. Code Ann. § 20-47-106	Duty limited to those liable for an individual who receives state mental health services	Reimbursement for cost of providing mental health services
<b>CALIFORNIA</b>	Cal. Fam. Code 4400-4405 Cal. Fam. Code 4410-4414 Cal. Welf. & Inst. Code § 12350 Cal. Penal Code § 270(c)	Child	“Necessities”
<b>COLORADO</b>	N/A		
<b>CONNECTICUT</b>	Conn. Gen. Stat. Ann §§ 46b-215, 53-304	“Any person who neglects or refuses to furnish reasonably necessary support to the person's spouse . . . or parent under the age of sixty-five shall be deemed guilty of nonsupport and shall be imprisoned not more than one year”	“reasonably necessary support”
<b>DELAWARE</b>	Del. Code Ann. Title 13 § 503	“Spouse, parents, or children, in that order”	Monetary support, health care, arrearages, or reimbursement; inc. related costs/fees, interest, income withholding, atty's fees, and other relief
<b>FLORIDA</b>	N/A		
<b>GEORGIA</b>	Ga. Code Ann. § 36-12-3	Father, mother, or child	
<b>HAWAII</b>	N/A		
<b>IDAHO</b>	Repealed in 2011		
<b>ILLINOIS</b>	N/A		
<b>INDIANA</b>	Ind. Code Ann. §§31-16-17-1 to -7 Ind. Code Ann. § 35-46-2-7	Child	
<b>IOWA</b>	Iowa Code Ann. § 252.1 Iowa Code Ann. § 252.2 Iowa Code Ann. § 252.5	Father, mother, children, grandparents, or grandchildren (in that order)	
<b>KANSAS</b>	N/A		
<b>KENTUCKY</b>	KY Rev. Stat. Ann. § 530.050	Child residing in Kentucky	
<b>LOUISIANA</b>	La. R.S. 13:4731	Parents and children have reciprocal duties to care; children born out of wedlock are expressly included	
<b>MAINE</b>	N/A		

<b>STATE</b>	<b>STATUTE</b>	<b>RELATIONSHIP OF LIABLE PARTY TO INDIGENT ELDER</b>	<b>CONTRIBUTION REQUIRED</b>
<b>MARYLAND</b>	MD. Code Ann. Fam. Law §§ 13-101 to 13-109	Parents and children have reciprocal duties	Necessary food, shelter, care, and clothing
<b>MASSACHUSETTS</b>	Mass. Gen. Laws Ann. ch. 273, § 20	Person over eighteen who unreasonably neglects his parent “	“Support and maintenance”
<b>MICHIGAN</b>	N/A		
<b>MINNESOTA</b>	Repealed in 1973		
<b>MISSISSIPPI</b>	Miss. Code Ann. § 43-31-25	Parents, grandparents, siblings, and descendants	Responsible relative must reimburse the county \$150 for each month that the county maintained the indigent person
<b>MISSOURI</b>	N/A		
<b>MONTANA</b>	Mont. Code Ann. § 40-6-214 Mont. Code Ann. § 45-5-621	Child that has reached the age of majority	Necessary food, clothing, shelter, medical attendance; burial, entombment, or cremation costs
<b>NEBRASKA</b>	N/A		
<b>NEVADA</b>	Nev. Rev. Stat. Ann § 428.070 Nev. Rev. Stat. Ann. § 439B.310	Child has duty under certain circumstances to reimburse county for hospitalization of parent	The total cost of hospitalization
<b>NEW HAMPSHIRE</b>	Repealed children’s obligation to parents in 2013 N.H. Rev. Stat. Ann. § 546-2:2 (retaining parental obligation)		
<b>NEW JERSEY</b>	N.J. Stat. Ann. §§44:4-100 to § 44:4-103; N.J. Stat. Ann. §§44:1-139 to § 44:1-142	Parents, spouses, and children	Relieve and maintain (N.J.S.A. 44:1-140)
<b>NEW MEXICO</b>	N/A		
<b>NEW YORK</b>	Repealed in 1966		
<b>NORTH CAROLINA</b>	N.C. Gen. Stat. § 14-326.1	Child	Maintain and support
<b>NORTH DAKOTA</b>	N.D. Cent. Code § 14-09-10	Parents and children have reciprocal duties	Maintain
<b>OHIO</b>	Ohio Rev. Code Ann. § 2919.21	Spouse, child, or parent	“Adequate support”
<b>OKLAHOMA</b>	N/A		
<b>OREGON</b>	OR. Rev. Stat. § 109.010	Parents and children have reciprocal duties	Duty to “maintain” and not abandon
<b>PENNSYLVANIA</b>	23 Pa. C.S.A. §§ 4601 to 4606	Reciprocal duty of parents, spouses, and children	Amount deemed appropriate by a court of competent jurisdiction

<b>STATE</b>	<b>CIVIL STATUTE</b>	<b>RELATIONSHIP OF LIABLE PARTY TO INDIGENT ELDER</b>	<b>CONTRIBUTION REQUIRED</b>
<b>RHODE ISLAND</b>	R.I. Gen. Laws §§ 15-10-1 to 15-10-7 R.I. Gen. Laws §§ 40-5-13 to 40-5-21	Child (crime); father or grandfather, mother or grandmother, children or grandchildren, by consanguinity, or children by adoption (civil)	Relief and support
<b>SOUTH CAROLINA</b>	N/A		
<b>SOUTH DAKOTA</b>	S.D. Codified Laws § 25-7-28 S.D. Codified Laws § 28-13-1.1	Child	Necessary food, clothing, shelter, or medical assistance
<b>TENNESSEE</b>	Tenn. Code Ann. § 71-5-103 Tenn. Code Ann. § 71-5-115	Parents, spouses, children, guardians of relative receiving medical assistance	Reimbursement for “medical assistance”
<b>TEXAS</b>	N/A		
<b>UTAH</b>	Utah Code Ann. § 17-14-2	Children, parents, siblings, or grandchildren of indigent person (in that order)	Support
<b>VERMONT</b>	VT. Stat. Ann. Tit. 15, §§ 202-03	Spouse, parent, or child	Support when the parent is destitute
<b>VIRGINIA</b>	VA. Code Ann. § 20-88	Children	Support or maintenance
<b>WASHINGTON</b>	N/A		
<b>WISCONSIN</b>	Repealed in 193		
<b>WYOMING</b>	N/A		
<b>WEST VIRGINIA</b>	W. VA. Code § 9-5-9	Children, father, sibling, and mother (in that order)	Support indigent individual “in the manner required by the department of welfare”
<b>DISTRICT OF COLUMBIA</b>	N/A		
<b>PUERTO RICO</b>	8 L.P.R.A. § 712	Descendant of any kind	“fair and reasonable” monetary or care contribution

Information contained in the above table is drawn from the following article: Twyla Sketchley & Carter McMillan, *Filial Responsibility: Breaking the Backbone of Today’s Long-Term Care System*, 26 ST. THOMAS L. REV. 131, 160 -163 (2013).