

COMMENT

PARENTAL RESPONSIBILITY STATUTES — AND THE PROGRAMS THAT MUST ACCOMPANY THEM

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I. INTRODUCTION: WHAT ARE PARENTAL RESPONSIBILITY STATUTES?

Parental responsibility statutes, also known as parental liability statutes,¹ are laws that hold parents criminally liable for negligence in not controlling their child's delinquent acts. Specifically, under parental responsibility statutes, parents are not held responsible for the acts of their children, but instead for inadequately controlling their children. Parental responsibility statutes are gaining popularity, at both the state and municipal levels,² as society contemplates

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1. To facilitate the discussion of these statutes, parental responsibility and liability statutes will collectively be referred to as "parental responsibility statutes" throughout this Comment.

2. See, e.g., Joe Brennan, *Omaha May Put Child's Crimes on Parents' Heads: Parental Responsibility Laws Fines, Jail Sentences for Parents*, OMAHA WORLD-HERALD, Feb. 27, 1994, at 1B; Brad Knickerbocker, *Oregon Drafts Parents in War on Teen Crime*, CHRISTIAN SCI. MONITOR, Sept. 13, 1995, at 1; J.M. Lawrence, *Polls Set Sights on Lax Parents*, BOSTON HERALD, Aug. 20, 1995, at 1; T.J. Quinn, *Punishing Parents Can Re-*

a variety of strategies to lessen juvenile crime. The underlying premise of parental responsibility statutes is that most children live with their parents, and that the parents actually have an impact on their children's activities.³ Under parental responsibility statutes, juveniles are considered as neither fully responsible adults nor completely dependent children. On one hand, juveniles are not regarded as independent adults because society recognizes that they have not yet reached the age of maturity and their behavior and activities should still be under some kind of supervisory guidance and scrutiny. On the other hand, juveniles are not considered to be completely dependent either. Society acknowledges that juveniles ought to be responsible for their conduct since they have the ability to choose the activities in which they get involved.⁴ Our legal system has struggled with this paradox and has experienced great difficulty in devising a successful and efficient method to alleviate the juvenile crime problem.

A. Purpose of this Comment

Properly written parental responsibility statutes can be efficient and effective tools to lower juvenile crime, as long as they are used in conjunction with social support programs. Not only will such a combined system of support and accountability be more successful than traditional attempts, which lacked sufficient support programs, it will also be less costly.⁵ This Comment first examines the fact-pattern of a famous Michigan case to illustrate the realistic impact of parental responsibility statutes. Second, this Comment explains the historical development of parental responsibility statutes. Third, this Comment reviews the arguments of parental responsibility statutes' proponents and opponents. Fourth, this Com-

duce Kid Crime: Town Praises Parental Responsibility, SALT LAKE TRIB., Sept. 21, 1995, at A1; Mike Ward, *Punishing Parents for Their Kids' Misdeeds: An Oregon Ordinance Is Model for a New Texas Statute*, AUSTIN AM.-STATESMAN, Jan. 2, 1996, at A1; *In Some States, Parents Serve Time for Crimes Their Children Commit*, HOUSTON CHRON., Jan. 14, 1996, at A2; *Town in Wisconsin Debates Fining Parents of Delinquents*, CHI. TRIB., Sept. 3, 1995, Womanews, at 8.

3. See Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 WIS. L. REV. 399, 415.

4. See *id.* at 400.

5. See *infra* note 126 and accompanying text for a discussion of the potential savings.

ment describes different varieties of parental responsibility statutes, and also discusses elements that should be added to and omitted from these statutes. Fifth, this Comment discusses several examples of both pre- and post-delinquency social programs that lawmakers can implement to support parental responsibility statutes. In this fifth section, this Comment considers some Florida programs with which this Author has had experience. Finally, this Comment concludes with a recommendation: Parental responsibility statutes can be a useful tool in combating juvenile crime, if lawmakers create working social support programs that parents can access to receive the help they need to control their children.

1. Model Case Fact Pattern

Imagine the following scenario:⁶ You are an adult living with your family in St. Clair Shores, a middle-class suburb in Michigan. The Provenzino family living next door seems normal: the father, Anthony, is a chef; the mother, Susan, is a bookkeeper. Unfortunately, their sixteen-year-old son, Alex, is a menace: he has been arrested many times, he comes and goes at all hours, and he and his friends constantly loiter around your house. Then, one day, you see two police officers escorting Alex from his house in handcuffs. This occurrence is not particularly surprising because you know Alex has already spent time in the juvenile detention center for the numerous crimes he has committed in your neighborhood: for example, he burglarized his family's church and stole \$3500. Then, through neighborhood talk, you learn of the items the police recovered from Alex's room: an alcoholic beverage, a tall marijuana plant, a bag of marijuana, a stolen knife, and a stolen handgun.

You are concerned about your family's safety because such a deviant child lives loose and uncontrolled in your neighborhood. You are worried your possessions may be stolen or vandalized by Alex and his troublesome friends. You wonder why his parents do not do anything to stop Alex's bad behavior. Soon you learn that Alex was sentenced to juvenile incarceration for one year for burglary and drug offenses. Your feelings of anger at Alex Provenzino then shift.

6. See Robyn Meredith, *Michigan Parents Convicted for Youth's Misconduct*, N.Y. TIMES, May 10, 1996, at A14. Meredith discusses the facts of the *Provenzino* case, upon which this fact pattern is based. See *id.*

You are no longer as angry at Alex as you are at his parents because of their failure to control their son. Once again, you wonder why Alex's parents do nothing to control their unruly son.

Then you see something truly surprising: the police have returned to the Provenzino home and this time leave escorting Susan and Anthony Provenzino, rather than Alex, into their squad car. You later discover that Susan and Anthony Provenzino, the Michigan parents of sixteen-year-old Alex, are being prosecuted for the misdemeanor of failing to control their son. The prosecution charges the Provenzinos with violating a city ordinance.⁷

During the trial in which the State pursues charges against Anthony and Susan Provenzino for failing to control their son's behavior, you begin to feel sympathy for Alex's parents. After all, Alex corroborated other witnesses' testimony that he continuously defied his parents by drinking alcoholic beverages, smoking marijuana, and, on one occasion, attacking his father with a golf club.⁸ You question what these apparently nice parents could have done to control their impetuous son.

During the trial, the prosecution argues that Anthony and Susan Provenzino should be found guilty for their "failure to properly supervise their son."⁹ You are disturbed when you learn that Alex's parents never forced their son to undergo counseling despite his illegal and often violent behavior. Furthermore, the prosecution argues that the parents knew little of Alex's life. Indeed, they were unable to recall Alex's recent grades at school.¹⁰ Finally, the prosecution argues that the Provenzinos had fair warning that their son was engaged in wrongful conduct, since the police had issued two search warrants against Alex in connection with a burglary.¹¹

On the other hand, the defense argues that the Provenzino parents were unaware of the extent of Alex's wrongdoings and were afraid of him.¹² After all, you clearly understand that when Alex

7. See Haya El Nasser & Desda Moss, *Teen Crime Tosses Ball to Parents' Court*, USA TODAY, Aug. 6, 1996, at 1A. The ordinance was only two years old when the Provenzinos were charged. See *id.*

8. In this instance, Anthony Provenzino called the police. See Meredith, *supra* note 6.

9. Meredith, *supra* note 6.

10. See *id.*

11. See El Nasser & Moss, *supra* note 7.

12. See *id.*

threatened his parents with a golf club and was escorted home by police officers, recalling his grades in certain classes may not have been a high priority for the Provenzinos. Finally, you read that your neighbors were found guilty of violating the ordinance and the court ordered them to pay a fine of \$2200.¹³ The question you are now left with is: Should parents be held criminally responsible for their negligence in controlling their child's behavior?

Concerned citizens react in various ways: Some crave an exclusively punitive approach, arguing that the way to solve the juvenile crime problem is by getting tough on crime and on criminals, regardless of, and sometimes in spite of, whether they are children.¹⁴ An example of the problems that arise from a "tough-on-crime" approach is illustrated when advocates of such a solution suggest that the system treat juvenile delinquents as adults and charge them as such.¹⁵ While many concerned citizens may feel some kind of cathartic relief when they hear that a child who has committed a heinous crime is sentenced as an adult, they would be less satisfied if they were able to follow this child through the reality of his sentence. Even in most adult prisons, children are separated from adult offenders.¹⁶ So, in reality, these children are still in a juvenile program.¹⁷

13. *See id.*

14. Society has been inconsistent in its treatment of juveniles in various areas of the law. For instance, statutes dictate different minimum ages for young adults: 16 to drive; 18 to vote; and 21 to purchase alcoholic beverages. *See, e.g.*, FLA. STAT. ANN. § 322.0601 (West 1997) (driving); *id.* § 97.041 (voting); *id.* § 562.11 (buying alcohol).

15. For examples of statutes from each state that treat juveniles as adults, see Catherine J. Ross, *Disposition in a Discretionary Regime: Punishment and Rehabilitation in the Juvenile Justice System*, 36 B.C. L. REV. 1037, 1043 n.31 (1995) (listing statutes that authorize or require authorities to transfer juveniles to adult institutions). *See generally* Howard Davidson, *No Consequences — Re-examining Parental Responsibility Laws*, 7 STAN. L. & POL'Y REV. 23, 23 (1995-96) (stating that the three most common legislative responses to juvenile crime are "1) increasing penalties, including finite and lengthier periods of incarceration for young offenders; 2) lowering the age and other prerequisites for transferring juveniles accused of serious crimes from juvenile to adult court . . . ; and 3) funding new detention and correctional centers as well as 'boot camps' with rigid, military-like regimens").

16. *See* 18 U.S.C.A. § 5039 (West 1997) (requiring separation of juvenile inmates from adult offenders in the federal system). In addition, almost every state has a statute that requires the segregation of juvenile and adult inmates. *See, e.g.*, 20 ILL. COMP. STAT. ANN. 505/17a-5 (West 1997); IOWA CODE ANN. § 356.3 (West 1997); KY. REV. STAT. ANN. § 15A.200(3) (Banks-Baldwin 1997).

17. *See generally* Michelle India Baird & Mina B. Samuels, *Justice for Youth: The Betrayal of Childhood in the United States*, 5 J.L. & POL'Y 177 (1996) (discussing United

An exclusively punitive approach inevitably leads to chronic prison overcrowding.¹⁸ But even when combined with support programs, a punitive focus still leads to problems, including rushed programming that does not significantly help juveniles with their problems, longer sentences, and sentences in adult institutions rather than juvenile detention centers. Sometimes, however, what people initially perceive as the right solution ends up being far from the best choice. Exclusively punitive strategies may initially appear right, and may appease those who believe they have endured enough juvenile crime and desire a quick end to the problem at hand. But, in the case of juvenile crime, what at first may appear to be the “right” solution, in part because it provides a “quick-fix,” may not materialize as such. A “quick-fix” will eventually create additional problems because of its failures in the long-term reformation of juveniles and because of its high monetary costs.¹⁹

Juvenile crime is a problem our system must deal with as if curing a disease. Similar to a virus attacking different parts of the human system, the juvenile crime problem deeply affects many different facets of society. With the new advances in combating the AIDS virus, brought to light by *Time Magazine's* Man of the Year, Dr. David Da-i Ho, we have been reminded that hurried, one-dimensional solutions do not cure complicated problems.²⁰ Indeed, what has proven successful in combating complex viruses is the accumulation of multifaceted solutions derived from a diverse pool of focused people.²¹ Analogously, it would be detrimental to try to cure the juvenile crime problem by mandating parental responsibility alone. This attempt would merely act as a band-aid, superficially covering a serious problem. To be successful, statutes addressing juvenile crime must be used in conjunction with programs that support and

States and international standards for incarcerated juveniles).

18. See *infra* note 228 for a list of sources discussing detention center overcrowding.

19. See *infra* note 126 and accompanying text for a discussion of the long-term expense the state must consider when its “quick-fix” punitive strategy fails to reform juvenile offenders.

20. See Christine Gorman, *The Disease Detective* (visited Sept. 28, 1997) <<http://www.pathfinder.com/@CcxwFgQAcRcUaqzK/time/magazine/1997/dom/970106/moy.html>> (discussing Dr. David Da-i Ho's “cocktail” approach to fighting the AIDS virus). See generally Meredith, *supra* note 6.

21. See Gorman, *supra* note 20.

guide parents' efforts in rehabilitating their children. Jurisdictions²² must implement a "cocktail" of social support programs consisting of parental responsibility statutes and some sort of incarceration that provides rehabilitation.

II. COMMENTARY ON DIFFERENT APPROACHES STATES HAVE IMPLEMENTED

A. Traditional Approaches

While the focus of this Comment is criminal liability, it is important to note that the notion of parental liability encompasses more than criminal law, and in fact had its origins in civil law.²³ Many, if not most, parental responsibility statutes are combinations of tort and criminal law. The concept of penalizing poor parenting is not new. In the past, various states have implemented laws imposing sanctions upon parents for abandonment, abuse, and neglect of their children.²⁴ Criminal nonsupport laws have been on the books for a long time as well.²⁵ Moreover, compulsory school attendance laws that provide for the criminal prosecution of parents whose children fail to regularly attend school also have a long history.²⁶

22. The Author uses the general term "jurisdictions" to encompass all institutions that could implement these programs. Thus, the term includes municipalities, cities, and states. Indeed, parental responsibility laws have been enacted through statutes as well as ordinances. See *infra* notes 170–88 and accompanying text.

23. See *Bryan v. Kitamura*, 529 F. Supp. 394, 396 (D. Haw. 1982). The *Bryan* court stated that

Hawaii's parental liability statute finds its origin in the Acts of 1846 The provision became codified as section 1288 of the Civil Code, and provided that the father "shall be the natural guardian of their (children's) persons and of their property; he shall be liable in damages for the tortious acts committed by them"

Id. (citing Compiled Laws of the Hawaiian Kingdom § 1288 (1884)).

24. See, e.g., FLA. STAT. ANN. §§ 39.464, .4611 (West 1997) (providing that parents who have abandoned their child lose their parental rights over that child); FLA. STAT. ANN. § 39.052 (West 1997) (imposing sanctions upon parents who have abused their child); see also P. Thomas Mason, *Child Abuse and Neglect, Part I: Historical Overview, Legal Matrix, and Social Perspectives*, 50 N.C. L. REV. 293, 293–302 (1972).

25. See OFFICE OF CHILD SUPPORT ENFORCEMENT, U.S. DEP'T OF HEALTH & HUM. SERVS., CHILD SUPPORT PROSECUTORS' BULL. VOL. II NO. 6, STATE CRIMINAL NONSUPPORT 1 (1993); U.S. COMM'N ON INTERSTATE CHILD SUPPORT, SUPPORTING OUR CHILDREN: A BLUEPRINT FOR REFORM 178 (1992).

26. See, e.g., FLA. STAT. ANN. § 232.19 (West 1997); see also Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, 5 NOTRE DAME J.L. ETHICS & PUB. POL'Y 303, 305 (1991); Kathryn J. Parsley, Note,

At the turn of the century, the United States became the first country to establish a specific court to deal exclusively with juvenile delinquency.²⁷ But even before 1900, United States lawmakers were creating laws designed to protect society from delinquent children. In 1846, Hawaii became the first state to enact a civil statute allowing victims to recover from the parents of a child who harmed them.²⁸ Louisiana was also a frontrunner in imposing parental liability for torts committed by children.²⁹ However, Hawaii's statute remains the extreme example of vicarious liability law, because it does not limit the recovery of the victims, but does cover negligent and intentional torts of the child.³⁰ In 1903, Colorado became the first state to enact a criminal statute punishing parents for contributing to the delinquent acts of their children.³¹ The Hawaii, Colorado, and Louisiana laws were parallel to the civil codes of Central America, South America, and Europe, where the laws reflected the "cultural emphasis on family solidarity compared to the high value the common law places on individualism."³²

Common law did not allow any recovery from the parent of a minor, unless the damage was directly due to some parental action or inaction. The premise of the common-law doctrine was that liability without fault could be maintained only if specific exceptions

Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children, 44 VAND. L. REV. 441, 446 (1991).

27. See Geis & Binder, *supra* note 26, at 303 (stating that Illinois was the first state to establish a juvenile court in 1899).

28. See 1859 Haw. Sess. Laws § 1288 (currently codified at HAW. REV. STAT. ANN. § 577-3 (Michie 1996)); see also HAW. REV. STAT. ANN. § 577-3.5 (Michie 1996); Bryan v. Kitamura, 529 F. Supp. 394 (D. Haw. 1982); Geis & Binder, *supra* note 26, at 307.

29. To date, Louisiana has passed the most severe parental responsibility statutes. When parents are found guilty of "improper supervision of a minor," [they can be] fined up to \$1,000 and imprisoned for up to six months if their child associates with a convicted felon, drug dealer or members of a street gang." Peter Applebome, *Parents Target of Tough Laws More Adults Facing Fines, Jail Time for Kids' Crimes*, PLAIN DEALER, Apr. 5, 1991, at 1E; see also LA. REV. STAT. ANN. § 14:92.2 (West 1996).

30. All other states cap the recovery of the victims of juvenile crime. See *infra* note 32 and accompanying text for a discussion of the reasons Hawaii's laws evolved as they did.

31. See *The Legal Responsibility of Parents for Juvenile Delinquency in New York State: A Developmental History*, 21 BROOK. L. REV. 172, 173-74 (1955); see also Parsley, *supra* note 22, at 446; *infra* notes 43-66 and accompanying text discussing contributing to the delinquency of a minor (CDM) statutes.

32. Geis & Binder, *supra* note 26, at 308 (citing Ferdinand Fairfax Stone, *Liability for Damage Caused by Minors: A Comparative Study*, 5 ALA. L. REV. 1, 6 (1952)).

were set forth. In *Moore v. Crumpton*,³³ the North Carolina Supreme Court held that the parents of a seventeen-year-old who broke into a woman's house and raped her were not liable for the acts of their child because the parents could not have prevented their son from leaving the house while they were sleeping.³⁴ The court thus followed the common-law policy that parents do not generally have sufficient control over their children to justify imposing liability on those parents for the acts of their children.³⁵ At common law, parents were held liable only if

- (1) they directed or subsequently ratified the act; or if the child (2) was acting as the parent's agent or servant; (3) was entrusted with a dangerous instrumentality, such as a gun, or was negligently given access to an automobile; or (4) the parents' negligence was a proximate cause of the harm.³⁶

Following Hawaii's and Colorado's examples, most states enacted statutes holding parents liable for the delinquent acts of their children. Today, all states except New Hampshire have such laws.³⁷ These statutes were enacted, in part, to place the loss on the parents of the child who caused the loss, rather than on the innocent victim.³⁸ But overall, the driving force in enacting these statutes has been a desire to control juvenile delinquency by making parents financially accountable for the damages their children caused.³⁹ This intent is evidenced by the limits placed on recovery; the average recovery limit is \$2500.⁴⁰

Although parental civil liability statutes serve the important

33. 295 S.E.2d 436 (N.C. 1982).

34. *See id.* at 442 (stating that "[s]hort of standing guard over the child twenty-four hours a day, there was little that the defendant father could do to prevent [his son] from leaving the home after the father was asleep.").

35. *See* Toni Weinstein, Note, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 863 (1991).

36. Geis & Binder, *supra* note 26, at 308.

37. *See id.* at 310.

38. *See id.*

39. *See, e.g.*, GA. CODE ANN. § 51-2-3(c) (1997) (stating that its purpose "is to provide for the public welfare and aid in the control of juvenile delinquency, not to provide restorative compensation to victims").

40. *See* L. Wayne Scott, *Liability of Parents for Conduct of Their Child Under Section 33.01 of the Texas Family Code: Defining the Requisite Standards of Culpability*, 20 ST. MARY'S L.J. 69, 87-92 (1988).

function of compensating the victim for the deeds of another's child, primarily these statutes are focused on lowering juvenile crime.⁴¹ Even so, some fear of liability should trigger parents to be more mindful of their child's activities. "[T]he starting point for a solution could be a resurgence of the belief that parents should take responsibility for their children's activities. . . . The laws . . . if not higher principles, may properly provide incentives for parents to fulfill their roles in the lives of their children."⁴² Unfortunately, such statutes are not helpful when the parents of the deviant child have nothing to fear because they have insufficient resources available with which to compensate the victim.

B. Contributing to the Delinquency of a Minor

While parental responsibility statutes punish parents for the criminal acts of their children, contributing to the delinquency of a minor (CDM) statutes punish anyone who has "caused" or "contributed" to the child committing an unlawful act; however, some statutes are hybrids, combining elements of both.⁴³ "Contributing to delinquency laws are explained as encompassing `the broad purpose . . . to stamp out juvenile delinquency at its roots."⁴⁴ Although anyone may be charged under a CDM statute, this Comment addresses only the statutes as applied to parents.

Colorado was the first state to enact a CDM statute.⁴⁵ Today, only a handful of states remain without a CDM statute.⁴⁶ Surprisingly, prosecutors have used CDM statutes infrequently.⁴⁷ One reason for the infrequent use is that crimes covered in the CDM statutes are punishable only as misdemeanors;⁴⁸ therefore, most police

41. See Geis & Binder, *supra* note 26, at 311.

42. Board of Educ. v. Caffiero, 431 A.2d 799, 807 (N.J. 1981).

43. See CAL. PENAL CODE § 272 (West 1997) (placing criminal responsibility on both parents and others who contribute to the delinquency of minors).

44. Geis & Binder, *supra* note 26, at 306 (quoting Commonwealth v. Jordan, 7 A.2d 523, 527 (Pa. Super. Ct. 1939)).

45. See *supra* note 31 and accompanying text.

46. See Geis & Binder, *supra* note 26, at 305.

47. See Davidson, *supra* note 15, at 25.

48. For example, Alabama's CDM statute states:

It shall be unlawful for any parent, guardian or other person to willfully aid, encourage or cause any child to become or remain delinquent Failure on the part of any parent, guardian or other person having custody of the child to cause such child to attend school as required by the compulsory attendance law

officers and prosecutors must concentrate their efforts on more serious crimes, punishable at least as felonies.⁴⁹ As a result, many crimes covered in CDM statutes have subsequently been converted to felonies.⁵⁰ For instance, activities that are more detrimental, such as aiding, abetting, or encouraging a minor to commit a felony, carry a gun to school, or deal drugs, are punishable as felonies.⁵¹ Nevertheless, these converted CDM statutes still have not been used sufficiently, considering the rising arrest levels of juvenile crime.⁵² Although some critics argue that prosecutors fear using these CDM statutes because they may be struck as unconstitutionally vague, most are written specifically enough to pass constitutional scrutiny.⁵³

Some criticize CDM statutes on the basis that they contain an inherent contradiction: while parents will be prosecuted for their children's acts, such as truancy or failure to obey a curfew, parents will not necessarily be criminally liable if their child commits murder.⁵⁴ But is this truly a contradiction, or merely an answer to other critics' complaints? It would be unconstitutional to hold a person criminally liable for the actions of another. CDM statutes do not hold parents criminally liable for their children's acts *per se*.⁵⁵ Instead, CDM statutes, like parental responsibility statutes, punish parents for their negligence in raising or controlling their child and not for the behavior of their child.⁵⁶

While it is true that a parent is more likely to be criminally charged under a CDM statute for the truancy of his child than for

shall be held to be encouraging, causing and contributing to the delinquency, dependency or need of supervision of such child.

ALA. CODE § 12-15-13(a) (1995). This violation is a misdemeanor and a person convicted under the statute is fined not more than \$500, sentenced to hard labor for up to 12 months, or both. *See id.* § 12-15-13(c).

49. *See Davidson, supra* note 15, at 25.

50. *See id.*

51. *See, e.g.,* OKLA. STAT. ANN. tit. 21, § 856 (West 1997).

52. *See Davidson, supra* note 15, at 25.

53. *See, e.g.,* *Big Eagle v. Andera*, 508 F.2d 1293, 1297 (8th Cir. 1975); *Jackson v. Ellington*, 316 F. Supp. 1071, 1074-75 (W.D. Tenn. 1970); *State v. McKinley*, 202 P.2d 964, 966 (N.M. 1949). *But cf. Entertainment Ventures, Inc. v. Brewer*, 306 F. Supp. 802, 820 (M.D. Ala. 1969) (holding that "[a] state . . . may not use a vague and imprecise [CDM] statute to protect its minors from . . . allegedly harmful expression.").

54. *See SOL RUBIN, CRIME AND JUVENILE DELINQUENCY: A RATIONAL APPROACH TO PENAL PROBLEMS* 38 (1958).

55. *See Davidson, supra* note 15, at 24.

56. *See id.*

his child's commission of murder, logic supports this outcome. Although parents may have little control over their child's singular act of murder, their child's truancy or failure to obey a curfew is more of a repetitive crime that parents may have an opportunity to control. Furthermore, parents have an inherent duty to supervise their children, which requires parents to stop their children from skipping school or from missing a curfew. On the other hand, parents cannot be punished for every crime that their child commits independently; there is arguably little a parent can do to prevent her child from committing murder. Therefore, CDM statutes punish parents based on a pattern of failing to affirmatively control their children, not on specific instances of bad conduct on the part of their children.

For example, under California's CDM statute, parents⁵⁷ can be arrested when their child is a suspect in a crime if they have knowingly failed to supervise or control the child.⁵⁸ Parents are given the opportunity to attend counseling as an alternative to prosecution.⁵⁹ The only parents who will be prosecuted are those who are unwilling to control their children, or those who lack the capacity to do so and also refuse to seek help.⁶⁰ Practically speaking, charges are dropped against parents who exhibit even minimal signs of an attempt to control their child's delinquent behavior.⁶¹ Indeed, California courts have refused to hold parents liable even when the children have committed egregious crimes.⁶²

So far, California's statute (the STEP Act) has been used to order one thousand parents to classes or counseling.⁶³ The STEP Act states, "[A] parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child."⁶⁴ This statute

57. The California statute also holds accountable "[e]very person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to [become delinquent]" CAL. PENAL CODE § 272 (West 1997).

58. *See id.*

59. *See id.*

60. *See, e.g., Williams v. Garcetti*, 853 P.2d 507, 514 (Cal. 1993) (stating that "a parent who makes reasonable efforts to control a child but is not actually able to do so does not breach the duty of control."). *See also infra* notes 144-60 and accompanying text discussing *Williams*.

61. *See supra* note 60.

62. *See supra* note 60.

63. *See Applebome, supra* note 29.

64. CAL. PENAL CODE § 272 (West 1997).

mandates a fine not exceeding \$2500, imprisonment for not more than one year, or both, or release on probation for a period not exceeding five years.⁶⁵ Similarly, Kentucky's CDM statute also offers a way for parents to escape liability if they make an attempt to control their child.⁶⁶ The commentary by the Kentucky Crime Commission suggests that "there must be a prior judicial finding of neglect, dependency or delinquency of the child" for a parent to be found liable.⁶⁷

C. Other Types of Statutes

1. Truancy Statutes

While parental responsibility statutes and CDM statutes will not be used to punish parents who have exercised some degree of control or supervision over their child, there are other statutes under which parents will be punished for the wrongful acts of their child, no matter what preventative measures the parent has taken. One example of such strict liability is statutes that punish parents when their child has skipped school.⁶⁸

Few people dispute the legitimacy of statutes holding parents criminally liable for contributing to chronic school truancy. For example, Maryland's compulsory public school attendance statute provides: "Each person who has under his control a child who is 6 years old or older and under 16 shall see that the child attends school or receives instruction as required by this section."⁶⁹ This statute imposes a fine not to exceed fifty dollars per absence or imprisonment for not more than ten days, or both.⁷⁰

But there are some truancy statutes that allow judges to consider failed parental attempts to encourage their children's school attendance. For instance, Florida's Compulsory School Attendance

65. *See id.*

66. *See* KY. REV. STAT. ANN. § 530.060 (Banks-Baldwin 1997). This statute, entitled "Endangering Welfare of Minor," states: "(1) A parent . . . is guilty of endangering the welfare of a minor when he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming a neglected, dependent or delinquent child. (2) Endangering the welfare of a minor is a Class A misdemeanor." *Id.*

67. *Id.*

68. *See* MD. CODE ANN., EDUC. § 7-301(c) (1989).

69. *Id.*

70. *See id.*

statute⁷¹ mandates that the superintendent institute criminal prosecution against parents when their child does not attend school and has no valid excuse. "A parent who refuses or fails to have a child who is under his or her control attend school regularly, or who refuses or fails to comply with the requirements . . . is guilty of a misdemeanor of the second degree . . ." ⁷² But if the court finds that the parent has made a diligent effort to "control and keep the child in school," the court will dismiss the criminal charges against the parent and will then send both parent and child for "counseling, guidance, or other needed services."⁷³

In one example of the punitive effect these statutes can have, a Baltimore judge sentenced a mother to ten days in jail when her daughter was found to be truant.⁷⁴ The mother had failed to attend several meetings scheduled with school officials.⁷⁵ Although truancy is also typically considered merely a misdemeanor, prosecutors have nevertheless used these statutes⁷⁶ to prosecute parents for their children's lack of school attendance.⁷⁷ "The goal in using educational neglect statutes is for schools and parents to jointly address a child's truancy, readmission after suspension/expulsion, or special education needs."⁷⁸

Despite these examples of well-designed and well-intentioned laws, prosecutors are still not sufficiently using them because the "crime" is generally punished merely as a low-level misdemeanor.⁷⁹ Prosecutors, burdened with large case loads, tend to prosecute felonies instead of misdemeanors.⁸⁰ Since many prosecutors have little time to prosecute misdemeanors, juvenile offenders will often continue to commit crimes until they reach a level where they draw

71. See FLA. STAT. ANN. § 232.19 (West 1997).

72. *Id.* § 232.19(6)(a).

73. *Id.*

74. See Geis & Binder, *supra* note 26, at 314 (citing *Teen's 101 Truant Days Costs Mom 10*, N.Y. TIMES (West Coast ed.), July 20, 1989, at A4).

75. See *id.*

76. See, e.g., ALA. CODE § 16-28-12 (1995); *id.* § 12-5-13 (1995); KY. REV. STAT. ANN. § 159.990 (Banks-Baldwin 1997).

77. See Davidson, *supra* note 15, at 25.

78. *Id.*

79. See *id.* (stating that "CDM statutes generally classify such parental actions as misdemeanors, diminishing police and prosecutor interest in pursuing actions under them").

80. See *id.*

public attention to themselves.⁸¹ “Ironically, parents are more likely to be subjected to legal proceedings resulting from their exercise of some deeply held political or religious objection to their children's school attendance than because of a callous disregard of a child's educational needs or school misbehavior.”⁸²

2. Possession of a Firearm Statutes

Another type of statute that holds parents strictly liable for the wrongful acts of their child is the firearm statute.⁸³ Under firearm statutes, the parent has direct involvement with the child's crime, since the parent somehow allowed the child access to the firearm.⁸⁴ The truancy statutes and parental responsibility statutes, on the other hand, address the parent's failure to stop the child from committing the crime.⁸⁵ In this sense, firearm statutes allow for direct prosecution of the parent for his or her own activities, whereas the other statutes permit prosecution of the parent for his or her inaction.

Responding to a series of fatal juvenile firearm incidents, in June 1989, Florida became the first state to enact adult liability legislation.⁸⁶ The law mandates safe storage of all firearms.⁸⁷ If a child gains access to a firearm, the adult owner is held liable. Florida subjects parents to a five-year prison term and fine of \$5000 if their child uses a gun that the child found in his or her home.⁸⁸ A parent violates this statute “by storing or leaving a loaded firearm within the reach or easy access of a minor . . . if the minor obtains

81. *See generally id.* at 29 (discussing the need for legislatures to provide the courts with the authority and resources to better deal with juveniles).

82. *Id.*

83. *See, e.g.*, FLA. STAT. ANN. § 784.05(3) (West 1997) (subjecting parents to a five-year prison term and a fine of up to \$5000 if their child uses a gun the child found in the home; the standard is one of culpable negligence); NEB. REV. STAT. § 28-1204.01(1) (1995) (providing that “[a]ny person who knowingly and intentionally does or attempts to sell, provide, loan, deliver, or in any other way transfer the possession of a firearm to a juvenile commits the offense of unlawful transfer of a firearm to a juvenile” and is guilty of a Class IV felony).

84. *See*, for example, *supra* note 83 for two statutes that illustrate the parents' direct involvement with the child obtaining a firearm.

85. *See supra* notes 1–4 and accompanying text.

86. *See* Denise Griffin, *Kids, Guns and Accidents: Taking Responsibility*, NCSL LEGISBRIEF, Sept. 1993.

87. *See* FLA. STAT. § 784.05(3) (1995).

88. *See id.*

the firearm and uses it to inflict injury or death upon himself or any other person.”⁸⁹ A parent who breaks this statute may be found guilty of a felony in the third degree and is subject to fines and imprisonment.⁹⁰ While there are few critics of statutes that punish parents for inattentiveness to their child's truancy, this Author predicts that even fewer will criticize statutes punishing parents for allowing children illegal access to their firearms given the risks inherent in such a precarious scenario.

3. Parental Appearance

Similar to the courts' application of CDM statutes,⁹¹ parental responsibility statutes may include a parental appearance mandate. Some statutes require very little action on the part of parents whose child has committed an illegal act. For example, a Kansas statute merely requires parents to show that they are being responsible parents by attending hearings after their child has already committed a crime.⁹² While some may consider this type of post-crime requirement a fair middle ground, it does not delve far enough into the crux of the problem. Parents, for fear of prosecution, may attend all their child's hearings yet take no further actions to control their child's behavior. Statutes need to go beyond this superficial level of parental commitment.

III. PROPONENTS *v.* OPPONENTS

Proponents of parental responsibility statutes make four main arguments: first, the courts have limited and unsatisfactory alternatives; second, helpful legislation is needed; third, parental responsibility statutes will save the government money by avoiding the expense of the child's extended incarceration; and fourth, parents need to take a larger role in attempting to control their delinquent

89. *Id.*; see also Geis & Binder, *supra* note 26, at 314; Griffin, *supra* note 86.

90. See FLA. STAT. ANN. § 784.05 (West 1997).

91. See *supra* notes 60–62 and accompanying text.

92. See KAN. STAT. ANN. § 38-1641 (1995). The title of this statute is: “Duty of parents and others to appear at all proceedings involving juvenile offender; failure, contempt,” and it provides: “Any person required by this act to be present at all juvenile proceedings who fails to comply, without good cause . . . may be proceeded against for indirect contempt of court” *Id.*; see also OR. REV. STAT. § 419C.570 (1995).

child's behavior.⁹³

First, the proponents of parental responsibility statutes argue that the courts' options for repeat juvenile offenders are limited and often unsatisfactory.⁹⁴ A judge frequently must either send the child home to the environment that enabled the criminal activity, or send the child to a juvenile delinquency program that is already overcrowded.⁹⁵ Seldom can the court find a program that has an immediate vacancy to accept the child for rehabilitation, and when a program can take the child, he or she is too soon returned to the same environment that helped to create the criminal conduct. Therefore, it follows that parental responsibility statutes must provide the court with an alternative it can rely upon.

Second, proponents of parental responsibility statutes contend that the increase of juvenile crime, and the seriousness of the crimes committed over the past few decades, demonstrate the need for alternative legislation.⁹⁶ One does not need to conduct extensive research to find statistics indicating an increase in juvenile crime over the past two decades.⁹⁷ Certainly one thing is clear to both proponents and opponents of parental responsibility statutes: the juvenile

93. See Hope Viner Samborn, *Kids' Crimes Can Send Parents to Jail*, A.B.A. J., Mar. 1996, at 28.

94. See Geis & Binder, *supra* note 26, at 304.

95. Approximately 75% of the nation's juvenile detention facilities are overcrowded. These institutions not only lack adequate bed space, but also healthcare and security or suicide control. *Report Finds Substantial Deficiencies Among Juvenile Confinement Facilities* (visited Sept. 29, 1997) <<http://ncjrs.org:71/0/4/2/2/condit.dos>> (citing DALE G. PARENT ET AL., CONDITIONS OF CONFINEMENT: JUVENILE DETENTION AND CORRECTIONS FACILITIES (1994)); see also Cahn, *supra* note 3, at 443 (citing OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEP'T OF JUSTICE, GUIDE FOR IMPLEMENTING THE COMPREHENSIVE STRATEGY FOR SERIOUS, VIOLENT, AND CHRONIC OFFENDERS 3 (1995)).

96. See Davidson, *supra* note 15, at 23 (stating that policymakers have been exploring legislative options for dealing with the increasing level of juvenile crime in the past decade).

97. See, e.g., Catherine Clements, Williams v. Garcetti: *The Constitutionality of Holding Parents Criminally Liable for the Acts of Their Children*, 25 GOLDEN GATE U. L. REV. 417, 417 (1995). See generally S. Randall Humm, Comment, *Criminalizing Poor Parenting Skills as a Means to Contain Violence by and Against Children*, 139 U. PA. L. REV. 1123 (1991); *The Impending Youth Crime Wave Can Be Averted*, FED. NEWS SERV. CONG. HEARING TESTIMONIES, July 18, 1996, available in 1996 WL 10828074 [hereinafter *Impending Youth Crime*]; Joseph N. De Roismes, III, *Parental Responsibility: Let the Punishment Fit the Crime*, INT'L MUN. LAW. ASS'N NEWSL., Summer 1996 (on file with the *Stetson Law Review*); *Crossfire* (CNN television broadcast, May 9, 1996). But see JEROME G. MILLER, SEARCH AND DESTROY 40-47 (1996) (stating that proportionally there is not more juvenile violent crime today).

crime of today is more dangerous to society than the juvenile crime of previous generations.⁹⁸ Nevertheless, this increase is not at the foundation of the juvenile crime issue that legislators need to address. Regardless, whether juvenile crime is increasing or not, legislators should work toward ending it.

Third, proponents of parental responsibility statutes assert that these statutes will save money.⁹⁹ A system that attacks juvenile crime using parental responsibility statutes supplemented with multi-faceted social programming¹⁰⁰ will save money.¹⁰¹ Parental responsibility statutes are not designed to be reactive. Indeed, parental responsibility statutes are not enacted to punish parents for their failure to control their child's conduct, but are enacted to encourage parents to try to control their children.¹⁰² Often, through simple attempts to improve their child's behavior, parents avoid punishments a court might order pursuant to parental responsibility statutes. Most importantly though, this combination will work to decrease juvenile crime. Fines and other punishments the courts impose upon a finding of parental "negligence" are designed to be avoided, even through the most minimal attempts by parents to improve their child's behavior. These statutes, in combination with other social programs such as increased financial support and parenting skills classes, will save the government money and benefit the community.¹⁰³

Finally, proponents argue that parents need to take a larger role in attempting to control their delinquent child's behavior.¹⁰⁴ The true assumption underlying parental responsibility statutes is not that parents can absolutely control their child's conduct, but merely that they should make a more than negligible attempt at it.¹⁰⁵ The

98. See generally *Impending Youth Crime*, *supra* note 97.

99. See *infra* note 126 and accompanying text for a discussion of the potential savings.

100. See *infra* notes 189–228 and accompanying text for examples of programs that support parental responsibility statutes.

101. See Davidson, *supra* note 15, at 24. Not only will it save money through the decrease in juvenile crime, but society will also save money due to the decrease in charges being brought against juveniles (since many juveniles will be rehabilitated). See *id.*

102. See, e.g., CAL. PENAL CODE §§ 186.20–28 (West 1997).

103. See Davidson, *supra* note 15, at 24.

104. See Cahn, *supra* note 3, at 410 (stating that "by holding parents responsible for their child's actions, these laws seek improved parental control over their child").

105. *But see id.* (stating "[t]he underlying and highly questionable assumption of [pa-

name “parental responsibility statute” is somewhat of a misnomer because parents are not held responsible for the acts of the child. Instead, parents are held responsible for their negligence because they failed to even attempt to control their child's conduct. Although all parents may argue that they attempted to control their children, the test is really whether they have failed to do as much as the state deems reasonable. Parental responsibility statutes developed with the basic premise that

parents can and do affect the behavior of their children. A breach of the parental duty is established according to the actions or characteristics of the child. The fact presumed is the parent's influence, or lack thereof, and the fact to be proven is the child's behavior or condition. While the connection between the two is not always uniform, the presumption of the relationship is rational.¹⁰⁶

As an extension of the idea that parents need to take a larger role in their child's behavior, Professor Naomi Cahn¹⁰⁷ suggests programs such as those designed to keep fathers in the home.¹⁰⁸ These programs address the concern that the lack of a father-figure instigates juvenile crime.¹⁰⁹ But the father-figure need not necessarily be the biological father to make a positive impact. “[H]aving at least two parental figures — neither of whom may be a father — correlates with a decrease in delinquent behavior.”¹¹⁰ These programs should not be used in place of parental responsibility statutes, but instead, in concert with them. Indeed, “[j]uvenile delinquency is both a social and an individual problem. Focusing on only one aspect precludes an effective understanding of the problem, and also detracts from the search for realistic solutions. Consequently, solu-

rental responsibility statutes] is that parents can control their child”).

106. Humm, *supra* note 97, at 1135 (citing *State v. Hamilton*, 501 A.2d 778, 779 (Del. 1985), in which the court stated that in Delaware “statutes and the case law imposing liability presume the obvious, that in our culture, the parent of a child, with whom that child resides, has authority and control over the child”).

107. Author of *Pragmatic Questions About Parental Liability Statutes*, see *supra* note 3, and Associate Professor of Law, George Washington University Law School.

108. See generally Cahn, *supra* note 3.

109. See *id.* at 420–21 (discussing DAVID BLANKENHORN, FATHERLESS AMERICA: CONFRONTING OUR MOST URGENT SOCIAL PROBLEM 75 (1995) (tracing juvenile problems to a lack of fathers)).

110. *Id.* at 424 (referring to a study demonstrating that children from fatherless homes are more prone to become involved in crime).

tions that focus on decreasing delinquency need to focus on prevention and rehabilitation, rather than confinement."¹¹¹ Parental responsibility statutes are merely one weapon in the arsenal to attack juvenile crime, but parental responsibility statutes will fail without supportive social systems. Thus, to truly deal with the high costs of juvenile crime, parental responsibility statutes must be implemented to work with social programs directed at the family as a whole, child and parents. Howard Davidson, Director of the ABA Center on Children and the Law, advocates parental responsibility because

parents whose actions or indifference contribute to their children's violent and destructive behavior must be held to a legally appropriate standard of responsibility, with civil and criminal sanctions imposed where warranted. Moreover, parents should be educated about these sanctions and parental responsibility statutes applied long before children engage in activities that are seriously harmful to others.¹¹²

Parental responsibility statutes do not hold parents responsible for their child's misdeeds. Rather, they hold parents responsible for parental action or inaction that was directly responsible for the delinquency. This form of accountability is similar to the cases where bartenders are held liable for serving drinks to an intoxicated person who then drives intoxicated and injures someone.¹¹³ Likewise, parental responsibility statutes are a way of holding a person responsible for neglecting to act to control a problem.

Opponents of parental responsibility statutes proffer some valid criticism. Some of the more common arguments against parental responsibility statutes include the following: first, parental responsibility statutes impose class-based ideals on families that cannot meet those goals; second, parental responsibility statutes disproportionately affect women; third, parental responsibility stat-

111. *Id.* at 427.

112. Davidson, *supra* note 15, at 23.

113. For examples of cases in which the provider of alcohol is held liable for supplying drinks to an intoxicated individual, see *Waynick v. Chicago's Last Dep't Store*, 269 F.2d 322 (7th Cir. 1959); *Paula v. Gagnon*, 146 Cal. Rptr. 702 (Cal. 1st Dist. Ct. App. 1978); *Davis v. Shiappacosse*, 155 So. 2d 365 (Fla. 1963); *Prevatt v. McClennan*, 201 So. 2d 780 (Fla. 2d Dist. Ct. App. 1967); *Rappaport v. Nichols*, 156 A.2d 1 (N.J. 1959); *Hutchens v. Hankins*, 303 S.E.2d 584 (N.C. Ct. App. 1983).

utes will only further burden parents who are already overwhelmed and possibly decrease the insufficient amount of time these parents spend with their children; fourth, the costs of prosecuting parents with parental responsibility statutes could be better spent on supporting parents with programs to empower and enable them; fifth, parental responsibility statutes are unconstitutional since individuals, not their parents, are the ones responsible for their crimes, and further, parental responsibility statutes are unconstitutionally overbroad and vague; and finally, parental responsibility statutes are difficult to enforce because it is difficult for the state to determine when a parent has been negligent.¹¹⁴

First, a common argument against parental responsibility statutes is that they “impose class-based expectations on families that cannot meet those expectations.”¹¹⁵ Opponents contend that parental responsibility statutes manipulate the legal system by forcing lower-income families to conform to the standards of good parenting set by middle-class America.¹¹⁶ Not only may this be an infringement on a family's prerogative to raise its children a certain way, but it might also demand parents expend resources they do not have. For instance, suppose lower-income parents notice their child is getting into trouble. Parental responsibility statutes might demand supervision of the child, while the parents' job schedules do not allow for this constant supervision. How can such parents conform to these laws without losing their jobs?

114. See Cahn, *supra* note 3, at 410–11 (noting that “the standard of conviction is generally negligence. . . [although, as an affirmative defense, the parent can allege that she acted reasonably]”); Davidson, *supra* note 15, at 27 (explaining the “slippery slope” theory which suggests that authorities could carry the ambiguity of parental negligence statutes too far and prosecute parents when their “teenage children purchase cigarettes, consume alcohol, or engage in consensual sexual activity”); Parsley, *supra* note 26, at 448–49 (describing the problem with ambiguous statutory language); Michael Dizon, *Parental Criminal Liability Plans Walk a Fine Line*, CHI. TRIB., June 19, 1996, Metro Chicago sec., at 1 (quoting a parallel concern by an executive director of the American Civil Liberties Union's Oregon chapter); Ian MacLeod, *Make Mom and Dad Pay; Some Want Parents Punished for Junior's Crimes*, EDMONTON J., May 19, 1996, at G2 (suggesting that the key to a successful parental responsibility statutes is its clarity so that the courts can effectively determine whether a parent is indeed negligent); Samborn, *supra* note 93 (commenting that poorly written parental responsibility statutes force judges to make parenting decisions concerning other people's children).

115. Cahn, *supra* note 3, at 401 (citing LINDA GORDON, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE — BOSTON 1880–1960* (1988)).

116. See Michelle L. Maute, Note, *New Jersey Takes Aim at Gun Violence by Minors: Parental Criminal Liability*, 26 RUTGERS L.J. 431, 447–50 (1995).

The previous example contemplates a two-parent household. Often, low-income families are further burdened by their lack of a male wage-earner. These laws “tend to have a disproportionate impact on single-parent households, further penalizing poor, often African-American, women who are already over-burdened and who are acting in the most responsible manner of which they are capable, and yet who cannot meet middle-class defined parenting norms.”¹¹⁷ Therefore, these concerns must be addressed by allowing judges to consider the parents' circumstances when applying parental responsibility statutes. Additionally, these statutes must be accompanied by social resources providing support programs, such as parenting classes, which must be accessible to everyone with need.

Second, opponents further argue that parental responsibility statutes disproportionately affect women,¹¹⁸ although they may not be intentionally targeted to have such an effect.¹¹⁹ If the father-figure leaves the household or was never part of it, it is the mother who is subject to prosecution under the parental responsibility statutes because she is the one the statutes regard as negligent in failing to control her child.¹²⁰

Third, many parents act responsibly and desire to be good parents, yet they lack the resources to properly manage their children. Opponents argue that parental responsibility statutes impose fines and imprisonment on parents who already have problems controlling their child in large part due to their financial shortcomings and

117. Cahn, *supra* note 3, at 415–20 (citing Frank E. Harper, *To Kill the Messenger: The Deflection of Responsibility Through Scapegoating (A Socio-Legal Analysis of Parental Responsibility Laws and the Urban Gang Family)*, 8 HARV. BLACKLETTER J. 41, 55 (1991) (arguing that parental responsibility laws which target gang activity fall most heavily on poor, Latina, and African-American mothers)); *see also* Applebome, *supra* note 29; Maute, *supra* note 116, at 449–50.

118. *See* Harper, *supra* note 91, at 59 (stating: “Mothers of gang members are predominantly poor Latina and Black women, many of whom are single parents, who live in low-income, drug- and crime-infested communities.”).

119. *See, e.g.*, Cahn, *supra* note 3, at 418–20.

120. Along the same lines, opponents argue that the parents of children in gangs may be rightfully afraid of disciplining their children. *See* Sharon A. Ligorsky, Williams v. Garcetti: *Constitutional Defects in California's “Gang Parent” Liability Statute*, 28 LOY. L.A. L. REV. 447, 466 (1994).

lack of being physically proximate to the child.¹²¹ Also, opponents of parental responsibility statutes argue that these statutes will only further burden such parents and possibly decrease the already insufficient amount of time the parents spend with their children.¹²² They argue that instead, parents need to be supported to create more opportunities for them to control their child's behavior.¹²³

Fourth, opponents contend that the costs expended in prosecuting parents could be better spent on supporting parents with programs to empower and enable them to provide more helpful guidance to their children.¹²⁴ Many suggest implementing supportive programs such as parenting classes, day-care, home economics, home health, and others designed specifically to help these parents.¹²⁵ Studies have shown that the cost of implementing and maintaining support programs is less than what it would cost to eliminate such programs and simply deal with criminals as they commit crimes.¹²⁶

Fifth, the American Civil Liberties Union has argued that these laws are unconstitutional since individuals are responsible for their crimes, not their parents.¹²⁷ The ACLU has also asserted that these statutes are unconstitutionally vague.¹²⁸ Further, the ACLU has

121. See Cahn, *supra* note 3, at 445 n.67. The ACLU argued that parental responsibility statutes threaten to "exacerbate the problems in the family by splitting up mother and child." Lawrence Hammack, *Ruling Curbs Curfew: Parental Control Clause Too Vague, Judge Finds*, ROANOKE TIMES & WORLD NEWS, Aug. 25, 1995, at A1; cf. Davidson, *supra* note 15, at 24 (discussing "good kids" being negatively influenced due to "a lack of adequate supervision of and attention paid to children when both parents are working full time").

122. See *supra* note 121.

123. See *supra* note 121.

124. See Davidson, *supra* note 14, at 24 ("Imagine how much less delinquency there might be if effective and low-cost or free parent education, counseling, and parent-child mediation services were easily available through every public school system, community health program, and/or public social service agency.").

125. See *id.*

126. See Lawrence J. Schweinhart et al., *Preschool & Home Visit Programs Cut Crime and Save Money* (visited Sept. 11, 1997) <<http://www.kidscampaigns.org/New/crimemats2.html>> (stating: "Preschool and home visits produced dramatic cost savings and prevented \$148,000 in crime costs alone for each child served."). See also *infra* notes 208-11 and accompanying text for more information about such programs.

127. See Cheri Collis, *When Parents Pay for Their Children's Mistakes*, STATE GOV'T NEWS, June 1990, at 20-21; Meredith, *supra* note 6; see also Clements, *supra* note 97, at 417-19 (discussing the ACLU's opposition to the constitutionality of a California statute holding parents criminally liable for the criminal acts of their children).

128. See Meredith, *supra* note 6; A. Dale Ihrie III, Comment, *Parental Delinquency:*

criticized these laws as being “overbroad, violative of substantive due process, and [as] constitut[ing] cruel and unusual punishment.”¹²⁹ Nevertheless, even the ACLU concedes that parental responsibility statutes “generally withstand constitutional scrutiny, notwithstanding the creative arguments of scholarly commentators and advocates. . . . While the constitutional arguments represent an avenue for challenging the [parental responsibility statutes], they have generally been unsuccessful.”¹³⁰

Although generally parental responsibility statutes have withstood constitutional scrutiny, there are isolated incidents of courts striking down parental responsibility statutes. In *State v. Akers*,¹³¹ the Supreme Court of New Hampshire struck down a parental responsibility statute because it failed to specify an act or omission by the parents that would impose criminal liability.¹³² The court held that the statute violated due process because it, in effect, criminalized the status of parenthood.¹³³ This decision implies that if a parental responsibility statute provides a specific act or omission upon which to base parental liability for the criminal acts of their children, the statute would withstand constitutional scrutiny. Most courts addressing parental responsibility statutes have found that “[a] duty to act can be created with liability resulting from nonperformance. . . . The state imposes an affirmative duty on the parent to provide guidance, which if ignored leads to criminal sanctions. The source of this duty is based on the relationship of the parent to the child.”¹³⁴ Therefore, properly written parental responsibility statutes are constitutional and will withstand judicial scrutiny.¹³⁵

Next, opponents note that parental responsibility statutes are difficult to enforce because it is difficult for the state to determine

Should Parents Be Criminally Liable for Failing to Supervise Their Children?, 74 U. DET. MERCY L. REV. 93, 94 n.9 (1996) (citing Penelope D. Clute, Comment, “Parental Responsibility” Ordinances — Is Criminalizing Parents When Children Commit Unlawful Acts a Solution to Juvenile Delinquency?, 19 WAYNE L. REV. 1551, 1561–66 (1973)).

129. Cahn, *supra* note 3, at 412, 415; *see also* Ihrle, *supra* note 128, at 94.

130. Cahn, *supra* note 3, at 412, 415; *see also* Ihrle, *supra* note 128, at 94.

131. 400 A.2d 38 (N.H. 1979).

132. *See id.*

133. *See id.* at 40.

134. Humm, *supra* note 97, at 1145 (citations omitted).

135. *See id.* at 1126.

when a parent has been negligent.¹³⁶ After all, anytime a juvenile is arrested, some slight degree of negligence may be attributable to the parents. "The most glaring shortcoming of parental responsibility laws has been their unwarranted assumption of parental omnipotence."¹³⁷ All parents could theoretically be held responsible for not observing and controlling their child twenty-four hours every day. So where should the state draw the line? At what point can the state determine that parents have not met their burden?

Perhaps legislative bodies are willing to enact parental responsibility statutes, despite their nebulous parameters, because society is in such fear of juvenile crime that communities give legislators carte blanche to deal with the problem. The cost of this strategy is the loss of some of the inherent autonomy in the traditional family unit:

Parental responsibility statutes must thus be evaluated within the confines of the tension between the state's duty to respect the integrity of the family and its duty to protect children and the best interests of society. In effect, parental responsibility laws represent a legislative judgment that the state's interests transcend those of parent or family. The motivating factor leading to this conclusion in most circumstances is frustration with crime and violence involving the nation's youth.¹³⁸

According to Howard A. Davidson, the Director of the ABA Center on Children and the Law, this strategy may be a quick-fix solution that does not address the underlying problems within the child's family.¹³⁹ Further, the criticisms leveled against parental responsibility statutes only maintain their legitimacy when they are applied without support programs.¹⁴⁰ Without supplemental support

136. See *Williams v. Garcetti*, 853 P.2d 507, 515–16 (Cal. 1993); *Williams v. Reiner*, 2 Cal. Rptr. 2d 472, 486–88 (Cal. 2d Dist. Ct. App. 1991); Humm, *supra* note 97, at 1141. But see *Clements*, *supra* note 73, at 426–28, where the author discusses the California Supreme Court's analysis of the terms "supervision and control" in a California statute holding parents criminally liable for the criminal acts of their children. The court held that the statute provided sufficient specificity to determine when a parent has violated it. See *Reiner*, 2 Cal. Rptr. 2d at 486–88.

137. Humm, *supra* note 97, at 1160.

138. *Id.* at 1129; see *supra* notes 131–34 and accompanying text for a discussion of a parental responsibility statute that a court struck down as unconstitutional.

139. See *Meredith*, *supra* note 6.

140. See *generally* Davidson, *supra* note 15, at 28–29.

programs, most of the foregoing criticism of parental responsibility statutes is well deserved. But arguments against parental responsibility statutes lose their foundation when the parental responsibility statutes are enacted with supplemental social programming aimed at assisting parents who want to take advantage of the support.

The difficulty in creating statutes and programs that will have an impact on juvenile crime lies in the way people think about the state in relation to the family. On one hand, many liberals disagree with parental responsibility statutes because they do not like the extension of vicarious liability to parents whose children caused injury.¹⁴¹ Furthermore, many liberals also fear that the state may impose standards that discriminate against lower-income families by failing to consider cultural norms and the financial realities of such families.¹⁴² On the other hand, many conservatives dislike parental responsibility statutes because these statutes allow the state to interfere with the familial relationship.¹⁴³ In addition, most people, whether liberal or conservative, are concerned about how a sufficient warning to parents would be determined (before the state imposes criminal liability). Moreover, there is always the haunting question of how to deal with a child who is simply uncontrollable.

Perhaps the most famous case concerning the clash of the proponents' and opponents' arguments is *Williams v. Garcetti*.¹⁴⁴ The parental punishment provision of California's contributing to the delinquency of a minor statute was added to its laws in 1988.¹⁴⁵ "In 1987, . . . 387 people were killed on the streets of Los Angeles alone as a consequence of youth gang activity."¹⁴⁶ During this time, there was a growing concern that parents of delinquent children were apathetic toward the crimes their children were committing.¹⁴⁷ "[P]rosecutors lobbied for the adoption of Parental Responsibility Law because they believed that it would divide children and gangs."¹⁴⁸

141. See De Roismes, *supra* note 97, at 2. See also Cahn, *supra* note 3, at 410–11, for a discussion of imputing liability to parents for their children's crimes.

142. See Cahn, *supra* note 3, at 415–20; see also Applebome, *supra* note 29.

143. See Weinstein, *supra* note 35, at 881.

144. 853 P.2d 507 (Cal. 1993) (in bank).

145. California lawmakers were responding to the rash of increasingly violent juvenile criminal activity. See CAL. PENAL CODE § 186.21 (West 1997).

146. Humm, *supra* note 97, at 1131 (citation omitted).

147. See *id.*

148. Parsley, *supra* note 22, at 446–47.

California attempted to lessen its juvenile crime problem through the amendment of the California Penal Code section 272, which prohibited contributing to the delinquency of a minor.¹⁴⁹ The 1988 amendment added a provision to the statute stating: "For purposes of this section, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child."¹⁵⁰ Thus, California law punishes parents if they breach their parental duty of "reasonable care, supervision, protection, and control" and that breach results in their child's delinquency.¹⁵¹ A parent who violates this statute is guilty of a misdemeanor.¹⁵² Contemporaneously, the California Legislature added a chapter to the Penal Code that set up programs for parents who were charged under section 272.¹⁵³

Ms. Williams was the first parent to be charged for violating section 272 when the police discovered gang paraphernalia throughout her apartment.¹⁵⁴ Despite all the evidence the police found of Ms. Williams encouraging her son's illegal behavior,¹⁵⁵ the charges against Ms. Williams were eventually dismissed when she provided proof that she had taken her son to counseling pursuant to the Parental Diversion Program.¹⁵⁶

Notwithstanding the minimal burden that parents must overcome to convince prosecutors to drop their charges, the ACLU sued on behalf of the taxpayers of Los Angeles County seeking injunctive and declaratory relief stating that § 272 was unconstitutional.¹⁵⁷ The

149. See CAL. PENAL CODE § 272 (West 1997).

150. *Id.* Section 272 provides that violation of the statute can result in a fine of up to \$2500 or by imprisonment for up to one year, or both. See *id.*

151. See *id.*

152. See *id.*

153. See CAL. PENAL CODE §§ 1001.70-.75 (West 1997). This chapter is titled "Parental Diversion" and "is intended for parents charged with 'contributing to the delinquency' of their child pursuant to the Amendment." Ligorsky, *supra* note 120, at 449; see *Williams v. Garcetti*, 853 P.2d 507, 508 (Cal. 1993).

154. See *Clements*, *supra* note 97, at 420. Ms. Williams' 17-year-old son was a suspect in a gang rape. See *id.* When the police searched the Williams home, they found walls filled with graffiti, "a photo album of family members holding guns and making gang signals, and a picture of an eight-year-old's birthday cake with the child's gang name written in blue icing." *Id.*

155. See Robert W. Welkos, *Mother Seized Under Gang Law Cleared*, L.A. TIMES, June 10, 1989, Metro Desk, at 1.

156. See *id.*

157. See *Williams*, 853 P.2d at 509 (stating: "The grounds of the complaint were that the amendment was unconstitutionally vague, overbroad, and an impingement on

California Supreme Court held that the amendment was not unconstitutionally vague, either under the California or Federal Constitution, because it imposes criminal sanctions on parents only if they engage in conduct that so grossly departs from the standard of care that it amounts to criminal negligence.¹⁵⁸ Thus, the court interpreted the statute as providing that parents have breached their duty of “supervision” and “control” when the parents “know or should know that their child is at risk of delinquency and that they are able to control the child.”¹⁵⁹ Consequently, parents who take reasonable steps to control their child and are not successful will not be charged under § 272. Finally, the court held that § 272 did not violate principles of due process, stating that even though parents have a right to raise their children, “a statute that seeks to regulate parental behavior is not overbroad per se.”¹⁶⁰

But even when legislators enact parental responsibility statutes that pass vagueness challenges, critics argue that parental responsibility statutes unconstitutionally infringe upon parents' personal liberties.¹⁶¹ Yet our society endorses as constitutional a variety of well-established laws that similarly regulate the way in which parents raise their children. For similar infringements to personal liberties, consider compulsory education statutes¹⁶² where the state tells parents: “You may raise your child as you see fit; however, you may not raise your child without providing an education that will enable the child to function adequately in society.” In other words, parents do not have the right or the freedom to create a burden to society.

In *Wisconsin v. Yoder*,¹⁶³ the Supreme Court held that the Amish were allowed to home-school their children and thereby avoid the State's curriculum.¹⁶⁴ In this way, the children would not be a burden to society because they would be able to function in their

the right of privacy.”).

158. *See id.* at 509–14. The court added that the statute merely “incorporates the definition and the limits of a parental duty . . . that has long been a part of California tort law.” *Id.* at 514.

159. *Id.* at 512.

160. *Id.* at 516. See also Clements, *supra* note 97, at 432–33 for a discussion of the court's analysis of the overbreadth argument in *Williams*.

161. *See* Humm, *supra* note 97, at 1142–44.

162. *See id.* at 1139–40.

163. 406 U.S. 205 (1972); *see* Parsley, *supra* note 22, at 459–72.

164. *See Yoder*, 406 U.S. at 236.

community.¹⁶⁵ In addition, when children are home-schooled, the parents must nevertheless meet certain criteria set up by the state to ensure that the child is getting a proper education — in fact, the children are required to take certain tests at various intervals to prove that their teachers are adequately meeting each child's educational needs.¹⁶⁶ Similarly, parental responsibility statutes send the message that parents have freedom to raise their child as they see fit; but if the child becomes a burden to society, and the parents are contributing to the child's unlawful behavior or are not attempting to prevent their child from becoming such a burden, the parents can be held criminally responsible.

Curfew laws are another example of compulsory laws that limit parents' right to raise their children as they see fit.¹⁶⁷ While parents should have a certain amount of freedom to raise their children in the manner they choose, society has decided to limit this freedom to protect the community.

While opponents' arguments against parental responsibility statutes may appear powerful, their focus is misdirected. Rather than opposing parental responsibility statutes, people should assist in the development of social programs to supplement parental responsibility statutes and increase their effectiveness. Those who are concerned about the juvenile crime problem should expend their energies productively with a focus on creating, developing, and supporting social programs that will prove most effective in helping to empower parents while proving cost-effective for society. The process of developing the support programs that will supplement parental responsibility statutes is where all the truly helpful yet technical and complicated work lies.

165. *See id.* at 234.

166. *See id.* at 213. "There is no doubt as to the power of a State, having a high responsibility for education of its citizens, to impose reasonable regulations for the control and duration of basic education." *Id.*; *see also* Humm, *supra* note 97, at 1128 ("courts have held consistently that the primary responsibility for child care rests with the parents themselves, and, with the exception of abuse or severe neglect, they have been unwilling to scrutinize any particular style of parenting"); *cf.* Ginsberg v. New York, 390 U.S. 629, 639 (1968) (holding that the primary responsibility over children belongs to parents); *Pierce v. Society of Sisters*, 268 U.S. 510, 534 (1925) (stating that there is a parental interest in a child's intellectual development).

167. *See, e.g.*, IND. CODE. ANN. § 31-6-4-2 (West 1996). Curfew laws are usually enacted through ordinances. *See* Bykofsky v. Borough of Middletown, 401 F. Supp. 1242 (M.D. Pa. 1975) (upholding the constitutionality of a curfew ordinance), *aff'd*, 535 F.2d 1245 (3d Cir. 1976).

If well-designed support programs were implemented, class, gender, or marital status would no longer be issues. Parents who believed that they did not have time to spend dealing with their children would find time as programs supporting after-school activities free up their time to attend programs including parenting classes. In addition, the costs of implementing these programs would be lower than the costs society bears for incarcerating a fraction of the programs' attendees. Finally, most courts addressing this issue have upheld parental responsibility statutes against vagueness and overbreadth challenges.¹⁶⁸ In essence, with proper social programs in place, the underlying criticisms of parental responsibility statutes would be addressed and possibly eliminated.

IV. VARIETIES OF PARENTAL RESPONSIBILITY STATUTES

A. Band-Aid Statutes

Many statutes have been labeled “band-aid” statutes in this Comment because they seem to be of a quick-fix variety, and do not truly address the problem; they are more reflexive than proactive. These statutes fall short of their potential positive impact because they are used without the necessary support programs that would provide the foundation upon which a more effective statute could be built. While these statutes appear to be a step toward a better combination of statutes and social support programs, when enacted by themselves, their impact can be negative. These statutes give the appearance of working, but the problem persists and worsens as time passes. “No one disputes the benefits of forcing parents to attend court hearings or counseling sessions. But many [people] say excessive fines and parent imprisonment is more likely to hurt families.”¹⁶⁹

Examples of band-aid statutes can be found in Arizona,¹⁷⁰

168. See Parsley, *supra* note 26, at 451–55.

169. El Nasser & Moss, *supra* note 7.

170. See ARIZ. REV. STAT. ANN. § 8-235 (West 1996). The Arizona statute states: “A parent . . . shall exercise reasonable care, supervision, protection and control over the . . . minor child. . . . The court may order a parent or guardian to pay the cost of any counseling, treatment or education program ordered.” *Id.* The court may impose a fine of up to \$1000, imprisonment of up to or not more than thirty days, or the court may order the child and the parent to perform community service together. *See id.* “[T]he court may order the parent . . . to participate in a diversion program . . . to per-

Ohio,¹⁷¹ and Wyoming.¹⁷² Such statutes require parents to pay a fine or a cash bond for counseling without providing any alternative for low-income parents.¹⁷³ Thus, these statutes appear to provide a solution while ignoring the real problem.¹⁷⁴ Imagine a parent who observes her child becoming increasingly involved in at-risk behavior. If the parent is a low-income, single parent who needs to work to support her family, how can she get the help she needs?¹⁷⁵

form community service or to attend and successfully complete a program of counseling, treatment or education. If the terms and conditions of the diversion order are successfully completed, the court shall dismiss its finding against the parents." *Id.*

171. See OHIO REV. CODE ANN. § 2151.411 (Banks-Baldwin 1996). Under the Ohio statute:

if the parent . . . was notified prior to the adjudication hearing of the provisions of this division and of the possibility that the provisions may be applied to the parent, and if the court finds at the hearing that the parent has failed or neglected to subject the child to reasonable parental control and authority and that that parent's failure or neglect is the proximate cause of the act or acts of the child upon which the delinquent child adjudication is based, the court may require that parent to enter into a recognizance with sufficient surety, in an amount of not more than [\$500], conditioned upon the faithful discharge of the conditions of probation of the child. If the child then commits a second act and is adjudicated a delinquent child for the commission of the second act or violates the conditions of probation and if the court finds at the hearing that the failure or neglect of a parent of the child . . . is the proximate cause of the act or acts of the child upon which the second delinquent child adjudication is based or upon which the child is found to have violated the conditions of his probation, the court may declare all or a part of the recognizance forfeited.

Id. If a parent is charged under this statute, she or he may have to provide a \$500 bond and could be found guilty of contempt of court. *See id.* The court may also mandate counseling and other support. *See id.*

172. See WYO. STAT. ANN. § 14-6-244 (Michie 1996). Wyoming's parental liability statute, entitled "Parental liability for failure to exercise reasonable control and authority," states: "A parent or guardian having custody of a child shall exercise such parental control and authority over the child as is reasonably necessary to prevent the child from engaging in delinquent acts." *Id.* If the parent has failed or neglected to reasonably control the juvenile, and "such failure or neglect is the proximate cause of" the crimes the juvenile committed, the court may place the child on probation and require the parent to pay a bond of up to \$500. *Id.* If the child commits another delinquent act or if the state finds the child to be in contempt of court, the parent will forfeit the bond. *See id.*

173. *See supra* notes 170–72.

174. Indeed, low-income families probably suffer the most from not being able to continuously supervise or control their children because both parents (or the one parent, as in most cases) have to work full-time in order to provide basic necessities. *See infra* notes 190–206 and accompanying text for a discussion of financial support programs for low-income families.

175. How can she afford to leave her younger children to attend classes? How can she afford to pay for these classes? Are there any classes offered that she can reasonably

Another example of a band-aid statute can be found in Missouri. Missouri's statute provides:

A person commits the crime of endangering the welfare of a child in the second degree if [he or she is] legally charged with the care or custody of a child less than seventeen years old, [and] recklessly fails or refuses to exercise reasonable diligence in the care or control of such child to prevent [the child from committing an unlawful act].¹⁷⁶

This statute is poorly written because it is unnecessarily vague regarding what is “reasonable diligence.” Moreover, it does not mention the availability of support or guidance for parents who want help in controlling their children.¹⁷⁷ Thus, once again, while seeming to provide a “fix” to the juvenile delinquency problem, this statute is only helpful in appearance because it provides little to truly address the problem of juvenile crime.

These band-aid statutes miss the target because, even if a deterrent such as jail time or a possible fine helps instigate better parenting, many economic and social factors would block parents from actually improving their relationship with their children.¹⁷⁸ Once again, similar to attacking a disease by providing a “cocktail” of cures, these statutes must be accompanied by some support programming to parents who desire to improve their impact on their child's behavior.

B. Synergy Statutes

“Synergy” denotes taking pieces that individually add up to “X,” yet when combined add up to greater than “X.” Some statutes can be labeled synergy statutes. The idea is again similar to what made Dr.

commute to?

176. MO. REV. STAT. § 568.050 (1996). “Endangering the welfare of a child in the second degree is a class A misdemeanor unless the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.” *Id.*

177. See *supra* notes 114–26 and accompanying text for a discussion of why it is crucial to have these support programs operating before enacting parental responsibility statutes.

178. See Davidson, *supra* note 15, at 24 (discussing how low-income families face economic, social, and psychological pressures that may limit their ability to control their children despite their desire to avoid jail and fines).

David Da-i Ho successful in his attack on the AIDS virus.¹⁷⁹ These statutes are not merely vindictive or political attempts to say “the buck stops here,” but instead, work in concert with a social support system that offers help to those with legitimate needs. Although these statutes do not necessarily strive far enough in applying the support programming that might be necessary for many parents, they at least take into account the economic reality of many parents who cannot afford fines and time away from their other responsibilities.¹⁸⁰ In addition, these statutes consider the parents' good-faith attempts to improve the behavior of the child, even if those attempts were fruitless.¹⁸¹ In other words, while these statutes are not sufficient by themselves, they are superior to many statutes that do not take parents' economic and social circumstances into account and that do not provide any support for well-intentioned parents lacking the means to help their families.

179. See Gorman, *supra* note 20.

180. See Davidson, *supra* note 15, at 24.

181. See *supra* notes 57–67 and accompanying text.

Colorado,¹⁸² Louisiana,¹⁸³ and Oregon¹⁸⁴ have synergy stat

182. See COLO. REV. STAT. ANN. § 19-2-703 (West 1996). For example, Colorado's synergy statute provides: "The court may require . . . that the custodial parent or guardian of the juvenile assist the juvenile in participating in a supervised work program . . ." *Id.* In addition, the court may require "both the juvenile and his or her parent or guardian to perform volunteer service in the community designed to contribute to the rehabilitation of the juvenile or to the ability of the parent or guardian to provide proper parental care and supervision of the juvenile." *Id.* The parent and/or the juvenile can be made "to attend the parental responsibility training program . . ." *Id.* Furthermore, the court may require proof of completion within a certain time period at the risk of contempt sanctions of the court. See *id.* The court may also order juvenile and/or parent to "perform services for the victim designed to contribute to the rehabilitation of the juvenile, if the victim consents in writing to such services." *Id.* The liability of the parent "shall not exceed the damages . . . for any one delinquent act. If the court finds, after a hearing, that the guardian or legal custodian of the juvenile has made diligent, good faith efforts to prevent or discourage the juvenile from engaging in delinquent activity, the court shall absolve the guardian or legal custodian of liability for restitution . . ." *Id.* The parent's liability shall not exceed \$5000 for any one delinquent act. See *id.* The main issue of concern under this statute is whether there is a support in place to allow a working low-income parent the time away from other responsibilities. See *id.*

Finally, the statute provides that a parent shall not be guilty of violating this statute if the parent "seeks the assistance of local, parish, or state law enforcement officials, school officials, social services officials, or other appropriate authorities in either leading the child to modify his or her behavior, or in referring the child to appropriate treatment or corrective facilities." *Id.* Fines range from \$25 to \$250 or not more than 30 days in jail, or both 40 hours of community service and court-approved family counseling. See *id.*

183. See LA. REV. STAT. ANN. § 14:92.2 (West 1996). Louisiana's synergy statute provides that improper supervision includes: Allowing the child to associate with a person whom the parent knows:

To be a member of a known criminal street gang . . . To have been convicted of a felony offense . . . To be a known user or distributor of drugs . . . To be a person who possesses or has access to an illegal firearm, weapon, or explosive . . . Through criminal negligence, the permitting of the minor: To enter premises known by the parent or custodian to be a place where sexually indecent activities or prostitution is practiced. To violate a local or municipal curfew ordinance. To habitually be a truant from school without valid excuse. To enter the premises known by the parent or legal custodian as a place of illegal drug use or distribution activity. To enter the premises known by the parent or legal custodian as a place of underage drinking or gambling. To enter the premises known by the parent or legal custodian as a place which stores or has a person present who possesses an illegal firearm, weapon, or explosive.

Id.

184. See OR. REV. STAT. § 419C.570 (1995). Oregon's statute states that the court may:

Order the parent or guardian to assist the court in any reasonable manner in providing appropriate education or counseling for the youth; or Require the parent or guardian to enter into a contract with the juvenile department in regard to the supervision and implementation of the youth's probation. In all cases in which a youth is placed on probation, the juvenile department and the

utes. Under these statutes, the court may order the parents of a juvenile delinquent to attend a parental class or counseling.¹⁸⁵ One state further requires the parents and the juvenile department to enter into a contract whereby the parents must provide, and follow, a plan to supervise their child.¹⁸⁶ Another statute requires the juvenile and his or her parents to participate in community programs.¹⁸⁷

Similarly, other jurisdictions, through both a state statute or a municipal ordinance, require parents to attend parent effectiveness classes when their children are convicted of a crime.¹⁸⁸ Certainly, these statutes are a step in the right direction. They attempt to deal with the deeper problems in juvenile delinquency by setting up support programs for the parents and their children. Although the synergy statutes can continuously be improved as our understanding of juvenile crime grows, perhaps the best attack on juvenile crime is to focus a majority of society's energies on the social support programs that will make these parental responsibility statutes successful.

V. EXAMPLES OF SOCIAL PROGRAMS THAT SUPPORT PARENTAL RESPONSIBILITY STATUTES

This section discusses various social programs that can be instrumental in the success of parental responsibility statutes. While pre-delinquency programs include those that generally take effect before a jurisdiction threatens parents with criminal liability, post-delinquency programs take effect following the institution of criminal liability. It is essential, though, that jurisdictions implement

parent or guardian shall develop a plan for supervision of the youth. The plan must be reasonably calculated to provide the supervision necessary to prevent further acts of delinquency given the individual circumstances of the youth. The court shall review and ratify the plan and make the plan a part of the probation order.

Id. The parent may be fined up to \$1000 for violating a court's order or the contract. *See id.* § 419C.573. Furthermore, the court may order education or counseling. *See id.* "The programs may include, but need not be limited to, parenting classes." *Id.*

185. *See supra* note 182.

186. *See* OR. REV. STAT. § 419C.570 (1995); *supra* note 182.

187. *See* COLO. REV. STAT. ANN. § 19-2-703 (West 1996); *supra* note 182.

188. *See, e.g.,* Peter Applebome, *Texas, Austin Part of Trend Nationwide to Punish Parents*, AUSTIN AM.-STATESMAN, Apr. 10, 1996, at A4 (stating California laws have been used to order counseling or parenting classes for 1000 parents since 1994); *Seven Parents Get Citations for Children's Unruly Behavior*, WIS. ST. J., May 14, 1996, at 3B (describing a city ordinance that allows a judge to order up to 12 weeks of parenting classes).

programs that will fit into both of these categories. By doing so, states can impact families before they have to face criminal liability, as well as deal with the families that need support after they have had continued problems.

A. Pre-Delinquency Programs

“There is a great need for appropriate, abundant, and affordable resources to aid parents and families with a broad array of family problems long before the issue of a child's delinquent behavior becomes a public concern.”¹⁸⁹ Indeed, a great deal of juvenile misconduct could be avoided by implementing social programs that educate parents on effective and responsive parenthood.¹⁹⁰ One commentator suggests the following general programs: First, “adopt policies designed to increase the relative number of two-parent families. Second, . . . take steps to lift children and their families out of poverty by increasing their money incomes. Finally, . . . accept that many children will grow up in poverty and take steps to mitigate the worst consequences associated with it.”¹⁹¹ These pre-delinquency services should include after-school programs for latchkey kids, who do not have a supervised home to go to after school. These programs would help both in constructively occupying children while they are being supervised, but could also be a great way to provide them with additional skills to prevent them from getting involved in illegal activity.¹⁹² Furthermore, social programs teaching parents how to involve themselves in their children's lives will strengthen the family unit, thus helping create strong familial relations, which are crucial in eradicating problems when they do arise.¹⁹³

Home visitation programs are one variety of social programs that can begin before a child is born. These programs include “infor-

189. Davidson, *supra* note 15, at 24.

190. See Geis & Binder, *supra* note 26, at 315–19 (referring to a study which found that “characteristics of the child being ‘temperamentally difficult, overactive, impulsive, or with a short attention span’ . . . are the key precursors of delinquency in terms of the family situation”).

191. Julie DaVanzo, *Families, Children, Poverty, Policy*, in *URBAN AMERICA: POLICY CHOICES FOR LOS ANGELES AND THE NATION* 83, 93 (James B. Steinberg et al. eds., 1992).

192. For instance, juveniles could get involved in sports or other similar activities that promote a sense of community, comraderie, and good health. See Davidson, *supra* note 15, at 24.

193. See *id.*

mation about pregnancy, infant needs, child development, nutrition, and parenting tasks.”¹⁹⁴ In addition, counselors teach basic communication skills to parents, which is an important part of resolving juvenile crime.¹⁹⁵ Imagine a counselor visiting the house of a pregnant teenager. The counselor basically serves in the role of a teacher and support figure for the soon-to-be parent. Lessons and advice on parenting, as well as being an all-around resource, are some of the helpful supports that the counselor provides.¹⁹⁶

Hawaii legislators have established a home visitation program for families in need.¹⁹⁷ Hawaii's statistics on the benefits of this counseling program are encouraging. “[T]he rate of child abuse among program recipients may be as low as five percent compared to other high-risk families.”¹⁹⁸ Studies reveal that similar programs have helped reduce the risk factors for juvenile delinquency.¹⁹⁹ Again, these programs pay for themselves many times over since the cost to society of incarcerating a criminal is so high.²⁰⁰

Another type of social support that the government can establish is financial support. There are many methods for providing better financial support to families in need. While legislators may be hesitant to dole out financial resources to every family having trouble making ends meet, legislators must consider the alternatives. One such alternative includes spending far more money on the future incarceration of the child who reveals early signs of at-risk

194. Cahn, *supra* note 3, at 435 (quoting Martha Minow, *Learning from Experience: The Impact of Research About Family Support Programs on Public Policy*, 143 U. PA. L. REV. 221, 222 (1994)).

195. *See id.*

196. *See id.*

197. *See* HAW. REV. STAT. ANN. § 321-36 to -37 (Michie 1996); Indira A.R. Lakshmanan, *Innovative Hawaii Program Said To Reduce Child Abuse*, PLAIN DEALER, Apr. 21, 1996, at 20A.

198. Cahn, *supra* note 3, at 445.

199. *See* Office of Juvenile Justice and Delinquency Prevention, U.S. Dep't of Justice, *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Juvenile Offenders*, at 57-58 (visited Sept. 11, 1997) <<http://www.ncjrs.org/pdffiles/guide.pdf>> [hereinafter OJJDP Guide].

200. *See supra* note 126 and accompanying text for a discussion of the long-term expense the state must consider when its “quick-fix” punitive strategy fails to reform juvenile offenders.

behavior.²⁰¹ Again, if the investment is made early, it will pay off.²⁰² The truly difficult questions include: how do we identify families at risk, and how do we provide financial support that will have a direct, positive impact on the child's at-risk behavior? It is not the intent of this Comment to discuss the preferable methods of providing financial support to families in need, but it is important to note that at some point, most people will receive some form of public support from the government. "[A]ll families receive public support, although for middle-class families this assistance is in the form of the home mortgage interest deduction, other tax breaks, and similar programs that are not labeled 'public.'"²⁰³ What is essential is for society to develop and support creative and effective methods that will allow families-in-need to obtain financial support. In this way, these families will have access to the resources they need to better raise their children, while simultaneously saving society money on future incarceration of their at-risk children.²⁰⁴

In addition to home visitation and financial support, lawmakers can introduce or strengthen many other programs that will help reduce juvenile crime. In the *Guide for Implementing the Comprehensive Strategy for Serious, Violent, and Chronic Offenders*,²⁰⁵ the Office of Juvenile Justice and Delinquency Prevention listed several strategies as effective: "Reductions of class size for kindergarten and first grade classes . . . [t]utoring . . . [a]bility grouping within classes in elementary school . . . Behavioral monitoring and reinforcement of school attendance, academic progress, and school behavior. Parent training. Marital and family therapy. Youth employment and vocational training."²⁰⁶

"While these programs are labor-intensive and expensive, they are ultimately less expensive than incarceration. Building a prison cell may cost as much as \$110,000 per inmate housed" and additional annual costs for each juvenile incarcerated are about

201. See *infra* notes 207–11 and accompanying text for a discussion of the government's potential savings when it places at-risk children in programs while they are young.

202. See *infra* notes 207–11 and accompanying text.

203. Cahn, *supra* note 3, at 436 (citing MARTHA FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 163, 191 (1995)).

204. See *supra* notes 198–99 for a discussion of Hawaii's success with home visit programs.

205. See OJJDP Guide, *supra* note 199, at 127–28.

206. *Id.*

\$30,000.²⁰⁷ On the other hand, it is estimated that every dollar invested in Head Start²⁰⁸ and other, more intensive early childhood education programs saves six dollars in lower costs for education, welfare, and criminal behavior.²⁰⁹ But, people disagree on the value of Head Start itself. Still, in a study of the Perry Preschool Project, one of the models for Head Start, “Results indicated that the program, which cost about \$12,356 per family, yielded benefits totaling \$108,002 per family.”²¹⁰ Nearly two decades later, a follow-up study revealed that thirty-one percent of the Perry Preschool children had been arrested, compared to fifty-one percent of the children in the control group.²¹¹

B. Post-Delinquency Programs

207. Cahn, *supra* note 3, at 441 (citing *Hearings on Community Corrections Programs Before the Subcomms. on Commerce, Justice, State and Judiciary of the House Comm. on Appropriations*, 104th Cong. (1996) (testimony of James J. Lawrence and Mary Shilton of the International Community Corrections Association)).

208. See 42 U.S.C.A. §§ 9831–9855g (West 1997) (creating the Head Start Program). Head Start is a federally funded, comprehensive child development program. See *Head Start Brochure* (visited Mar. 28, 1997) <<http://chtop.com/hsbroc.htm>>. The program recruits children, ages three and four, from low-income families as well as children with disabilities. See *id.* While Head Start is “committed to the individualization and the total inclusion of children with professionally diagnosed disabilities,” Head Start is primarily concerned with improving early childhood education. See *id.* Staff, parents, and community members are active in providing a wide variety of services, including: education, family services, parent involvement, health, mental health, disabilities, and nutrition. See *id.*

209. See DaVanzo, *supra* note 191, at 98.

210. Hirokazu Yoshikawa, *Long-Term Effects of Early Childhood Programs on Social Outcomes and Delinquency*, FUTURE OF CHILDREN, Winter 1995, at 51, 69; see also W. Steven Barnett, *Long-Term Effects of Early Childhood Programs on Cognitive and School Outcomes*, FUTURE OF CHILDREN, Winter 1995, at 25, 45. The Perry Preschool Program (PPP) “provided an organized educational experience directed at the intellectual and social development of young children who participated, in most cases, for 2 years when they were 3 and 4 years of age.” J.R. Berrueta-Clement et al., *Eric Abstract* (visited Mar. 27, 1997) <<http://eric-web.tc.colum.edu/abstracts/ed313128.html>>.

211. See Cahn, *supra* note 3, at 445 (citing ELIZABETH F. EMENS ET AL., PREVENTING JUVENILE DELINQUENCY: AN ECOLOGICAL DEVELOPMENTAL APPROACH, in CHILDREN, FAMILIES AND GOVERNMENT: PREPARING FOR THE TWENTY-FIRST CENTURY 308, 318 (Edward Zigler et al. eds., 1996)). In addition, other studies on the Perry Preschool Program reported positive results: “young people up to 19 years of age who attended the High/Scope Educational Research Foundation's Perry Preschool Program (PPP) in the early 1960s continue to outperform peers who did not attend preschool.” J.R. Berrueta-Clement et al., *Eric Abstract* (visited Mar. 27, 1997) <<http://eric-web.tc.colum.edu/abstracts/ed313128.html>>.

Certainly, programs should be established to teach parents how to deal with uncontrollable and generally unruly children.²¹² Some states have implemented “youth at risk” programs that “focus on the rehabilitation of current delinquents through counseling and job programs.”²¹³ Such rehabilitation programs must be provided to troubled youth to prevent these children from getting in further trouble with the law. In connection with parental responsibility statutes, these programs provide an organized attack on the juvenile crime problem.

Florida lawmakers have instituted creative approaches to include the entire family in a child's rehabilitation.²¹⁴ Florida legislators designed the Families in Need of Services (FINS) statutes to focus on the parents' responsibility in raising their children.²¹⁵ The court informs the parents of their role with the child's rehabilitation as well as the parent's financial contribution to the state's expenses for the child's tuition in the FINS program.²¹⁶ FINS also includes mediation with family counselors.²¹⁷ The court can order the parents to take part in the treatment and services along with the fines and fees.

The Florida Legislature intended to alleviate the problems of families in need of services by setting up a variety of programs “designed to preserve the unity and integrity of the family and to emphasize parental responsibility for the behavior of their children.”²¹⁸ The FINS program is set up to provide services to these families on a continuum.²¹⁹ The Florida Legislature encourages families to work through their problems in these programs instead of in the court system. Therefore, the legislation provides that a court should be limited to hearing only those family problems where “service,

212. See Maute, *supra* note 116, at 465 (stating that reformation programs should teach parents how to deal with their problem children).

213. *Id.* at 467.

214. See *infra* notes 215–26 and accompanying text.

215. See FLA. STAT. ANN. § 39.42(1) (West 1997) (stating: “It is the intent of the Legislature to address the problems of families in need of services by providing them with an array of services designed to preserve the unity and integrity of the family and to emphasize parental responsibility for the behavior of their children.”).

216. See FLA. STAT. ANN. §§ 39.42(3), 39.424(3) (West 1997).

217. See *id.* § 39.424(2)(d) (stating that the services available to the family may include, but are not limited to “[i]ndividual, group, or family counseling”).

218. *Id.* § 39.42 (families in need of services and children in need of services; procedures and jurisdiction).

219. See *id.* § 39.426(4).

treatment, and family mediation have, after a diligent effort, failed to achieve a resolution.”²²⁰ But the Florida legislation is careful not to oversimplify these often complex family problems by combining families with incongruent issues.

[T]he Legislature recognizes the need to distinguish the problems of truants, runaways, and children beyond the control of their parents, and the services provided to these children, from the problems and services designed to meet the needs of abandoned, abused, neglected, and delinquent children. In achieving this recognition, it shall be the policy of the state to develop short-term, temporary services . . . for families in need of services and children in need of services.²²¹

These statutes demonstrate that Florida has, at least in legislation if not in practice, designed a system where programs are available to parents for support, counseling, and teaching parenting skills prior to parents being held criminally responsible for the acts of their delinquent children. But the question remains: Is help reasonably and practically available to any parent who needs it and seeks it?

Since Florida has such support programs in place, the foundation is present to initiate parental responsibility statutes aimed at encouraging parents to make sincere attempts to control their delinquent children or to seek the available help to do so. Thus any punishment, fine, or incarceration is used as a last resort for those parents who need such severe threats to take responsibility. Either way, at least the state will be encouraging and providing a forum for parents to try to help their families.

Courts have generally been apprehensive about infringing upon the familial relationship.²²² Courts have dictated that the Equal

220. *Id.*

221. *Id.*

222. “[T]he values of parental direction of the religious upbringing and education of their children in their early and formative years have a high place in our society.” *Wisconsin v. Yoder*, 406 U.S. 205, 213–14 (1972); *see also* *Pierce v. Society of Sisters*, 268 U.S. 510, 534–35 (1925); *cf.* *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). In *Meyer*, the Court stated that,

[w]ithout doubt, [liberty granted by the Fourteenth Amendment] denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those

Protection and Due Process Clauses of the Fifth and Fourteenth Amendments each disallow the government from unwarranted intrusion on family issues.²²³ Indeed, “[t]he Constitution affords parents wide latitude in deciding how to raise their children”²²⁴ Yet for many children, the mere knowledge that their parents may be held criminally liable will help reduce their illegal activities. Parental responsibility statutes should have a three-fold effect. First, parents will feel the threat of criminal prosecution and may work more diligently to control their children. Second, parents' more-attentive management style may cause their children to resist engaging in illegal conduct. Third, those children who do not feel such an influence may avoid illegal activities because they fear the consequences that their criminal conduct will cause their parents. The Author's experience as a Florida high school teacher for juvenile delinquents²²⁵ revealed that a surprisingly high percentage of children are heavily influenced by this third category. Many of these children appeared unaffected by the consequences that their crimes brought upon themselves and upon their victims; however, they were concerned about the possibility that their parents might be inconvenienced by their crimes.²²⁶

Although it certainly appears ironic, often juveniles are more concerned about disturbing their parents than they are with bringing criminal repercussions upon themselves. But these juveniles'

privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

Id.

223. See Humm, *supra* note 97, at 1127.

224. *Id.*; see, e.g., Parham v. J.R., 442 U.S. 584 (1979); Wisconsin v. Yoder, 406 U.S. 205 (1972); Prince v. Massachusetts, 321 U.S. 158 (1944); Pierce v. Society of Sisters, 268 U.S. 510 (1925); Meyer v. Nebraska, 262 U.S. 390 (1923).

225. The Author worked in various positions (including Base Site Manager, Field Instructor, Urban Instructor, and Education Coordinator) in direct contact with juveniles committed by Florida courts to Hurricane Island Outward Bound School from 1992 through 1995. The juveniles were court-ordered into the program and therefore their tuition was provided by the State of Florida. The mission of this program was to teach these children about the Four Pillars of Outward Bound — self-reliance, craftsmanship, physical fitness, and compassion. The program was set up with a wilderness component to use the elements of the wilderness as a forum to inspire learning about the Four Pillars.

226. Many of the children I worked with had no fear of receiving another one-month session at the local juvenile detention center, yet they became more concerned by the mere threat that their parents might have to leave work to come to some sort of a hearing.

perspective is logical when one considers the courts' lack of available and effective options for dealing with the delinquent youth.²²⁷ While it is true that there are some excellent programs in place, the courts' hands are tied when it comes to squeezing the multitudes of children flooding the juvenile court system into the scarce number of vacancies in effective programs.²²⁸ Rationally, juvenile delinquents may not feel threatened by time in a detention center, or a social program, where often their lives become more comfortable and structured than their unfortunate home lives. These juvenile delinquents may therefore feel more concerned with the threat of some inconvenience to their parents as a result of their illegal activities. Realistically, some of the delinquents' parents are more burdened by having to make court appearances or attend counseling sessions than they are by signing their child away to a program that lasts between two weeks and one year.

VI. RECOMMENDATIONS

It is crucial to note that incarcerating a parent for breaking a parental responsibility statute is a lose-lose situation. The threat of incarcerating a negligent parent should merely be a deterrent factor and should seldom actually occur. When a negligent parent is placed in jail, everyone loses.²²⁹ Yet when used as a lever to encourage, or even threaten otherwise irresponsible parents into a more proactive role in caring for their children, the threat of incarceration may be parents' most motivating factor. Judges must realize this option and make every attempt to use this aspect of the statute as the bark, but not the bite. "[I]t would be realistic to hold parents legally responsible for the destructive actions of their children if society provides

227. See Geis & Binder, *supra* note 26, at 304 for a discussion of the lack of options the court has for rehabilitating juvenile offenders.

228. See, e.g., Thanassis Cambanis, *Juvenile Center Overcrowding Persists*, ST. PETERSBURG TIMES, July 17, 1996, at 3B; Michael Coit, *Plan Targets Crowding at Juvenile Hall Release Program Eases County Strain*, L.A. DAILY NEWS, July 21, 1996, at SV1; Shelby Grad, *Overcrowding Plagues Youth Facilities Too*, L.A. TIMES, July 7, 1996, at B1; Chris Limberis, *Juvenile Detention Plan OK'd 48 New Beds To Ease Crowding*, ARIZ. DAILY STAR, Feb. 14, 1996, at 1B; Brian Maffly, *Some Will Go Free To Ease Youth-Jail Overcrowding: Detention Releases Will Ease Crowding*, SALT LAKE TRIB., Mar. 20, 1996, at A1.

229. Society has to pay to support the parent in jail, and the child loses the already insufficient benefit of the parent's contact.

sufficient resources (through non-governmental programs as well as government agencies) for families to learn appropriate child development, behavior control, parent effectiveness, and disciplinary methods.”²³⁰

Many lower-income families would welcome low cost or free programming that would help raise their children and teach the parents effective family skills. In combination with parental responsibility statutes, the community programs would be attractive to parents concerned with their at-risk children or parents who are merely afraid of legal repercussions. In addition to parenting classes, access to quality professional child care²³¹ would allow parents to work without risking liability due to the child's lack of supervision. “Only if such a support network were in place would it be effective, as well as equitable, to mandate parental legal accountability for a child's criminal acts.”²³²

One common concern expressed by opponents of parental responsibility statutes is that some of the more diabolic juvenile delinquents will use these statutes as a tool to blackmail their parents.²³³ Thus, in these situations, the first concern that must be addressed is: What has caused the child to become this vindictive towards his or her parents? Children who make a concerted effort to break the law in order to threaten their parents are essentially calling attention to serious problems in their relationship with their parents. This problem is just one of the reasons why access to quality programs is essential. Hopefully, programs will be able to help those children who are unconcerned about the repercussions their

230. Davidson, *supra* note 15, at 24.

231. Child care in early years helps influence children at a crucial time in their development. A study compared the Perry Preschool participants with a control group of children. See Lawrence J. Schweinhart et al., *Preschool & Home Visit Programs Cut Crime and Save Money* (visited Mar. 28, 1997) <<http://www.kidscampaigns.org/New/crimemats2.html>>. When the children in the study reached 27 years-old, the study found that the participants' likelihood of arrest was drastically less than the control group: Arrest rates were cut in half; and “chronic offender rates' (number arrested more than four times) [went] from one in three to one in fourteen, and among males [it went] from nearly one in two to less than one in eight — an 80% reduction.” *Id.* See *supra* notes 208–11 and accompanying text for a discussion of the Head Start Program as a form of quality professional child care.

232. Davidson, *supra* note 15, at 25.

233. Numerous opponents of parental responsibility statutes have brought up this concern during discussions with this Comment's Author. But this Author has been unable to find this concern expressed in writing.

conduct will have upon their parents, as well as those who specifically act out in order to see their parents "punished." Further, the parental responsibility statutes and support programs should also help those children who do fear their parents suffering the consequences of their misconduct, because parental responsibility statutes should act as a deterrent.

Justice Holmes stated that the law can hold competent people to set standards, despite the differing capabilities of the population to meet those standards.²³⁴ The synergy parental responsibility statutes are not about punishing parents for their inability to control their children, nor are they about punishing parents for their best efforts that unfortunately did not dissuade their child from breaking the law. As the cases show, the synergy statutes are only in place to prosecute the parents who have not taken advantage of the resources offered to them to better raise their children.²³⁵ Therefore, with the proper statutes in place, the courts can expect that parents will meet society's reasonable expectations. Further, the courts can be assured that parents have access to the resources they need to comply with that societal standard.

Thus, with the enactment of appropriate parental responsibility statutes, supervision of the delinquent youth will be placed on the parent instead of the state. People's concerns about parental responsibility statutes can be minimized through properly administered social support programs and carefully drafted legislation. Just as parents in nearly all states can be held civilly liable for the tortious conduct of their children,²³⁶ so too should parents be held criminally liable for criminal behavior of their children. "Far too many courts, as well as family and youth services agencies, have either undervalued or ignored the role parents play in their children's severe misbehavior and what can and should be done about it."²³⁷ Juvenile crime is neither a liberal nor a conservative problem; rather, it is a problem that can be properly addressed not by criminalizing the status of being the parent of a juvenile delinquent, but the actions of par-

234. See OLIVER WENDELL HOLMES, JR., *THE COMMON LAW* 50 (1881).

235. See, e.g., *supra* notes 57-62, 154-56 and accompanying text.

236. See, e.g., FLA. STAT. ANN. § 39.054(1)(f) (West 1997); IND. CODE ANN. § 34-4-31-1 (West 1996); MONT. CODE ANN. § 40-6-237 (1995); WIS. STAT. ANN. § 895.035 (West 1997). See *supra* notes 37-42 for a discussion of various state statutes holding parents civilly liable for the torts of their children.

237. Davidson, *supra* note 15, at 23.

ents who fail to act responsibly as parents.

Probably the best plan for lawmakers seeking to reduce juvenile crime is to learn from the medical community's recent success in combating the AIDS virus.²³⁸ Society must implement a cocktail approach to reduce juvenile crime. Lawmakers must ensure adequate and accessible programming to support parents in a variety of ways.²³⁹ Society must provide access to day care and monitored after-school activities for those parents who need, but cannot afford these programs. These parents must have the ability to send their children to a structured and safe environment while the parents are at work.²⁴⁰ Society must also support those parents who sense they are losing control of their children and who do not know how to have a sufficient impact on their children's behavior. Parents, pressured by parental responsibility statutes, may seek these programs early enough to prevent their child from committing further and more serious crimes. Furthermore, for parents who do not take advantage of such support programs, parental responsibility statutes can mandate parenting classes, fines, and, as a last resort, incarceration. Only through this cocktail approach can society hope to competently fight the disease known as juvenile crime.

238. See *supra* notes 17–18 and accompanying text for a discussion of how the “cocktail” approach to fighting the AIDS virus can be a useful strategy in reducing juvenile crime.

239. See *supra* note 142 and accompanying text for a discussion of accessibility of such programs to the poor.

240. See *supra* note 192 and accompanying text for a discussion of day-care and after-school programs.