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Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding of Justice

Cover Page Footnote

Special thanks to my parents, Christopher and Kerri for their encouragement and support.

**CREATING PROBLEMS RATHER THAN SOLVING THEM:
WHY CRIMINAL PARENTAL RESPONSIBILITY
LAWS DO NOT FIT WITHIN OUR
UNDERSTANDING OF JUSTICE**

*Tami Scarola**

Alex Provenzano is a suburban Detroit teenager who started getting into trouble shortly after he began associating with an older group of friends.¹ He was first arrested in May 1995 for robbing his family's church.² A month later, he was arrested for assaulting his father.³ His parents twice asked the police to keep Alex in jail.⁴ Three months later, in September, he was again in custody, this time for a string of house burglaries.⁵ This last arrest occurred after police searched Alex's bedroom and found a stolen handgun and marijuana lying on his nightstand.⁶

A year after Alex's first arrest, his parents, Anthony and Susan Provenzano, were branded as criminals. They were found guilty of a misdemeanor for failing to prevent their son from committing the burglaries.⁷ This case was the first to be tried under the St. Clair Shores' new parental responsibility law,⁸ which requires parents "to exercise reasonable control to prevent the minor from committing any delinquent act."⁹ The St. Clair Shores ordinance exists:

for the preservation of the public peace, health, safety and welfare of the people of the City of St. Clair Shores, and is intended to address situations where parents have failed to act responsibly and reasonably in the supervision of their minor children to the detriment of the general public.¹⁰

The ordinance also defines the duties of "reasonable parental control"¹¹ as: ensuring a home free of illegal firearms and drugs, staying

* Special thanks to my parents, Christopher and Kerri for their encouragement and support.

1. Marney Rich Keenan, "We Did the Best We Could," *Provenzos Say About Raising Unruly Teen*, Det. News, May 12, 1996, at A13.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*; Eric Freedman, *Sins of the Son Visited on Parents: Conviction of Michigan Couple Part of a Trend*, Nat'l L.J., May 27, 1996, at A6. For a complete discussion of the facts of the Provenzano case, see Katherine Rabe & Dagmar Von Diessl, *Recent Developments*, 23 Am. J. Crim. L. 675, 677-79 (1996) and Barry Seigel, *Town Tries to Police The Parents*, L.A. Times, April 21, 1996, at A1.

8. Keenan, *supra* note 1, at A13; St. Clair Shores, Mich., Parental Responsibility Ordinance 20.560-20.566 (July 26, 1994).

9. 20.563 § 3a.

10. 20.561 § 1.

11. 20.561 § 3b.

informed of the curfew ordinance, requiring that the child go to school, arranging supervision if the parent is absent, taking precautions to keep the child from committing property destruction, forbidding the child to keep stolen property, and seeking help from the government to control the child if necessary.¹²

The Provenzano parents were ordered to pay \$2200 in fines and court costs, and to pay \$13,000 a year for Alex's care in a youth detention home.¹³ While this verdict may appear extreme, the jury found otherwise. Elaborating on the reasons behind the guilty verdict, jurors said the Provenzos' inability to get Alex into counseling was "pivotal in their decision."¹⁴ The Provenzos claim that they tried to get Alex to attend counseling, but could not force him to go.¹⁵ The Provenzano parents also maintain that they discouraged Alex from associating with the older group of friends whom, it appears, he was trying to impress.¹⁶ Despite what the Provenzos believed to be their best efforts, they could not stop him from breaking the law.¹⁷ They added, "we know in our hearts we did everything we could."¹⁸ The parents appealed the fines, which were later overturned by the Macomb County court because St. Clair Shores failed to show that the Provenzos did not attempt to bring Alex to counseling.¹⁹

12. 20.563 § 3b. The statute reads:

Included (without limitation) in this continuous duty of reasonable parental control are the following parental duties:

1. To keep illegal drugs or illegal firearms out of the home and legal firearms locked in places that are inaccessible to the minor.

2. To know the Curfew Ordinance of the City of St. Clair Shores, and to require the minor to observe the Curfew ordinance

3. To require the minor to attend regular school sessions and to forbid the minor to be absent from class without parental or school permission.

4. To arrange proper supervision for the minor when the parent must be absent.

5. To take the necessary precautions to prevent the minor from maliciously or willfully destroying real, personal, or mixed property which belongs to the City of St. Clair Shores, or is located in the City of St. Clair Shores.

6. To forbid the minor from keeping stolen property, illegally possessing firearms or illegal drugs, or associating with known juvenile delinquents, and to seek help from appropriate governmental authorities or private agencies in handling or controlling the minor, when necessary.

Id.

13. Keenan, *supra* note 1, at A13.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. The appeals court found that the City of St. Clair Shores failed to show that the Provenzos did not obtain counseling for Alex, an element required under the statute. *City of St. Clair Shores v. Provenzano*, No. 96-1483 AR, at 15 (County of Macomb Cir. Ct. July, 16, 1997).

Citizens of St. Clair Shores and other communities across the nation have had mixed reactions to the Provenzano verdict in particular, and the St. Clair Shores law generally. Due to the national interest, Court TV aired a one-hour special discussing the Provenzano case entitled *Sins of the Child: Parents on Trial*.²⁰ In addition, parents from across the country reacted to the case over the Internet.²¹

Some people firmly believed that the Provenzos were properly punished for their lack of control of Alex.²² Due to the increasing problem of juvenile crime, they believed that any measure that would help reduce youth offenses should be utilized.²³ Others who endorsed the verdict indicated that the parents were better suited to pay for the juvenile's crimes than taxpayers.²⁴

Other Internet respondents, however, argued that the verdict against the Provenzos was "unfair."²⁵ Some thought the ordinance invaded the privacy of parenting decisions by requiring certain parenting styles.²⁶ Others noted that the ordinance could force parents to resort to desperate means, including physical abuse²⁷ or emancipation.²⁸ Some people even wrote that they would rather abstain from having children than be subjected to the statute.²⁹ Other parents, who felt they could sympathize with the Provenzos, related similar stories of delinquent children whom they could not control.³⁰ One parent, whose child refused to attend counseling, stated that "for a court to convict me of failing to control my kid would be the ultimate insult!"³¹

Responses to the verdict also questioned the "fairness" of the decision based on doubts that the ordinance would reduce juvenile

20. Janet Naylor, *2 Michigan Cases Make Showing on Court TV: Network to Air Special on Provenzano Ruling, Cover 'Jenny Jones' Trial*, Det. News, Oct. 6, 1996, at B4.

21. *Are Parents Responsible for Their Children's [sic] Crimes?* (visited Feb. 21, 1997) <http://web-cr01.pbs.org/newshour/forum/may96/parents_5-21.html> [hereinafter *Are Parents Responsible*].

22. *Id.*

23. *Id.* One commentator has warned, however, that "[s]ome conservatives will fall panting into the arms of anything that looks like law and order." Don Feder, *Don't Hit Parents for Kids' Misdeeds*, Boston Herald, June 12, 1995, at 21.

24. *Are Parents Responsible*, *supra* note 21.

25. *Id.*

26. *Id.*

27. *Id.* In fact, this fear is not unfounded. One desperate parent chained his son to the bedroom floor to stop him from associating with a gang. Feder, *supra* note 23, at 21.

28. *Are Parents Responsible*, *supra* note 21. At least one statute excepts parents from liability when the child is emancipated. N.Y. Gen. Oblig. § 3-112(3) (McKinney 1997); see also Ilse Nehring, "Throwaway Rights": *Empowering A Forgotten Minority*, 18 Whittier L. Rev. 767 (1997) (discussing the increase in abandoned children in the United States).

29. *Are Parents Responsible*, *supra* note 21.

30. *Id.*

31. *Id.*

crime.³² Respondents on the Internet questioned the "fairness" because it appeared there was no community assistance available to help the Provenzinis.³³ Indeed, the Provenzino family is not any better equipped to control Alex now than before they were prosecuted because they have not received training or assistance.³⁴ Thus, respondents argue, it is questionable whether society has learned anything, or will learn anything, from the experience of the Provenzinis, or others in a similar plight.³⁵ Further, some people argue that it is too much to expect parents alone to stop juvenile crime when there are multiple factors contributing to the criminal behavior.³⁶ Stated differently, it may be that legislatures are too quick to criminalize parents' behavior when, in reality, social problems are at the root of juvenile crimes.³⁷ Instead of addressing underlying social causes, legislatures may find criminalizing parents' behavior an easy, inexpensive, and quick solution.³⁸ Critics note that if legislatures fail to address these underlying causes, juvenile crime is likely to continue.³⁹

The wide range of responses elicited by the St. Clair Shores law illustrate the vexing issues raised by criminal parental responsibility laws.⁴⁰ This Note examines the theories of criminal law to assess

32. *Id.* Indeed, the Internet responses were not the only such objection to the statute. An article in the National Law Journal also questioned the fairness of the ordinance. Freedman, *supra* note 7, at A6 (noting that "there are problems of fairness in applying the legal principle of strict criminal liability").

33. *Are Parents Responsible*, *supra* note 21 (noting how the Provenzinis asked the police to keep Alex in jail); see *supra* note 4 and accompanying text.

34. See *Are Parents Responsible*, *supra* note 21.

35. See *id.*

36. Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States*, 37 Santa Clara L. Rev. 621, 626 (1997); Maggie Gallagher, *Sins of the Children are Visited on their Parents*, Sacramento Bee, May 14, 1996, at B7 ("[D]on't expect that parents will be capable of single-handedly saving Western civilization.").

37. Honorable Mel L. Greenberg, *Just Deserts in an Unjust Society: Limitations on Law as a Method of Social Control*, 23 New Eng. J. on Crim. & Civ. Confinement 333, 341 (1997).

38. *Id.* ("The laws are there because it is more expedient for elected officials to pass stricter criminal penalties than deal with the costly and complicated business of providing resources to deliver necessary services to prevent recurrence.").

39. The Real War on Crime: The Report of the National Criminal Justice Commission 144-45 (Steven R. Donziger, ed. 1995) ("Almost as shocking [as juvenile violence] is the unwillingness of our leaders to take the practical steps necessary to do something about it."); Greenberg, *supra* note 37, at 333-34.

40. Criminal parental responsibility laws raise a number of constitutional issues, beyond the focus of this Note, that have been discussed at length elsewhere. For example, the Provenzinis appealed their conviction on constitutional grounds. *City of St. Clair Shores v. Provenzino*, No. 96-1483 AR, at 2 (Macomb County Cir. Ct. July 16, 1997). The statute they were convicted under, Section 20.565(a), was struck down because it was constitutionally overbroad. *Id.* at 7. Other cases have addressed the constitutionality of such statutes. *Williams v. Garcetti*, 853 P.2d 507, 508 (Cal. 1993) (concluding the California parental liability statute was not vague); *Owens v. Ivey*, 525 N.Y.S.2d 508, 516 (Rochester City Ct. 1988) (holding the statute unconstitutional because it was "in practical effect, a bill of attainder"). Some scholars likewise object

whether the criminal parental responsibility laws are "fair."⁴¹ This Note then concludes that the goal of reducing juvenile crime, regardless of how well-intended, does not justify unfair treatment of parents.⁴² In light of the two principal approaches to criminal law, utilitarianism and retributivism,⁴³ this Note argues that the St. Clair Shores ordinance fails to fit within our understanding of justice, and hence of "fairness." Instead, preventive social programs which address the causes of juvenile crime should be utilized. These programs not only address more of the root causes of delinquency, but also do not run afoul of the underlying tenets of criminal justice theory.

To demonstrate that parental control laws are inconsistent with our concepts of justice, Part I of this Note discusses the various causes of juvenile crime and outlines alternative approaches to address it. Part I then examines different state criminal parental responsibility laws and considers whether these laws have been effective in reducing juvenile crime. This Note then turns to a discussion of the criminal theories of justice. Part II explains how the fairness of parental control laws can be evaluated under criminal justice theories by, first, addressing the justifications for criminal law, and, second, reviewing and critiquing the two main approaches to criminal law: utilitarianism and retributivism. Part III examines criminal parental responsibility laws within those theories and concludes that such laws are unfair because the laws do not fit within the primary theories justifying criminal law.

to the statutes on constitutional grounds. See Penelope D. Clute, "Parental Responsibility" Ordinances—Is Criminalizing Parents When Children Commit Unlawful Acts a Solution to Juvenile Delinquency?, 19 Wayne L. Rev. 1551, 1561-68 (1973) (arguing the statutes are unconstitutionally vague); Michelle L. Casgrain, Note, *Parental Responsibility Laws: Cure for Crime or Exercise in Futility?*, 37 Wayne L. Rev. 161, 183-85 (1990) (same); Freedman, *supra* note 7, at A6 (same); S. Randall Humm, *Criminalizing Poor Parenting Skills as a Means to Contain Violence By and Against Children*, 139 U. Pa. L. Rev. 1123, 1138-42 (1991) (same); Rabe, *supra* note 7, at 678 (stating the Provenzano defense attorney's claim that Anthony and Susan's due process rights were violated); see generally Sharon A. Ligorsky, Note, *Williams v. Garcetti: Constitutional Defects in California's "Gang-Parent" Liability Statute*, 28 Loy. L.A. L. Rev. 447 (1994) (evaluating the Constitutional problems of the California parental liability laws); Kathryn J. Parsley, Note, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children*, 44 Vand. L. Rev. 441 (1991) (discussing several constitutional arguments); Max Stier, Note, *Corruption of Blood and Equal Protection: Why the Sins of the Parents Should Not Matter*, 44 Stan. L. Rev. 727 (1992) (arguing children should not pay for the sins of their parents); 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 (1991) (arguing the statutes are unconstitutional on privacy, cruel and unusual punishment, and vagueness grounds).

41. The fairness of the criminal law is sometimes questioned. For instance, as Learned Hand once noted, "Here I am an old man in a long nightgown making muffled noises at people who may be no worse than I am." Lloyd L. Weinreb, *Criminal Law: Cases, Comment, Questions* 401 (5th ed. 1993).

42. Greenberg, *supra* note 37, at 341.

43. For a discussion of the two principal approaches, utilitarianism and retributivism, see *infra* Part II.

Accepting that juvenile crime is a growing problem in need of address, Part IV provides a more just, and more effective solution than criminal parental responsibility laws. Part IV specifically argues that targeting parents for criminal sanctions in an attempt to reduce juvenile crime is misguided; legislatures should instead focus on addressing the root causes of juvenile crime through prevention programs. Part IV offers, as an example, the New York State Attorney General's approach to juvenile crime reduction, which focuses on prevention, and urges other states to adopt similar solutions.

I. JUVENILE CRIME AND PARENTAL RESPONSIBILITY LAWS

Juvenile crime is a recurring news topic and an increasing societal concern.⁴⁴ A disproportionate number of people under the age of 18 are involved in crimes compared to adults.⁴⁵ Especially disturbing is the fact that the number of juvenile murder convictions has tripled between 1984 and 1994.⁴⁶ In addition population increases could increase murders committed by juveniles to 25 percent by the year 2005.⁴⁷

Although youth offenses have been addressed through the criminal justice system for hundreds of years,⁴⁸ the continued increase in juvenile crime makes it apparent that new solutions must be found. Over time, legislators have utilized several methods for reducing juvenile delinquency, including programs meant to address the causes of juvenile crime.⁴⁹ Currently, there is a political movement to impose more responsibility on the parents of delinquents for these increases in crime.⁵⁰ For example, in a 1996 New York Times/CBS News poll, 72% of the respondents said parents should be responsible for their children's crimes.⁵¹

Thus, to lay the foundation for the parental responsibility movement, this part will give a brief overview of the underlying causes of juvenile crime and the current solutions utilized by various legisla-

44. Joshua Wolf Shenk et al., *Teen Crime*, U.S. News & World Rep., Mar. 3, 1997, at 43; Donald J. Shoemaker, *Theories of Delinquency: An Examination of Explanations of Delinquent Behavior* 3 (1990); USNews Online, *Juvenile Crime* (visited Oct. 20, 1997) <<http://www.usnews.com/usnews/issue/crime.htm>> [hereinafter *Juvenile Crime*].

45. Shoemaker, *supra* note 44, at 3.

46. *Juvenile Crime*, *supra* note 44; see also Jeffrey A. Butts et al., *Juvenile Court Statistics 1994*, Office of Juvenile Justice and Delinquency Prevention 5 (1996) ("Between 1985 and 1994, the number of delinquency cases processed by U.S. juvenile courts increased 41%.").

47. *Juvenile Crime*, *supra* note 44.

48. Shoemaker, *supra* note 44, at 4 (noting that "early Anglo-Saxon laws contained provisions for the punishment of child offenders").

49. *Id.* at 4.

50. Peter Applebome, *A Carrot and Stick for Parenthood*, N.Y. Times, June 16, 1996, at E5 [hereinafter *Carrot*].

51. *Id.*

tures. Specifically, this part will first discuss the theoretical and empirical causes of juvenile crime and then turn to the methods of reducing juvenile crime other than criminal parental responsibility laws. This part will also compare the parental responsibility laws in different states and discuss whether they have been effective.

A. *Causes of Juvenile Crime*

Criminology theories and empirical studies point to varying causes of juvenile crime.⁵² This part first discusses the causation theories stemming from research in both psychology and sociology.⁵³ It then turns to a review of the empirical studies of juvenile crime.

1. Causation Theories

Traditionally, criminology is separated into two schools of causation theories—the positive⁵⁴ and classical schools.⁵⁵ Currently, popular causation theories stem from the positivist school, which attributes crime to the criminal's background and environment.⁵⁶ Any theory that empirically or systematically concludes that personal, social, or environmental factors contribute to juvenile delinquency is included in the positive school.⁵⁷ The positivist school is further broken down into the psychological and sociological perspectives.⁵⁸

52. See *infra* Parts I.A.1 & I.A.2.

53. A theory has been generalized as "an attempt to make sense out of observations." Shoemaker, *supra* note 44, at 9. Theory may include empirical data, but also utilizes other criteria in reaching conclusions, such as "deductive explanations of events" or "a set of descriptions or classification schemes concerning a particular phenomenon." *Id.* at 8.

54. Positivism is "any theory that systematically and, in varying degrees, empirically analyzes the causes of crime and delinquency and concludes that personal or social and environmental factors *determine* criminal behavior." *Id.* at 5-6.

55. The classical school bases crime on the free will of the criminal agent, while the positive school bases crime on the agent's background and environment. *Id.* at 4-6; Larry J. Siegel, & Joseph J. Senna, *Juvenile Delinquency: Theory, Practice, and Law* 69-72 (1981).

For a discussion of additional causation theories which have been advanced see Chapin, *supra* note 36, at 664-69 (discussing the biological, strain, cultural deviance and differential association, and control theories of causation), Deborah W. Denno, *Gender, Crime, and the Criminal Law Defenses*, 85 J. Crim. L. & Criminology 80 (1994) (discussing how biological influences affect crime rates), and Deborah W. Denno, *Human Biology and Criminal Responsibility: Free Will or Free Ride?*, 137 U. Pa. L. Rev. 615 (1988) (same).

56. Robert C. Trojanowicz & Merry Morash, *Juvenile Delinquency: Concepts and Control* 41 (3rd. ed. 1983) (stating that "almost all modern theories have emanated . . . from the positive school"); Shoemaker, *supra* note 44, at 6 (noting "many modern theories of delinquency may be called positivistic"); Siegel, *supra* note 55, at 72 ("During the latter part of the nineteenth century, positivist theory came to the forefront of criminological thought.").

57. Shoemaker, *supra* note 44, at 5-6.

58. *Id.* at 6; Trojanowicz, *supra* note 56, at 42.

Because criminal parental responsibility laws focus on the parents' role in juvenile crime, this part will analyze only those psychological and sociological theories of juvenile crime causation that relate specifically to the family. A juvenile's family is important because it influences the formation of the juvenile's conscience and affects the discipline of the child.⁵⁹

The psychological theories of juvenile crime causation emphasize internal control structures.⁶⁰ Internal control structures are ways in which the family affects the child's personality.⁶¹ A child's first life experiences impact the child's later behavior.⁶² Thus, if a parent is openly hostile towards a child or shows little concern for the child, the parents' actions may contribute to later delinquent behavior.⁶³ The psychological theory focuses on such learned behavior.⁶⁴ For example, psychologists explain that children learn aggressive behavior from the manner in which their parents punish them.⁶⁵ Thus, a parent who uses physical punishment should not be surprised when their child becomes physically aggressive.⁶⁶ The psychological model, then, stresses the strong influence that a family exerts upon a child's personality.

In contrast, the sociological theories of juvenile crime causation emphasize the family's external control processes.⁶⁷ While the internal control processes concern personality formation, external control processes influence social relationships that affect a child's tendency to become delinquent.⁶⁸ In this context, "the environment of the family" is important.⁶⁹ The environmental factors that increase delinquent behavior are: "broken homes, family tension, parental rejection, methods of parental control, parental emotional stability, and family economics."⁷⁰ Another sociological perspective examines the "interaction in the contemporary family."⁷¹ This perspective differs from the "environment of the family" because it focuses on aspects of family life that might be changed by social programs or

59. Trojanowicz, *supra* note 56, at 86.

60. See Shoemaker, *supra* note 44, at 47-78, 175-81 (analyzing the different psychological theories).

61. Trojanowicz, *supra* note 56, at 85.

62. *Id.* at 84.

63. *Id.*

64. *Id.* at 85.

65. *Id.*

66. *Id.*

67. *Id.*; Shoemaker, *supra* note 44, at 182-207.

68. See Shoemaker, *supra* note 44, at 182.

69. Trojanowicz, *supra* note 56, at 86; see also Shoemaker, *supra* note 44, at 190 (phrasing this discussion as the "structure of the family"); Siegel, *supra* note 55, at 97-123.

70. Trojanowicz, *supra* note 56, at 86.

71. *Id.* at 98; see also Shoemaker, *supra* note 44, at 189 (phrasing this discussion as the "centrality of family relationships"); Siegel, *supra* note 55, at 125-149 (placing this discussion under the umbrella of "social process theories").

judicial intervention.⁷² The factors that contribute to family interaction include the generation gap, over-competitiveness within the family, over-reliance on outside resources such as child psychologists, lack of an efficient decision-making process, unrecognized immaturity in the child, loss of child-rearing priorities, and unconscious parental transmission of negative influence.⁷³

Sociologists also theorize that the methods of parental control can influence the development of delinquent behavior.⁷⁴ Unlike the psychological theories, which examine how a child learns specific behavior from his parents, this inquiry focuses on the amount of guidance a parent provides. Some theorists pose that strict parents hinder a child's interaction with peers, while more permissive parents may not guide a child's behavior enough.⁷⁵ Other sociologists link physical abuse by parents to delinquency.⁷⁶ Alternatively, if control methods are inconsistent, a child may lose respect for the parents or believe that she is exempt from discipline because the child has learned to manipulate the parents' inconsistent control methods.⁷⁷ Some sociologists contend that consistently strict or permissive parents have non-delinquent children, while parents who are inconsistent may encourage delinquent behavior in children.⁷⁸

The psychological and sociological perspectives "are not rival answers to the same question, but they answer different questions about the same sort of behavior."⁷⁹ As discussed above, the psychological theories focus on "internal factors that contribute to criminality," while the sociological theories focus on the "external environment in which" the child lives.⁸⁰ Some categories of parental behavior fit squarely within one of the theories. For instance, Freudian psychological theory looks at the repression of sexual desires to determine a child's later behavior,⁸¹ while a sociological theory, such as Anomie,⁸² looks at a child's interaction within a group to determine whether de-

72. Trojanowicz, *supra* note 56, at 98 ("Since many existing programs try to change family interactions, [this perspective] . . . will give a more detailed description of the interaction patterns thought to produce delinquency.").

73. Trojanowicz, *supra* note 56, at 98-105.

74. See Shoemaker, *supra* note 44, at 189; Siegel, *supra* note 55, at 135-39; Trojanowicz, *supra* note 56, at 92.

75. Trojanowicz, *supra* note 56, at 92 (citing Sheldon and Eleanor Glueck, *Delinquents and Nondelinquents in Perspective* 15-16 (1968)).

76. *Id.*

77. *Id.*

78. *Id.* at 92-93 (citing the study by William and Joan McCord & Irving Zola, *Origins of Crime* 76 (1959)).

79. *Id.* at 42.

80. *Id.* at 43.

81. *Id.* at 64.

82. The Anomie theory states that "if persons do not feel part of a group and are isolated from the mainstream of interaction and positive peer support, then a reaction to this situation would be some sort of deviant behavior." *Id.* at 45.

linquent behavior will result.⁸³ Certain types of behavior, in contrast, affect both the psychology and sociology of the child. For example, physical abuse may affect both a child's development of attitudes and values—under the psychological theories⁸⁴—and the child's interaction with peers—under the sociological theories.⁸⁵

Ultimately, both the psychological and sociological models agree on one thing—the family is just one of the many factors to consider when deciding what factors to address in the reduction of juvenile crime.⁸⁶ Thus, to address the growing delinquency problem, it is necessary to address all the factors contributing to delinquency, instead of narrowly concentrating all efforts on the parents.⁸⁷

2. Empirical Studies

In addition to psychological and sociological explanations, empirical studies have examined the causes of juvenile crime.⁸⁸ According to the United States Office of Juvenile Justice and Delinquency Prevention (“OJJDP”), the following elements increase the risk of delinquent behavior in children: family, community, school, individual, and peer group.⁸⁹ The OJJDP identifies the following risk factors within these categories: “child abuse and family disintegration, economic and social deprivation, low neighborhood attachment,⁹⁰ parental attitudes condoning law-violating behavior, academic failure, truancy, school drop-out, lack of bonding with society,⁹¹ fighting with peers, and early initiation of problem behaviors.”⁹² Additional factors

83. *Id.*

84. See *supra* note 66 and accompanying text.

85. See *supra* note 76 and accompanying text.

86. Shoemaker, *supra* note 44, at 72 (“The traditional view that delinquents . . . are produced from degenerate stock is no longer evident in modern psychological theories.”); Trojanowicz, *supra* note 56, at 105 (stressing that research shows “that, although the family has an effect, other factors also influence delinquency”).

87. Shoemaker, *supra* note 44, at 189 (stating sociologists have not always accepted the “centrality of family relationships” as a cause of juvenile delinquency); Trojanowicz, *supra* note 56, at 105.

88. Indeed, the empirical studies often provide data in support of the theoretical approaches. The empirical studies and the theoretical examinations are not mutually exclusive.

89. Paul Steiner, *Delinquency Prevention Fact Sheet #6* (visited Mar. 14, 1997) <<http://www.ncjrs.org/jjfact.htm>> [hereinafter *Prevention Fact*] (describing the Title V Delinquency Prevention Program Strategy of the OJJDP).

90. “Indifference to cleanliness and orderliness, high rates of vandalism, little surveillance of public places by neighborhood residents, absence of parental involvement in schools, and low rates of voter participation are indicative of low neighborhood attachment.” J. David Hawkins, *Controlling Crime Before it Happens: Risk-Focused Prevention*, National Institute of Justice Journal, Aug. 1995, at 12.

91. “Antisocial behavior of early onset . . . places the child at increased risk for problems . . . during adolescence.” *Id.* at 13.

92. *Prevention Fact*, *supra* note 89. Another scholar notes concern over the “early initiation of problem behaviors.” Hawkins, *supra* note 90, at 13 (“[T]he earlier in their lives that young people become involved in these kinds of experiences—or take their

that may contribute to juvenile crime include: mental disorders, association with delinquents,⁹³ low income,⁹⁴ bad housing, a poor education,⁹⁵ lack of extended family support, marital separation,⁹⁶ racial prejudice,⁹⁷ and media influences.⁹⁸ Empirical studies posit that a child exposed to several risk factors is more likely than other children to develop delinquent behavior.⁹⁹

In addition, some courts have offered an opinion on the root causes of juvenile crime by offering mitigating factors in determining the parents' liability. Some courts reason that because children are often left unsupervised, a parent should not be held liable for failing to control the child in all instances.¹⁰⁰ Moreover, cases have held that a child's age is another relevant factor in determining control.¹⁰¹ One case assumed parents have less control over an older child.¹⁰²

As demonstrated above, empirical studies and criminology theories provide insight into the numerous causes of juvenile crime.¹⁰³ Both generally agree, however, that the family, economic status, academic

first drink of alcohol or smoke their first marijuana cigarette—the greater is the likelihood of prolonged, serious, and chronic involvement in health and behavior problems.”).

93. Parsley, *supra* note 40, at 468; Siegel, *supra* note 55, at 50 (discussing “gang activity versus lone delinquency”).

94. Casgrain, *supra* note 40, at 173; Siegel, *supra* note 55, at 45.

95. Siegel, *supra* note 55, at 31-33.

96. Gilbert Geis & Arnold Binder, *Sins of Children: Parental Responsibility for Juvenile Delinquency*, 5 Notre Dame J.L. Ethics & Pub. Pol'y 303, 318 (1991).

97. Siegel, *supra* note 55, at 27-28, 31, 33.

98. “[C]ivic leaders have to compete with . . . sports figures, rock musicians, TV stars . . .” Stephen Braun, *Cities' Get-Tough Policies Make Parents Take Action*, New Orleans Times-Picayune, Dec. 12, 1996, at G18 (quoting Maris Vinovskis, a University of Michigan professor who specializes in the history of the American family).

99. *Prevention Fact*, *supra* note 89.

100. *Hall v. McBryde*, 919 P.2d 910, 913 (Colo. Ct. App. 1996) (reasoning parents who leave their children home unsupervised have not breached a duty of supervision); *Dennis v. Timmons*, 437 S.E.2d 138, 141 (S.C. Ct. App. 1993) (same); *Hockensmith v. Brown*, 929 S.W.2d 840, 848-49 (Mo. Ct. App. 1996) (finding parents could not be under a duty to supervise a child who went to a party without their permission); see *Humm*, *supra* note 40, at 1153, 1159-60 (suggesting that varying social forums change the level of parental control); Michelle L. Maute, *New Jersey Takes Aim at Gun Violence by Minors: Parental Criminal Liability*, 26 Rutgers L.J. 431, 458 (1995).

101. *Sabatinelli v. Butler*, 296 N.E.2d 190, 192 n.3 (Mass. 1973); *McDonald v. Lavery*, 534 N.E.2d 1190, 1192 (Mass. App. Ct. 1989).

Finally, age is relevant to parental supervision. . . . The younger the child, the more dependent he or she will be on the parent for support and guidance. Not only will the child more often be in the presence of the parents, but they will also have primary responsibility for structuring the child's contacts outside of the family. As the child matures, he will spend less time with the parents and will begin to take charge of his own social relationships. Parental control will be correspondingly diminished.

Humm, *supra* note 40, at 1153-54; see also Or. Rev. Stat. § 163.577 (1995) (criminalizing failure to control a child under age 15 as opposed to age 18 in similar statutes).

102. *Sabatinelli*, 296 N.E.2d at 192 n.3 (“[T]o the extent that the father's negligence is posited upon his ability to control his son, the age of the son is a relevant factor.”).

103. Chapin, *supra* note 36, at 664.

achievement, peer groups, community attachment, and media can all influence whether a child will become delinquent.¹⁰⁴ Consequently, in addressing the delinquency problem, legislatures have attempted to tailor their laws to one (or more) of the accepted causes of juvenile crime. The various legislative efforts will be discussed below in an effort to determine which solutions are most viable.

B. *Alternatives for Reducing Juvenile Crime*

Traditionally, numerous attempts to reduce juvenile crime have focused on parents. While some have addressed juvenile crime by imposing civil and criminal sanctions against parents of juvenile offenders, others have used prevention programs to address the causes of juvenile crime presumably within the control of parents.

Setting aside criminal parental responsibility laws, a number of laws are likewise designed to sanction parents. Child abuse and neglect laws, for instance, set parameters on the manner in which parents can control children.¹⁰⁵ These laws address the psychological theories, sociological theories, and empirical studies which link physical abuse to juvenile delinquency.¹⁰⁶ Contributing to the delinquency of a minor statutes penalize adults for affirmative acts or omissions that further juvenile crime.¹⁰⁷ In addition, parents have been held civilly liable for their children's criminal acts, often resulting in decisions requiring that the parents pay restitution for property and physical damage to victims.¹⁰⁸ Civil compensatory laws provide victims with remedies against parents when juveniles are unable to pay in an attempt to compel parents to supervise their children.¹⁰⁹

Other methods attempt to address the root causes of juvenile crime before the crime is committed.¹¹⁰ Two examples of these methods are teaching morals in early childhood¹¹¹ and providing character educa-

104. See *supra* Part I.A.

105. Casgrain, *supra* note 40, at 175-78; see, e.g., N.Y. Penal Law § 260.10 (McKinney 1997) (criminalizing the endangerment of a child's welfare).

106. See *supra* Part I.A.

107. Iowa Code Ann. § 709A.1 (West 1997); Kan. Stat. Ann. § 21-3612 (1995); Geis, *supra* note 96, at 305-07; see, e.g., *In the Matter of J.D.B.*, 915 P.2d 69, 71 (Kan. 1996) (stating defendant "violated K.S.A. 21-3612(a)(5) (contributing to a child's misconduct) for having caused or encouraged G.A., a child under the age of 18, to have sexual intercourse with her and commit the aggravated indecent liberties offense").

108. Geis, *supra* note 96, at 307-12; see Casgrain, *supra* note 40, at 178-80; see, e.g., 740 Ill. Comp. Stat. Ann. 115/3 (West 1997) (creating liability for parents for damages from intentional acts of children); N.Y. Gen. Oblig. Law § 3-112 (McKinney 1996) (requiring parents to pay property damage for children's crimes).

109. See *A v. B*, 468 N.Y.S.2d 992, 994 (N.Y. Sup. Ct. 1983) (stating the purposes of New York's civil parental responsibility law).

110. This section samples approaches which will be discussed in detail in part IV.B.

111. Maute, *supra* note 100, at 466. Moral instruction has been upheld under a Constitutional challenge of entangling church and state. See *M.C.L. v. Florida*, 682 So.2d 1209, 1212-13 (Fla. Dist. Ct. App. 1996).

tion in schools.¹¹² Studies show that children who are taught morals and character at the pre-school age are less likely to become delinquent later in life.¹¹³ In addition, establishing intensive day care and family services that provide for those below the poverty line¹¹⁴ would help to alleviate the problems associated with family economics¹¹⁵ and lack of parental supervision.¹¹⁶ Other programs include conflict resolution skills classes,¹¹⁷ mentoring programs,¹¹⁸ and criminal law courses in high schools.¹¹⁹ Finally, many cities enforce juvenile curfews to compensate for parents' lack of supervision.¹²⁰

These approaches address the causes of juvenile crime identified in the psychological theories, sociological theories, and empirical studies. Some legislatures have, alternatively, implemented criminal parental responsibility laws, which are examined below.

C. Criminal Parental Responsibility Statutes

This section will analyze the jurisdictional variations among the current criminal parental responsibility laws to shed light on the variations among the laws of different jurisdictions.¹²¹ Apparently, an increase in juvenile crime,¹²² coupled with frustration over perceived inadequacies in other responses to juvenile crime, has motivated legislators to enact criminal parental responsibility statutes.¹²³ Currently,

112. Judith T. Younger, *Responsible Parents and Good Children*, 14 Law & Ineq. 489, 514 (1996) (arguing a "curriculum for caring" would teach children about "the sensitivities, motivations and skills involved in assisting and caring for other human beings" (quoting Brian Hall, *Families and Children First*, Cornell Mag., Nov. 1995 at 35-36)); see William Jefferson Clinton, *President Clinton's Message to Congress on the State of the Union*, N.Y. Times, Feb. 5, 1997, at A20.

113. Maute, *supra* note 100, at 466-67.

114. *Id.*

115. See *supra* note 70 and accompanying text.

116. See *supra* note 100 and accompanying text.

117. Dennis C. Vacco, New York State Att'y Gen., Rep. on Juv. Crime, May 1996, at 30.

118. *Id.* For a more in depth discussion of a mentoring program, see *infra* Part IV.A-B.

119. Vacco, *supra* note 117, at 32.

120. Associated Press, *Cincinnati Considers Crackdown on Parents of Juvenile Offenders*, The Plain Dealer, Jan. 10, 1997, at 7B (noting that "cities are enforcing curfews to get young people off the streets at night").

121. It should also be noted that as parental responsibility laws are growing popular another movement is calling for parental rights laws. For instance, one Congressional bill could, if enacted, proscribe school counseling that is contrary to parents' wishes. The two movements clearly have conflicting goals. Applebome, *Carrot*, *supra* note 50, at 5.

122. Mary Wisniewski Holden, *Increasing Message to Parents of Juvenile Offenders: You're Grounded*, Chi. Law., Dec. 1996, at 14 ("The Federal Bureau of Investigation reports that the number of youths arrested for murder, rape, robbery and assault has increased nearly every year since 1985, though it declined slightly in the past year.").

123. Maute, *supra* note 100, at 433 & n.16.; A. Dale Ihrie III, *Parental Delinquency: Should Parents Be Criminally Liable for Failing to Supervise Their Children?*, 74 U. Det. Mercy L. Rev. 93, 96-7 (1996) (arguing legislators have enacted the parental

at least seven states and a number of cities have some form of criminal parental responsibility laws.¹²⁴ This part will explore the differences among these existing statutes.

The St. Clair Shores parental responsibility ordinance holds parents criminally liable when they cannot "reasonably control" their children.¹²⁵ The St. Clair Shores City Council adopted the law in July of 1994 without debate.¹²⁶ Two police officers, motivated by juvenile crime increases, drafted the ordinance based on laws from other jurisdictions.¹²⁷ After presenting the ordinance to the city attorney, the city council passed it into law.¹²⁸

New Mexico's legislature has also enacted a parental responsibility statute.¹²⁹ New Mexico's statute differs from St. Clair Shores' ordi-

responsibility laws to eliminate a lack of parental supervision, but also stating that "[t]he notion of 'parental responsibility' was likely born because of children's delinquency"). Examples of such statutes include: Ark. Code Ann. § 9-27-330 (Michie 1993) (fining parents up to \$500, ordering attendance at parenting classes, or requiring community service for the delinquent acts of their children); Cal. Penal Code § 272 (West Supp. 1997) (authorizing jail time and fines for negligent supervision and control of child which causes, encourages, or contributes to the delinquency of the child); Colo. Rev. Stat. Ann. § 19-2-113 (West 1997) (ordering a parent to attend parenting classes or perform community service with their child); Ky. Rev. Stat. Ann. § 530.060 (Michie 1996) (uses reasonable control standard in an endangering the welfare of a minor statute); N.M. Stat. Ann. § 32A-2-28(a) (Michie Supp. 1995) (making a parent a party to any complaint alleging a child's delinquency); N.Y. Penal Law § 260.10 (McKinney 1989) (controlling a child to prevent him from becoming a juvenile delinquent is included under the endangering the welfare of a child statute); Or. Rev. Stat. § 163.577 (Supp. III 1996) (criminalizing failure to supervise a child). Some cities are currently considering similar criminal responsibility legislation. See Lou Ransom, *Juvenile Justice U.S. Trends Point to Rising Youth Crime; What Steps Are We Taking?*, Cin. Enquirer, Feb. 23, 1997 at D01; Gordy Holt & Ruth Schubert, *Bellevue Weighs Program Aimed at Parental Responsibility*, Seattle Post-Intelligencer, Feb. 11, 1997, at B2.

124. See *supra* note 123. This Note will not discuss civil parental responsibility statutes or criminal statutes which only require restitution to a victim of juvenile crime. See, e.g., Md. Code Ann. art. 27, § 808 (1996) (requiring restitution for property or physical damage through the criminal court system). The focus here is on statutes which go beyond the traditional civil compensatory purpose.

This Note will also not discuss contributing to the delinquency of a minor statutes which require a parent's intent to cause the delinquency. See, e.g., N.H. Rev. Stat. Ann. § 169-B:41 (1994) (requiring a parent to knowingly contribute to the child's delinquency); Kan. Stat. Ann. § 21-3612 (1995) (finding guilt if a parent causes or encourages a child's misconduct). Some "contributing" statutes may specify a reasonable control standard similar to the St. Clair Shores ordinance and, therefore, will be discussed. See, e.g., Cal. Penal Code § 272.

125. See *supra* note 9 and accompanying text.

126. Seigel, *supra* note 7, at A1.

127. *Id.*

128. *Id.*

129. N.M. Stat. Ann. § 32A-2-28 (Michie Supp. 1995). The statute provides that:

In any complaint alleging delinquency, a parent of the child alleged to be delinquent may be made a party in the petition. If a parent is made a party and if a child is adjudicated a delinquent, the court may order the parent or parents to submit to counseling, participate in any probation or other treatment program ordered by the court and, if the child is committed for institu-

nance in that New Mexico does not require a showing that the parents lacked reasonable control, nor does it fine or incarcerate parents.¹³⁰ Instead of imprisonment, New Mexico courts can order parents to attend counseling, participate in the probation program of the juvenile, or participate in the juvenile's treatment program.¹³¹ Under the statute, parents are held strictly criminally liable for their delinquent children.¹³²

In comparison, California punishes parents through a statute proscribing the contribution to the delinquency of a minor.¹³³ Typically, such statutes require that parents commit an intentional act that causes a child to become delinquent.¹³⁴ California's statute differs from otherwise similar statutes in that a parent may be held liable without a showing of an intentional act.¹³⁵ Parents who do not "exercise reasonable care, supervision, protection, and control over" their child are guilty of a misdemeanor and subject to a fine of up to \$2,500.¹³⁶ Two noted purposes of the California statute are to inform parents of their responsibility to eliminate delinquency¹³⁷ and to create parental accountability for juvenile crimes.¹³⁸ Courts have interpreted the statute to permit parents to avoid liability if they attend parental training classes.¹³⁹

Arkansas and Colorado, in contrast, hold parents criminally liable by making parents parties to the delinquency action.¹⁴⁰ In either state

tionalization, participate in any institutional treatment or counseling program including attendance at the site of the institution.

Id.

130. Compare *id.* with St. Clair Shores, Mich., 20.565 (July 26, 1994).

131. N.M. Stat. Ann. § 32A-2-28.

132. See *id.*

133. Cal. Penal Code § 272 (West Supp. 1997).

134. See *supra* note 124.

135. See Cal. Penal Code § 272.

136. *Id.*

137. California Assembly Committee on Public Safety, Committee Report for 1991 California Assembly Bill No. 2208, at 2208, 1991-92 Regular Session (1992).

138. Senate Committee on Criminal Procedure, Committee Report for 1995 California Assembly Bill No. 3261, 1995-96 Regular Session (1996).

139. Williams v. Garcetti, 853 P.2d 507, 508 (Cal. 1993).

140. Ark. Code Ann. § 9-27-330(a) (Michie Supp. 1995).

If a juvenile is found to be delinquent, the court may enter an order making any of the following dispositions based upon the best interest of the juvenile: . . . (8) Order a fine of not more than five hundred dollars (\$500) to be paid by the juvenile, a parent, both parents, or the guardian; (9) Order that the juvenile and his parent, both parents, or the guardian perform court-approved 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, not to exceed one hundred sixty (160) hours; (10)(A) Order that the parent, both parents, or the guardian of the juvenile attend a court-approved parental responsibility training program, if available.

Id.; Colo. Rev. Stat. Ann. § 19-2-113 (West 1997) ("(1)(a) The parent, guardian, or legal custodian of any juvenile subject to proceedings under this article is required to

the court may order the parents of a delinquent child to perform community service with the juvenile or to attend parental training classes.¹⁴¹ In Arkansas, parents can be fined up to \$500.¹⁴² In both Colorado and Arkansas, parents can be held accountable without any showing of the lack of parental control.¹⁴³ In effect, these statutes hold parents strictly liable.

Oregon employs a failure to supervise statute to hold parents liable for the crimes of their children.¹⁴⁴ The purpose of Oregon's law is to act as a tool to assist parents and families,¹⁴⁵ however, rather than to punish parents.¹⁴⁶ A parent receives a warning for a first offense and parental training classes or a fine for the second offense.¹⁴⁷ Affirmative defenses to prosecution include notifying the proper authorities of the child's illegal act and taking reasonable steps to control the child.¹⁴⁸

In New York, a parent who "fails or refuses to exercise reasonable diligence in the control of [a] child to prevent him from becoming . . . 'a juvenile delinquent' or a 'person in need of supervision'" may be found guilty of endangering the welfare of a child.¹⁴⁹ This is a class A misdemeanor¹⁵⁰ which requires greater than 15 days, but less than one year imprisonment.¹⁵¹ Kentucky uses a similar endangerment statute to hold parents liable for failing to "exercise reasonable diligence in the control of [a] child to prevent him from becoming a . . . delinquent child."¹⁵² As in New York, violation of the statute is a Class A misdemeanor¹⁵³ punishable by up to 12 months' imprisonment.¹⁵⁴

attend all proceedings that may be brought under this article concerning the juvenile.").

141. Ark. Code Ann. § 9-27-330; Colo. Rev. Stat. Ann. § 19-2-113.

142. Ark. Code Ann. § 9-27-330.

143. See Ark. Code Ann. § 9-27-330; Colo. Rev. Stat. Ann. § 19-2-113.

144. Or. Rev. Stat. § 163.577 (1995) ("A person commits the offense of failing to supervise a child if the person is the parent, lawful guardian or other person lawfully charged with the care or custody of a child under 15 years of age and the child: (a) Commits an act that brings the child within the jurisdiction of the juvenile court . . .").

145. 68th Oregon Legislative Assembly, Staff Measure Summary HB 2884, 1995 Regular Session (1995).

146. Oregon House Judiciary Subcommittee on Juvenile Justice, Meeting Minutes, Mar. 13, 1995, at 6. Despite the law's stated purpose, however, its effect is similar to the other statutes in this section.

147. Or. Rev. Stat. § 163.577(6)(a)-(9).

148. Or. Rev. Stat. § 163.577(3)-(4).

149. N.Y. Penal Law § 260.10 (McKinney 1989); see *People v. Dailey*, 323 N.Y.S.2d 523, 526 (Yates County Ct. 1971) (holding loitering insufficient to show child's welfare was in danger).

150. N.Y. Penal Law § 260.10.

151. N.Y. Penal Law § 70.15(1).

152. Ky. Rev. Stat. § 530.060 (Michie 1997).

153. *Id.*

154. Ky. Rev. Stat. § 532.020 (Michie 1997).

Unlike the St. Clair Shores ordinance, most of the states provide for affirmative opportunities to avoid liability,¹⁵⁵ such as parenting classes,¹⁵⁶ reporting the child's crime,¹⁵⁷ and community service done by both the parents and child together.¹⁵⁸ Although several states provide some form of criminal penalties for the parents of delinquent children, the effectiveness of these statutes is questionable. The next section considers the extent to which these laws succeed in reducing juvenile crime.

D. *Do the Criminal Parental Responsibility Laws Work?*

Little direct statistical analysis is available to show the effectiveness of the newly-enacted criminal parental responsibility laws.¹⁵⁹ Available statistics, however, suggest that the laws are not entirely effective in reducing the juvenile crime rate.¹⁶⁰

In California, for example, 1,000 parents have been ordered to attend parental training or counseling since California passed its law in 1994.¹⁶¹ Despite their enrollment in class, there has been no corresponding decrease in juvenile crime. Some evidence, however, supports proponents of the criminal parental responsibility laws. Silverton, Oregon has had better results. There, juvenile crime dropped 40 percent after the first year the city adopted its criminal parental responsibility ordinance,¹⁶² but this law is still too new to evaluate its long-term effectiveness.¹⁶³

155. Maute, *supra* note 100, at 462.

156. Colo. Rev. Stat. Ann. § 19-2-703 (West 1997); N.M. Stat. Ann. § 32A-2-28(a) (Michie Supp. 1995); Williams v. Garcetti, 853 P.2d 507, 508 (1993) (dismissing charges after authorities learned the mother attended parenting classes); Vacco, *supra* note 117, at 20 (suggesting the use of parental training in Family Court); West's Legal News Staff, *Florida Juvenile Judges Lead Push for Mandatory Parenting Classes*, West's Legal News, Jan. 13, 1997, at 14353 (discussing Florida juvenile court judges' tendency to "push for legislation requiring parents of those youth appearing before them to attend parenting classes"); Younger, *supra* note 112, at 515-16 (teaching parents how to perform their role is necessary).

One scholar argues parenting classes alone are ineffective because juvenile delinquency is based on multiple factors. See generally Chapin, *supra* note 36, at 672 (concluding "neither parent training nor parent punishment will help" reduce juvenile delinquency).

157. Or. Rev. Stat. § 163.577 (Supp. III 1996).

158. Maute, *supra* note 100, at 465.

159. Chapin, *supra* note 36, at 653-54; Haya L. Nasser, *Teen Crime Tosses Ball to Parents' Court*, USA Today, Aug. 6, 1996, at 1A.

160. See *infra* notes 164-67.

161. Peter Applebome, *More States Rush to Hold Parents Liable for Kids' Crimes*, Idaho Statesman, April 15, 1996; Nasser, *supra* note 159, at 1A.

162. Holt, *supra* note 123, at B2; Nasser, *supra* note 159, at 1A.

163. Nasser, *supra* note 159, at 1A (stating "[m]ost of these laws are too new to be rated on their effectiveness").

Nonetheless, the weight of evidence indicates that parental responsibility laws are ineffective¹⁶⁴ or, at least, under-utilized.¹⁶⁵ In 1963, the Department of Health, Education, and Welfare evaluated 16 states that had enacted civil parental responsibility laws and found their juvenile crime rates higher than before the statutes were enacted.¹⁶⁶ In addition, the low prosecution rates for parental responsibility may indicate that these laws are not being utilized.¹⁶⁷ In all, the paucity of evidence regarding the laws does little to further the contention that they are effective.

From this part's discussion, several conclusions can be drawn. First, criminology theories, as well as empirical evidence, indicate that parenting is not the only factor affecting juvenile tendencies. Rather, parenting is just one of a number of social and familial influences at work. State legislatures have employed a wide variety of methods to target juvenile crime's underlying causes. While there is disagreement regarding the exact causes of juvenile crime, achieving such a consensus may be unnecessary to determine whether these laws should be repealed. In addition to the practical ineffectiveness of criminal parental responsibility laws, the next part will demonstrate that such laws are fundamentally irreconcilable with the theoretical underpinnings of our justice system.

II. THE JUSTIFICATIONS FOR THE CRIMINAL LAW

While criminal courts may be a prominent part of our society, their use is not always warranted. Criminal sanctions are the strongest pen-

164. Geis, *supra* note 96, at 304 ("[T]here is no evidence that the laws punishing parents inhibit the delinquency of their children; nor does reflective common sense or the theory dominating the study of delinquency offer support for the idea that they can do so."); Ligorsky, *supra* note 40, at 466 (arguing that "[e]vidence exists that parental liability statutes may fail to deter crime"); Weinstein, *supra* note 40, at 878-79 (stating "evidence exists that parental liability statutes may fail to deter crime").

165. See *infra* note 167.

166. Alice B. Freer, *Parental Liability (sic) for Torts of Children*, 53 Ky. L.J. 254, 264-65 (1964) (citing the study).

167. Casgrain, *supra* note 40, at 171-72 (arguing that low prosecution rates indicate the law's failure because it diminishes fear, and, as a result, diminishes the law's deterrent effects on juveniles). To some degree, this phenomenon may be attributable to the difficulty inherent in proving parental knowledge in states which require some act or omission of the parent, rather than to law enforcement's failure to charge parents under the statute. *Id.*

One reason for few convictions is the difficulty of proving parental permission and knowledge. This is especially true where the child is older. A mature, independent child more easily violates laws without a parent's knowledge. Likewise, parents are rarely with the children when the violation occurs, which makes proving permission and knowledge problematic. The prosecutor must prove acquiescence in some other way, often by hearsay evidence. As a result, most convictions occur when the parent openly admits the violation, which is rare.

Id. at 171 (emphasis added).

alty society can impose.¹⁶⁸ Indeed, such penalties may result in a severe deprivation of liberties.¹⁶⁹ Thus, many scholars have suggested that the justifications for criminal sanctions should be significantly more compelling than those for civil penalties.¹⁷⁰ The question, then, is whether the implementation of parental responsibility laws satisfies this stricter standard.¹⁷¹

Because the overall aims of criminal law are to deter and prevent crime,¹⁷² the more relevant question becomes whether these laws efficiently and justly perform either of these functions. Stated differently, this inquiry examines whether parental actions or inactions are "criminal" and thus require prevention or deterrence through stricter sanctions than civil penalties.

In examining whether criminal parental responsibility laws are consistent with our system of criminal justice, it is first necessary to define the theories of criminal law. There is a debate among criminal theorists about whether "criminal" should be defined as a social or moral wrong.¹⁷³ The former is reflected in the theory of utilitarianism, examined in part II.A below; the latter is reflected in retributivism, which is discussed in part II.B.¹⁷⁴ Part II.C, in turn, compares the sub-

168. Andrew Ashworth, *Principles of Criminal Law* 20 (1991).

169. *Id.*

170. Several legal scholars have addressed the distinction between civil and criminal punishment. Ashworth, *supra* note 168, at 30; George P. Fletcher, *What is Punishment Imposed For?*, 5 J. Contemp. Legal Issues 101, 101-102 (1994); see generally John C. Coffee Jr., *Does "Unlawful" Mean "Criminal"? Reflections on the Disappearing Tort/Crime Distinction in American Law*, 71 B.U. L. Rev. 193 (1991); Donald Dripps, *The Exclusivity of the Criminal Law: Toward a "Regulatory Model" of, or "Pathological Perspective" on, the Civil-Criminal Distinction*, 7 J. Contemp. Legal Issues 199 (1996); Alan T. Harland, *Monetary Remedies for the Victims of Crime: Assessing the Role of the Criminal Courts*, 30 UCLA L. Rev. 52 (1982).

171. See Weinstein, *supra* note 40, at 863-65.

172. Ashworth, *supra* note 168, at 11; Weinreb, *supra* note 41, at 400 ("Most observers would probably conclude that none of the justifications of punishment, except the preventive function, can be regarded as beyond controversy.").

173. Ashworth, *supra* note 168, at 21-23 ("Does the term 'wrong' indicate social or moral wrongness?"); see generally Matthew A. Pauley, *The Jurisprudence of Crime and Punishment from Plato to Hegel*, 39 Am. J. Juris. 97 (1994) (describing the evolution of criminal jurisprudence).

174. Utilitarianism and Retribution are viewed as the two main theories of criminal law. Joshua Dressler, *Understanding Criminal Law* 8 (2d ed. 1995) ("Moral reasoning is of two types: utilitarianism and retributivism."); Charles E. Torcia, *Wharton's Criminal Law* § 1, at 2-3 (15th ed. 1993) ("Although the theory of retribution would impose punishment for its own sake, the utilitarian theories . . . would use punishment as a means to an end—the end being community protection by the prevention of crime."); Weinreb, *supra* note 41, at 392-93; Jeffrey A. Barker, Comment, *Professional-Client Sex: Is Criminal Liability an Appropriate Means of Enforcing Professional Responsibility?*, 40 UCLA L. Rev. 1275, 1294 (1993) ("There are essentially two mainstream philosophical models used to justify imposing punishment on criminal offenders: retributivism and utilitarianism."); Kent Greenawalt, "Prescriptive Equality": *Two Steps Forward*, 110 Harv. L. Rev. 1265, 1288 (1997) ("A common debate is whether punishment is warranted on retributive . . . or utilitarian grounds."); See N. Stephan Kinsella, *A Libertarian Theory of Punishment and Rights*, 30 Loy.

tleties of the two theories. Both theories provide frameworks which may be used to determine whether a particular criminal sanction is just.¹⁷⁵

A. *The Utilitarian Approach to Criminal Law*

From a utilitarian perspective, as initially formulated by Jeremy Bentham, punishment, and indeed all law, is justified only when it benefits society as a whole at the least possible cost.¹⁷⁶ Criminal liability, then, is beneficial when it ensures that citizens fulfill the obligations that are prerequisites to peaceful community living.¹⁷⁷ Punishment is an instrument of societal control.¹⁷⁸ Its focus should not be on the criminal, but rather, on the good done for society.¹⁷⁹ Right and wrong are defined with respect to the utility the punishment provides to society.¹⁸⁰ If the benefits to society of criminal punish-

L.A. L. Rev. 607, 608-609 (1997); Paul H. Robinson & John M. Darley, *The Utility of Desert*, 91 Nw. U. L. Rev. 453, 454 (1997) (justifying punishment on the two grounds of utilitarianism and retribution).

A third approach, "Denunciation," is a hybrid of utilitarianism and retributivism. Dressler, *supra* note 174, at 13-14 ("[P]unishment is justified as a means of expressing society's condemnation of a crime.").

Law and Economics provides yet another approach. Economic theorists propose that punishments should show how much liberty or money a citizen is prepared to forfeit in order to commit crime. It equates rational choice with the retributive concept of free will by substituting moral reasoning with behavioral explanations for criminal conduct. The criminal weighs the costs and benefits before acting. Richard A. Posner, *The Problems of Jurisprudence* 174-177 (1990). Yet, even Judge Posner, who has developed this approach, admits "there is more to justice than economics." Richard A. Posner, *Economic Analysis of Law* 27 (4th ed. 1992).

175. For a law to be just, it should fit within at least one, if not both, of the theories. "Neither model alone sufficiently describes the entire range of conduct subject to criminal penalties; nevertheless, considered together, the two models are helpful in that they provide a principled means of discussing the *appropriate* scope of the criminal law-i.e., they identify the range of conduct that *can* be justly prohibited." Barker, *supra* note 174, at 1294; *see also* Dressler, *supra* note 174, at 8; Robinson, *supra* note 174, at 454 (stating "[c]riminal punishment can be justified on two broad grounds: utilitarianism and retribution").

176. Dressler, *supra* note 174, at 9 ("[T]he purpose of all laws is to maximize the net happiness of society."); *see generally* Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation* (1823) *reprinted in* John Stuart Mill, *Utilitarianism on Liberty Essay on Bentham* 34 (Mary Warnock ed., 1962) ("By the principle of utility is meant that principle which approves or disapproves of every action whatsoever, according to the tendency which it appears to have to augment or diminish the happiness of the party whose interest is in question. . . .").

177. Ashworth, *supra* note 168, at 1 (proposing that the criminal law "may be seen as justified by the mutual obligations necessary for worthwhile community living").

178. Fletcher, *supra* note 170, at 110.

179. Bentham, *supra* note 176, at 35 ("An action then may be said to be conformable . . . to utility, (meaning with respect to the community at large) when the tendency it has to augment the happiness of the community is greater than any it has to diminish it."); Weinreb, *supra* note 41, at 393 (explaining that "punishment is justified by its *utility*, the good that it does, not necessarily for the criminal himself but for the community").

180. Bentham, *supra* note 176, at 36.

ment—for example, increased juvenile control—outweigh the costs, then the punishment is justified.¹⁸¹ Conversely, if the costs outweigh the benefits, a utilitarian would endorse other means of social control.¹⁸²

Three questions must be answered to determine whether a particular criminal punishment is justified under utilitarianism: (1) What are the social benefits to criminalizing the behavior?; (2) Would disadvantageous consequences or costs result from creating this crime?; and (3) What other means may effectively prevent the criminal conduct?¹⁸³ Each of these elements will be examined to determine whether criminal parental responsibility laws fit within the utilitarian model of justice.

1. Benefits

The primary benefits of criminal sanctions identified by the utilitarian approach are deterrence and rehabilitation.¹⁸⁴ There are two types of deterrence: *specific deterrence*, or the prevention of further criminal activity by the individual,¹⁸⁵ and *general deterrence*, which offers the punished defendant as an example to society in the hope of deterring others from committing the same crime.¹⁸⁶ Fear is the primary element of both types of deterrence.¹⁸⁷ Specific deterrence, therefore, attempts to alter the individual criminal's calculation of costs and benefits by using the threat of prison to force the potential criminal to weigh the risks of illegal conduct and ultimately choose not

Of an action that is conformable to the principle of utility one may always say either that it is one that ought to be done, or at least that it is not one that ought not to be done. One may say also, that it is right it should be done

Id.; Michele H. Kalstein, et al., *Calculating Injustice: The Fixation on Punishment as Crime Control*, 27 Harv. C.R.-C.L. L. Rev. 575, 579 (1992) ("The guiding principle of utilitarian theory holds that 'it is the greatest happiness of the greatest number that is the measure of right and wrong.'" (quoting Jeremy Bentham, A Fragment on Government 3 (J.H. Burns & H.L.A. Hart eds., Cambridge University Press 1988) (1776))).

181. Kalstein, *supra* note 180, at 579 ("[T]o do what is 'right', an actor must calculate the predicted pain and pleasure that her acts will create in society and perform only those acts which produce the greatest pleasure, or the greatest overall happiness.").

182. Barker, *supra* note 174, at 1306-07.

183. *Id.*

184. Dressler, *supra* note 174, at 10 (explaining deterrence and rehabilitation); Torcia, *supra* note 174, § 1, at 3 (noting "the utilitarian theories of deterrence and reformation would use punishment as a means to an end").

185. Dressler, *supra* note 174, at 10; Torcia, *supra* note 174, § 3, at 16; *see, e.g.*, *Seleina v. Seleina*, 93 N.Y.S.2d 42, 45 (Dom. Rel. Ct. 1949) (expressing hope that the parent would reflect upon what he had done to his child).

186. Dressler, *supra* note 174, at 10; Torcia, *supra* note 174, § 3, at 16; Weinreb, *supra* note 41, at 397; Kalstein, *supra* note 180, at 580.

187. H.L.A. Hart, *Punishment and Responsibility: Essays in the Philosophy of Law* 236 (1968).

to commit the crime.¹⁸⁸ Criminalizing the conduct is effective, then, when the threat of prison or punishment will improve the future conduct of that individual criminal.¹⁸⁹ General deterrence, on the other hand, seeks to encourage compliance with the law by making an example out of the punished criminal. General deterrence is, therefore, more concerned with community order than with the illegal acts of individual criminals.¹⁹⁰ But in many instances, punishment and prison might not be as effective as other social and educational policies or programs.¹⁹¹ Utilitarians stress that punishment should be a last resort because they find it unpleasant.¹⁹² Thus, if other less costly means are available, they should be employed.

Rehabilitation, the other goal of the utilitarian model, is an attempt to ensure that the criminal's future behavior will comply with societal norms.¹⁹³ Both probation and imprisonment have potential rehabilitative value.¹⁹⁴ Reformation of criminals into law-abiding and productive citizens is of great benefit to society.¹⁹⁵

2. Costs

The "costs" under the utilitarian approach are the consequences resulting from enforcement of the criminal law. Some common costs to society for imprisonment are the expense of imprisonment,¹⁹⁶ the loss

188. Weinreb, *supra* note 41, at 397 ("The threat of punishment may simply alter a person's calculation of risks, costs, and benefits."). In other words, the criminal will decide whether committing the crime is worth suffering the punishment.

189. "Possibly such confinement might help him to realize his own conduct and what he has done to his own child, and in that way make a better man out of him and a good father to his children." *Seleina*, 93 N.Y.S.2d at 45.

190. Weinreb, *supra* note 41, at 397-98.

191. Ashworth, *supra* note 168, at 13, 55 ("In terms of prevention, more can probably be achieved through various techniques of situational crime prevention, social crime prevention, and general social and educational policies." (footnotes omitted)).

192. Dressler, *supra* note 174, at 9 ("To a utilitarian, both crime and punishment are unpleasant and, therefore, normally undesirable occurrences.").

193. Ashworth, *supra* note 168, at 13 ("A rehabilitative theory would attempt to mold offender's behavior towards compliance with the norms of the criminal law.").

194. Weinreb, *supra* note 41, at 398.

[T]he correctional field is directed toward developing institutional plants, personnel and programs that will accomplish the rehabilitation of as many offenders as possible and will enable those who cannot be released to adjust as well as possible to the restricted life of the prison.

Id. (quoting the American Correctional Association, Manual of Correctional Standards 8 (3d ed. 1966)); see Torcia, *supra* note 174, § 4, at 18-19 ("At times, an offender's reformation may be promoted by probation rather than imprisonment . . .").

195. Kalstein, *supra* note 180, at 581. The possibility of rehabilitation, while currently viewed with skepticism, has historically been accepted as a social benefit. Dressler, *supra* note 174, at 15; Weinreb, *supra* note 41, at 400.

196. Posner, Economic Analysis of Law, *supra* note 174, at 227 (including "the expense of constructing, maintaining, and operating prisons").

or impairment of the criminal's economic production after release,¹⁹⁷ and criminal stigma.¹⁹⁸ If these or other adverse consequences outweigh the benefits derived from criminalizing the behavior, the punishment is not justified under the utilitarian model.¹⁹⁹

3. Alternatives to Criminal Liability

The final component of utilitarianism is a consideration of alternatives to the examined practice. Due to the high costs of criminal incarceration, utilitarians argue that imprisonment should be avoided if there are better, less costly means to achieve society's ends.²⁰⁰ Thus, the utilitarian uses a cost-benefit analysis to determine whether a criminal law is just.²⁰¹ Some scholars argue, however, that laws requiring punishment are just irrespective of their relative costs and benefits, because they serve to exact punishment for a moral wrong committed against the individual and society. This approach, examined below, is the theory of retributivism.

B. *The Retributive Approach to Criminal Law*

Retributivism, or the Kantian approach,²⁰² asks whether the past conduct in question is morally wrong.²⁰³ This approach is backward-looking, asking whether the punishment is deserved.²⁰⁴ According to

197. *Id.* (stating that the impairment is "caused by the depreciation of skills, loss of contacts, etc. during the period of imprisonment—the depreciation in short of the convict's human capital").

198. *United States v. Glasgow*, 389 F. Supp. 217, 224 n.18 (D.D.C. 1975) (listing "[c]urtailment of employment opportunity, quasi-criminal record, harm to personal reputation in the eyes of family and friends and public reinforcement of antisocial tendencies" as possible effects of juvenile adjudications of delinquency (quoting The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Juvenile Delinquency and Youth Crime 16 (1967))); Ashworth, *supra* note 168, at 28 (noting that the criminal law is "stigmatic in its operation").

199. "[T]he consequences of criminalizing certain behaviour should not be as bad as, or worse than, the consequences of leaving it outside the ambit of criminal law." Ashworth, *supra* note 168, at 27-28 (discussing the growth in organized crime after the United States alcohol prohibition).

200. *Id.* at 28-29.

201. *Id.*

202. See generally Immanuel Kant, *The Metaphysical Elements of Justice* ix (John Ladd trans., 1965) (1724-1804) (explaining Kant's philosophy of the "dignity of the individual").

203. Hart, *supra* note 187, at 36 ("On this view the law inquires into the mind in criminal cases in order to secure that no one shall be punished in the absence of the basic condition of moral culpability."); Kalstein, *supra* note 180, at 581 (explaining that retributivism is "generally viewed as anti-utilitarian, holding that an offender deserves punishment because she has 'morally' transgressed, not because she can be used as an example to others").

204. Kant, *supra* note 202, at 99-107; Weinreb, *supra* note 41, at 393 (stating that punishment "is retrospective, a requirement of justice justified directly and completely by the past conduct of the person punished"); Torcia, *supra* note 174, § 2, at 13 ("The offender simply deserved to be punished; he was allowed, by suffering punishment, to expiate the sin he has committed." (footnotes omitted)).

Kant, punishment "must in all cases be imposed on . . . [a person] only on the ground that he has committed a crime."²⁰⁵ Justice is served by punishing the morally wrong because they deserve the penalty;²⁰⁶ it is right to hurt a criminal because the criminal has harmed society.²⁰⁷ The Kantian view could also be termed "vengeance,"²⁰⁸ or "just deserts."²⁰⁹ To more closely examine retribution, it is necessary to break it down into its discrete analytic elements: (1) Is the crime voluntary in nature? and (2) Does the criminal receive her "just deserts?"

1. Voluntary Nature of the Crime

Retributivists believe human beings are special because they possess free will and, thus, punishment is deserved only when a person *consciously* chooses to commit a wrong.²¹⁰ To the extent a person's freedom to choose is constricted, their culpability should be correspondingly limited.²¹¹ Individuals must have knowledge and voluntarily control of their actions to justify punishment.²¹² Otherwise, the threat of punishment is wasted because, without control, a criminal is not responsible for her crime.²¹³ It does not matter whether the punishment will reduce further crime, either by this individual or others, because retributivism focuses solely on the individual criminal.²¹⁴

2. Just Deserts

If an illegal act was committed voluntarily, the retributivist then considers the gravity of the punishment. The greater the harm to soci-

205. Kant, *supra* note 202, at 100.

206. Hart, *supra* note 187, at 36; Kant, *supra* note 202, at 100 ("He must first be found to be deserving of punishment before any consideration is given to the utility of this punishment for himself or for his fellow citizens.").

207. "Because the criminal has harmed society, it is right to 'hurt him back.'" Dressler, *supra* note 174, at 12.

208. Weinreb, *supra* note 41, at 398 (explaining "punishment is thought to serve [the] satisfaction of a deeply felt human need for requital of wrongdoing or, simply, vengeance").

209. Dressler, *supra* note 174, at 12 (discussing the retributivists "just deserts" philosophy).

210. Kant, *supra* note 202, at 105 (explaining a person "suffers punishment . . . because he has willed a punishable action").

211. Hart, *supra* note 187, at 37-39.

212. *Id.* at 107 (reasoning that a "link between mind and body" is needed to determine liability).

213. *Id.* at 41 (explaining that "the law's threat could not have had any effect on the agent in relation to the *particular* act committed because of his lack of knowledge or control").

214. Dressler, *supra* note 174, at 11 ("[T]he wrongdoer should be punished, whether or not it will result in a reduction in crime.").

ety, the graver the punishment should be.²¹⁵ Proportioning punishment to the seriousness of the offense is the "just desert."²¹⁶

Thus, rather than weighing the costs of punishment with respect to its benefits as does utilitarianism,²¹⁷ retributivism focuses on whether the crime was voluntarily committed and whether the criminal gets her "just desert." To fully explicate the framework against which criminal parental responsibility laws will be evaluated, the other important differences between the two schools will be explored below.

C. *Comparison of Utilitarianism and Retributivism*

There are two major differences between utilitarianism and retributivism: moral culpability and social maximization.²¹⁸ Utilitarianism differs from retributivism because it views punishment as a "forward-looking social policy,"²¹⁹ "rather than backward-looking at moral guilt."²²⁰ Utilitarians argue that basing a system on morality is wrong because people have different conceptions of morality's boundaries.²²¹ Therefore, while culpability is not an element of criminal liability under the utilitarian approach, it is important to retributivists.²²²

Strict liability crimes illustrate the difference between retributivism and utilitarianism.²²³ Strict liability is defined as "liability imposed for an act or omission in violation of law, without considering at trial whether the defendant may exculpate himself by proving a mistake or accident bearing on the wrongfulness of his violation."²²⁴ In other

215. Ashworth, *supra* note 168, at 14-15.

216. *Id.* at 15 (explaining the "concept of proportionality involves preserving a correspondence between the relative seriousness of the crime and the relative severity of the sentence").

217. *See supra* Part II.A.

218. *See infra* Part II.C.

219. Weinreb, *supra* note 41, at 395 (stating utilitarianism "regards punishment for crime as the equivalent of . . . any . . . forward-looking social policy").

220. Kalstein, *supra* note 180, at 580 ("The utilitarian's vision of punishment, then, is forward-looking to crime prevention, rather than backward-looking to moral guilt."); *see also* Dressler, *supra* note 174, at 11.

221. Ashworth, *supra* note 168, at 22-23 ("A theory about morality and the criminal law must be based on a secure definition of morality . . .").

222. Kalstein, *supra* note 180, at 585-86.

223. This Note will not discuss vicarious liability. Vicarious liability arose because: "by reason of some relationship existing between A and B, the negligence of A is to be charged against B, although B has played no part in it, has done nothing whatever to aid or encourage it, or indeed has done all that he possibly can to prevent it." William L. Prosser, *Handbook of the Law of Torts* § 69, at 458 (4th ed. 1971). The St. Clair Shores ordinance does not hold parents vicariously liable because the parent is not charged with the particular crime their child has committed, but with lack of responsibility. Clute, *supra* note 40, at 1569. *But cf.* Humm, *supra* note 40, at 1145 (penalizing the parent for the acts of the child is "the de facto imposition of vicarious liability"); Weinstein, *supra* note 40, at 863-67 ("Parental liability laws . . . can be construed as punishing parents not for their own violations of the law but for someone else's—their child's." (footnote omitted)).

224. George P. Fletcher, *Rethinking Criminal Law* § 9.3.2, at 716 (1978).

words, it is a no-fault crime.²²⁵ Retributivists find fault with strict liability crimes because there is no culpability requirement. They argue that punishment should depend upon choice because it is this choice which molds the individual's behavior.²²⁶ Strict liability crimes do not allow for willful decisions and, consequently, retributivists argue the system does not ensure that criminal sanctions reflect moral culpability.²²⁷ In addition, retributivists believe that even if punishment for such crimes would benefit society because it will change some criminals' behavior, such laws are unacceptable because they sweep too broadly, punishing the innocent and those unable to control their actions.²²⁸ Retributivists argue that sacrificing the innocent for the sake of utility would be unjustifiable.²²⁹

The second major difference between the two theories concerns social maximization goals.²³⁰ Retributivists argue that utilitarianism's social maximization can lead to problems.²³¹ In formulating policy, legislators may ignore "social inequities."²³² At times, society may be the cause of crime. In those cases, society, rather than an individual, needs correction.²³³ Moreover, under utilitarianism, an innocent person could be punished if it benefits society.²³⁴ For example, utilitari-

225. Ashworth, *supra* note 168, at 3 (explaining that crimes which require "no personal fault at all . . . are usually termed offences of 'strict liability'"); Fletcher, *Rethinking Criminal Law*, *supra* note 224, § 9.3.3, at 726 (discussing statutory rape and other crimes of mistake); Hart, *supra* note 187, at 176 ("[I]t is no defence that the accused did not intend to do the act which the law forbids and could not, by the exercise of reasonable care, have avoided doing it.").

226. Hart, *supra* note 187, at 182 (arguing if our criminal system were "one in which [men] were liable to punishment . . . whether they had voluntarily offended or not, it is plain that our system takes a risk").

227. *Id.* at 181-82.

228. *Id.* at 12 (explaining that "a system which openly empowered authorities to [punish an offender's family], even if it succeeded in averting specific evils . . . would awaken such apprehension and insecurity that any gain from the exercise of these powers would by any utilitarian calculation be offset by the misery caused by their existence").

229. *Id.* Hart offers "excusing conditions" as an alternative to strict liability: (1) "maximize the individual's power at any time to predict the likelihood that the sanctions of the criminal law will be applied to him;" (2) "introduce the individual's choice as one of the operative factors determining whether or not these sanctions shall be applied to him;" (3) "if the sanctions of the criminal law are applied, the pains of punishment will for each individual represent the price of some satisfaction obtained from breach of law." *Id.* at 47.

230. *See supra* note 176.

231. Kalstein, *supra* note 180, at 588 (reasoning that "the happiness-maximizing calculus on which [utilitarianism] operates allows policymakers to take as given—and thus to ignore—existing social inequities when devising policies").

232. *Id.*

233. *Id.* ("[I]t is society which is responsible and needs correction because it is society which has situated the offender in a position which has forced her to commit a crime." (footnote omitted)).

234. Dressler, *supra* note 174, at 14-15 ("A second criticism of utilitarianism . . . is that utilitarianism can justify the punishment of one known to be innocent of wrongdoing." (footnote omitted)); Hart, *supra* note 187, at 12.

ans might justify an innocent black man being arrested for rape as a means of avoiding the lynching of many others; although this may save many lives, retributivists would respond that the misery afforded the one man outweighs any benefits that flow from the arrest.²³⁵ Retributivists would find this calculus unacceptable, arguing that arresting one innocent man is morally wrong.²³⁶

As demonstrated above, retributivism and utilitarianism, despite their differences, are the two primary justifications for the criminal law. Thus, to determine whether criminal parental responsibility laws, like the St. Clair Shores ordinance, are just, the laws will be evaluated under both approaches. This analysis will demonstrate that such laws are fundamentally inconsistent with both theories of criminal law.

III. CRIMINAL PARENTAL RESPONSIBILITY LAWS DO NOT FIT WITHIN THE APPROACHES TO CRIMINAL LAW

Most criminal parental responsibility laws create a duty to supervise and control a child.²³⁷ Failure to fulfill this duty results in criminal liability.²³⁸ The St. Clair Shores ordinance, for instance, imposes a duty on parents to reasonably control the child,²³⁹ even if the parents claim they are unable to do so, as in the Provenzano case.²⁴⁰ To evaluate the "fairness" of this duty, it will be examined against the two approaches to criminal law examined in part II: utilitarianism and retributivism.

A. Utilitarian Analysis of the St. Clair Shores Ordinance

As explained in part II, the utilitarian would consider the benefits, costs, and alternative solutions available to society regarding parental responsibility laws.²⁴¹ The three questions a utilitarian would ask about these laws are: (1) What are their benefits?²⁴² (2) As compared to the benefits, what are the disadvantageous consequences resulting

235. This famous hypothetical is based on H.J. McCloskey, *A Non-Utilitarian Approach to Punishment*, in *Contemporary Utilitarianism* 239, 248 (Michael D. Bayles ed. 1968); see also Dressler, *supra* note 174, at 14-15 (discussing the hypothetical); Hart, *supra* note 187, at 12 (same).

236. Dressler, *supra* note 174, at 14-15.

237. Humm, *supra* note 40, at 1125, 1145; see, e.g. Cal. Penal Code § 272 (West Supp. 1997) (explaining the required duty of control); Or. Rev. Stat. § 163.577 (Supp. 1996) (same).

238. Clute, *supra* note 40, at 1569 (defining a "negative act" as "a failure to take affirmative action where a legal duty to do so existed"); Humm, *supra* note 40, at 1125; Weinstein, *supra* note 40, at 867-68.

239. St. Clair Shores, Mich., Parental Responsibility Ordinance 20.563 § 3 (July 26, 1994).

240. See *supra* notes 15-19 and accompanying text.

241. See *supra* Part II.A.

242. See *supra* note 183 and accompanying text.

from utilizing the laws?²⁴³ and (3) Are there other means of preventing juvenile crime at less cost to society?²⁴⁴

1. The Minimal Benefits of Criminal Parental Responsibility Laws

The goal of parental responsibility laws is to reduce juvenile crime.²⁴⁵ As explained earlier, legislators intend that criminal parental responsibility laws will benefit society by deterring and rehabilitating parents who will, in turn, prevent their children from committing criminal offenses.²⁴⁶

Criminal parental responsibility laws may benefit society. The laws would be effective where a parent's lack of control is influencing a child's conduct and that child's delinquency can still be prevented if the parent is deterred or rehabilitated. This is only true where the parent is the only cause of the child's delinquency and the child is at the stage of development where a change in the parent's control methods will change the child's behavior. This scenario appears rare because parents are not the only cause of juvenile delinquency.²⁴⁷ Because there is a "reasonable" standard used to determine liability, however, proponents of criminal parental responsibility laws argue that only those parents who actually affect the child's behavior—and therefore could have a deterrent effect on the child's delinquent conduct—will be prosecuted.²⁴⁸ The jury will receive the facts and, based on those facts, will determine whether the parents caused the child's delinquent behavior. Again, this argument fails because juries are not considering the other influences which may have affected the child. Thus, even if societal factors caused the delinquency a parent could still be held liable for failing to control the child.

The deterrent effect of parental responsibility laws, therefore, is questionable. Once a child has committed her first crime, a parental responsibility law lacks deterrent effect because the law effectively punishes the parent while the child's behavior has already been

243. *Id.*

244. *Id.*

245. *See supra* Part I.C.

246. *See supra* Part II.A.

247. *See supra* Part I.A.

248. It remains the burden of the prosecutor to convince the jury that a parent failed to encourage or discourage behavior in the requisite ways. Correctly understood, parental negligence then becomes strictly a question of fact. Under most parental responsibility laws, proof that the defendant-parent failed to act in some way is a violation in itself, regardless of the "injury" the child may have caused in the course of her bad acts. A child's subsequent bad acts may be offered as evidence, but only as proof that the parent failed to perform a duty. Evidence of a child's delinquent acts does not automatically render the parents liable, evidence of a parent's delinquent acts does. Guilt under parental responsibility laws is based on a jury's determination that a parent failed to perform a parental duty.

Ihrie, *supra* note 123, at 111 (emphasis added).

molded.²⁴⁹ While the statute may affect a parent's actions, it may be too late to prevent a child from committing crimes when she is already evidencing delinquent behavior.²⁵⁰ Thus, the ultimate goal of reducing juvenile crime is not always realized by these laws.²⁵¹

Furthermore, parental responsibility laws may be poor deterrents because the acts of parents are not necessarily the direct cause of the acts of their children.²⁵² The presumption underlying all parental responsibility laws is that parents affect the behavior of their children.²⁵³ While there is evidence linking parents to children's delinquent behavior,²⁵⁴ it is not clear that parents are the only cause of their child's delinquency.²⁵⁵ Rather, parents are usually only one of the competing factors influencing children's behavior.²⁵⁶ This questionable causation link is therefore insufficient to justify implementing criminal sanctions as an effective deterrent, especially in light of the higher standard we require for criminal punishment.²⁵⁷ In conclusion, if the parents are not *the* significant cause of the juvenile's crime, the parental responsibility law will have little deterrent effect on the juvenile's delinquent behavior.²⁵⁸

Whether parents will be rehabilitated by these laws is also questionable. First, the laws are attempting to reform parents, and not the children. Therefore, if the child is already delinquent, reforming the

249. Holden, *supra* note 122, at 14. Charles Patrick Ewing, a professor of law and psychology at the State University of New York and Buffalo states: "This is a barn door solution. The horse is way down the road, and we're going to close the barn door." *Id.*

250. Frederick J. Ludwig, *Delinquent Parents and the Criminal Law*, 5 Vand. L. Rev. 719, 732 (1952).

251. *Id.*

252. Holden, *supra* note 122, at 14 ("A child may have a mental disorder that leads him to violence, or he may live in a neighborhood where crime is commonplace. . . . Juvenile Crime is just too multi-faceted to say this is the answer.").

253. Humm, *supra* note 40, at 1135.

254. Geis, *supra* note 96, at 317; Humm, *supra* note 40, at 1135-36; *see supra* Part II.A.

255. *City of St. Clair Shores v. Provenzano*, No. 96-1483 AR, at 7 (County of Macomb Cir. Ct. July 16, 1997); *see also* Casgrain, *supra* note 40, at 172-75; Humm, *supra* note 40, at 1136-37; Ligorsky, *supra* note 40, at 472 (stating parents are one of several contributing factors); Maute, *supra* note 100, at 432.

256. *See supra* Part I.A.

257. *See supra* Part II.

258. One ordinance was found unconstitutional because of the presumption that repeat offenses were due to the parents. The city provided no evidence of a singular parental role causing juvenile delinquency and, therefore, the court found the criminal sanction inappropriate. *Doe v. City of Trenton*, 362 A.2d 1200 (N.J. Super. Ct. App. Div. 1976), *aff'd*, 380 A.2d 703 (N.J. 1977) (*per curiam*).

Despite the above criticism, some still argue that a natural deterrent benefit of these laws is that the criminals—presumably the juveniles—are imprisoned. However, this criticism is really not pertinent to parental responsibility laws because these laws deter and punish parents when, in reality, society wants the juvenile, and not the parents, stopped. Criminal parental responsibility laws, therefore, provide little deterrent benefit. Holden, *supra* note 122, at 14.

parent would not ensure change in the child's behavior. Parental responsibility laws may also treat a repeat offender's parents more harshly because the child's criminal propensities have not changed.²⁵⁹ Thus, it is possible that the same parent may be punished multiple times for the continued delinquent behavior of a child who can no longer be reformed by his parents. In fact, penalties may disrupt rehabilitative potential where economic disadvantage is the underlying problem.²⁶⁰ In that case, fines may only increase the family's already unstable economic position. Moreover, if a parent were imprisoned, the child would be left with even less guidance and supervision. These shortcomings collectively demonstrate that the rehabilitative benefit of such laws is likely to be minimal.

Thus, as the preceding analysis demonstrates, there are few deterrent and rehabilitative benefits of the criminal parental responsibility laws. An important question remains: what are the costs?

2. The Disadvantageous Consequences Resulting from Criminalizing Parental Responsibility Offenses

The utilitarian balances the benefits of criminal parental responsibility laws against their costs. These laws incur significant costs. First, the imprisonment of parents will injure society because children will be deprived of their parents.²⁶¹ Rather than providing a remedy, these laws will split up families. Further, in single parent homes, even more damage will occur, because these children will presumably become wards of the state once these parents are imprisoned.²⁶²

A second cost of these laws is that they may induce parents to become unnecessarily strict.²⁶³ In turn, some children may react to overbearing parents by becoming even more unwieldy.²⁶⁴ The laws also create a weapon—the threat of parental incarceration—that juveniles can use against parents.²⁶⁵

Parental responsibility laws also may motivate parents to resort to extremes.²⁶⁶ Some parents may become physically abusive to control

259. Maute, *supra* note 100, at 465.

260. Abraham Abramovsky, *Bias Crime: Is Parental Liability The Answer?*, 1992/1993 Ann. Surv. Am. L. 533, 539 (1993) [hereinafter *Bias Crime*].

261. Weinreb, *supra* note 41, at 392; Geis, *supra* note 96, at 319.

262. Abraham Abramovsky, *Bias Crime: A Call For Alternative Responses*, 19 Fordham Urb. L.J. 875, 908 (1992); *Bias Crime*, *supra* note 260, at 539.

263. Maute, *supra* note 100, at 447 ("Any regime that imposes absolute parental control over a child can be harsh and ultimately unproductive of the desired ends.").

264. See *supra* note 78 and accompanying text.

265. Geis, *supra* note 96, at 322 (noting juveniles can threaten parents with criminal sanctions); but cf. Ihrie, *supra* note 123, at 111 (contending that because parental responsibility cases are decided by a jury, children will find it impossible to use the system to threaten parents).

266. See *supra* notes 27-28 and accompanying text.

the child.²⁶⁷ Alternatively, some parents may send their children to boarding school. Those of lower socio-economic status who cannot afford boarding school may decide to emancipate the child—leaving the child alone—in order to avoid criminal liability.²⁶⁸ Still others may decide to avoid having children.²⁶⁹

The heavy fines such laws levy may also exacerbate economic hardship²⁷⁰—one of the initial problems often underlying delinquency.²⁷¹ Exemplifying one particularly harsh result, a Wisconsin mother lost welfare payments due to the Wisconsin criminal parental responsibility law and, as a result, became homeless.²⁷² These examples highlight the tendency of parental control laws to contribute to other causes of delinquency.²⁷³

Criminal stigma is yet another cost of these laws.²⁷⁴ Parents are branded as bad parents for acts which may be out of their control.²⁷⁵ Once labeled, community opinions of the parents could affect their employment and reputation with friends and family.²⁷⁶

Furthermore, the parent is not the only one who bears the heavy costs of parental responsibility statutes. Society may also shoulder the costs of implementing such laws, including increased economic hard-

267. Geis, *supra* note 96, at 320 (depicting a father's use of abuse because nothing else would change his son's behavior).

268. *Owens v. Ivey*, 525 N.Y.S.2d 508, 512 (Rochester City Ct. 1988) ("These kinds of decisions have narrowed the parent's effective defenses to the Hobson's choice between termination of the relationship of parent and child (emancipation) and absolute liability."); see *supra* note 28 and accompanying text.

269. Ludwig, *supra* note 250, at 733 (arguing that the law "deter[s] potential parents from having children"); see *supra* note 29 and accompanying text.

270. "We're talking about dysfunctional families, frequently; and for the majority of folks coming through juvenile court, money is the issue in the first place." Holden, *supra* note 122, at 14 (quoting Judge Sophia Hall, Administrative Presiding Judge of the Cook County Juvenile Justice and Child Protection Resource Section, Illinois).

Arkansas addresses this concern by considering a parent's ability to pay for detention care before ordering payment. Ark. Code Ann. § 9-27-330(a)(13)(B)(I) (Michie 1995).

271. Donziger, *supra* note 39, at 27-28 ("Research consistently demonstrates that a disproportionate amount of violent street crime occurs in areas that have the lowest incomes . . ."); see *supra* note 94 and accompanying text.

272. Joseph P. Shapiro, *When Parents Pay for Their Kids' Sins: States are Treating Mom and Dad as Criminals if their Children are Bad*, U.S. News & World Report, July 24, 1989, at 26.

273. Casgrain, *supra* note 40, at 185 (imposing pressure "on a family in crisis is likely to worsen the situation"); Shapiro, *supra* note 272, at 26.

274. See *supra* note 198 and accompanying text.

275. See *infra* Part III.B.1.

276. See *supra* note 198. The question then remains: Where does the responsibility end? If parents are criminally liable, then perhaps the grandparents should be responsible for the parent's irresponsibility. Ludwig, *supra* note 250, at 719-20. These laws may criminalize another "victim" if parents' behavior is caused by the same factors as the juvenile. Casgrain, *supra* note 40, at 186. Thus, these laws will require society to punish parents who have attempted, and failed, to fulfill their obligations due to external problems. Humm, *supra* note 40, at 1156. This illustrates yet another cost in utilizing these laws.

ship,²⁷⁷ parents resorting to extreme punishments,²⁷⁸ and the placement of children with state services.²⁷⁹ Consequently, this utilitarian analysis demonstrates that the costs of these laws outweigh the benefits. The final question is whether there are alternatives to criminal parental responsibility laws which could also reduce juvenile crime without these costs to society.

3. Alternative Means of Preventing Juvenile Crime

Before criminal parental responsibility statutes are adopted under utilitarianism, it must be shown that there are no other effective solutions to the juvenile crime problem.²⁸⁰ There are several other means available, however, for reducing and addressing the causes of juvenile crime.²⁸¹ Legislatures could rely on child abuse and neglect laws, contributing to the delinquency of a minor statutes, or civil liability statutes as viable alternative solutions to the juvenile crime problem.²⁸² In addition, preventive social programs could be adopted by legislatures.²⁸³

The preceding section demonstrates that the many costs of laws like the St. Clair Shores ordinance clearly outweigh the possible benefits of parental responsibility laws.²⁸⁴ Further, these laws appear even more unjust in light of the viable alternatives available to address the problem of juvenile crime. Under the utilitarian approach, therefore, parental criminal liability is an inappropriate and unjust solution to the juvenile crime problem. The next section examines the possibility that these laws may be justified on the basis of their retributive effect.

B. *The St. Clair Shores Ordinance under the Retributivist Approach*

Retributivism focuses on the voluntary nature of the crime and whether the criminal receives her "just deserts."²⁸⁵ The following sections will discuss these two elements respectively.

1. The Voluntary Nature of the Crime

As explained above, retributivists require that a crime be a voluntary act because punishment is not deserved unless a person chooses to commit a wrong.²⁸⁶ The St. Clair Shores ordinance calls for "rea-

277. See *supra* notes 270-71 and accompanying text.

278. See *supra* notes 266-69 and accompanying text.

279. See *supra* note 262 and accompanying text.

280. See *supra* Part II.A.3.

281. See *supra* Part I.B.; see *infra* Part IV.

282. See *supra* Part I.B.

283. See *infra* Part IV.

284. See *supra* Part III.A.

285. See *supra* Part II.B.

286. See *supra* Part II.B.1.

sonable control" of a minor.²⁸⁷ Thus, the ordinance is premised on the idea that parents exercise enough control to prevent their child from committing criminal acts. In reality, however, the parent often has little control over the child's delinquency.²⁸⁸ As discussed above, it is impossible to consistently demonstrate a direct link between parents' actions and those of their children.²⁸⁹

In addition to these shortcomings, the statutory standard of "reasonable control" may be too vague.²⁹⁰ Retributivism requires a conscious choice to do wrong.²⁹¹ Without a clear understanding of the duties commanded under such statutes, parents may not know whether certain parenting choices comport with the law. While a "reasonable" requirement in criminal law is not always susceptible to a claim of vagueness,²⁹² the Provenzano case demonstrates that this standard may be vague as applied. The Provenzos attempted to get Alex into counseling, asked him to stop associating with certain friends, asked police to keep him in jail, and believed they did "everything they could," yet their actions were found to be unreasonable.²⁹³ Thus, this "reasonable" standard may not provide specific guidance needed to direct parents' actions or permit them to choose to violate the law and, therefore, parents may be prosecuted even when they do not consciously choose to commit a wrong.²⁹⁴

Retributivists may also argue that these ordinances are, in effect, premised on strict liability and, therefore, unfair because they eliminate the excuse of mistake of fact.²⁹⁵ For instance, if parents are una-

287. St. Clair Shores, Mich., Parental Responsibility Ordinance 20.563 § 3 (July 26, 1994).

288. Casgrain, *supra* note 40, at 180.

289. See *supra* notes 252-58 and accompanying text.

290. Clute, *supra* note 40, at 1570.

291. See *supra* note 208 and accompanying text.

292. Williams v. Garcetti, 853 P.2d 507, 508 (Cal. 1993) (finding "reasonable care, supervision, protection and control" is not vague); In the Matter of Tarango, 595 P.2d 552, 556 (Wash. Ct. App. 1979) (holding "proper parental control" is not unconstitutionally vague for parent's civil liability); Vanthournout v. Burge, 387 N.E.2d 341, 343 (Ill. App. Ct. 1979) (holding civil statute not vague). Some argue that the St. Clair Shores ordinance is not vague because it lists the duties of the parent. Ihrie, *supra* note 123, at 109-10.

293. See *supra* notes 15-19 and accompanying text.

294. Clute, *supra* note 40, at 1572 (noting "[t]here is neither a mention of specific acts to be prevented, nor a provision for the notice necessary to create the legal duty to act").

295. Humm, *supra* note 40, at 1148 ("[T]he imposition of strict liability eliminates the defense of mistake of fact and the parent is presumed to know the facts which give rise to the duty to act." (footnote omitted)); Ihrie, *supra* note 123, at 102 ("Admittedly, parental responsibility laws that impose criminal liability without fault part from the traditional notion that strict liability should only be imposed when the judgments are compensatory, not punitive, in nature.").

One case has compared these laws to a Bill of Attainder. Owens v. Ivey, 525 N.Y.S.2d 508, 514-16 (Rochester City Ct. 1988) (finding the New York parental responsibility law predicated liability solely either on the blood relationship, or on the equivalent legal relationship, of parent and child and, therefore, was unconstitutional

ware of the child's criminal propensity, they could mistakenly fail to take action to prevent their child's crimes. Thus, because the parent did nothing, liability is based on only one factor—a parent-child relationship.²⁹⁶ In fact, the Provenzano appeals court struck down the section of the St. Clair Shores ordinance that created parental liability based solely on the child's delinquent status.²⁹⁷ The court reasoned that there was no rational basis to infer that, if the child was delinquent, the parents failed to exercise reasonable control.²⁹⁸ Other parental responsibility laws, such as New Mexico's,²⁹⁹ could be susceptible to a similar challenge.³⁰⁰ Retributivists would, therefore, find criminal liability unjust because parents are not being punished for freely chosen acts.

A voluntary actor must also have control of the act. There are many instances, however, when a parent is unable to control the child, even where he is aware of the child's propensity for delinquency. Anthony Provenzano, for example, was struck by Alex and actually asked the police to keep Alex in jail because he knew he could not control him.³⁰¹ In such cases, where the parent is unable to control the child, a conscious choice is lacking.³⁰² Without a choice, these laws essentially penalize parents for parenthood.³⁰³ Thus, retributivists would argue that parents do not deserve punishment in this case because they could not voluntarily choose the unlawful behavior.

under the United States Constitution). A Bill of Attainder bases liability simply upon an extant relationship between two parties and is illegal under the United States Constitution. U.S. Const. art. I, § 9, cl. 3. The court in *Owens*, therefore, described the New York parental responsibility statute as "a single-minded and deliberate effort to legislate for motives impermissible under Constitutionally outlawed bills of attainder, namely, to punish the parent for the crimes of his children." *Owens*, 525 N.Y.S.2d at 516.

296. See *supra* note 293.

297. *City of St. Clair Shores v. Provenzano*, No. 96-1483 AR, at 7 (Macomb County Cir. Ct. July 16, 1997).

298. *Id.*

299. See *supra* Part I.C.

300. *State v. Akers*, 400 A.2d 38, 39 (N.H. 1979) (holding "parents cannot be held criminally responsible vicariously for the offenses of the child"); *Owens v. Ivey*, 525 N.Y.S.2d 508, 515 (Rochester City Ct. 1988) ("In practical operation, the statute has replaced the trial.").

301. See *supra* note 4 and accompanying text.

302. In order to establish actual causation, the state must first establish that the child's misconduct would not have occurred "but for" the parent's neglect. If the law's characterization of the requisite parental guidance is too broad, it may dilute the force of the parent's actions. When this is coupled with a prohibition against a large class of conduct, the parent's guidance may become insignificant, eliminating the parent as the actual cause of the harmful behavior.

Humm, *supra* note 40, at 1151; Clute, *supra* note 40, at 1572 (explaining that causation is difficult to prove).

303. Humm, *supra* note 40, at 1151 ("[R]ecognizing the existence of a parent-child relationship does not prove causation, since proximate cause requires that the parent's actions predictably lead to the child's misbehavior or abused state.").

On the other hand, some may argue that Alex's parents initially formed Alex's behavior during his early childhood³⁰⁴ and, therefore, did control Alex's criminal behavior. Unless Anthony Provenzano intentionally influenced Alex's criminal propensity, however, it would be very difficult to prove that earlier discipline or parenting is the sole cause of Alex's current behavior.³⁰⁵ Thus, parents should not be held responsible as if they have complete control over their children's behavioral development.

The law may also be asking parents to do the impossible by asking them to constantly supervise their children.³⁰⁶ The Provenzano's attorney argued that "[i]n order to defend this type of lawsuit, parents will have to keep a diary any time they chastise or praise their child."³⁰⁷ The child's age and amount of parental supervision time also influence the amount of control a parent can exercise.³⁰⁸ In the Provenzano case, both parents worked and the child was being influenced by older friends.³⁰⁹ It "would be extending the hardships of harassed and exasperated parents too far to hold them liable for general incorrigibility, a bad education and upbringing, or the fact that the child turns out to have a nasty disposition."³¹⁰ Thus, parents could be held liable for acts which were beyond their control.³¹¹

Criminal parental responsibility laws do not fulfill the voluntary requirement of the retributivist school. In addition, a criminal sanction should be balanced against the severity of the crime committed. The next section, therefore, examines whether a parent subject to the criminal parental responsibility statutes receives her "just deserts," the final element of the retributive analysis.

2. Just Deserts

Under the "just deserts" analysis, the parent's harm to society must be weighed against the punishment inflicted.³¹² In cases where a par-

304. See *supra* Part I.A.1.

305. See *supra* Part I.A.1.

306. Weinstein, *supra* note 40, at 868, 871; Clute, *supra* note 40, at 1570; Geis, *supra* note 96, at 304; Humm, *supra* note 40, at 1147; Maute, *supra* note 100, at 457-59; Freedman, *supra* note 7, at A6 (noting "[t]here is no possible way, short of chaining a child that a parent can really maintain control.").

307. Keenan, *supra* note 1, at A13.

308. See *supra* notes 100-102 and accompanying text.

309. Keenan, *supra* note 1, at A13.

310. Prosser, *supra* note 223, § 123, at 873.

311. There may also be a conflict between control and the child abuse laws. In assuming parents can control children, the law authorizes the maximum reasonable physical control. If a parent finds the only way to control their child is through excessive abuse, then the parent will violate a child abuse law. This inconsistency reduces a parent's ability to control her child. Maute, *supra* note 100, at 460 (stating "[o]ne law assumes that parents can control their children and that they must do so, or else criminal liability is imposed. By exercising physical control, however, the parent may be subject to a child abuse law." (footnote omitted)).

312. See *supra* Part II.B.2.

ents' use of reasonable control could have stopped a juvenile's crime, society is harmed by the parents' failure to control their child. Thus, parental failure to control their child must be weighed against the parent's punishment. But, because it cannot be stated with certainty that this failure causes juvenile crime,³¹³ it is also questionable whether the omission actually causes harm to society which requires punishment.

Not only is it highly debatable whether parental negligence leads to crime, and thus causes damage deserving punishment, but parents may be punished adequately without formal sanction—the shame of their child's incarceration brands them as bad parents.³¹⁴ In addition, if the child is incarcerated, parents may be hurt by the loss of the child. This punishment may be significant enough to compensate for any harm the parent has possibly inflicted on society. Moreover, criminal liability may be unduly harsh because it stigmatizes the parents simply because the child may be out of the parents' control.³¹⁵

Where there is no voluntary commission of crime and no control over criminal actions, the retributivist school indicates that imposing criminal parental liability is unfair. Moreover, under retributivism, these statutes may be considered unduly harsh because the parent may already be suffering as a result of the child's crime. Justice Holmes summed up why we succumb to punishment in cases where criminal liability is unfair: "when our neighbors do wrong, we sometimes feel the fitness of making them smart for it, whether they have repented or not. The feeling of fitness seems to me to be only vengeance in disguise."³¹⁶ These statutes, therefore, appear to be punishing parents disproportionately higher than what they deserve. Instead, a more just way to address these problems is to utilize prevention programs, which are examined in the next part.

IV. PREVENTION PROGRAMS SOLVE THE PROBLEM

Rather than address the increases in juvenile crime through criminal penalties aimed at parents, a better solution is to address the root causes of juvenile crime through prevention programs.³¹⁷ Criminal

313. See *supra* Part I.A & D.

314. Casgrain, *supra* note 40, at 175 (requiring parenting classes results in "guilty feelings"); Maute, *supra* note 100, at 461.

315. *Bias Crime*, *supra* note 260, at 538-39; Maute, *supra* note 100, at 461; Kimberly Crockett, Editorial, *Sticky Issue: If Child a Criminal Do We Jail Parent?*, *Phoenix Gazette*, July 8, 1993, at A13 (arguing "[f]or a parent who's ever lost a child through their own negligence, no criminal punishment is as strong as the anguish they must carry. Is it any different for parents of children who kill strangers?"); see also *supra* Part III.B.1.

316. O. Holmes, *The Common Law* 45 (1923). Vengeance is not illegitimate under retribution, but requires a balancing under the "just deserts" analysis. See *supra* Part III.B.2.

317. See *supra* notes 36-39 and accompanying text; Chapin, *supra* note 36, at 626; Donziger, *supra* note 39, at 145 (stating an effective "strategy calls for prevention programs that reduce known risk factors for violence in the same way doctors try to

parental responsibility laws have been but one of a number of efforts to reduce juvenile crime. There is no reliable data affirming their effectiveness³¹⁸ and, as demonstrated by the earlier analysis, they are unjust because they do not comport with societal theories of criminal punishment.³¹⁹

Prevention programs can provide a better remedy than criminal parental responsibility laws because, while they both focus on the same goal—the reduction of juvenile crime—prevention programs are more likely to succeed. Such programs address a number of possible causes of juvenile crime, including the familial causes that the criminal parental responsibility statutes treat as the exclusive cause.

One example of this prevention program approach is the New York State Attorney General's recommendation contained in his 1996 report on juvenile crime.³²⁰ The report details a combination of social programs a state could utilize to prevent juvenile crime. Thus, as an initial matter, the first section will demonstrate the effectiveness and cost-efficiency of prevention programs. The second section then outlines programs recommended by the New York Attorney General. Like New York, every state should adopt a slate of programs suited to its particular needs to combat juvenile crime.

A. *Prevention Programs Are More Effective Than Criminal Parental Responsibility Laws*

A combination of prevention programs, such as that being implemented in New York, better addresses the causes of juvenile crime than criminal parental responsibility laws. A variety of prevention programs can consider all the societal influences which affect juvenile crime, and are more successful and cost-effective than criminal parental responsibility laws. This part will discuss the ability of prevention programs' to address other causes of juvenile crime, cite studies which indicate the success and cost-effectiveness of prevention programs, and offer specific examples of effective prevention programs.

As noted earlier, most criminology theories and empirical studies generally indicate that families, economic status, academic achievement, peer groups, community attachment, and susceptibility to the media affect a child's propensity to become delinquent.³²¹ Balanced against this reality, criminal parental responsibility laws address only

reduce risk factors for disease"); Maute, *supra* note 100, at 467 ("Legislators should consider more effective solutions, ones that target the causes of delinquency."); Parsley, *supra* note 40, at 472 ("Instead of penalizing parents for their failures, state officials should focus on solving the multitude of problems that face parents in the 1990s such as the lack of affordable housing, education, and health and child care.").

318. See *supra* Part I.

319. See *supra* Part III.

320. See generally Vacco, *supra* note 117 (discussing the proposed plan).

321. See *supra* note 104 and accompanying text.

one of those factors—the family. Because many of the factors creating an increase in juvenile crime can be attributed to broad societal problems rather than to the conduct of individual parents, society should bear some responsibility for juvenile crime.³²² Even President Clinton has acknowledged that society should do more for children: “Now, we all know that in all of our communities, some of our children simply do not have what they need to grow and learn in their own homes, or schools, or neighborhoods. And that means the rest of us must do more, for they are our children too.”³²³

Society also contributes indirectly to juvenile delinquency because societal attitudes may hinder a parent’s ability to control the child.³²⁴ Stated differently, community opinions can adversely affect children, thereby detracting from parents’ influence. For example, society teaches children that achieving popularity through grades or sports is more important than being decent, compassionate, or kind.³²⁵ Thus, societal attitudes may thwart efforts made by parents to instill good values in their children by offering conflicting messages.³²⁶

These negative societal attitudes can be counterbalanced by providing social programs for children and families. Several national indicia show the success of such programs. President Clinton and Attorney General Janet Reno attributed the seven percent national drop in violent crimes during 1996, in part, to the juvenile crime prevention programs started under their 1994 crime bill.³²⁷ Additionally, the U.S. Department of Justice (the “DOJ”) has recognized that increased criminal penalties have not affected juvenile crime rates because prevention should be emphasized in criminal justice policy.³²⁸ The DOJ has issued a report entitled “Delinquency Prevention Works.”³²⁹ It concluded that juvenile crime can be reduced because prevention pro-

322. Chapin, *supra* note 36, at 672 (arguing that “if the act of juvenile delinquency . . . is due primarily to other factors . . . [t]hen . . . parent punishment will [not] help”); Younger, *supra* note 112, at 492 (arguing that “the law bears some responsibility for . . . parental failure and for the corresponding plight of children”).

323. Clinton, *supra* note 112, at A20.

324. Applebome, *Carrot*, *supra* note 50, at 5 (explaining that “real social problems are inflicting family distress”); Younger, *supra* note 112, at 513 (reasoning that “societal attitudes can ruin a child with the best genes brought up by the best parents”).

325. Younger, *supra* note 112, at 514.

326. *Id.* (“Unfortunately, in our society, there is very little connection between youthful popularity and decency. The most ‘popular’ kid is the ‘coolest,’ most athletic, or most beautiful, and not necessarily the decentest, tenderest, or most compassionate.”).

327. *U.S. Crime Drops 5th Year in Row*, *Newsday*, June 2, 1997, at A14.; Robert Suro, *Dramatic Decline in Violent Crime by Children Under Age 15 Noted*, *Buffalo News*, Dec. 13, 1996, at A6.

328. Hawkins, *supra* note 90, at 17 (“The inclusion of prevention as a central element of criminal justice policy and practice is emblematic of a new emphasis reflecting the realization that enforcement alone is not enough to reduce youth violence.”).

329. University at Albany, Youth Development Research & Evaluation Institute 13-14 (1997).

grams interrupt the formation of delinquent behavior.³³⁰ In addition, the report found that lasting reductions in juvenile crime require long-term investment in both law enforcement and prevention programs.³³¹ In an additional DOJ report, entitled "Combating Violence and Delinquency: The National Juvenile Justice Action Plan," the Coordinating Council on Juvenile Justice and Delinquency Prevention offers eight objectives and strategies targeted at reducing juvenile crime.³³² One of the objectives is for states to "provide opportunities for children and youth."³³³ The Council advises that programs which address specific causes of delinquency are "the most effective defense."³³⁴ The strategies recommended include "truancy reduction, mentoring, conflict resolution, after school tutoring, vocational training, cultural development, recreation, and youth leadership" programs.³³⁵ Evaluations of these programs have shown that they are cost-effective and have great potential to reduce juvenile crime rates.³³⁶

Further evidence of prevention programs' success is the National Center for Juvenile Justice report which recognized that 425 prevention programs were effective in reducing juvenile crime.³³⁷ The top three programs in the survey were skill development; individual, group, and family counseling; and mentoring.³³⁸ These programs were successful because they addressed the needs of each individual juvenile and the juvenile's social interactions.³³⁹

Moreover, in 1993, the OJJDP issued a report entitled "Comprehensive Strategy for Serious Violent and Chronic Juvenile Offenders," which advocated a prevention approach focused on the causes of juvenile crime.³⁴⁰ The OJJDP report endorsed programs which target

330. *Id.* at 14. In addition, the New York State Division for Youth and the Association of New York State Youth Bureaus reported that juvenile crime prevention can only be successful if it contains elements that affect youth during development. *Id.* at 14-15.

331. *Id.* at 14.

332. U.S. Dept. Of Justice, Coordinating Council on Juvenile Justice and Delinquency Prevention, *Combating Violence and Delinquency: The National Juvenile Justice Action Plan 1* (1996).

333. *Id.* at 8.

334. *Id.*

335. *Id.* "To successfully reduce youth violence, prevention strategies must engage the entire spectrum of individuals and community systems impacting a young person's life, including families, schools, peers, and other adults in the community." *Id.*

336. *Id.*

337. Office of Juvenile Justice and Delinquency Prevention, *What Works: Promising Interventions in Juvenile Justice* ix (1994); Office of Juvenile Justice and Delinquency Prevention, *What Works: Effective Delinquency Prevention and Treatment Programs, Fact Sheet #20* (visited Aug. 5, 1997) <<http://www.abanet.Whatorg/crimjust/juvjus/5-5state.html>> [hereinafter *What Works*].

338. *What Works*, *supra* note 337.

339. *Id.*; see *supra* Part I.A (discussing the psychological and sociological theories of juvenile crime).

340. Donziger, *supra* note 39, at 141-44.

families, schools, peer groups, and neighborhoods.³⁴¹ The suggested programs which address the family are: parent support groups, family crisis intervention, runaway/homeless youth services, court-appointed special advocates, teen abstinence/pregnancy prevention, parent and family skills training, permanent planning for foster children, and family life education for teens and parents.³⁴² Examples of programs which address schools, peer groups, and neighborhoods are: truancy reduction, gang prevention and intervention, and safe havens for youths.³⁴³ Thus, the OJJDP has also recognized the need for prevention programs which address the major causes of juvenile crime.

In addition to being more comprehensive than criminal penalties, prevention programs are also more cost-effective. The Rand Institute, a highly regarded non-partisan California-based research group, published the 1996 study *Diverting Children From a Life of Crime: Measuring Costs and Benefits*.³⁴⁴ This study compared the costs and benefits of California's "Three Strikes and You're Out" law to prevention programs and found that, if both spent \$1 million, the "three strikes" law prevented 61 crimes while prevention programs prevented an average 125 crimes.³⁴⁵ Thus, the Rand Institute concluded that prevention programs in conjunction with incarceration programs are both more cost-effective and better at reducing juvenile crime than incarceration programs alone.³⁴⁶ In addition, both the "Delinquency Prevention Works" report and a National Park and Recreation Association Study found that juvenile crime prevention is more cost-effective than incarceration.³⁴⁷ Incarceration of one juvenile costs an average of \$34,000 a year, while an effective prevention program may cost only \$4300 per child per year.³⁴⁸

Some specific social programs have been nationally recognized for their effectiveness in reducing juvenile crime. The Council on Crime in America has reported that mentoring programs—such as Big Brothers/Big Sisters—reduce a youth's tendency to use drugs or alcohol, resort to violence, and skip school.³⁴⁹ The Council considers all of

341. *Id.*

342. *Id.* at 142.

343. *Id.*

344. Peter W. Greenwood et al., *Diverting Children From a Life of Crime: Measuring Costs and Benefits* (1996) (concluding certain prevention programs are more cost-effective than incarceration); University at Albany, *supra* note 329, at 12.

345. Greenwood, *supra* note 344, at 49 tbl. B.3; Velmanette Montgomery, *Pataki's Get-Tough Strategy Won't Do Much to Fight Growing Juvenile Crime*, Buffalo News, May 2, 1997, at C2.

346. University at Albany, *supra* note 329, at 2.

347. *Id.* at 13-14, 16; Coordinating Council on Juvenile Justice and Delinquency Prevention, *supra* note 332, at 8.

348. University at Albany, *supra* note 329, at 14; Coordinating Council on Juvenile Justice and Delinquency Prevention, *supra* note 332, at 8.

349. University at Albany, *supra* note 329, at 17-18.

these tendencies important in crime prevention.³⁵⁰ In addition, the OJJDP has cited positive results from a study conducted on the effectiveness of the Big Brothers/Big Sisters program.³⁵¹ Participants in the program were all less likely to use drugs, alcohol, and to become violent.³⁵²

Mediation and conflict resolution skills programs have also been recognized for creating a less hostile environment in schools nationwide.³⁵³ Children who are unable to handle conflict are more likely to become delinquent and resort to violence.³⁵⁴ Thus, many schools and communities are utilizing conflict resolution training to teach children how to constructively manage disputes.³⁵⁵ The National Institute of Justice examined New York City's Resolving Conflict Creatively Program, which teaches juveniles conflict resolution skills.³⁵⁶ Evaluations and student achievement tests after the program found that children learned the conflict resolution skills and are able to apply those skills to disputes.³⁵⁷

In addition, the success of public service announcements, such as the "McGruff" or "Take a Bite Out of Crime" campaigns, has been recognized by the federal government.³⁵⁸ An evaluation of the "McGruff" campaign, for example, showed that media campaigns are cost-effective in changing knowledge and behaviors about crime prevention.³⁵⁹ The effect of public service announcements on crime, however, is limited because it is difficult to measure whether the media campaign influenced the potential delinquent's choice.³⁶⁰

Specific programs, as well as the general success and cost-effectiveness of prevention programs, have been widely recognized. Despite this evidence, legislatures continue to rely on criminalization rather

350. *Id.* at 17.

351. Jean Baldwin Grossman & Eileen M. Garry, *Mentoring—A Proven Delinquency Prevention Strategy*, Juvenile Justice Bulletin (Office of Juvenile Justice and Delinquency Prevention), April 1997, at 3.

352. Eight Big Brother/Big Sister mentoring programs were studied in Columbus, Ohio, Houston, Texas, Minneapolis, Minnesota, Philadelphia, Pennsylvania, Phoenix, Arizona, Rochester, New York, San Antonio, Texas, and Wichita, Kansas. *Id.* The findings came from interviews with mentees and forms completed by program staff. *Id.*

353. Andrew Thomas, *Peer Mediation and Youth Violence*, CDS Newsletter, Summer 1995.

354. Donni LeBoeuf & Robin V. Delany-Shabazz, *Conflict Resolution*, Office of Juvenile Justice and Delinquency Prevention Fact Sheet #55, Mar. 1997.

355. *Id.*

356. William DeJong, *Building the Peace: The Resolving Conflict Creatively Program (RCCP)*, National Institute of Justice Program Focus 2 (1997).

357. *Id.* at 11-12.

358. Bureau of Justice Assistance, *The Social Impact of the National Citizens' Crime Prevention Campaign* vii (1993).

359. *Id.* at 55 ("[E]vidence of campaign effectiveness is indicated by citizens' self-reports about changes in their knowledge, perceived responsibility, feeling of efficacy, and personal actions in crime prevention.").

360. *Id.* at x.

than prevention. This misplaced emphasis on criminal sanctions is tragically demonstrated by the fact that more youth violence occurs in the United States than anywhere else in the world.³⁶¹ Experts attribute this, in part, to the low funds allocated for social programs in America as compared to other countries.³⁶² When children are provided with a healthy physical and mental environment, they are more likely to avoid criminal conduct.³⁶³ Fortunately, most American children live in such an environment.³⁶⁴ But for those who cannot, society should reach out to these children because it will both make America safer and help countless children.³⁶⁵ Preventive social programs, such as those provided in New York, would help to create this environment for more children. The next section describes the New York approach.

B. *The New York Attorney General's Approach*

New York's combination of programs is a good example of a comprehensive and informed attempt to utilize prevention programs to reduce juvenile crime.³⁶⁶ The Attorney General, Dennis C. Vacco, formed a Juvenile Justice Commission comprised of recognized national and state juvenile crime experts, parents, police chiefs, family court judges, school administrators, and county attorneys from New York state.³⁶⁷ This Commission recommended crime prevention programs that address juvenile self-esteem, self worth and respect.³⁶⁸ The Attorney General believes prevention programs could be an effective long-term solution to New York's juvenile crime problem.³⁶⁹

The Attorney General considered endorsing a parental responsibility law, but found that such a law would be too difficult to effectively enforce.³⁷⁰ Despite the choice not to promulgate such a law, the Attorney General noted that, "[w]e have, however, [a] . . . responsibility to create and implement crime prevention models in order to truly solve the problem of juvenile crime in the 21st century."³⁷¹

361. Judith Haverman, *For Children, an Epidemic of Homicide*, Washington Post, Feb. 7, 1997, at A1.

362. *Id.* at A1 (stating "the high rate of violent death among American children might be associated with the low level of funding for social programs in the United States.").

363. Donziger, *supra* note 39, at 145.

364. *Id.*

365. *Id.*

366. Vacco, *supra* note 117, at introductory letter.

367. *Id.* at 4.

368. *Id.* at introductory letter. The Attorney General recommended a "barbell approach" to juvenile crime which balances increased juvenile crime penalties with prevention programs. *Id.*

369. *Id.* at 29.

370. *Id.* at 20.

371. *Id.* at 29.

The Attorney General's recommendation includes several state-sponsored preventive programs. One program, "The Family Advocacy Program," advises parents of available assistance and trains parents to "detect[] potential problems their child may be experiencing."³⁷² Parents are assigned a family advocate worker who directs them to appropriate resources which can assist the family.³⁷³ The Family Advocacy Bureau also holds parenting skills workshops and seminars.³⁷⁴ This program addresses many of the psychological causes of juvenile crime—such as negative learned behaviors—because it teaches the parents how to detect these problems and respond appropriately.³⁷⁵

The Commission also recommended a mentoring program.³⁷⁶ Youths who have already served prison time for offenses would help guide other juveniles toward a law-abiding life by instilling in the children a sense of hope that they can lead better lives.³⁷⁷ This mentoring program would fill the void of effective role models for juveniles.³⁷⁸ Moreover, it would attempt to address media³⁷⁹ and parental influences,³⁸⁰ parental rejection,³⁸¹ and peer pressures,³⁸² in addition to psychological³⁸³ causes of juvenile crime, as the mentor would be trained to counteract these negative influences.³⁸⁴

Another suggested program, the Young Negotiators, teaches conflict resolution skills.³⁸⁵ This program is a 10-week negotiation course for teenagers based on the negotiation training offered at Harvard Law School, Harvard Business School, and the John F. Kennedy School of Government.³⁸⁶ This program was tested in Boston and has already been implemented in Manhattan.³⁸⁷ It addresses over-competitiveness within the family, heavy reliance on outside resources, lack of efficient decision making processes,³⁸⁸ fighting with peers,³⁸⁹ and lack of bonding with society³⁹⁰ by teaching juveniles non-violent

372. *Id.* at 26.

373. Letter from Division for Youth, New York State Executive Department, to Parents (on file with Fordham Law Review).

374. *Id.*

375. *Id.*; see *supra* Part I.A.1.

376. Vacco, *supra* note 117, at 30-31.

377. *Id.* at 30.

378. *Id.*

379. See *supra* note 98 and accompanying text.

380. See *supra* note 73 and accompanying text.

381. See *supra* note 70 and accompanying text.

382. See *supra* notes 92-93 and accompanying text.

383. See *supra* Part I.A.1.

384. Vacco, *supra* note 117, at 30.

385. *Id.* at 31.

386. *Id.*

387. *Id.*

388. See *supra* note 73 and accompanying text.

389. See *supra* note 92 and accompanying text.

390. See *supra* note 91 and accompanying text.

dispute resolution skills.³⁹¹ Studies have shown that conflict resolution training enhances a juvenile's self esteem and that, after training, the juvenile is more likely to reflect before reacting to a potentially violent situation.³⁹² After its first year in New York, the Young Negotiators program was evaluated by the Harvard University Graduate School of Education.³⁹³ The evaluation found that the children were learning the messages from the program, and that they could cite examples of using the new skills with parents and other students to peaceably resolve difficult situations.³⁹⁴ The preliminary findings also noted the new program was serving its main goals: children were more likely to resolve conflicts without violence³⁹⁵ and potentially violent incidents occurring at school with children who attended the training were less severe than for children who did not attend the training.³⁹⁶ Moreover, the success of the Young Negotiators has been recognized by the OJJDP because school reports indicate less conflict interventions and communication improvements between students in those schools utilizing the programs.³⁹⁷

Some preventive programs had been implemented in New York before the Attorney General's report. One such program addresses conflict resolution in the elementary grades.³⁹⁸ The Conflicting Clowns program presents dispute management skills to children through clowns, games, and stories.³⁹⁹ The clowns visit classrooms, act out a conflict scenario, and ask the children to brainstorm solutions.⁴⁰⁰ A follow-up visit is made the next week to check the children's progress.⁴⁰¹

Another program, the Reach and Teach program, is currently offered at thirty-seven high schools across the state.⁴⁰² Assistant Attorneys General instruct students once every other week for eight weeks on topics such as criminal law, societal effects of crime, consumer law, civil rights, and environmental law.⁴⁰³ A workbook including a lesson

391. Vacco, *supra* note 117, at 30.

392. *Id.*

393. Dr. Michael Nakkula, *PYN Evaluation Summary*, Human Development and Psychology Harvard University Graduate School of Education (1996).

394. *Id.*

395. Dr. Michael Nakkula, *Preliminary Evaluation Findings for the Fall 1995 Implementation of the Program for Young Negotiators* 3 (1996).

396. *Id.* at Combined Chart 2.

397. LeBoeuf, *supra* note 354.

398. Vacco, *supra* note 117, at 32.

399. *Id.*

400. Conflicting Clowns Program Grant Application 1997 (on file with Fordham Law Review).

401. *Id.*

402. Vacco *Announces Reach and Teach Schools*, News from Attorney General Dennis C. Vacco, Feb. 25, 1997 [hereinafter Vacco News].

403. Dennis C. Vacco, *Community Outreach Programs*, Legal Policy & Program Development Department of the New York State Attorney General's Office.

plan, exercises, and hypotheticals is distributed.⁴⁰⁴ Reach and Teach focuses on encouraging respect for the law by teaching students to respect one another and the law.⁴⁰⁵ By delivering an anticrime message to high school students,⁴⁰⁶ this program would address any negative influences by parents⁴⁰⁷ and peers⁴⁰⁸ by teaching students how to interact with one another under the law.⁴⁰⁹ In 1997, the Reach and Teach program received a positive evaluation from students who indicated they gleaned substantial knowledge about the Attorney General's office.⁴¹⁰

Another program, the Safe Haven program, offers a "sanctuary" for minors who may need police or medical assistance at stores which display the "safe haven" sticker.⁴¹¹ This program addresses emergency situations where the child needs supervision⁴¹² and low neighborhood attachment.⁴¹³ Inside the store, a minor may call the police or home if they are afraid or in trouble.⁴¹⁴

In addition to the above programs, the Attorney General's Office has begun issuing public service announcements made by teen role models which "deliver an anti-drug, anti-violence, and a stay in school message" for the entire state.⁴¹⁵ For example, such an announcement was filmed with Patrick Ewing and the New York Knicks.⁴¹⁶ This program would counteract media influences which glamorize juvenile crime.⁴¹⁷

Some of New York's programs are supported through grants directly from the Attorney General's office.⁴¹⁸ This year, the Attorney General's office awarded \$57,500 in grants to twenty-seven different juvenile crime prevention programs.⁴¹⁹ The programs included karate classes, a marching band, and mediation services.⁴²⁰

Generally, criminology theories and empirical studies indicate that families, economic status, academic achievement, peer groups, com-

404. *Id.*; New York Attorney General's Office, Reach & Teach (1996-97).

405. New York Attorney General's Office, Reach & Teach at introductory letter (1996-97).

406. Vacco, *supra* note 117, at 31-32.

407. *See supra* note 73 and accompanying text.

408. *See supra* notes 92-93 and accompanying text.

409. Vacco News, *supra* note 402.

410. Memorandum from Diana L. Carbonell to Lisa Elovich and Jenny Buccella (July 7, 1997) (on file with Fordham Law Review).

411. Vacco, *supra* note 117, at 32.

412. *See supra* note 100 and accompanying text.

413. *See supra* note 90 and accompanying text.

414. Vacco, *supra* note 117, at 32.

415. *Id.*

416. *Id.*

417. *See supra* note 98 and accompanying text.

418. New York State Juvenile Crime Prevention Programs: Grant Money Allocations for 1997 (on file with Fordham Law Review).

419. *Id.*

420. *Id.*

munity attachment, and susceptibility to the media affect whether a child becomes delinquent.⁴²¹ New York State targets most of these factors through the combination of prevention programs including: family training, mentoring, conflict resolution classes, criminal law instruction, community safe sanctuaries, and public service announcements. Such an approach addresses more causes of juvenile crime, and is more successful and cost-efficient, than criminal parental responsibility laws. The better method to address juvenile crime, therefore, is for society to take action through prevention programs. Other states should follow New York's example. Each state should evaluate their juvenile crime problem to determine which of the underlying factors of delinquency are present in their jurisdiction. The state should then choose a slate of programs tailored to target those problems.

CONCLUSION

The Provenzano parents were charged with a misdemeanor for a child they could not control. A jury of their peers thought they should have done more.

Yet under both the utilitarian and retributivist approaches, the two rationales underlying our criminal law, the Provenzos' conviction is unjust and unfair. Both approaches show social consequences—such as criminal stigma, excessive physical abuse, and economic hardships—resulting from reliance on parents, rather than society, for the solution. Thus, the criminal parental responsibility laws do not fit within our meaning of justice.

Instead, it is time to start investing more in social programs that prevent juvenile crime by addressing its causes. Such programs are more effective and efficient, and address more of the underlying causes of juvenile crime, than parental criminal penalties. The New York State Attorney General is currently advocating this long-term approach and other states should follow suit. If anything, such an approach will not only ensure justice for parents but also hope for children.

"Euripides reminds us that the gods often visit the iniquities of the fathers upon the children. . . ."⁴²² Society should not rush to advocate for the converse.

421. See *supra* note 104 and accompanying text.

422. *Doe v. City of Trenton*, 362 A.2d 1200, 1203 (N.J. Super. Ct. App. Div. 1976), *aff'd*, 380 A.2d 703 (N.J. 1977) (per curiam).