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

Tami Scarola
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WHY CRIMINAL PARENTAL RESPONSIBILITY
LAWS DO NOT FIT WITHIN OUR
UNDERSTANDING OF JUSTICE

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Alex Provenzino 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 Provenzino, 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.
2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
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 Provenzino 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 Provenzinos' inability to get Alex into counseling was "pivotal in their decision." 14 The Provenzinos claim that they tried to get Alex to attend counseling, but could not force him to go. 15 The Provenzino 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 Provenzinos 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 Provenzinos 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.

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 Provenzinos did not obtain counseling for Alex, an element required under the statute. City of St. Clair Shores v. Provenzino, 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 Provenzino verdict in particular, and the St. Clair Shores law generally. Due to the national interest, Court TV aired a one-hour special discussing the Provenzino case entitled Sins of the Child: Parents on Trial.\textsuperscript{20} In addition, parents from across the country reacted to the case over the Internet.\textsuperscript{21}

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

Other Internet respondents, however, argued that the verdict against the Provenzinos was “unfair.”\textsuperscript{25} Some thought the ordinance invaded the privacy of parenting decisions by requiring certain parenting styles.\textsuperscript{26} Others noted that the ordinance could force parents to resort to desperate means, including physical abuse\textsuperscript{27} or emancipation.\textsuperscript{28} Some people even wrote that they would rather abstain from having children than be subjected to the statute.\textsuperscript{29} Other parents, who felt they could sympathize with the Provenzinos, related similar stories of delinquent children whom they could not control.\textsuperscript{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!”\textsuperscript{31}

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

\begin{itemize}
\item \textsuperscript{21}Are Parents Responsible for Their Children’s [sic] Crimes? (visited Feb. 21, 1997) <http:l/web-cr01.pbs.org/newshour/forum/may96/parents_5-21.html> [hereinafter Are Parents Responsible].
\item \textsuperscript{22}Id.
\item \textsuperscript{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, \textit{Don’t Hit Parents for Kids’ Misdeeds}, Boston Herald, June 12, 1995, at 21.
\item \textsuperscript{24}Are Parents Responsible, supra note 21.
\item \textsuperscript{25}Id.
\item \textsuperscript{26}Id.
\item \textsuperscript{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.
\item \textsuperscript{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, \textit{“Throwaway Rights”: Empowering A Forgotten Minority}, 18 Whittier L. Rev. 767 (1997) (discussing the increase in abandoned children in the United States).
\item \textsuperscript{29}Are Parents Responsible, supra note 21.
\item \textsuperscript{30}Id.
\item \textsuperscript{31}Id.
\end{itemize}
crime. Respondents on the Internet questioned the "fairness" because it appeared there was no community assistance available to help the Provenzinos. 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. Thus, respondents argue, it is questionable whether society has learned anything, or will learn anything, from the experience of the Provenzinos, or others in a similar plight. 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. 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. Instead of addressing underlying social causes, legislatures may find criminalizing parents’ behavior an easy, inexpensive, and quick solution. Critics note that if legislatures fail to address these underlying causes, juvenile crime is likely to continue.

The wide range of responses elicited by the St. Clair Shores law illustrate the vexing issues raised by criminal parental responsibility laws. 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. See Parents Responsible, supra note 21 (noting how the Provenzinos 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.”).
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 Provenzinos 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."\(^4\) This Note then concludes that the goal of reducing juvenile crime, regardless of how well-intended, does not justify unfair treatment of parents.\(^2\) In light of the two principal approaches to criminal law, utilitarianism and retributivism,\(^5\) this Note argues that the St. Clair Shores ordinance fails to fit within our understanding of justice, and hence of "fairness." Instead, preventative 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.

\(^4\) 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).

\(^2\) Greenberg, supra note 37, at 341.

\(^5\) 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. A disproportionate number of people under the age of 18 are involved in crimes compared to adults. Especially disturbing is the fact that the number of juvenile murder convictions has tripled between 1984 and 1994. In addition, population increases could increase murders committed by juveniles to 25 percent by the year 2005.

Although youth offenses have been addressed through the criminal justice system for hundreds of years, 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. Currently, there is a political movement to impose more responsibility on the parents of delinquents for these increases in crime. 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.

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-

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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.


49. Id. at 4.


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. This part first discusses the causation theories stemming from research in both psychology and sociology. 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 positive and classical schools. Currently, popular causation theories stem from the positivist school, which attributes crime to the criminal’s background and environment. Any theory that empirically or systematically concludes that personal, social, or environmental factors contribute to juvenile delinquency is included in the positive school. The positivist school is further broken down into the psychological and sociological perspectives.

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. 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.

Sociologists also theorize that the methods of parental control can influence the development of delinquent behavior. 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. Other sociologists link physical abuse by parents to delinquency. 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. Some sociologists contend that consistently strict or permissive parents have non-delinquent children, while parents who are inconsistent may encourage delinquent behavior in children.

The psychological and sociological perspectives "are not rival answers to the same question, but they answer different questions about the same sort of behavior." 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. 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, while a sociological theory, such as Anomie, 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. 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 theories—and the child's interaction with peers—under the sociological theories.

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. 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.

2. Empirical Studies

In addition to psychological and sociological explanations, empirical studies have examined the causes of juvenile crime. 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. The OJJDP identifies the following risk factors within these categories: "child abuse and family disintegration, economic and social deprivation, low neighborhood attachment, parental attitudes condoning law-violating behavior, academic failure, truancy, school drop-out, lack of bonding with society, fighting with peers, and early initiation of problem behaviors." 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.
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, low income, bad housing, a poor education, lack of extended family support, marital separation, racial prejudice, and media influences. Empirical studies posit that a child exposed to several risk factors is more likely than other children to develop delinquent behavior.

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. Moreover, cases have held that a child's age is another relevant factor in determining control. One case assumed parents have less control over an older child.

As demonstrated above, empirical studies and criminology theories provide insight into the numerous causes of juvenile crime. 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.
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 local controls 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).

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.

103. Chapin, supra note 36, at 664.
achievement, peer groups, community attachment, and media can all influence whether a child will become delinquent. 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. These laws address the psychological theories, sociological theories, and empirical studies which link physical abuse to juvenile delinquency.

Contributing to the delinquency of a minor statutes penalize adults for affirmative acts or omissions that further juvenile crime. 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.

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.

Other methods attempt to address the root causes of juvenile crime before the crime is committed. Two examples of these methods are teaching morals in early childhood 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.
110. This section samples approaches which will be discussed in detail in part IV.B.
tion in schools.\textsuperscript{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.\textsuperscript{113} In addition, establishing intensive day care and family services that provide for those below the poverty line\textsuperscript{114} would help to alleviate the problems associated with family economics\textsuperscript{115} and lack of parental supervision.\textsuperscript{116} Other programs include conflict resolution skills classes,\textsuperscript{117} mentoring programs,\textsuperscript{118} and criminal law courses in high schools.\textsuperscript{119} Finally, many cities enforce juvenile curfews to compensate for parents' lack of supervision.\textsuperscript{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.\textsuperscript{121} Apparently, an increase in juvenile crime,\textsuperscript{122} coupled with frustration over perceived inadequacies in other responses to juvenile crime, has motivated legislators to enact criminal parental responsibility statutes.\textsuperscript{123} Currently,
at least seven states and a number of cities have some form of criminal parental responsibility laws.\(^\text{124}\) 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.\(^\text{125}\) The St. Clair Shores City Council adopted the law in July of 1994 without debate.\(^\text{126}\) Two police officers, motivated by juvenile crime increases, drafted the ordinance based on laws from other jurisdictions.\(^\text{127}\) After presenting the ordinance to the city attorney, the city council passed it into law.\(^\text{128}\)

New Mexico’s legislature has also enacted a parental responsibility statute.\(^\text{129}\) New Mexico’s statute differs from St. Clair Shores’ ordi-


\(^\text{124}\) 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.

\(^\text{125}\) See supra note 9 and accompanying text.

\(^\text{126}\) Seigel, supra note 7, at A1.

\(^\text{127}\) Id.

\(^\text{128}\) Id.


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. 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. Under the statute, parents are held strictly criminally liable for their delinquent children.

In comparison, California punishes parents through a statute proscribing the contribution to the delinquency of a minor. Typically, such statutes require that parents commit an intentional act that causes a child to become delinquent. California's statute differs from otherwise similar statutes in that a parent may be held liable without a showing of an intentional act. 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. Two noted purposes of the California statute are to inform parents of their responsibility to eliminate delinquency and to create parental accountability for juvenile crimes. Courts have interpreted the statute to permit parents to avoid liability if they attend parental training classes.

Arkansas and Colorado, in contrast, hold parents criminally liable by making parents parties to the delinquency action. In either state
the court may order the parents of a delinquent child to perform community service with the juvenile or to attend parental training classes. In Arkansas, parents can be fined up to $500. In both Colorado and Arkansas, parents can be held accountable without any showing of the lack of parental control. 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. The purpose of Oregon's law is to act as a tool to assist parents and families, however, rather than to punish parents. A parent receives a warning for a first offense and parental training classes or a fine for the second offense. Affirmative defenses to prosecution include notifying the proper authorities of the child's illegal act and taking reasonable steps to control the child.

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. This is a class A misdemeanor which requires greater than 15 days, but less than one year imprisonment. 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." As in New York, violation of the statute is a Class A misdemeanor punishable by up to 12 months' imprisonment.

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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 . . . ").
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.
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).
153. Id.
Unlike the St. Clair Shores ordinance, most of the states provide for affirmative opportunities to avoid liability, reporting the child's crime, and community service done by both the parents and child together. 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. Available statistics, however, suggest that the laws are not entirely effective in reducing the juvenile crime rate.

In California, for example, 1,000 parents have been ordered to attend parental training or counseling since California passed its law in 1994. 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, but this law is still too new to evaluate its long-term effectiveness.

155. Maute, supra note 100, at 462.

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).

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 ineffective or, at least, under-utilized. 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. In addition, the low prosecution rates for parental responsibility may indicate that these laws are not being utilized. 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-
al society can impose.\textsuperscript{168} Indeed, such penalties may result in a severe deprivation of liberties.\textsuperscript{169} Thus, many scholars have suggested that the justifications for criminal sanctions should be significantly more compelling than those for civil penalties.\textsuperscript{170} The question, then, is whether the implementation of parental responsibility laws satisfies this stricter standard.\textsuperscript{171}

Because the overall aims of criminal law are to deter and prevent crime,\textsuperscript{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.\textsuperscript{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.\textsuperscript{174} Part II.C, in turn, compares the sub-

\begin{itemize}
\item \textsuperscript{168} Andrew Ashworth, Principles of Criminal Law 20 (1991).
\item \textsuperscript{169} Id.
\item \textsuperscript{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).
\item \textsuperscript{171} See Weinstein, supra note 40, at 863-65.
\item \textsuperscript{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.").
\item \textsuperscript{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).
\item \textsuperscript{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-


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


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 Dressier, 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. Dressier, 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").

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

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? 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. There are two types of deterrence: specific deterrence, or the prevention of further criminal activity by the individual, and general deterrence, which offers the punished defendant as an example to society in the hope of deterring others from committing the same crime. Fear is the primary element of both types of deterrence. 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 . . . .


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.

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.

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, and criminal stigma. If these or other adverse consequences outweigh the benefits derived from criminalizing the behavior, the punishment is not justified under the utilitarian model.

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. Thus, the utilitarian uses a cost-benefit analysis to determine whether a criminal law is just. 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, asks whether the past conduct in question is morally wrong. This approach is backward-looking, asking whether the punishment is deserved. 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").


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.


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."\textsuperscript{205} Justice is served by punishing the morally wrong because they deserve the penalty;\textsuperscript{206} it is right to hurt a criminal because the criminal has harmed society.\textsuperscript{207} The Kantian view could also be termed "vengeance,"\textsuperscript{208} or "just deserts."\textsuperscript{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 \textit{consciously} chooses to commit a wrong.\textsuperscript{210} To the extent a person's freedom to choose is constricted, their culpability should be correspondingly limited.\textsuperscript{211} Individuals must have knowledge and voluntarily control of their actions to justify punishment.\textsuperscript{212} Otherwise, the threat of punishment is wasted because, without control, a criminal is not responsible for her crime.\textsuperscript{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.\textsuperscript{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-

\textsuperscript{205} Kant, \textit{supra} note 202, at 100.

\textsuperscript{206} Hart, \textit{supra} note 187, at 36; Kant, \textit{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.").

\textsuperscript{207} "Because the criminal has harmed society, it is right to 'hurt him back.'" Dressier, \textit{supra} note 174, at 12.

\textsuperscript{208} Weinreb, \textit{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").

\textsuperscript{209} Dressier, \textit{supra} note 174, at 12 (discussing the retributivists "just deserts" philosophy).

\textsuperscript{210} Kant, \textit{supra} note 202, at 105 (explaining a person "suffers punishment . . . because he has willed a punishable action").

\textsuperscript{211} Hart, \textit{supra} note 187, at 37-39.

\textsuperscript{212} \textit{Id.} at 107 (reasoning that a "link between mind and body" is needed to determine liability).

\textsuperscript{213} \textit{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").

\textsuperscript{214} Dressler, \textit{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. Proportioning punishment to the seriousness of the offense is the "just desert." Thus, rather than weighing the costs of punishment with respect to its benefits as does utilitarianism, 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. Utilitarianism differs from retributivism because it views punishment as a "forward-looking social policy," "rather than backward-looking at moral guilt." Utilitarians argue that basing a system on morality is wrong because people have different conceptions of morality's boundaries. Therefore, while culpability is not an element of criminal liability under the utilitarian approach, it is important to retributivists.

Strict liability crimes illustrate the difference between retributivism and utilitarianism. 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." In other

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 853-67 ("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)).
words, it is a no-fault crime. 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. Strict liability crimes do not allow for willful decisions and, consequently, retributivists argue the system does not ensure that criminal sanctions reflect moral culpability. 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. Retributivists argue that sacrificing the innocent for the sake of utility would be unjustifiable.

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

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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. 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. Retributivists would find this calculus unacceptable, arguing that arresting one innocent man is morally wrong.

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. Failure to fulfill this duty results in criminal liability. The St. Clair Shores ordinance, for instance, imposes a duty on parents to reasonably control the child, even if the parents claim they are unable to do so, as in the Provenzino case. 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. The three questions a utilitarian would ask about these laws are: (1) What are their benefits? (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).


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.


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\(^2\)\(^{243}\) and (3) Are there other means of preventing juvenile crime at less cost to society?\(^2\)\(^{244}\)

1. The Minimal Benefits of Criminal Parental Responsibility Laws

The goal of parental responsibility laws is to reduce juvenile crime.\(^2\)\(^{245}\) 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.\(^2\)\(^{246}\)

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.\(^2\)\(^{247}\)

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.\(^2\)\(^{248}\) 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).
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. Thus, the ultimate goal of reducing juvenile crime is not always realized by these laws.

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. The presumption underlying all parental responsibility laws is that parents affect the behavior of their children, while there is evidence linking parents to children's delinquent behavior, it is not clear that parents are the only cause of their child's delinquency. Rather, parents are usually only one of the competing factors influencing children's behavior. 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. 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.

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.


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. Provenzino, 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.
261. Weinreb, supra note 41, at 392; Geis, supra note 96, at 319.
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.\textsuperscript{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.\textsuperscript{268} Still others may decide to avoid having children.\textsuperscript{269}

The heavy fines such laws levy may also exacerbate economic hardship—\textsuperscript{270} one of the initial problems often underlying delinquency.\textsuperscript{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.\textsuperscript{272} These examples highlight the tendency of parental control laws to contribute to other causes of delinquency.\textsuperscript{273}

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

\begin{enumerate}
\item Geis, \textit{supra} note 96, at 320 (depicting a father’s use of abuse because nothing else would change his son’s behavior).
\item 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 \textit{supra} note 28 and accompanying text.
\item Ludwig, \textit{supra} note 250, at 733 (arguing that the law “deter[s] potential parents from having children”); see \textit{supra} note 29 and accompanying text.
\item “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, \textit{supra} note 122, at 14 (quoting Judge Sophia Hall, Administrative Presiding Judge of the Cook County Juvenile Justice and Child Protection Resource Section, Illinois).
\item Donziger, \textit{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 \textit{supra} note 94 and accompanying text.
\item Joseph P. Shapiro, \textit{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.
\item Casgrain, \textit{supra} note 40, at 185 (imposing pressure “on a family in crisis is likely to worsen the situation”); Shapiro, \textit{supra} note 272, at 26.
\item See \textit{supra} note 198 and accompanying text.
\item See infra Part III.B.1.
\item See \textit{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, \textit{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, \textit{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, \textit{supra} note 40, at 1156. This illustrates yet another cost in utilizing these laws.
\end{enumerate}
ship, parents resorting to extreme punishments, and the placement of children with state services. 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. There are several other means available, however, for reducing and addressing the causes of juvenile crime. 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. In addition, preventive social programs could be adopted by legislatures.

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. 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.” 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. The St. Clair Shores ordinance calls for “rea-
sonable control” of a minor.\footnote{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.\footnote{288} As discussed above, it is impossible to consistently demonstrate a direct link between parents’ actions and those of their children.\footnote{289}

In addition to these shortcomings, the statutory standard of “reasonable control” may be too vague.\footnote{290} Retributivism requires a conscious choice to do wrong.\footnote{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,\footnote{292} the Provenzino case demonstrates that this standard may be vague as applied. The Provenzinos 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.\footnote{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.\footnote{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.\footnote{295} For instance, if parents are una-
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. In fact, the Provenzino appeals court struck down the section of the St. Clair Shores ordinance that created parental liability based solely on the child’s delinquent status. The court reasoned that there was no rational basis to infer that, if the child was delinquent, the parents failed to exercise reasonable control. Other parental responsibility laws, such as New Mexico’s, could be susceptible to a similar challenge. 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 Provenzino, for example, was struck by Alex and actually asked the police to keep Alex in jail because he knew he could not control him. In such cases, where the parent is unable to control the child, a conscious choice is lacking. Without a choice, these laws essentially penalize parents for parenthood. 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.
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 childhood and, therefore, did control Alex's criminal behavior. Unless Anthony Provenzino 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. 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. The Provenzino'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." The child's age and amount of parental supervision time also influence the amount of control a parent can exercise. In the Provenzino case, both parents worked and the child was being influenced by older friends. 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." Thus, parents could be held liable for acts which were beyond their control.

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. In cases where a par-
...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, 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. 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.

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." 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. Criminal
parental responsibility laws have been but one of a number of efforts to reduce juvenile crime. There is no reliable data affirming their effectiveness\textsuperscript{318} and, as demonstrated by the earlier analysis, they are unjust because they do not comport with societal theories of criminal punishment.\textsuperscript{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.\textsuperscript{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.

\textbf{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.\textsuperscript{321} Balanced against this reality, criminal parental responsibility laws address only

\textsuperscript{318} See \textit{supra} Part I.
\textsuperscript{319} See \textit{supra} Part III.
\textsuperscript{320} See \textit{generally} Vacco, \textit{supra} note 117 (discussing the proposed plan).
\textsuperscript{321} See \textit{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.\textsuperscript{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."\textsuperscript{323}

Society also contributes indirectly to juvenile delinquency because societal attitudes may hinder a parent's ability to control the child.\textsuperscript{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.\textsuperscript{325} Thus, societal attitudes may thwart efforts made by parents to instill good values in their children by offering conflicting messages.\textsuperscript{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.\textsuperscript{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.\textsuperscript{328} The DOJ has issued a report entitled "Delinquency Prevention Works."\textsuperscript{329} It concluded that juvenile crime can be reduced because prevention pro-

\textsuperscript{322}. Chapin, \textit{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, \textit{supra} note 112, at 492 (arguing that "the law bears some responsibility for ... parental failure and for the corresponding plight of children").

\textsuperscript{323}. Clinton, \textit{supra} note 112, at A20.

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

\textsuperscript{325}. Younger, \textit{supra} note 112, at 514.

\textsuperscript{326}. \textit{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.").


\textsuperscript{328}. Hawkins, \textit{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.").

\textsuperscript{329}. University at Albany, Youth Development Research & Evaluation Institute 13-14 (1997).
programs interrupt the formation of delinquent behavior. In addition, the report found that lasting reductions in juvenile crime require long-term investment in both law enforcement and prevention programs. 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. One of the objectives is for states to "provide opportunities for children and youth." The Council advises that programs which address specific causes of delinquency are "the most effective defense." The strategies recommended include "truancy reduction, mentoring, conflict resolution, after school tutoring, vocational training, cultural development, recreation, and youth leadership" programs. Evaluations of these programs have shown that they are cost-effective and have great potential to reduce juvenile crime rates.

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. The top three programs in the survey were skill development; individual, group, and family counseling; and mentoring. These programs were successful because they addressed the needs of each individual juvenile and the juvenile's social interactions.

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. 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.


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.


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. 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. Examples of programs which address schools, peer groups, and neighborhoods are: truancy reduction, gang prevention and intervention, and safe havens for youths. 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.* 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. 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. 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. 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.

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

Mediation and conflict resolution skills programs have also been recognized for creating a less hostile environment in schools nationwide. Children who are unable to handle conflict are more likely to become delinquent and resort to violence. Thus, many schools and communities are utilizing conflict resolution training to teach children how to constructively manage disputes. The National Institute of Justice examined New York City's Resolving Conflict Creatively Program, which teaches juveniles conflict resolution skills. 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.

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. An evaluation of the “McGruff” campaign, for example, showed that media campaigns are cost-effective in changing knowledge and behaviors about crime prevention. 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.

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.
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.
355. Id.
357. Id. at 11-12.
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.\textsuperscript{361} Experts attribute this, in part, to the low funds allocated for social programs in America as compared to other countries.\textsuperscript{362} When children are provided with a healthy physical and mental environment, they are more likely to avoid criminal conduct.\textsuperscript{363} Fortunately, most American children live in such an environment.\textsuperscript{364} But for those who cannot, society should reach out to these children because it will both make America safer and help countless children.\textsuperscript{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.

\textbf{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.\textsuperscript{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.\textsuperscript{367} This Commission recommended crime prevention programs that address juvenile self-esteem, self worth and respect.\textsuperscript{368} The Attorney General believes prevention programs could be an effective long-term solution to New York’s juvenile crime problem.\textsuperscript{369}

The Attorney General considered endorsing a parental responsibility law, but found that such a law would be too difficult to effectively enforce.\textsuperscript{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.”\textsuperscript{371}

\textsuperscript{362} \textit{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.”).
\textsuperscript{363} Donziger, \textit{supra} note 39, at 145.
\textsuperscript{364} \textit{Id.}
\textsuperscript{365} \textit{Id.}
\textsuperscript{366} Vacco, \textit{supra} note 117, at introductory letter.
\textsuperscript{367} \textit{Id.} at 4.
\textsuperscript{368} \textit{Id.} at introductory letter. The Attorney General recommended a “barbell approach” to juvenile crime which balances increased juvenile crime penalties with prevention programs. \textit{Id.}
\textsuperscript{369} \textit{Id.} at 29.
\textsuperscript{370} \textit{Id.} at 20.
\textsuperscript{371} \textit{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 media and parental influences, 379 parental rejection, 380 and peer pressures, 381 in addition to psychological causes of juvenile crime, as the mentor would be trained to counteract these negative influences. 382

Another suggested program, the Young Negotiators, teaches conflict resolution skills. 383 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. 384 This program was tested in Boston and has already been implemented in Manhattan. 385 It addresses over-competitiveness within the family, heavy reliance on outside resources, lack of efficient decision making processes, 386 fighting with peers, 387 and lack of bonding with society 388 by teaching juveniles non-violent

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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.
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.
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. 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. After its first year in New York, the Young Negotiators program was evaluated by the Harvard University Graduate School of Education. 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. The preliminary findings also noted the new program was serving its main goals: children were more likely to resolve conflicts without violence 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. 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.

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. The Conflicting Clowns program presents dispute management skills to children through clowns, games, and stories. The clowns visit classrooms, act out a conflict scenario, and ask the children to brainstorm solutions. A follow-up visit is made the next week to check the children’s progress.

Another program, the Reach and Teach program, is currently offered at thirty-seven high schools across the state. 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. A workbook including a lesson
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-

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.
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.
419. Id.
420. Id.
Community 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 Provenzino 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.

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\(^{421}\) *See supra* note 104 and accompanying text.