

HB

18

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: CSHB 18 (STA)
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Parental Liability BRU Alaska Court System
 Component Trial Courts
 Sponsor Representative Meyer
 Requester House State Affairs Component No. 768

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2003) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of CSHB 18 (STA).

Prepared by: Doug Wooliver, Administrative Attorney Phone 463-4750
 Division Alaska Court System Date/Time 3/7/03 10:40 AM
 Approved by: Stephanie Cole, Administrative Director Date 3/7/03
 Agency Alaska Court System




REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: February 13, 2003

TO: Representative Bruce Weyhrauch
Chairman, House State Affairs Committee

FROM: Representative Kevin Meyer 

RE: House Bill 18 Parental Liability for Child's Damage

At your earliest convenience, please schedule HB 18 Parental Liability for Child's Damage for a hearing in the House State Affairs Committee.

HB 18 removes the limit on recovery of property damaged by a minor. HB 18 will allow for a person, municipal corporation, association, village, school district, or religious or charitable organization to recover the full costs of damages to property from parents or guardians of a minor who knowingly destroys property.

Thank you for your time and consideration.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

Sponsor Statement

House Bill 18

“An Act relating to the liability of parents and legal guardians of minors who destroy property.”

House Bill 18 removes the limit on recovery of property damaged by a minor. HB 18 will allow for a person, municipal corporation, association, village, school district, or religious or charitable organization to recover the full cost of damages to property from parents or guardians of a minor who knowingly destroys property. Currently, under AS 34.50.020(a), the recovery limit is \$10,000.

Traditionally, Alaska has held that parents are accountable for their children's behavior, and that parents should pay restitution for damages caused by their children. In 1995, the limit for recovery was raised from \$2,000 to \$10,000. Often, cumulative damage to a facility exceeds the \$10,000 limit, thus leaving taxpayers or organizations to bear the cost of repairs and clean up.

The large discrepancy between the \$10,000 limit and the actual cost of damages incurred to property became apparent this past summer in Anchorage. The Anchorage School District reported that minors did nearly \$750,000 in damage over the summer to facilities and schools. Money that should go towards technology enhancement, textbooks, and personnel, is instead, drained by the cost of repairing facilities.

Five other states, Hawaii, Idaho, Montana, New Jersey, and Oklahoma, have no limit on the cost recovery from parents or guardians of a minor who knowingly destroys property. By removing the limit, children are deterred from making decisions to vandalize and destroy property. This will also impose an additional duty on parents and legal guardians to exercise reasonable care, supervision, protection and control over their child.

Last Updated: February 13, 2003

Sec. 34.50.020. Liability for destruction of property by minors

(a) A person, municipal corporation, association, village, school district, or religious or charitable organization, incorporated or unincorporated, may recover damages in a civil action in an amount not to exceed \$10,000 and court costs from either parent, both parents, or the legal guardian of an unemancipated minor under the age of 18 years who, as a result of a knowing or intentional act, destroys real or personal property belonging to the person, municipal corporation, association, village, school district, or religious or charitable organization. However, for purposes of this subsection, recovery in damages shall be apportioned by the court between the parents or between the parents and legal guardian, or both, without regard to legal custody but with due consideration for the actual care and custody of the minor provided by the parents or legal guardian.

(b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home, or children's institution, is not liable for the acts of unemancipated minors in its charge or custody. A state agency or an agent of a state agency, including a nonprofit corporation that designates shelters for runaways under AS 47.10.392 - 47.10.399 and employees of or volunteers with that corporation, is not liable for the acts of a minor sheltered in a shelter for runaways, as defined in AS 47.10.399.

(c) A parent or, if any, a legal guardian of an unemancipated minor under the age of 18 years who is a runaway or missing minor is not liable under (a) of this section for the acts of the minor that are committed by the minor after a parent or, if any, a legal guardian of the minor has made a report to a law enforcement agency, as authorized by AS 47.10.141 (a), that the minor has run away or is missing. In this subsection, "runaway or missing minor" means a minor who a parent or legal guardian of the minor reasonably believes is absent from the minor's residence for the purpose of evading a parent or the legal guardian of the minor, or who is otherwise missing from the minor's usual place of abode without the consent of a parent or the legal guardian of the minor.

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Anchorage Daily News (AK)
June 25, 2002
Section: Nation

Page: A1

Vandals cost schools \$500,000

ARRESTS: Two boys, ages 13 and 14, charged in maintenance facility rampage.

Katie Pesznecker
Anchorage Daily News

Two teenage boys were arrested late Sunday in connection with a weekend vandalism spree at the Anchorage School District's maintenance facility that racked up more than \$500,000 in damages, Anchorage police said. During the two-day rampage, the boys, ages 13 and 14, allegedly climbed behind the wheel of a John Deere tractor to ram buildings and storage sheds, police said. They destroyed roofs and boilers, ripped away chunks of walls and smashed windows.

The teens are charged with first-degree criminal mischief and resisting arrest. Police did not identify the suspects, who were taken to McLaughlin Youth Center, because they are charged in juvenile court.

"It's just so frustrating," Superintendent Carol Comeau said. "There is nothing that makes me more angry in this job than reckless, malicious vandalism. It's a real sad commentary on these young people. If I had it my way, I'd put their names on the front page of the paper."

Police in the past several days have responded to minor break-ins or vandalism reported at Rabbit Creek, Scenic Park, Homestead and Huffman elementaries, Central Middle School and East and West high schools. Damage ranged from shattered windows and busted copy machines to lewd graffiti.

The maintenance facility, at 1201 Labar St. in South Anchorage, was by far the worst hit. The complex contains offices, storage space for the district's maintenance, facilities and operations departments. Equipment on site includes vehicles and machinery the district uses for snow removal and construction and renovation projects.

Anchorage police said the boys initially broke into the facility a little after 10 p.m. Friday. They wrenched doors off and smashed windows of a dump truck, three street sweepers, two road graders and a tractor.

The boys were apparently driving around the fenced property on lawnmowers when a district employee approached them. The teenagers fled. The employee reported the incident to police, but no suspects were found.

Police said the boys showed up again late Sunday. They apparently fired up a John Deere tractor by using a lever.

The teenagers used the tractor to plow into a double-wide trailer used for storing heavy equipment. The impact caused part of the roof to collapse and obliterated the ramp to the trailer's main door.

The boys also bulldozed storage sheds in the northwest corner of the property, chewing chunks out of building walls. When it was over, the tractor's front wheels were bent at 45-degree angles.

"I'm surprised they didn't get hurt," said Stan Syta, district operations director.

Houses border the property's north side. Comeau is baffled that no one called police.

"They had to have heard breaking glass," she said. "That tractor ramming buildings -- I can't believe no one heard what was going on."

Another employee happened upon the boys and called police shortly after 10 p.m. When officers arrived, the teens bolted. Police caught the 14-year-old hiding in a nearby wooded area. The 13-year-old was later arrested at his home.

The boys admitted to Friday's vandalism at the site, police said.

The district budgets about \$250,000 a year for vandalism. Much of the damage occurs at empty schools during summer breaks. Property damaged Friday and Sunday will not be covered by the district's insurance policy, which in this case covers amounts exceeding \$1 million.

Comeau said the district will do everything in its power to see that the boys are held responsible for the damages, including a possible civil suit. State statute says that in a civil case, a school district can sue for up to \$10,000 and court costs from one or both of a minor's parents or legal guardians.

In the interim, Comeau is encouraging people who live near schools to watch out for strange activity. The district has recruited 15 volunteers this summer to live in motor homes and trailers at more than a dozen schools.

Syta said last summer the district invited a man to live in his trailer at Rabbit Creek Elementary. His presence basically erased vandalism there, Syta said.

But the family living there now didn't prevent Sunday night's window breaking. They were eating dinner while the vandalism took place on the back side of the school, Syta said.

Reporter Katie Pesznecker can be reached at kpesznecker@adn.com or 907 257-4589.

ILLUSTRATION SHOWS RECENT SCHOOL VANDALISM

Police have responded to the following Anchorage schools to investigate vandalism or possible break-ins.

- * Dimond High School - On Dec. 31, vandalism at the new school resulted in spilled paint, smashed piping and sheetrock and windows. Damage totaled \$177,000. Two boys were arrested.
- * Chugiak Elementary - On May 4 and 5, three boys reportedly broke windows, destroyed stereos, televisions and classroom globes and vandalized a car in the parking lot. Damage totalled about \$25,000. Three boys were arrested.
- * Rabbit Creek Elementary - On ??? someone pryed boards off windows on the back side of the school and broke glass. No arrests.
- * District maintenance facility - On June 21, two boys entered and damaged seven vehicles, smashed windows and drove around on lawn mowers. Police arrived after the boys fled. No arrests.
- * West High School - A passerby on June 22 called police to report fowl graffiti on the auditorium's exterior wall. No arrests.
- * Scenic Park Elementary - Security guards on June 23 found several doors propped open with rocks. There was no sign of vandalism or arrests.
- * Homestead Elementary - Police responding to the school's alarm on June 23 found kids playing behind the school. There was no sign of vandalism or arrests.
- * Huffman Elementary - Police responded to an alarm early June 23 and found a broken window and two people running through the building. The people got away. No arrests.
- * William Tyson Elementary - On June 23, an intrusion alarm sounded. No arrests.
- * District maintenance facility - Late June 23, an employee found two boys ramming vehicles and buildings with a tractor. The boys fled and were soon arrested. They admitted to Friday's vandalism also. Police estimate total damage at \$500,00.
- * East High School - At 5:50 a.m. on June 24, police caught and arrested one person who had broken in and sprayed a fire extinguisher around the school.

* Central Middle School - At 6 a.m. on June 24, police arrested a student who had broken in through a window. Police found damage to an interior window, a clock and a copy machine. No damage estimate.

Source: Anchorage School District

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Anchorage Daily News (AK)
September 24, 2002
Section: Metro

Page: B1

Schools want damage limits erased

VANDALISM: District can sue for \$10,000 under current law.

Katie Pesznecker
Anchorage Daily News

Staff

Anchorage School District officials want to erase limits that dictate the amount of money they can sue for when students vandalize school property. Current state law says the district can sue an 18-year-old culprit or a minor's parents for up to \$10,000. Sometimes that doesn't cover actual damages, Superintendent Carol Comeau said.

Members of the School Board's legislative subcommittee plan to lobby state lawmakers to do away with the cap. They want the freedom to sue for actual costs.

On Monday, the board voted unanimously to ask the Alaska Association of School Boards to make this move one of its 2002 resolutions. They want the backing of that group when time comes to persuade politicians.

Students smash windows and computers and trash Anchorage schools often enough that the district budget includes about \$250,000 a year to clean up.

But financial retribution is hampered by the \$10,000 limit. There used to be a \$2,000 ceiling on lawsuits but the Legislature increased it in 1995.

"We need to be able to recover the full cost of vandalism," Comeau said. "The current law limits recovery, and we think it's wrong because it penalizes the taxpayer."

School Board member Rita Holthouse said the subcommittee will push to change the law, whether or not the state school board association signs on.

The \$10,000 limit wasn't as noticeable with the more frequent lower-cost incidents, said Howard Trickey, one of the district's attorneys. But when kids do more than \$100,000 in damage, \$10,000 hardly helps. And the district's insurance policy applies only to damage amounts of more than \$1 million.

The most recent big-ticket vandalism came last summer when two teenagers destroyed buildings and equipment at the school maintenance facility in South Anchorage. District officials and the public were outraged.

"It looked like a tornado had been there," said Ed Conyers, then the district's maintenance director.

Vandalism at schools results mostly in small losses that quickly add up -- broken windows, gouges in



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Anchorage Daily News (AK)
 October 7, 2002
 Section: Metro
 Page: B5

VOICE OF THE TIMES

Commentary

school vandals should . . . Pay the price

THE ANCHORAGE School District is on the right track in seeking approval from state lawmakers to sue for actual costs when vandals damage the schools and property it manages for taxpayers.

As it stands now, the district can demand only up to \$10,000 from the parents of minors or from 18-year-olds involved in school vandalism.

That amount -- increased from \$2,000 only a few years ago -- sometimes does not begin to cover the actual damages, Superintendent Carol Comeau said. She points to last year's \$100,000 in damages at the district's school maintenance facility as an example.

The School Board has voted to ask the Alaska Association of School Boards to lobby politicians for the increase, and Comeau said she believes the effort will find favor.

"The legislators we've had contact with . . . they've been very supportive," she said. "I think this is something that will resonate with legislators."

Each year, the school district budgets \$250,000 to \$300,000 to clean up vandalism, and "that's just for maintenance and repair costs," Comeau said. "That doesn't include labor or down time." That also does not reflect repairs to items such as photocopy machines or computers, she said.

Comeau credits additional police patrols and a policy of allowing campers to stay on school grounds with helping to keep vandalism in check this summer. And keeping it in check can save taxpayers hundreds of thousands of dollars.

The district is self-insured to \$1 million, Comeau said, and then its insurance kicks in. In construction areas, such as Dimond High School -- where vandals did about \$170,000 in damage last year -- the contractor's insurance is in force and its lawyers can go after the full amount.

There is no valid reason to bar the district from seeking the amount of actual damages from vandals or their parents. In fact, such a policy could act as a deterrent and encourage parents to know where their children are and what they are doing.

"That's what it comes down to in my mind," Comeau said, "good parenting."

We agree. While 99.9 percent of the kids in Anchorage's schools are good citizens, there is no reason to allow the other .1 percent to have a free ride when they damage the district's property. They and their parents rightly should pay the full amount.



The district should have the right to collect -- in full -- on the taxpayers' behalf.

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LEGISLATIVE RESEARCH REPORT

SEPTEMBER 12, 2002



REPORT NUMBER 03.009

LIMITS OF PARENTAL LIABILITY FOR PROPERTY DAMAGE BY MINORS

PREPARED FOR REPRESENTATIVE KEVIN MEYER

BY ROGER WITHINGTON

You asked for information regarding the scope of parental liability if a minor child willfully destroys property. Specifically, you asked for information on the parental liability laws for five western states and wished to know whether any of these state laws contain graduated limits to liability.

As you know, Alaska Statute 34.50.020(a) allows for a person, municipal corporation, association, village, school district, or religious or charitable organization to recover up to \$10,000 in damages in a civil action from either parent, both parents, or the legal guardian of an unemancipated minor who intentionally destroys property belonging to the person, municipal corporation, association, village, school district, or religious or charitable organization.¹ We were unable to obtain a fifty-state summary of similar parental liability statutes that included the monetary limits to the parents of a delinquent minor. However, we believe the most current information to be a 1999 report compiled by the National Center for Juvenile Justice (NCJJ) that states that at the end of the 1998 legislative session, 34 states had statutes that made the parent of a minor liable for restitution to the victim of a delinquent act. We include NCJJ's report as Attachment A.

In addition, in 1995 this agency completed a report that addressed questions similar to yours as well as the constitutionality of parental liability laws. In Legislative Research Report 95.068, we found that 34 states (not exactly the same 34 states identified in the NCJJ report) had statutes that established parental liability for damages caused by minor children. The dollar amount of the parental liability ranged from \$1,000 to \$25,000, with some states not capping the liability amount. We include Legislative Research Report 95.068 as Attachment B.

In an effort to provide you with more current information, we reviewed the current laws of five western states and British Columbia and found that California, Hawaii, Nevada, Oregon, Washington, and British Columbia all had statutes similar to AS 34.50.020(a). Table 1 provides a summary of the statutes from each of these jurisdictions. Attachment C provides the complete statute from each state.

¹ A minor is defined as a person under the age of 18 years.

As you will see, the laws in Nevada, Oregon, and British Columbia limit liability at the same or lesser amount than does the law in Alaska. The laws in California, Hawaii, and Washington make a distinction in liability for the type of damage caused by the minor; one law in California caps liability at \$25,000, while laws in Hawaii and Washington provide for actual damages.

Table 1: Limits of Parental Liability for Property Damage by Minors			
State / Province	Statutory Citation	Maximum Financial Liability	Comments
California	Cal Civ Code § 1714.1	\$25,000	
	Cal Ed Code § 48904	\$10,000	Specifically addresses damage to school property.
Hawaii	HRS § 46-1.5	\$1,000 or actual cost to repair/replace damage.	Pertains to damage to county property.
	HRS § 577-3.5	Actual cost to repair/replace damage or community work service.	Pertains to damage caused by graffiti.
Nevada	Nev. Rev. Stat. Ann. § 41.470	\$10,000	
Oregon	ORS § 30.765	\$7,500	
Washington	Rev. Code Wash. § 4.24.190	\$5,000	
	Rev. Code Wash. § 28A.635.060	Actual cost to repair/replace damage to school.	Specifically addresses damage to school property.
British Columbia	S.B.C. 2001, c. 45, s. 6	\$10,000 CND ^(a)	
Notes: (a) \$10,000 CND equals \$ 6,413.26 USD as of 9/6/2002 per XE.COM, an online currency conversion site. The URL for XE.COM is http://www.xe.com/ucc/ .			
Sources: LEXIS Law Publishing.			

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Attachment A

Linda A. Szymanski, "Parental Responsibility for the Delinquent Acts of Their Children," *NCJJ Snapshot*, Volume 4, Number 7, July 1999

NCJJ Snapshot

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 Research Division of the National Council of Juvenile and Family Court Judges

Parental Responsibility for the Delinquent Acts of Their Children

Linda A. Szymanski, Esq., Director of Legal Research, NCJJ

States that have a Parental Accountability Statement in their Juvenile Code Purpose Clause



Over the last fifteen years, juvenile courts have gained increasing power and authority over the parents of children who commit delinquent acts. While all states have had statutes making it illegal for parents to contribute to the delinquency of their children, a handful of states now make parents criminally liable for failing to supervise their minor who commits delinquent acts. There is a wide variety of parental responsibility laws in juvenile codes throughout the states.

For example, as of the end of the 1998 legislative session, 10 states, Alabama, Alaska, Florida, Idaho, Maryland, Nevada, North Carolina, Oregon, Texas, and Virginia, have added a parental

accountability statement in their juvenile code purpose clause.

Arkansas, California, Colorado, the District of Columbia, Florida, Idaho, Indiana, Kansas, North Carolina, Ohio, Oregon, Texas, Wisconsin, and Wyoming allow the juvenile court to order parents to attend a court-approved parental responsibility training program/parent education program.

Alaska, Mississippi, New Hampshire, New Mexico, and Wisconsin have statutes in their juvenile code that allow for public disclosure of the parent's name if his or her child commits specified serious offenses.

Eleven states, Kansas, Louisiana, Michigan, Montana, New Hampshire, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and Wyoming, require parents to aid in the enforcement of court orders concerning their delinquent's rehabilitation program. Failure to aid in the enforcement of court orders can result in contempt sanctions being filed against the parent.

As of the end of the 1998 legislative session, two-thirds of the states have statutes that make the parent of a delinquent liable for restitution to the victim of the delinquent act: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Kentucky, Maryland, Michigan, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, West Virginia, Wisconsin, and Wyoming.

Thirty-nine jurisdictions currently have statutes that permit or require parents of delinquents to participate in family treatment/counseling/probation with their children: Alabama, Alaska, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland,

Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

In all states, the parents of a delinquent can be held liable for the costs of confinement and/or services provided to their children, such as: the child's support while in an institution, the costs of probation supervision, costs of transporting and/or treatment for delinquent minors, court costs and legal fees, and payment for alcohol and other drug abuse services.

It remains to be seen whether or not these parental accountability laws actually lead to a decrease in juvenile crime.

NCJJ Snapshot is a copyrighted publication of the National Center for Juvenile Justice. NCJJ is a non-profit organization that conducts research, statistical, legal, and policy on a broad range of juvenile justice topics and provides technical assistance to the field.

For additional information or to request a coupon, contact NCJJ at 710 Fifth Avenue, Pittsburgh, PA 15219. Phone: (412) 227-8950.

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 Szymanski, L. (1999). Parental Responsibility for the Delinquent Acts of Their Children. NCJJ Snapshot, 3(7). Pittsburgh, PA: National Center for Juvenile Justice.

Attachment B

Patricia Young, "Parental Liability Laws for Damages Caused by Minor Children,"
Legislative Research Request 95.068, February 16, 1995

Legislative Research Agency

Alaska State Legislature



130 Seward Street, Suite 218
Juneau, Alaska 99801-2196

Phone: (907) 465-3991
Fax: (907) 463-3351

February 16, 1995

MEMORANDUM

TO:

FROM: Patricia Young *Pat Young*
Legislative Analyst

RE: **Parental Liability for Damages Caused by Minor Children**
Research Request 95.068

You wished to know the history behind AS 34.50.020, the law that caps at \$2,000 parents' liability for damages caused by their minor children. You also wished to know if and to what extent other states hold parents financially accountable for damages caused by their children.

In 1957, Alaska passed a statute providing that parents could be held responsible for damages maliciously and willfully caused by their minor children. Liability was capped at \$500. The cap was raised in 1967 from \$500 to the current level of \$2,000.

At least 34 states have laws addressing parental liability for damages caused by minor children. Many states, like Alaska, have traditionally held that parents are accountable for their children's behavior and that parents should pay restitution for damages caused by their children. The attached table shows caps for each state identified. As you will see, of the 34 states, eleven cap liability at \$2,000 or less and ten cap liability at \$5,000 or more. Five states do not specify a limit to parental liability. California's cap is the highest at \$25,000. These laws have been held constitutional in at least the following six states: California, Georgia, Maryland, North Carolina, Texas, and Wyoming.

I have attached copies of "Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children," 44 *Vand. Law Rev.* 441 (1991) and "Parental Liability Law Upheld in California," *Youth Law News*, September-October 1993. I hope the information is helpful. Please let me know if you have questions or need more information.

Attachments

Parental Responsibility for Delinquent Acts of Children

State	Cap (\$)	Notes
Alabama	1,000	
Illinois	1,000	
Minnesota	1,000	
North Carolina	1,000	
Pennsylvania	1,000	
South Dakota	1,500	
Alaska	2,000	
Arkansas	2,000	
Missouri	2,000	
Utah	2,000	
Wyoming	2,000	
Florida	2,500	court may absolve parents of liability if it finds they have made good faith efforts
Michigan	2,500	
New York	2,500	
Wisconsin	2,500	
Indiana	3,000	
Ohio	3,000	
Colorado	3,500	court may absolve parents of liability if it finds they have made good faith efforts
New Mexico	4,000	
Connecticut	5,000	
Georgia	5,000	
Maryland	5,000	parents may be heard and present evidence on their own behalf
Massachusetts	5,000	
Washington	5,000	
Arizona	10,000	
Kentucky	10,000	
New Hampshire	10,000	
Texas	15,000	
California	25,000	cap to be adjusted every 2 years to reflect changes in cost of living
Hawaii	no cap	
Idaho	no cap	victims may be "made whole"
Montana	no cap	court may order parents to pay restitution
New Jersey	no cap	cap at \$1,000 for damage to a public transportation utility
Oklahoma	no cap	court may order parents to pay restitution

Source: NCJJ analysis of state juvenile codes in the Automated Juvenile Law Archive, current as of the end of the 1993 legislative session; NCSL annual state summaries of Children, Youth and Family Issues; and Legislative Research Unit Research Response, "Laws on Parental Responsibility for Child's Acts," File 10-419, September 9, 1992.

Prepared by the Legislative Research Agency, February 1995 (95.068)

Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children

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I. INTRODUCTION

In late 1988 as part of a comprehensive effort to combat violent street gang activity,¹ the California legislature passed an amendment to section 272 of California's Penal Code,² commonly known as the Paren-

1. Abramovsky, *Parent's Liability for Child's Crime*, 202 N.Y.L.J. 3 (1989). The California legislature found that violent street gangs, whose activities presented a "clear and present danger to public order," had created a state of crisis. CAL. PENAL CODE § 186.21 (West Supp. 1990).

2. CAL. PENAL CODE § 272 (West Supp. 1990). In addition, the legislature passed the Califor-

tal Responsibility Law.³ Section 272 originally stated only that every person who commits any act or fails to perform any duty that causes or tends to cause a minor to do a prohibited act is guilty of contributing to the delinquency of a minor, a misdemeanor under the California Penal Code, and subject to a maximum fine of twenty-five hundred dollars, one year in jail, or both.⁴ When the California legislature amended section 272, it imposed an additional affirmative duty on parents and legal guardians "to exercise reasonable care, supervision, protection, and control over their minor child[ren]."⁵ In essence, California's legislative package makes parents liable for failing to prevent their minor children from engaging in criminal activity.⁶

Although the State has not prosecuted anyone under the new laws,⁷ the American Civil Liberties Union of Southern California (ACLU) has filed a taxpayers' lawsuit challenging the constitutionality of the Parental Responsibility Law.⁸ The complaint alleges that the amendment is vague, overbroad, and an infringement on family privacy. The ACLU has requested that the court enjoin enforcement of the Parental Responsibility Law and declare it unconstitutional.⁹

California's Parental Responsibility Law reflects a recent trend among the states to make parents more responsible for the activities of

nia Street Terrorism Enforcement and Prevention Act (Street Terrorism Act). *Id.* §§ 186.20-186.27. The Street Terrorism Act criminalizes participation in a street gang with knowledge of the gang's patterns of criminal activity. *Id.* § 186.22.

3. *Law Challenged Holding Parents Criminally Liable*, L.A. Daily J., July 21, 1989, at 1, col. 4 [hereinafter *Law Challenged*].

4. CAL. PENAL CODE § 272 (West 1988), prior to the 1988 amendment, read: "Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any [minor] . . . to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code" is guilty of a misdemeanor. Sections 300, 601, and 602 define the types of minors who are subject to the juvenile court's jurisdiction. Section 300 governs minors who have been or are in danger of being physically, emotionally, or sexually abused or neglected or exploited by someone in the minor's home. CAL. WELF. & INST. CODE § 300 (West Supp. 1990). Section 601 covers habitually disobedient or truant minors, *id.* § 601, and § 602 concerns minors who have violated any state or federal law or any city or county ordinance other than curfew ordinances. *Id.* § 602.

5. CAL. PENAL CODE § 272 (West Supp. 1990). A person is considered a minor in California until the age of 18. *Id.*

6. See Kantrowitz, Springen, Annin & Gordon, *Now, Parents on Trial*, *NEWSWEEK*, Oct. 2, 1989, at 54 [hereinafter *Parents on Trial*]; Abramovsky, *supra* note 1, at 3; *Law Challenged*, *supra* note 3, at 1, col. 4.

7. In April 1989 the Los Angeles city attorney filed charges under the Parental Responsibility Law against Gloria Williams after her son, a gang member, was arrested for rape. *Parents on Trial*, *supra* note 6, at 55. Williams was charged with failing to provide reasonable care for her son. *Law Challenged*, *supra* note 3, at 1, col. 4. Prosecutors dismissed the charges when they learned that Williams had taken a parenting class. *Id.*

8. *Law Challenged*, *supra* note 3, at 1, col. 4.

9. *Id.*

their minor children.¹⁰ Some states have imposed certain duties on parents with the ultimate goal of discouraging various forms of undesirable behavior by their children.¹¹ Moreover, Kentucky¹² and New York¹³ have legislation that greatly resembles California's Parental Responsibility Law. This trend has enormous potential for growth because many states could use existing criminal statutes to regulate parental conduct in the same manner as California's new legislation.¹⁴

10. Abramovsky, *supra* note 1, at 3; see also Shapiro, *When Parents Pay for Their Kids' Sins*, *U.S. NEWS & WORLD REPORT*, July 24, 1989, at 26.

City councils also have countered increases in juvenile crimes with ordinances to punish parents who do not keep their children out of trouble. See Gibson, *Make Parents Pay for Actions of Kids*, *USA TODAY*, Dec. 19, 1989, at 10A (final ed.) (discussing the success of a new city ordinance in Dermott, Arkansas that seeks to curb juvenile delinquency by prosecuting parents of delinquent children). For example, the Norwalk, California City Council voted to impose \$2500 fines on parents of delinquent children. Harris, *Norwalk Votes to Fine Parents of Lawbreakers*, *L.A. TIMES*, Feb. 11, 1990, at 1, col. 2 (home ed.). The Norwalk ordinance also enables the city to file civil suits against parents whose children are gang members. *Id.*

California State Senator Ed Davis has advocated federal and state tax subsidies to encourage mothers to stay home and raise children. Davis, *A Parental Presence Prevents Delinquency*, *L.A. TIMES*, Feb. 25, 1990, at 4, col. 1 (home ed.). According to Senator Davis, mothers should remain at home to teach children cultural values during the children's formative years. *Id.*

11. A Florida law requires parents to store securely any loaded guns or face a \$600 fine and 60 days in prison. FLA. STAT. ANN. §§ 790.173-790.174 (West 1976 & Supp. 1990). In Wisconsin parents who fail to support the offspring of their unmarried minor children may face a \$10,000 fine or a maximum jail term of two years. WIS. STAT. ANN. § 49.90 (West 1987 & Supp. 1990). Wisconsin legislators enacted the law to combat teenage pregnancy and abortion by making parents feel more responsible for the sexual behavior of their minor children. See *Parents on Trial*, *supra* note 6, at 54. Hawaii has a similar law. See Shapiro, *supra* note 10, at 26. The Arkansas legislature has passed a law that fines parents if their children miss school. *Id.*

12. "A parent, . . . is guilty of endangering the welfare of a minor when he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming a neglected, dependent or delinquent child." KY. REV. STAT. ANN. § 630.060(1) (Michie/Bobbs-Merrill 1985). A neglected child is one whose parents have harmed or threatened to harm the child's physical or emotional welfare. *Id.* § 600.020(1) (Michie/Bobbs-Merrill 1990). A child is dependent if the child's parents unintentionally cared for the child improperly. *Id.* § 600.020(15). "Delinquency" is not defined in the Kentucky Code.

13. "A person is guilty of endangering the welfare of a child when: . . . (b) being a parent, . . . he fails or refuses to exercise reasonable diligence in the control of such child to prevent him from becoming an 'abused child,' a 'neglected child,' a 'juvenile delinquent' or a 'person in need of supervision,' . . ." N.Y. PENAL LAW § 260.10(2) (McKinney 1989). An abused child is one whose parent physically or sexually abused the child or allowed another to abuse the child. A neglected child is one whose physical, emotional, or mental condition has been impaired or is in danger of being impaired because the parent has not provided a minimum degree of care. N.Y. JUD. LAW § 1012(e), (f) (McKinney 1983 & Supp. 1990). A juvenile delinquent is a child who has committed a crime. *Id.* § 301.2(1) (McKinney 1983). A child is in need of supervision if the child is habitually truant, incorrigible, ungovernable, habitually disobedient, or has a conviction for the unlawful and knowing possession of marijuana. *Id.* § 712.

14. See, e.g., ARIZ. REV. STAT. ANN. §§ 13-3612, 13-3613 (1989); GA. CODE ANN. § 15-11-2 (1990); *id.* § 16-12-1 (1988); NEV. REV. STAT. ANN. §§ 201.090, 201.110 (Michie 1986); R.I. GEN. LAWS § 11-9-4 (1981); S.D. CODIFIED LAWS ANN. §§ 26-8-6, 26-9-1 (1984 & Supp. 1990).

In addition, the police in Grand Rapids, Michigan have reactivated a 20-year-old city ordinance that holds parents criminally liable for their children's misbehavior. See *Parents Are*

This Note addresses the legal problems presented when states attempt to regulate parental conduct through statutes that penalize contributing to the delinquency of minors.¹⁶ Part II of this Note discusses the current popularity of enforcing contributing statutes to deter juvenile crime indirectly. Part III reviews the void for vagueness doctrine and analyzes the nearly unanimous view of the state courts that contributing statutes are not void for vagueness. Part IV examines the argument that these statutes violate parents' constitutional right to privacy in child rearing decisions. Part V concludes that some contributing statutes are void for vagueness and most contributing statutes impermissibly interfere with the fundamental right of parents to make child rearing decisions.

II. BACKGROUND FOR STATUTORY TREND

A. Prevailing Views on the Solution to Juvenile Crime

Between 1978 and 1987 overall arrests of juveniles for violent crime decreased.¹⁷ In the same period, however, juvenile arrests increased 20 percent for forcible rape and 8.3 percent for aggravated assault.¹⁷ Other assault arrests also rose,¹⁸ and the number of juveniles arrested for weapons possession increased 16.9 percent.¹⁹

From 1987 to 1988 arrests of juveniles for violent crimes increased 7.7 percent.²⁰ Arrests for murder and nonnegligent manslaughter, which had decreased from 1978 to 1987,²¹ grew 17.8 percent between 1987 and 1988.²² The previous decline in arrests for drug abuse violations²³ reversed sharply from 1987 to 1988.²⁴ Moreover, arrests for aggravated and other assaults and for weapons possession continued to increase.²⁵

Charged After Crime by Kids, Chicago Tribune, Feb. 6, 1990, at 3 [hereinafter *Parents Charged*]. Although the city had not prosecuted anyone under the ordinance for fifteen years, seven people have been charged in the last four months. *Id.* Under the ordinance, parents who fail to exercise "reasonable control" over their children may face 90 days in jail and a \$500 fine. *Id.* The Assistant City Attorney has stated that parents will be charged only if their children have committed three or more serious offenses. *Id.*

16. This Note does not address the application of contributing statutes to defendants who are not parents of the minor.

17. BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS 489 (1989) [hereinafter *SOURCEBOOK*].

17. *Id.*

18. *Id.*

19. *Id.*

20. FEDERAL BUREAU OF INVESTIGATION, U.S. DEPT. OF JUSTICE, UNIFORM CRIME REPORTS FOR THE U.S. 176 (1989) [hereinafter *UNIFORM CRIME REPORTS*].

21. *SOURCEBOOK*, *supra* note 16, at 489.

22. *UNIFORM CRIME REPORTS*, *supra* note 20, at 176.

23. *SOURCEBOOK*, *supra* note 16, at 489.

24. *UNIFORM CRIME REPORTS*, *supra* note 20, at 176.

25. *Id.*

These unsettling patterns of juvenile violence prompted the Select Committee on Children, Youth, and Families of the House of Representatives to hold a hearing in May 1989 to consider causes of the violence and possible solutions to the problem.²⁶ Experts on juvenile delinquency testified that while the proportion of juveniles committing violent crimes is not increasing,²⁷ those juveniles currently involved are much more violent than delinquents were a few years ago.²⁸ The easy availability of drugs and weapons has aggravated the situation.²⁹ In addition, a new phenomenon has surfaced in that inner city men in their twenties are not growing out of adolescent violence, but instead are continuing to commit more violent crimes.³⁰ Many of the Committee's witnesses pointed to family breakdown as a major contributor to juvenile delinquency.³¹ Other witnesses focused on factors such as the influence of peer groups on juvenile offenders³² and poverty.³³ The most common

26. *Down These Mean Streets: Violence by and Against America's Children: Hearing Before the House Select Comm. on Children, Youth, and Families*, 101st Cong., 1st Sess. 4 (1989) [hereinafter *Down These Mean Streets*].

27. See *UNIFORM CRIME REPORTS*, *supra* note 20, at 172.

28. *Down These Mean Streets*, *supra* note 26, at 107 (statement of Dr. Delbert S. Elliott, Professor of Sociology, University of Colorado at Boulder); see also *supra* notes 18-25 and accompanying text.

29. *Down These Mean Streets*, *supra* note 26, at 107.

30. Dr. Elliott explained that violence in young people usually peaks around the age of 15 or 16 and ends by the age of 18. Today, almost 20% of delinquent teenagers are continuing their violent behavior into adulthood. In addition, these delinquent adults are committing violent acts more frequently. Dr. Elliott suggested that this phenomenon is caused in part by increased poverty and unemployment in urban areas. *Id.* at 107-08.

31. Representative Thomas J. Billey, Jr. stated that "[v]iolence on the streets cannot be separated from what is happening in the home." *Id.* at 11. Another witness worried about the "deterioration of the family structure." *Id.* at 44 (statement of J. Reggie B. Walton, Associate Judge, Superior Court of the District of Columbia); see also *id.* at 116-16 (statement of Karl Zinsmeister, Adjunct Research Associate, American Enterprise Institute for Public Policy Research).

The Department of Justice statistics confirm that family breakdown is a factor in juvenile delinquency. Almost one-half of the juveniles in long-term institutions were raised by single mothers. Family breakdown cannot be the entire explanation, however, because almost 30% of incarcerated juveniles grew up with both parents at home. *SOURCEBOOK*, *supra* note 16, at 601.

32. Dr. Elliott testified that while inadequate parenting does make juveniles more likely to be violent, the more immediate cause of juvenile violence is association with violent peer groups. During adolescence the influence of peer groups far outweighs the influence of parents. *Down These Mean Streets*, *supra* note 26, at 109. Peer groups become the dominant factor perpetuating violent behavior because these groups teach members "techniques of moral disengagement which provide justification and rationalizations for engaging in crime." *Id.* Because violence is an "expression of group hostility," Dr. Elliott believes that any attempt to solve the juvenile delinquency problem that ignores peer groups is destined to fail. *Id.*

33. Parents need more social services before they can reclaim parental authority. "Parents . . . can exert power when they are seen as effective protectors; but when their resources . . . prohibit them from providing more than [the barest necessities], then they are seen as weak adult authority figures. They dare not say no because they fear their children will . . ." leave them. *Id.* at 53 (statement of Deborah Meier, Principal of Central Park East Secondary School in East Harlem, New York, New York). See generally STAFF OF HOUSE SELECT COMM. ON CHILDREN, YOUTH,

recommendation made to the Committee was that parents should be held accountable for the violent activities of their children.³⁴

Holding parents responsible for juvenile delinquency is not a new concept. Colorado enacted the first law holding parents criminally liable for their children's delinquent acts in 1903.³⁵ The reasoning behind the concept is fairly simple. The family is the primary influence in the lives of children and, therefore, is the institution best situated to prepare children to become productive members of society.³⁶ Consequently, the state should require parents not only to provide for the basic needs of children, but also to teach them fundamental societal values, including respect for authority.³⁷ Advocates of this solution suggest that lack of adequate parental control and guidance causes juvenile delinquency. Advocates also believe that through the imposition of fines or prison terms for delinquent parenting the state can force parents to control their children and, therefore, decrease the incidence of juvenile delinquency.³⁸

B. The Hidden Potential in Present Criminal Laws for Expansion of the Trend

Many states are embracing this proposed solution to the growing problem of juvenile crime.³⁹ For example, California prosecutors lob-

AND FAMILIES, 100TH CONG., 2D SESS., REPORT ON CHILDREN AND FAMILIES: KEY TRENDS IN THE 1980s 3 (Comm. Print 1989) [hereinafter REPORT ON CHILDREN AND FAMILIES] (outlining the economic problems facing the modern family).

34. See, e.g., *Down These Mean Streets*, supra note 26, at 165 (response by Judge Walton to subsequent questions posed by Congressman Lamar Smith); *id.* at 119 (statement of Karl Zinmeister, Adjunct Research Associate, American Enterprise Institute for Public Policy Research). Zinmeister recommended positive family building laws, new penalties for persons who harm children, and new laws holding parents accountable for the actions of their children. "[T]he first step in reducing juvenile delinquency has to be to make negligent parents, who are just kind of not exerting themselves in a proper way, exert some control over their charges." *Id.*

35. For a discussion of the Colorado law, see Gladstone, *The Legal Responsibility of Parents for Juvenile Delinquency in New York State: A Developmental History*, 21 BROOKLYN L. REV. 172, 173-74 (1955). "This theory of [parental] criminal responsibility and causation [of juvenile crime] climbs upwards in popularity every now and then. When it has its effect we have increased punishment . . . of parents of delinquent children." S. RUBIN, CRIME AND JUVENILE DELINQUENCY 21 (3d rev. ed. 1970).

36. See *Children and Families in Poverty: Beyond the Statistics: Hearing Before the House Select Comm. on Children, Youth, and Families*, 99th Cong., 1st Sess. 64 (1985) [hereinafter *Children and Families*] (additional submitted material by Glenn C. Loury); S. KATZ, WHEN PARENTS FAIL: THE LAW'S RESPONSE TO FAMILY BREAKDOWN 1, 2 (1971).

37. S. KATZ, supra note 36, at 9-13.

38. See generally *Children and Families*, supra note 36, at 64 (discussing the role of the family in juvenile delinquency). But see S. RUBIN, supra note 35, at 21-31 (calling for the repeal of contributing statutes); Alexander, *What's This About Punishing Parents?*, 12 FED. PROBATION 23 (1948) (acknowledging the failure of Ohio's contributing statute).

39. See *Parents on Trial*, supra note 6, at 54; Shapiro, supra note 10, at 26.

lied for the adoption of the Parental Responsibility Law because they believed that it would divide children and gangs.⁴⁰ Most states already can force parents to take greater responsibility for their children through enforcement of statutes that prohibit contributing to the delinquency of minors.⁴¹ Many contributing statutes contain general terms that could be used to punish parents for either acts or omissions later found to have promoted the delinquency of their children. A typical statute reads: "Contributing to [the] delinquency of [a] minor consists of any person committing any act, or omitting the performance of any duty, which act or omission causes, or tends to cause or encourage the delinquency . . ." of a minor.⁴² This language is broad enough to include any activity of a parent, intentional or not, that an outside observer subsequently determines is detrimental to the child.

Other state contributing statutes contain language specifically applicable to parental behavior. Contributing statutes in California, New York, and Kentucky explicitly require parents to exercise reasonable control over their children.⁴³ Other states either bury the control provisions in the statutory definitions of delinquent or dependent children⁴⁴ or require parents to prevent their children from engaging in certain

40. Prosecutors stated that the new law would "drive a wedge between children and gangs." *Law Challenged*, supra note 3, at 22, col. 2.

41. See ALA. CODE § 12-15-13 (1988); ALASKA STAT. § 11.51.130 (1989); ARIZ. REV. STAT. ANN. § 13-3613 (1989); ARK. STAT. ANN. §§ 5-27-205, 5-27-220 (1987); CAL. PENAL CODE § 272 (West Supp. 1990); COLO. REV. STAT. § 18-6-701 (1989 & Supp. 1990); CONN. GEN. STAT. ANN. § 53-21 (West 1985); DEL. CODE ANN. tit. 11, § 1102 (1987); GA. CODE ANN. § 16-12-1 (1988); HAW. REV. STAT. §§ 709-904 (1989); ILL. REV. STAT. ch. 23, para. 2381a (1987); IND. CODE ANN. § 35-46-1-8 (Burns 1985); IOWA CODE ANN. § 233.1 (West 1985 & Supp. 1990); KAN. STAT. ANN. § 21-3608 (1989); KY. REV. STAT. ANN. § 530.060 (Michie/Bobbs-Merrill 1985); LA. REV. STAT. ANN. § 92 (West 1988); ME. REV. STAT. ANN. tit. 17-A, § 554 (1983 & Supp. 1989); MD. CTS. & JUD. PROC. CODE ANN. § 3-631 (1989); MASS. GEN. LAWS ANN. ch. 119, § 63 (West Supp. 1990); MICH. COMP. LAWS ANN. § 750.145 (West 1975); MINN. STAT. ANN. § 260.315 (West Supp. 1991); MISS. CODE ANN. § 07-5-39 (Supp. 1990); NEB. REV. STAT. § 28-709 (1989); NEV. REV. STAT. ANN. § 201.110 (Michie 1988); N.H. REV. STAT. ANN. § 189-B:41 (1990); N.J. STAT. ANN. § 2C:24-4 (West Supp. 1990); N.M. STAT. ANN. § 30-6-3 (1984); N.Y. PENAL LAW § 260.10 (McKinney 1989); N.C. GEN. STAT. § 14-316.1 (1988); N.D. CENT. CODE § 14-10-06 (Supp. 1989); OHIO REV. CODE ANN. § 2919.24 (Anderson 1987); OKLA. STAT. ANN. tit. 21, § 858.1 (West Supp. 1991); OR. REV. STAT. § 163.576 (1990); PA. STAT. ANN. tit. 18, § 4304 (Purdon Supp. 1990); R.I. GEN. LAWS § 11-9-4 (1981); S.C. CODE ANN. § 16-17-490 (Law. Co-op. 1985); S.D. CODIFIED LAWS ANN. § 26-9-1 (Supp. 1990); TENN. CODE ANN. § 37-1-166 (1984); TEX. FAM. CODE ANN. § 72.002 (Vernon 1988); VT. STAT. ANN. tit. 13, § 1301 (1974); VA. CODE ANN. § 18.2-371 (Supp. 1990); WASH. REV. CODE ANN. § 9A.42.030 (1988); W. VA. CODE § 49-7-7 (Supp. 1990); WIS. STAT. ANN. § 948.40 (West Supp. 1990).

42. N.M. STAT. ANN. § 30-6-3 (1984).

43. See CAL. PENAL CODE § 272 (West Supp. 1990); KY. REV. STAT. ANN. § 530.060(1) (Michie/Bobbs-Merrill 1985); N.Y. PENAL LAW § 200.10(2) (McKinney 1989).

44. See, e.g., ARIZ. REV. STAT. ANN. §§ 13-3613, 13-3612 (1989); GA. CODE ANN. §§ 16-12-1, 16-11-2 (1988, 1990); NEV. REV. STAT. ANN. § 201.110 (Michie 1988); S.D. CODIFIED LAWS ANN. §§ 26-9-1, 26-8-0 (Supp. 1990).

behavior.⁴⁵

Although in the past states generally have used contributing statutes to punish strangers for sexual or physical assaults on minors,⁴⁶ the statutory language permits a broader application. New York, for example, which previously has applied its contributing statute narrowly, soon may use its statute to police parental behavior.⁴⁷ Because New York and California are influential states, other states are likely to follow their lead. The majority of states would not require legislative action to punish parents; instead, state prosecutors simply could begin to enforce existing criminal statutes more strictly.⁴⁸

III. THE VOID FOR VAGUENESS DOCTRINE

A. Supreme Court Decisions

Defendants have challenged contributing statutes most frequently under the void for vagueness doctrine.⁴⁹ The United States Supreme Court developed the doctrine in a series of cases in which the Court held that a penal statute violates due process⁵⁰ if its terms are too vague and indefinite.⁵¹ The purpose of the void for vagueness doctrine is to ensure fair warning of the effect of a penal statute and to prevent standardless law enforcement.⁵²

If a statute's terms are too vague, ordinary citizens, forced to guess at the statute's meaning, inevitably will disagree about what conduct comes within the purview of the statute.⁵³ More importantly, a vague law allows policemen, judges, and juries to make subjective, and possi-

45. See, e.g., OHIO REV. CODE ANN. § 2919.24 (Anderson 1987); RI GEN. LAWS § 11-9-4 (1981); VT. STAT. ANN. tit. 13, § 1301 (1974).

46. See MODEL PENAL CODE § 230.4 comment, at 445-47 (1980).

47. Abramovsky, *supra* note 1, at 3.

48. See generally MODEL PENAL CODE § 230.4 comment (discussing broad reach of current contributing statutes); S. RUBIN, *supra* note 35, at 28 (stating that "[a]s long as 'contributing' statutes are on the books, the danger exists that they will be used, and when they are used, the danger exists . . . that they will be abused"); see also *Parents Charged* *supra* note 14, at 3 (discussing the current enforcement of a little-used city ordinance holding parents criminally liable for their children's misbehavior).

49. See, e.g., *Brockmueller v. State*, 86 Ariz. 82, 340 P.2d 992, cert. denied, 361 U.S. 913 (1959); *State v. Schriver*, 207 Conn. 466, 542 A.2d 686 (1988); *State v. Bachelder*, 565 A.2d 96 (Me. 1989); *State v. Simanla*, 182 Neb. 491, 155 N.W.2d 788 (1968); *State v. Flinn*, 158 W. Va. 111, 208 S.E.2d 638 (1974).

50. See U.S. CONST. amends. V, XIV, § 1.

51. See *Kolander v. Lawson*, 461 U.S. 352 (1983); *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972); *United States v. National Dairy Prods. Corp.*, 372 U.S. 29 (1963); *United States v. Petrillo*, 332 U.S. 1 (1947); *Thornhill v. Alabama*, 310 U.S. 88 (1940); *Connally v. General Constr. Co.*, 269 U.S. 385 (1926). For a good discussion of Supreme Court decisions in this area, see *Flinn*, 158 W. Va. at 111, 208 S.E.2d at 638.

52. *Kolander*, 461 U.S. at 357.

53. *Connally*, 269 U.S. at 391.

bly arbitrary, decisions.⁵⁴ Thus, the principal requirement of the vagueness doctrine is that criminal statutes establish at least minimal guidelines to limit discretionary law enforcement.⁵⁵

The Constitution, however, does not require complete specificity.⁵⁶ At times the legislature must use general terms in a statute because the various behaviors required or prohibited cannot be described or listed adequately.⁵⁷ An ambiguous statute is not unconstitutional merely because of the possibility that in some marginal cases the exact application of the statute will be difficult to determine.⁵⁸ Moreover, courts may cure the constitutional shortcomings of potentially vague statutes by finding a specific intent element in the offense⁵⁹ or by determining that prior judicial decisions have eliminated the vagueness.⁶⁰

In accordance with concerns for both discriminatory enforcement and due process, the Supreme Court has adopted two approaches to the vagueness problem, depending on whether the Constitution protects the activity governed by the statute. In *Thornhill v. Alabama*⁶¹ the Court held that the Constitution requires a strict vagueness test when reviewing statutes that regulate first amendment rights.⁶² The strict test requires a facial examination of an allegedly vague statute notwithstanding the particular conduct concerned in the case.⁶³ The *Thornhill* Court believed that the freedoms of speech and of the press deserved enhanced protection because of the importance of these rights in a democracy.⁶⁴ The Court was concerned that vagueness in statutes

54. *Thornhill*, 310 U.S. at 97-98. The subjective nature of vague statutes encourages harsh and discriminatory law enforcement. *Id.*

55. *Kolander*, 461 U.S. at 358.

56. *Petrillo*, 332 U.S. at 7-8.

57. One court has upheld a contributing statute on this basis, stating that the ways in which an adult may corrupt a minor are so numerous that "to compel a complete enumeration in any statute designed for protection of the young before giving it validity would be to confess the inability of modern society to cope with the problem of juvenile delinquency." *State v. McKinley*, 63 N.M. 106, 111, 202 P.2d 964, 967 (1949).

58. *Petrillo*, 332 U.S. at 7.

59. *Boycott Motor Lines, Inc. v. United States*, 342 U.S. 337, 342 (1952).

60. *Chaplinsky v. New Hampshire*, 316 U.S. 568, 572 (1942).

61. 310 U.S. at 89.

62. See *id.* at 98-99. In *Thornhill* the defendant was charged with violating an Alabama statute that prohibited persons from loitering or picketing, without just cause, on the property of a lawful business, with the intention of convincing customers not to trade with that business. *Id.* at 91. The defendant had been picketing the Brown Wood Preserving Company under a strike order issued by the American Federation of Labor. *Id.* at 94. According to the Court, the Alabama statute embraced almost every available means of informing the public about the causes of a labor dispute. *Id.* at 104. The Court stated that "freedom of speech and of the press . . . embraces at the least the liberty to discuss publicly . . . all matters of public concern without previous restraint or fear of subsequent punishment." *Id.* at 101-02 (footnote omitted).

63. *Id.* at 96-97; see *State v. Hodges*, 254 Or. 21, 26, 457 P.2d 491, 493 (1969).

64. *Thornhill*, 310 U.S. at 95.

regulating first amendment rights would deter constitutionally protected and socially desirable conduct.⁶⁵ Additionally, the Court feared that a vague statute would prove to be a convenient tool for harsh and discriminatory enforcement against disfavored groups.⁶⁶

In *Papachristou v. City of Jacksonville*⁶⁷ the Supreme Court extended the strict test of *Thornhill* beyond first amendment rights to other constitutionally protected activities. *Papachristou* concerned a challenge to a Florida vagrancy ordinance that criminalized normally innocent activities, such as wandering without lawful purpose or objective and becoming economically dependent on a wife or minor child even though able to work.⁶⁸ The Court stated that although the Constitution and Bill of Rights do not list these particular activities specifically, these activities historically have been features of life in the United States.⁶⁹ Tolerance for this conduct has fostered American independence and creativity by inviting spirited dissent and nonconformity rather than submissiveness.⁷⁰ The Court consequently held that the ordinance was unconstitutional under *Thornhill* because the broad language of the ordinance allowed the police and the courts to violate the constitutionally protected right of citizens to determine their personal lifestyles.⁷¹

The *Papachristou* decision was not based on the first amendment or on any specifically enumerated constitutional right. The Court was concerned more about arbitrary enforcement of the vagrancy statute based on subjective statutory criteria and the potential that law enforcement officials could apply the statute inappropriately to deter socially desirable, historically protected conduct. This extension of *Thornhill* is not limited to vagrancy statutes, even though the *Papachristou* Court did mention the distinctive and familiar abuses of

65. *United States v. National Dairy Prods. Corp.*, 372 U.S. 29, 36 (1963).

66. *Thornhill*, 310 U.S. at 97-98.

67. 405 U.S. 156 (1972).

68. *Id.* at 166 n.1.

69. *Id.* at 164.

70. *Id.* The Court stated:

The difficulty [with the ordinance] is that these activities are historically part of the amenities of life as we have known them. They are not mentioned in the Constitution or in the Bill of Rights. These unwritten amenities have been in part responsible for giving our people the feeling of independence and self-confidence, the feeling of creativity. These amenities have dignified the right of dissent and have honored the right to be nonconformists and the right to defy submissiveness. They have encouraged lives of high spirits rather than hushed, suffocating silence.

Id.

71. *Id.* at 170. The Court stated that persons covered by the statutory language could be "required to comport themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts." *Id.*

vagrancy statutes by law enforcement officials.⁷² In later cases the Supreme Court has stated explicitly that the *Thornhill* test applies to constitutionally protected activities other than first amendment liberties.⁷³

In *United States v. National Dairy Products Corp.*⁷⁴ the Court developed a second, less exacting approach to the vagueness problem. The Court held that it would examine general penal statutes that do not implicate constitutionally protected activities both facially and in light of the particular conduct concerned in the case.⁷⁵ Thus, if the statute as applied would not violate the due process rights of the defendant, the Court will allow it to stand even if it might be unconstitutionally vague in another situation.⁷⁶ The Court usually tests economic regulatory statutes under this looser standard because of the narrower subject matter and because businesses are expected to plan their activities more carefully than individuals.⁷⁷ In these cases the Court has found the terms of statutes to be sufficiently certain by interpreting the statutes in light of the common understanding and general usage of the words.⁷⁸

B. Analysis of State Court Decisions on the Vagueness of Contributing Statutes

State courts almost unanimously have rejected challenges to contributing statutes based on vagueness;⁷⁹ however, the rationale of the various courts has differed.⁸⁰ Some courts have looked to the legislative

72. The Court was worried that "a vagrancy prosecution may be merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest." *Id.* at 169. The Court quoted with approval Justice Felix Frankfurter's statement that "[t]hese [vagrancy] statutes are in a class by themselves, in view of the familiar abuses to which they are put Definiteness is designedly avoided . . . to enable men to be caught who are vaguely undesirable in the eyes of police and prosecution, although not chargeable with any particular offense." *Id.* (quoting *Winters v. New York*, 333 U.S. 607 (1948) (Frankfurter, J., dissenting)).

73. See *Kolender v. Lawson*, 461 U.S. 352, 358 (1983).

74. 372 U.S. 29 (1963).

75. *Id.* at 38. *National Dairy* concerned violations of the Robinson-Patman Act, 15 U.S.C. § 13a (1908), which prohibits selling goods at "unreasonably low prices for the purpose of destroying competition." 372 U.S. at 29. The Court distinguished *Thornhill* on the ground that *Thornhill* concerned first amendment activities, which are constitutionally protected and socially desirable. *Id.* at 38. The Robinson-Patman Act, on the other hand, is "directed only at conduct designed to destroy competition," activity that is neither constitutionally protected nor socially desirable. *Id.*

76. *National Dairy*, 372 U.S. at 33.

77. *Hoffman Estates v. Flipside*, *Hoffman Estates*, 466 U.S. 489, 498 (1982); see *United States v. Petrillo*, 332 U.S. 1 (1947).

78. See *United States v. Vuitch*, 402 U.S. 82, 72-73 (1971); *Petrillo*, 332 U.S. at 5-8.

79. See, e.g., *Brockmueller v. State*, 86 Ariz. 82, 340 P.2d 992 (1959); *State v. Bacheider*, 565 A.2d 98 (Me. 1989); *State v. McKinley*, 63 N.M. 108, 202 P.2d 984 (1949); *State v. Crazy*, 10 Ohio Op. 2d 36 (Common Pleas Ct. 1959); *Commonwealth v. Randall*, 183 Pa. Super. 603, 133 A.2d 276 (Super. Ct. 1957); *State v. Flinn*, 188 W. Va. 111, 208 S.E.2d 538 (1974). None of these cases concerns the type of parental conduct at issue in this Note.

80. See generally *Flinn*, 188 W. Va. at 116, 208 S.E.2d at 547-48 (discussing various state

intent behind the statute and narrowed the scope of the statute to demand only the conduct that would best achieve the legislative purpose.⁸¹ Other courts have rejected vagueness objections because the statute so obviously prohibited the particular conduct concerned.⁸² Many courts have upheld contributing statutes on the broad policy ground that the welfare of youth is such a vital state interest that the legislature must write statutes in general terms that preserve the flexibility necessary to handle the problem of juvenile delinquency effectively.⁸³ Other courts have found contributing statutes constitutional because these statutes have a long history at common law⁸⁴ or because a lack of prior challenges to the law indicates that no genuine vagueness problem exists.⁸⁵ One group of state courts upheld the statutes on the grounds that the terms were not indefinite.⁸⁶

court decisions).

81. See, e.g., *State v. Simants*, 182 Neb. 491, 493, 155 N.W.2d 788, 790 (1968); *Crary*, 10 Ohio Op. 2d at 39; *Flinn*, 158 W. Va. at 137, 208 S.E.2d at 552-53.

82. See, e.g., *Bochelder*, 565 A.2d at 97 (stating that "it cannot be doubted in this instance that the children's natural mother, with whom they live, has . . . a duty . . . [that] extends to caring for their health, safety and mental welfare"); *People v. Owens*, 13 Mich. App. 469, 477, 164 N.W.2d 712, 714-15 (1968) (finding that encouraging a 16-year-old girl to leave home was exactly the type of conduct that the statute intended to prohibit); *Matthews v. State*, 240 Miss. 189, 193, 128 So. 2d 245, 246 (1961) (holding that defendant's failure to provide proper medical treatment for her child "indicated at least a negligent and careless attitude toward the care and well-being of her child"); *James v. State*, 635 S.W.2d 653, 656 (Tex. Ct. App. 1982) (holding that the language of the statute was sufficiently clear to inform a reasonable person that encouraging and aiding a 14-year-old to dance nude in a public bar contributed to her delinquency).

83. See, e.g., *People v. Delbert*, 117 Cal. App. 2d 410, 256 P.2d 356 (1953); *McDonald v. Commonwealth*, 331 S.W.2d 716 (Ky. Ct. App. 1960); *State v. Cialkowski*, 193 Neb. 372, 227 N.W.2d 406 (1975); *McKinley*, 63 N.M. at 106, 202 P.2d at 964; *State v. Coterel*, 97 Ohio App. 48, 123 N.E.2d 438 (1953), appeal dismissed, 162 Ohio St. 112, 120 N.E.2d 890 (1954); *Birdsell v. State*, 205 Tenn. 631, 330 S.W.2d 1 (1959); *State v. Harris*, 105 W. Va. 165, 141 S.E. 637 (1928).

84. See, e.g., *Brockmueller*, 86 Ariz. at 84, 340 P.2d at 994 (stating that a long history of common-law interpretation renders the language of these statutes sufficiently clear and meaningful).

85. See, e.g., *State v. Friedlander*, 250 P. 453, 455 (Wash. 1926) (noting that no one previously had challenged the 1907 statute as unconstitutionally vague and that the objection had no merit).

86. See *Randall*, 183 Pa. Super. at 611, 133 A.2d at 279-81. In *State v. Sparrow*, 276 N.C. 499, 173 S.E.2d 897 (1970), the court held that because the words used in the statute were ordinary words of common usage, the statute gave adequate warning that "any person who knowingly does any act to produce, promote or contribute to any condition of delinquency of a child in violation of the statute." *Id.* at 509, 173 S.E.2d at 903.

After rejecting the defendant's void for vagueness challenge to Utah's contributing statute on grounds of waiver, the Utah Supreme Court stated in dicta in *State v. Tritt*, 23 Utah 2d 365, 463 P.2d 806 (1970), that the terms "delinquency" and "contributing to delinquency" in the statute have such widespread usage that the statute had a clear and understandable meaning. *Id.* at 369, 463 P.2d at 808-09. The court found that these terms denoted any actions that caused a child to engage in conduct which "is contrary to law or which is so contrary to the generally accepted standards of decency and morality" that the result of this conduct would harm substantially the child's "mental, moral, or physical well-being." *Id.* at 369, 463 P.2d at 809. *But see State v. Val-*

A few courts, however, have found contributing statutes void for vagueness.⁸⁷ Most recently, the Connecticut Supreme Court held that a statute prohibiting any "act likely to impair the health or morals" of a child⁸⁸ was unconstitutionally vague as applied to a particular set of facts.⁸⁹ The Louisiana Supreme Court similarly struck down a statute penalizing an adult for enticing, aiding, or permitting a minor to perform an "immoral act."⁹⁰ In Oregon, the state supreme court found that the statutory language, "any person who does any act which manifestly tends to cause any child to become [a delinquent]," was void because it contained no standards by which a jury could determine guilt.⁹¹ Moreover, the Wyoming Supreme Court struck down a statute prohibiting an adult from causing, encouraging, aiding, or contributing to the endangerment of a minor's health, welfare, or morals.⁹² The court stated that determining what conduct was being prohibited based on the terms of the statute would be an utter impossibility.⁹³

Very few of the state courts that have upheld contributing statutes

lery, 212 La. 1095, 1098-99, 34 So. 2d 329, 331 (1948) (rejecting a similar definition of "immoral").

87. See, e.g., *State v. Schriever*, 207 Conn. 456, 561-62, 542 A.2d 688, 689 (1988); *Vallery*, 212 La. at 1099, 34 So. 2d at 331; *State v. Hodges*, 264 Or. 21, 27-28, 457 P.2d 491, 494 (1969); *State v. Gallegos*, 384 P.2d 967, 968-69 (Wyo. 1963).

88. CONN. GEN. STAT. ANN. § 53-21 (West 1985).

89. *Schriever*, 207 Conn. at 456, 542 A.2d at 688. In *Schriever* the State of Connecticut charged the defendant with engaging in activity that was "likely to impair the health or morals" of a child. The court found that the statute, on its face, failed "to articulate a definite standard for determining whether the conduct [of this defendant was] permitted or prohibited." *Id.* at 461, 542 A.2d at 689. The court then discussed whether prior judicial decisions had added a gloss that could save the statute. The court concluded, based on prior decisions, that "grabbing the waist of a fully clothed minor while uttering a sexually suggestive remark is not the type of lewd conduct that § 53-21 proscribes." *Id.* at 468, 542 A.2d at 691.

90. *Vallery*, 212 La. at 1095, 34 So. 2d at 329. The Louisiana court determined that the term "immoral" was too vague to establish any standards for enforcement. The court rejected a statutory construction that defined "immoral" as conduct that violated "well established and well accepted standards of the community" because that definition was equally uncertain. *Id.* at 1098-99, 34 So. 2d at 331.

After *Vallery* the Louisiana legislature amended the statute to read "sexually immoral act." *State v. Fulmer*, 250 La. 29, 31, 193 So. 2d 774, 774 (1967). The Louisiana Supreme Court upheld the new statute on the grounds that "sexually immoral" had an "accepted meaning not susceptible to misunderstanding." *Id.* at 33, 193 So. 2d at 775.

91. *Hodges*, 264 Or. at 21, 457 P.2d at 491. The *Hodges* court held that the statute was void for vagueness because it was an "instrument of potential abuse" contrary to due process and because it violated the Oregon Constitution's prohibition on the delegation of legislative power. *Id.* at 23, 457 P.2d at 494. While some courts have interpreted *Hodges* as based solely on the state constitution, the decision also is based on the due process clause of the federal constitution. See *Flinn*, 158 W. Va. at 128-29, 208 S.E.2d at 548. *But see Comment, Contributing Survives Constitutional Attack: Confusion or Certainty*, 78 W. VA. L. REV. 145, 149-50 (1976).

92. *Gallegos*, 384 P.2d at 967. Although the *Gallegos* court cited Supreme Court cases to support its discussion, the court ultimately based its holding on the Wyoming Constitution. *Id.* at 969.

93. *Id.* at 968.

have provided defensible reasoning for their decisions. The judicial decisions that avoided the constitutional question through statutory construction⁹⁴ effectively eliminated vagueness concerns. Courts frequently can construe statutes to avoid constitutional challenges.⁹⁵ On the other hand, state courts that have declared a potentially vague statute constitutional on grounds that no one had challenged it before⁹⁶ cannot defend this reasoning. In addition, a blanket assertion that protecting children is a vital state interest⁹⁷ circumvents the question of whether the statute is unconstitutionally vague.

Other state courts have yet to analyze their contributing statutes in light of the Supreme Court decisions on vagueness. While the egregiousness of a defendant's conduct⁹⁸ may be relevant to the court's determination, the court first must decide which constitutional test applies before evaluating the weight of the facts. The facts of a case are irrelevant under the *Thornhill* test because the court must judge the potential for vagueness problems on the face of the statute, while under the *National Dairy* approach, the court also must consider the statute in light of the facts.

The state court decisions holding that the language of the contributing statutes was not indefinite⁹⁹ require closer examination. In *Musser v. Utah*¹⁰⁰ the United States Supreme Court stated that a statute prohibiting a person from committing any act "injurious to public morals" was vulnerable to multiple subjective interpretations by judges and jurors depending on the fact finder's view of morality.¹⁰¹ The Court did not strike down the statute, but hinted that unless the Utah Supreme Court construed the statute to supply more definite standards, the statute would be void for vagueness.¹⁰² The *Musser* decision suggests that the contributing statutes phrased in terms of morality are facially vague.

94. See *Brockmueller*, 86 Ariz. at 84, 340 P.2d at 994 (interpreting statute in light of a long history of common law); *State v. Crary*, 10 Ohio Op. 2d 36, 39 (Common Pleas Ct. 1959) (limiting statute's application to certain specified types of conduct).

95. See *Fox v. Washington*, 236 U.S. 273, 277 (1915); *State v. McKinley*, 53 N.M. 106, 111, 202 P.2d 864, 967 (1949); *James v. State*, 635 S.W.2d 653, 655 (Tex. Ct. App. 1982); *State v. Flinn*, 158 W. Va. 111, 130, 208 S.E.2d 538, 547 (1974).

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

97. See *supra* note 83 and accompanying text.

98. See *supra* note 82 and accompanying text.

99. See *supra* note 86 and accompanying text.

100. 333 U.S. 95 (1948).

101. *Id.* at 96-97; see also *Flinn*, 158 W. Va. at 130, 208 S.E.2d at 549 (stating that the phrases "immoral or vicious persons" and "injure or endanger the morals" are unconstitutionally vague).

102. See *Musser*, 333 U.S. at 96-98.

In *Commonwealth v. Randall*,¹⁰³ however, the Pennsylvania Superior Court upheld a statute that penalized adults whose actions corrupted or tended to corrupt the morals of a child. According to the court, the statute was not vague because the community easily could decide what particular conduct was forbidden based on commonly accepted notions of decency, morality, and common sense.¹⁰⁴ Although both *Randall* and *Musser* concerned interpretation of the term "morals," the Pennsylvania court apparently found the clear and obvious meaning that had eluded the Supreme Court. The Pennsylvania court distinguished *Musser* on the grounds that public morals was a much broader category than the morals of children.¹⁰⁵ Yet the court failed to explain how the term "morals" as applied to children could have an obvious, universal meaning when other courts have declared the term unconstitutionally vague.¹⁰⁶

Other state courts have upheld contributing statutes because the terms "delinquency" and "contributing to delinquency" have clear meanings.¹⁰⁷ Because "delinquency" was not known at common law, however, all definitions of the terms are statutory.¹⁰⁸ Since nearly every state defines "delinquency" differently,¹⁰⁹ the term must lack a clear and obvious meaning. Moreover, when the courts considering these statutes attempted to define "delinquency," they based their definitions in terms of "morality."¹¹⁰ As illustrated by the admonition of the Supreme Court in *Musser*, the term "morality" is unconstitutionally vague.¹¹¹

C. Application of the Void for Vagueness Doctrine to Contributing Statutes

Under modern void for vagueness doctrine, a court first must decide whether to apply the strict *Thornhill* test or the less exacting *National Dairy* standard. If the contributing statute infringes on constitutionally protected conduct, the court should apply the stricter *Thornhill* test. Under either test, however, contributing statutes that

103. 183 Pa. Super. 603, 133 A.2d 278 (Super. Ct. 1957), cert. denied, 355 U.S. 954 (1958).

104. *Randall*, 193 Pa. Super. at 611, 133 A.2d at 280.

105. *Id.* at 610, 133 A.2d at 278.

106. See *State v. Vallery*, 34 So. 2d 329 (La. 1948); *Flinn*, 158 W. Va. at 111, 208 S.E.2d at 538.

107. See *supra* note 86 and accompanying text.

108. See MODEL PENAL CODE § 230.4 comment, at 444-45 (1980).

109. For a sampling of the various definitions, see OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, U.S. DEPT. OF JUSTICE, A COMPARATIVE ANALYSIS OF JUVENILE CODES 23-24 (1980).

110. See cases cited *supra* note 86.

111. See *supra* notes 100-02 and accompanying text.

contain a specific intent element¹¹² pass constitutional muster. The contributing statutes pertinent to this Note¹¹³ fall roughly into one or both of two categories, neither of which specify a requisite intent. These categories include: (1) statutes, like California's Parental Responsibility Law, that require parents to exercise reasonable or proper control over their children¹¹⁴ and (2) statutes that require persons to prevent minors from engaging in certain conduct.¹¹⁵

The concerns that the Supreme Court articulated in *Papachristou*¹¹⁶ are present in the context of contributing statutes that expressly require parents to exercise reasonable or proper control. Although parents have a limited duty in civil law to control the conduct of their children,¹¹⁷ contributing statutes broaden parental liability because the statutes, unlike the civil law, may be used to impose criminal penalties on parents who neither know nor have reason to know the consequences of their conduct in relation to their children. Yet courts long have recognized parental discretion in child rearing as a fundamental precept in

112. See ALA. CODE § 12-15-13 (1988) ("willfully"); ARK. STAT. ANN. § 5-27-205, 5-27-220 (1987) ("knowingly"); DEL. CODE ANN. tit. 11, § 1102 (1987) ("knowingly" or "intentionally"); GA. CODE ANN. § 16-12-1 (1988) ("knowingly and willfully"); HAW. REV. STAT. § 709-904 (1988) ("knowingly"); ILL. REV. STAT. ch. 23, para. 2361e (1987) ("knowingly or willfully"); IND. CODE ANN. § 35-46-1-8 (Burns 1985) ("knowingly or intentionally"); IOWA CODE ANN. § 233.1 (West 1985 & Supp. 1989) ("knowingly"); LA. REV. STAT. ANN. § 92 (West 1986) ("intentional"); ME. REV. STAT. ANN. tit. 17-A, § 554 (1983 & Supp. 1989) ("knowingly"); MD. CR. & JUD. PROC. CODE ANN. § 3-831 (1989) ("willfully"); MISS. CODE ANN. § 97-5-39 (Supp. 1989) ("willfully"); N.H. REV. STAT. ANN. § 169-B:41 (Supp. 1988) ("knowingly"); N.C. GEN. STAT. § 14-316.1 (1986) ("knowingly or willfully"); N.D. CENT. CODE § 14-10.06 (Supp. 1989) ("willfully"); OR. REV. STAT. § 163.575 (1985) ("knowingly"); PA. CONS. STAT. ANN. § 4304 (Purdon 1989) ("knowingly"); S.C. CODE ANN. § 16-17-490 (Law. Co-op. 1985) ("knowingly and willfully"); VA. CODE ANN. § 18.2-371 (1989) ("willfully"); WASH. REV. CODE ANN. § 9A.42.030 (1988) ("recklessly").

113. This Note focuses solely on the statutory language. If the state judiciary has provided a limiting interpretation of these statutes, the statutes might not be void for vagueness. See *Musser v. Utah*, 333 U.S. 95 (1948) (remanding case to state supreme court for authoritative interpretation of statute in vagueness case).

114. See, e.g., ARIZ. REV. STAT. ANN. § 13-3612 (1989); CAL. PENAL CODE § 272 (West Supp. 1990); KY. REV. STAT. ANN. § 630.060 (Baldwin 1985); NEV. REV. STAT. ANN. § 201.090 (Michie 1986); N.Y. PENAL LAW § 260.10 (McKinney 1989); S.D. CODIFIED LAWS ANN. § 26-9-1 (1989).

115. The statutes in this category hold parents liable for behavior that tends to cause their children to engage in certain conduct such as growing up to lead an "idle, dissolute or immoral life," ARIZ. REV. STAT. ANN. § 13-3612 (1989), habitually associating with "vicious, immoral, or criminal persons," R.I. GEN. LAWS § 11-9-4 (1981), or acting in a way likely to "injure or endanger the health or morals of himself or others," OHIO REV. CODE ANN. § 2161.022 (Anderson 1987). See also NEV. REV. STAT. ANN. § 201.090 (Michie 1986); VT. STAT. ANN. tit. 13, § 1301 (1974).

116. See *supra* notes 67-71 and accompanying text.

117. Under civil law a parent has a "duty to exercise reasonable care so to control his minor child" to prevent the child from intentionally or recklessly harming others if the parent "knows or has reason to know that he has the ability to control his child, and . . . knows or should know of the necessity and opportunity for exercising such control." RESTATEMENT (SECOND) OF TORTS § 316 (1977).

our society,¹¹⁸ premising the fundamental character of parental rights on the idea that the democratic system mandates individualized and independent parental decisions free of official interference.¹¹⁹ The freedom of parents to choose how to raise their children is even more basic to our society than the freedom to wander and to enjoy a variety of lifestyles that was protected in *Papachristou*. By requiring parents to exercise reasonable or proper control over their children, contributing statutes in the first category attempt to regulate sensitive constitutional rights without any concrete guidelines to limit the subjective discretion of prosecutors, policemen, judges, and jurors. Thus, based on the reasoning in *Papachristou*, a court should apply the stricter *Thornhill* test to this category and judge the statutes facially.¹²⁰

A statute requiring parents to exercise reasonable or proper control over their children may not appear unconstitutionally vague because the Constitution does not require complete specificity.¹²¹ The Court, however, usually allows general language in a statute only if greater specificity is either impossible or impractical.¹²² In the parental control context, the legislature could identify what type of parental behavior would be penalized.¹²³ In addition, even though courts and legislatures typically define legal standards in terms of reasonableness,¹²⁴ the risk of arbitrary law enforcement in the application of this standard is substantial when regulating parental control.¹²⁵ Without a concrete definition of what constitutes "reasonable" or "proper" parental control, prosecutors, judges, and jurors are free to make hindsight judgments about parental conduct based on their personal views of "reasonable" or "proper" behavior. No consensus exists concerning the proper or reasonable way to raise children, and the judiciary has no special competence in this area.¹²⁶ Unless prior judicial decisions have provided a

118. See *infra* subpart IV(B)(1).

119. See *infra* subpart IV(B)(2).

120. See *State v. Hodges*, 254 Or. 21, 28, 467 P.2d 491, 493 (1969) (stating that the "*Thornhill* rule is not invoked . . . unless the terms of the questioned statute are so broad that their application in a normal, nondiscriminatory way would violate the individual's constitutional rights").

121. *United States v. Petrillo*, 332 U.S. 1, 7-8 (1947).

122. *Kolender v. Lawson*, 461 U.S. 352, 361 (1983); see *Petrillo*, 332 U.S. at 7-8.

123. For example, the legislature could add a specific intent requirement and specify what type of behavior parents should discourage. While states regularly set minimum standards for the care, supervision, and protection of children, these statutes are much more specific than the contributing statutes. See S. KATZ, *supra* note 36, at 10-12.

124. See *Nash v. United States*, 229 U.S. 973, 977 (1913) (stating that "the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree").

125. See Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 93 (1960).

126. *Bellotti v. Baird*, 443 U.S. 622, 639 (1979) (plurality opinion). Moreover, the Court

concrete definition of proper or reasonable conduct, these statutes are unconstitutionally vague.

One commentator has found that the Supreme Court has used the vagueness doctrine to create an insulating zone of protection around certain freedoms in the Bill of Rights.¹²⁷ Once a legislature attempts to regulate a constitutionally protected area, the Supreme Court's response will depend on a variety of factors including the nature of the threatened individual freedom and the potential deterrent effect of the risks of arbitrary enforcement.¹²⁸ Parental discretion in child rearing is an important right in our society, and this intrusion into family life could be extremely detrimental to the family unit.¹²⁹ These factors further suggest that contributing statutes requiring parents to exercise reasonable or proper control over their children are unconstitutionally vague.

The second category of contributing statutes requires persons to prevent minors from engaging in certain conduct. Although the statutes in this category may contain vague terms, they do not implicate parental discretion in child rearing expressly. These statutes should be judged under the *National Dairy* test because they contain only the potential for use against parents. If used against parents, these statutes would fail even the looser test of *National Dairy* because they contain morality language that is unconstitutionally vague.

In Rhode Island, for example, a parent could be held criminally liable for "permit[ting] or suffer[ing]" a child to "habitually associate with vicious, immoral, or criminal persons, or to grow up in ignorance, idleness or crime."¹³⁰ On its face, the Rhode Island statute contains inherently subjective criteria for punishment. While the term "permit" does have some element of specific intent, parents may disagree over whether particular persons are immoral. Other statutes in this category contain similar questionable language.¹³¹ As illustrated by the Supreme Court in *Musser v. Utah*,¹³² the term "morality" is unconstitutionally vague.

Even though the provisions concerning morality may be vague facially, these statutes also must be judged in light of the particular

stated that one central premise has emerged in this area: parents must have a substantial measure of authority over their children. *Id.*; see also L.A. Times, June 21, 1989, at 7, col. 5 (home ed.) (emphasizing the lack of definition in California's Parental Responsibility Law).

127. See Note, *supra* note 125, at 75.

128. *Id.* at 94.

129. See *infra* notes 228-36 and accompanying text.

130. R.I. GEN. LAWS § 11-9-4 (1981).

131. Most of the statutes in this second category prohibit some form of "immoral" conduct. See *supra* note 115.

132. 333 U.S. 95 (1948); see also *supra* notes 100-02 and accompanying text.

conduct at issue. Under the *National Dairy* test, if the behavior at issue in a particular case is so extreme that everyone generally could agree that it is immoral, a court probably would uphold the statute despite its facial vagueness. In addition, a court always could turn to prior judicial decisions to see if precedent had added a judicial gloss that would limit the application of the statute. A court also might declare statutes in this second category unconstitutionally vague if prosecutors, judges, or jurors used their own subjective views of correct parental behavior to penalize nonconforming parents.

IV. VIOLATION OF RIGHT TO PRIVACY IN FAMILY MATTERS

A. Substantive Due Process Methodology

While defendants have challenged contributing statutes as unconstitutionally vague rather than as violations of a constitutional right to privacy in family matters,¹³³ this latter constitutional objection may have a greater chance of success. The Supreme Court repeatedly has held that the state and federal governments cannot deprive citizens of life, liberty, or property without due process of law.¹³⁴ The due process clause provides both procedural¹³⁵ and substantive¹³⁶ protections. While in most cases a court will uphold a statute unless it lacks any rational basis,¹³⁷ if the statute infringes on a fundamental right, the governmental interest behind the statute must be compelling and the means must be closely related to the end.¹³⁸ If parental rights are not fundamental, a court will uphold the constitutionality of contributing statutes because under the rational basis test, a court will approve almost any reason for the statute.¹³⁹ If parents have a fundamental right to privacy in child rearing, however, a court will subject the contributing statutes to strict scrutiny.

Much of the litigation related to substantive due process has con-

133. Defendants probably have not raised the family privacy defense because most of the defendants convicted for violating contributing statutes were either strangers to the minor or relatives accused of sexually molesting the minor. See MODEL PENAL CODE § 230.4 comment 1, at 447 (1980).

134. U.S. CONST. amends. V, XIV, § 1; see, e.g., *Quilloin v. Walcott*, 434 U.S. 246 (1978); *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Meyer v. Nebraska*, 262 U.S. 390 (1923).

135. See *Stanley v. Illinois*, 405 U.S. 646 (1972). This Note does not examine procedural due process protections.

136. See *Roe v. Wade*, 410 U.S. 113 (1973); *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

137. See *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489 (1955).

138. Once a court finds a fundamental right the statute must pass strict scrutiny. See *Roe*, 410 U.S. at 113.

139. See *Williamson*, 348 U.S. at 483, 489.

cerned the definition of "fundamental right."¹⁴⁰ For a forty year period, beginning with *Lochner v. New York*,¹⁴¹ the Supreme Court substituted its views of social and economic values for those of the state and federal legislatures under the guise of substantive due process.¹⁴² Since the end of the *Lochner* era the Court has been wary of imposing its own value judgments in place of the legislative will;¹⁴³ however, the Court consistently has continued to look beyond the text of the Constitution to determine which substantive rights the due process clause protects.¹⁴⁴ According to the Court, fundamental rights are those rights that are "implicit in the concept of ordered liberty,"¹⁴⁵ or "deeply rooted in this Nation's history and tradition."¹⁴⁶ Recently, the Court has stated that the due process clause only protects those interests that society traditionally has protected.¹⁴⁷

B. Parental Rights As Fundamental Rights

1. Supreme Court Cases

The Supreme Court first addressed family rights in *Meyer v. Nebraska*¹⁴⁸ and *Pierce v. Society of Sisters*.¹⁴⁹ Both *Meyer* and *Pierce* concerned state statutes that interfered with parents' ability to choose how to educate their children.¹⁵⁰ In *Meyer* the Court stated that al-

140. See, e.g., *Michael H. v. Gerald D.*, 109 S. Ct. 2333 (1989); *Roe*, 410 U.S. at 113; *Griswold*, 381 U.S. at 479. See generally *Developments in the Law: The Constitution and the Family*, 93 HARV. L. REV. 1156, 1168-77 (1980) [hereinafter *Developments*] (discussing other aspects of substantive due process); McCarthy, *The Confused Constitutional Status and Meaning of Parental Rights*, 22 GA. L. REV. 975, 980-84 (1988) (briefly outlining the controversies surrounding the Supreme Court's use of substantive due process).

141. 198 U.S. 45 (1905).

142. *Developments*, supra note 140, at 1166-67.

143. "The Judiciary . . . is the most vulnerable and comes nearest to illegitimacy when it deals with judge-made constitutional law having little or no cognizable roots in the language or . . . the design of the Constitution." *Moore v. City of E. Cleveland*, 431 U.S. 494, 544 (1977) (White, J., dissenting).

144. See, e.g., *Roe*, 410 U.S. at 113 (concerning childbearing); *Loving v. Virginia*, 388 U.S. 1 (1967) (concerning marriage); *Skinner v. Oklahoma*, 316 U.S. 536 (1942) (concerning sterilization).

145. *Palko v. Connecticut*, 302 U.S. 319, 325 (1937).

146. *Moore*, 431 U.S. at 503 (plurality opinion); see also *Griswold*, 381 U.S. at 479 (various Justices attempted to define fundamental rights).

147. *Michael H.*, 109 S. Ct. at 2333. While the traditional rationale was not followed in older cases such as *Roe*, 410 U.S. at 113, tradition does seem to be an important consideration to the current Supreme Court. See *Bowers v. Hardwick*, 478 U.S. 186 (1986) (holding that the right to engage in homosexual sodomy traditionally has not been protected in our society).

148. 262 U.S. 390 (1923).

149. 268 U.S. 510 (1925).

150. In *Meyer v. Nebraska* statute prohibited any person from teaching another language or a subject in any language other than English to a child who had not passed the eighth grade. 262 U.S. at 397. In *Pierce v. Society of Sisters* an Oregon statute required parents to send their children between the ages of eight and sixteen to public schools. 268 U.S. at 530-31.

though it could not define the liberty protected by the due process clause exactly, that liberty undoubtedly included the right to marry and raise children.¹⁵¹ Likewise the Court held in *Pierce* that the due process clause prevented the state from requiring all children to attend public schools because parents have the right and the duty to raise their children individually.¹⁵²

While the Court purportedly applied strict scrutiny in these cases, the statutes ultimately failed because the legislation did not have a reasonable relationship to a permissible purpose.¹⁵³ Thus, these statutes arguably would have failed the looser rational basis test as well as the strict scrutiny test. *Meyer* and *Pierce* may not stand directly for the proposition that parental rights are fundamental¹⁵⁴ because of the narrowness of the holdings and the timing of the decisions.¹⁵⁵

The Court reaffirmed these early family rights cases in *Wisconsin v. Yoder*.¹⁵⁶ The *Yoder* Court applied strict scrutiny to a state statute requiring children to attend school until the age of sixteen because the statute impermissibly infringed on the fundamental right of parents to raise their children.¹⁵⁷ In that case Amish parents had refused to send their children to school after the eighth grade because of the parents' religious beliefs.¹⁵⁸ Although the Court found no flaw in the statutory purpose, the Court decided that application of the statute in this case would not further the statutory purpose.¹⁵⁹ The Court clearly emphasized the importance of the parental right to raise children free from state interference,¹⁶⁰ yet the Court also focused on the freedom of religion claim.¹⁶¹ Therefore, some commentators believe that *Yoder* may

151. *Meyer*, 262 U.S. at 399.

152. *Pierce*, 268 U.S. at 534-35.

153. *Id.* at 534-35 (stating that "the Act . . . unreasonably interferes with the liberty of parents . . . to direct the upbringing and education of children under their control"); *Meyer*, 262 U.S. at 403 (holding that "the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State").

154. See McCarthy, supra note 140, at 986-89 (suggesting that *Meyer* and *Pierce* are of limited significance in the family rights area).

155. Because the Court decided both *Meyer* and *Pierce* during the *Lochner* era, the Court's expansive view of substantive due process during that time could have tainted the Court's reasoning. See *id.* at 993; Ross, *Compulsory Education and Parent Rights: A Judicial Framework of Analysis*, 30 B.C.L. REV. 861, 876-79 (1969).

156. 406 U.S. 205 (1972).

157. *Id.* at 214.

158. *Id.* at 208-09.

159. *Id.* at 234-38.

160. *Id.* at 213-14, 232-34.

161. The *Yoder* Court stated that "when the interests of parenthood are combined with a free exercise claim . . . more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity" of the statute. *Id.* at 233.

have limited significance as a family rights case.¹⁶²

The Court extended the reasoning of *Meyer*, *Pierce*, and *Yoder* in *Moore v. City of East Cleveland*.¹⁶³ In *Moore* a plurality of the Court applied strict scrutiny to a housing ordinance that limited the occupancy of a home to certain defined members of a family.¹⁶⁴ Although the ordinance had legitimate goals, the means used did not achieve those goals adequately.¹⁶⁵ Justice Lewis Powell, writing for the plurality, acknowledged that *Meyer*, *Pierce*, and *Yoder* had not dealt expressly with the problem raised in *Moore*,¹⁶⁶ but he explained that the due process clause protects the family rights implicated in those three cases because the rights are rooted in the Nation's traditions and history.¹⁶⁷ Justice Powell believed that tradition and history also compelled the Court to strike down the housing ordinance.¹⁶⁸ A plurality of the Court held that the due process clause prevented the state from forcing its citizens to live in particular family patterns.¹⁶⁹

Although the Court has considered directly the parental right to raise children only in rare cases, it has continued to recognize the fundamental nature of parental rights in a variety of other situations. In these cases the Court has asserted broadly that precedent plainly establishes that parents' interest in raising their children deserves deference unless the state can show a powerful countervailing interest.¹⁷⁰ The Court has discussed the fundamental nature of parental rights in the context of state proceedings to terminate parental rights,¹⁷¹ in cases concerning the rights of unwed fathers¹⁷² and foster families,¹⁷³ and in

162. See McCarthy, *supra* note 140, at 990-91; Rose, *supra* note 165, at 880.

163. 431 U.S. 494 (1977) (plurality decision).

164. *Id.* at 496 & nn.1-2 (plurality opinion).

165. *Id.* at 499-500 (plurality opinion).

166. *Id.* at 500-01 (plurality opinion).

167. *Id.* at 503-04 (plurality opinion).

168. *Id.* at 500-01, 506 (plurality opinion). Justice Powell stated that "unless we close our eyes to the basic reasons why certain rights associated with the family have been accorded shelter under the . . . Due Process Clause, we cannot avoid applying the force and rationale of these precedents to the family choice involved in this case." *Id.* at 501 (plurality opinion).

169. *Id.* at 506 (plurality opinion). Justice Powell, analogizing the Cleveland ordinance to the statute in *Pierce*, which sought to "standardize" children by requiring them to attend public schools, stated that "[b]y the same token the Constitution prevents East Cleveland from standardizing its children . . . by forcing all to live in certain narrowly defined family patterns." *Id.*

170. See, e.g., *Lassiter v. Department of Social Servs.*, 452 U.S. 18, 27 (1981) (stating that previous cases have "made plain beyond the need for multiple citation" that the parental right deserves deference "absent a powerful countervailing interest").

171. See *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (acknowledging "this Court's historical recognition that freedom of personal choice in matters of family life is a fundamental liberty interest"); *Lassiter*, 452 U.S. at 27.

172. See, e.g., *Michael H. v. Gerald D.*, 102 S. Ct. 2333, 2342 (1989) (noting the "historic respect" for family relationships); *Lehr v. Robertson*, 463 U.S. 248, 258 (1983) (stating that "the relationship of love and duty in a recognized family unit is an interest in liberty entitled to consti-

privacy cases concerning other family matters.¹⁷⁴ The Court also has upheld parents' authority over their children in light of challenges to that authority by the child.¹⁷⁵ Several lower federal courts explicitly have recognized a fundamental right to family integrity based on these Supreme Court cases.¹⁷⁶

2. Justification for Protecting Parental Decisions

Even though the Court often speaks of the fundamental nature of parental rights, its opinions rarely offer a justification for this protection. An understanding of why the family has been protected historically may bolster the argument that the family rights at issue in the contributing statutes deserve constitutional protection. In a recent case, the Court explained that the fundamental character of family rights stems from the historic respect for the sanctity of familial relationships.¹⁷⁷

tutional protection"); *Quilloin v. Walcott*, 434 U.S. 248, 255 (1978) (stating that the Court has "recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972).

173. See, e.g., *Smith v. Organization of Foster Families for Equality & Reform*, 431 U.S. 810, 842-47 (1977).

174. See, e.g., *Roe v. Wade*, 410 U.S. 113, 162-63 (1973); *Griswold v. Connecticut*, 381 U.S. 479, 482 (1965).

175. See, e.g., *Bellotti v. Baird*, 443 U.S. 622, 628 (1979) (plurality opinion); *Parham v. J.R.*, 442 U.S. 684, 602-04 (1979).

176. See, e.g., *Doe v. Staples*, 706 F.2d 985 (8th Cir.) (challenging the summary removal policies and practices of the state welfare department), cert. denied, 465 U.S. 1033 (1983); *Lehman v. Lyncoming County Children's Servs. Agency*, 648 F.2d 135 (3d Cir. 1981), *aff'd*, 458 U.S. 602 (1982) (challenging a state adoption act); *Duchene v. Sugarman*, 566 F.2d 817 (2d Cir. 1977) (concerning an action for damages stemming from the conduct of the city child welfare bureau); *Doe v. Connecticut Dep't of Children & Youth Servs.*, 712 F. Supp. 277 (D. Conn. 1989) (discussing an action for damages caused by state child welfare officials); *McColleston v. City of Keene*, 586 F. Supp. 1381 (D.N.H. 1984) (attacking the "facial validity of juvenile curfew ordinance"); *Sylvander v. New England Home for Little Wanderers*, 444 F. Supp. 383 (D. Mass.), *aff'd*, 684 F.2d 1103 (1st Cir. 1978) (challenging the constitutionality of a parental rights termination statute); *Roe v. Connecticut*, 417 F. Supp. 789 (M.J. Ala. 1978) (attacking a state child neglect law); *Alasger v. District Court*, 406 F. Supp. 10 (S.D. Iowa 1975), *aff'd in part*, 545 F.2d 1137 (8th Cir. 1976) (challenging a state parental rights termination statute); see also *Developments, supra* note 140, at 1237-38 (discussing the effect of more widespread judicial recognition of the fundamental rights of parents).

177. See *Michael H.*, 102 S. Ct. at 2341-46. Although only two members of the Court fully endorsed the plurality opinion's view of the proper way to weigh tradition in the substantive due process analysis, the Court unanimously agreed that family rights traditionally have warranted protection. *Id.*; see *Bowers v. Hardwick*, 478 U.S. 186 (1986); *Moore*, 431 U.S. at 494 (plurality opinion).

One commentator has suggested that the Supreme Court always uses tradition as a basis for recognizing fundamental rights for families. See *Developments, supra* note 140, at 1177. The Court first attempts to determine whether the interest at issue has been regarded historically as within a sphere in which the state's interference is disfavored. *Id.* at 1178. Even if the interest has been protected historically, the interest also must have contemporary validity. *Id.* at 1179. After the Court decides which characteristics of the interest are of constitutional importance, it must define

A plurality of the Court discussed its deference to parental rights more comprehensively in *Bellotti v. Baird*,¹⁷⁸ a case challenging the constitutionality of a statute requiring parental consent before a minor could obtain an abortion.¹⁷⁹ The *Bellotti* Court explained that the state should defer to parents in child raising matters because of the important role parents play in the child's development.¹⁸⁰ 'This role is essential to the creation of socially responsible citizens and largely beyond the competence of a large impersonal institution.'¹⁸¹ By entrusting child care to parents, the state fosters social pluralism and diversity, important ideals in a society that is committed to individual liberties.¹⁸² Therefore, according to the *Bellotti* Court, parental authority is a basic presupposition of a free society.¹⁸³

Commentators have agreed with the *Bellotti* Court's reasons for protecting parental judgments and have advanced additional justifications. One commentator has argued that by insulating the rights of parents to control the upbringing of their children, the state serves the interests of the parents, the child, and society.¹⁸⁴ Parents obviously have an interest in raising their children free from interference.¹⁸⁵ This parental control usually serves the interest of the child as well because parents can fulfill a child's needs in ways that an institution cannot.¹⁸⁶ Finally, parental control may help to preserve an individualistic society by precluding state attempts at standardization.¹⁸⁷ Parental rights may deserve different degrees of protection depending on which of the identified interests are present.¹⁸⁸

Other commentators rationalize the protection given parental decisions through generalized analogies to the Bill of Rights.¹⁸⁹ Through these rights, the Constitution makes a statement about the form of government and society in the United States. The Constitution protects certain individual rights in part to guarantee the freedom of citizens to make certain personal decisions unfettered by conventional norms.¹⁹⁰ Under this theory, parental autonomy in child rearing decisions flows

the scope of that interest based on those characteristics. *Id.* at 1180.

178. 443 U.S. at 622.

179. *Id.* at 624.

180. *Id.* at 637-38.

181. *Id.* at 638.

182. *Id.*

183. *Id.*

184. See *Developments*, *supra* note 140, at 1353.

185. *Id.*

186. *Id.* at 1214, 1363-54.

187. *Id.* at 1215-18, 1354.

188. *Id.* at 1354.

189. McCarthy, *supra* note 140, at 1028-28.

190. *Id.* at 1026.

directly from the individual right to decide to have children.¹⁹¹

C. The State's Compelling Interest

Even assuming that the parental right to raise children is fundamental,¹⁹² the Constitution does not preclude the state from limiting that right. The state can interfere with a fundamental right only if the state has a compelling interest and the means chosen are closely related to that interest.¹⁹³ The state's compelling interest for contributing statutes is the protection of society from the wrongful acts of children, not the protection of children from the wrongful acts of parents.

The state's power to intervene in the family setting stems from two sources: the police power and the *parens patriae* power.¹⁹⁴ Under either of these powers, the state has a limited right to intervene in family affairs if the family situation evidences a threat to either the community or the welfare of the child. The state uses its police power to protect and promote all aspects of public welfare. Clearly, the state has the power to prevent and punish acts that directly threaten the existence or stability of the state or the personal safety or security of its citizens. Thus, California can defend its Parental Responsibility Law, and other states their contributing statutes, based on the state's need to protect society from the wrongful acts of children.¹⁹⁵ Under its *parens patriae* power, the state can protect and promote the welfare of only those individuals, such as minors, who lack the capacity to act in their own best interests.¹⁹⁶

The Supreme Court has ruled that the states may circumscribe parental discretion.¹⁹⁷ In *Prince v. Massachusetts*,¹⁹⁸ for example, the Court upheld the conviction of a guardian for allowing her wards to sell

191. *Id.* at 1027. A joint commission of the Institute of Judicial Administration (IJA) and the American Bar Association (ABA) also has argued that state intervention in family decisions should be limited because of our society's commitment to individual freedom and diversity. STANDARDS RELATING TO ABUSE AND NEGLECT Standard 1.1, commentary at 49-50 (IJA-ABA Joint Comm'n on Juvenile Justice Standards 1981) [hereinafter IJA-ABA STANDARDS]. Extensive intervention carries the risk of intervening to "save" the children of poor or minority parents. *Id.* at 49.

192. See *Roe*, *supra* note 155, at 874-83 (discussing the fundamental nature of parents' rights to educate their children).

193. See *supra* notes 134-38 and accompanying text.

194. *Developments*, *supra* note 140, at 1198-1202.

195. For a discussion of the Parental Responsibility Law, see *supra* notes 1-7 and accompanying text.

196. See *Prince v. Massachusetts*, 321 U.S. 158 (1944).

197. See *Parham v. J.R.*, 442 U.S. 584 (1979). The *Parham* Court noted that a state constitutionally can control parental discretion in situations in which the physical or mental health of a child is jeopardized. *Id.* at 603.

198. 321 U.S. 158 (1944).

religious leaflets in violation of child labor laws.¹⁹⁹ The defendant claimed that the conviction violated both her freedom of religion²⁰⁰ and her parental rights.²⁰¹ The Court balanced the substantial private interests of parents against the societal interest in protecting the welfare of children.²⁰² The Court recognized that under both *Meyer* and *Pierce* a private sphere of family life exists in which the state cannot interfere.²⁰³ Nevertheless, the Court upheld the power of the state to limit the rights and duties of parents under its *parens patriae* power when the child's welfare was at stake²⁰⁴ because of the state's independent interest in the welfare of children within its borders.²⁰⁵ Although the Court upheld the statute, it cautioned that the holding was limited to the facts of the case.²⁰⁶

In later cases the Court has explained that parental rights are accompanied by duties.²⁰⁷ The right of parents to educate their children that was recognized in *Meyer* and *Pierce* is coupled with the duty to prepare the child for a responsible place in society.²⁰⁸ Indeed, the constitutional protection afforded family decisions is based on the presumption that parents will act in the best interests of their children.²⁰⁹ When parents act contrary to that presumption, the state may intervene to protect the child.²¹⁰ In addition, Justice Byron White has argued that although parents have a fundamental right to make decisions about child rearing, some activities by parents, such as assaults on their children, are intrinsically outside the scope of the parents' fundamental rights.²¹¹

While the Court has recognized the power of the state to interfere with parental discretion, usually the state's compelling interest in the welfare of the child justifies the interference.²¹² The purpose of California's Parental Responsibility Law and similar statutes, however, is to

199. *Id.*

200. *Id.* at 164 (citing U.S. CONST. amend. I).

201. *Id.* (citing U.S. CONST. amend. XIV).

202. *Id.* at 166.

203. *Id.* at 166.

204. *Id.* at 166-67.

205. *Id.* at 168-69; see also *Ginsberg v. New York*, 390 U.S. 629, 640 (1968).

206. *Prince*, 321 U.S. at 171.

207. *Lehr v. Robertson*, 463 U.S. 248 (1983).

208. *Id.* at 257-58.

209. *Parham v. J.R.*, 442 U.S. 584, 602-03 (1979).

210. *Id.*

211. *Thornburgh v. American College of Obstetricians & Gynecologists*, 476 U.S. 747, 792 n.2 (1986) (White, J., dissenting); see also *McCarthy*, *supra* note 140, at 1027-28 (discussing Justice White's view).

212. See, e.g., *Santosky v. Kramer*, 465 U.S. 745 (1982); *Lasater v. Department of Social Servs.*, 452 U.S. 18 (1981); *Parham*, 442 U.S. at 684.

protect society from the wrongful acts of the child, not to protect the child.²¹³ Thus, these statutes are not justified based on the child's welfare. Protecting society from the wrongful acts of children is the only legitimate purpose for these statutes.

D. The Statutory Method Does Not Closely Fit the Goal

The Supreme Court has allowed the state to restrict parental discretion when necessary to protect the child's welfare only because the means closely fit that end.²¹⁴ Yet the state's only compelling interest in contributing statutes that regulate parental conduct is protecting society from juvenile crime. Thus, the question for a court is whether policing parental behavior is closely related to that goal.

Commentators long have argued that criminalizing parental behavior does not reduce juvenile crime.²¹⁵ While state officials readily have assumed that these statutes actually reduce delinquency rates, the only empirical study in this area revealed that these sanctions simply do not achieve the desired results.²¹⁶ In 1948 Judge Paul Alexander analyzed the effects of punishing parents under Toledo, Ohio's contributing statute over a period from 1937 to 1946.²¹⁷ When parents prosecuted under the statute received a suspended sentence, the conduct of those particular parents improved.²¹⁸ Despite massive publicity of ninety-one cases that resulted in actual punishment of the parents, however, the number of parents arrested increased steadily over the ten-year period.²¹⁹ Judge Alexander found no evidence that punishing parents had any effect on curbing juvenile delinquency.²²⁰ Although delinquency rates remained

213. See *supra* notes 1-7 and accompanying text for a discussion of the purposes behind the California statute.

214. Even in this area, the state cannot interfere freely in family life. The Constitution does not permit the state to disrupt families in general simply because some parents abuse or neglect their children. *Parham*, 442 U.S. at 603. The *Parham* Court stated that the "notion that governmental power should supersede parental authority in all cases because some parents abuse and neglect children is repugnant to American tradition." *Id.* The state must show that intervention in a particular case will further its goal of protecting children. See *Santosky*, 465 U.S. at 745. Parents do not lose their fundamental rights because they have not been model parents. *Id.* at 753. The Court has recognized that parents who are threatened with state intervention need even more constitutional protection than model parents do. *Id.*

215. See, e.g., S. RUBIN, *supra* note 35, at 21-31; Ludwig, *Delinquent Parents and the Criminal Law*, 6 VAND. L. REV. 719 (1952); Note, *Criminal Liability of Parents for Failure to Control Their Children*, 6 VAL. U.L. REV. 332 (1972).

216. Alexander, *supra* note 38, at 23.

217. *Id.* Judge Alexander reviewed 1027 contributing cases, 600 of which involved parents as defendants.

218. *Id.* at 29.

219. *Id.* at 28-29.

220. *Id.*; see also Gladstone, *supra* note 35, at 174-88 (analyzing the failure of New York's adult delinquency statute).

steady during the first three years of the study, the rates increased sharply in 1943 and subsequently declined.²²¹ Regardless of this empirical evidence, state officials continue to believe that these statutes can reduce delinquency. This belief, however, faces broad opposition.

Contributing statutes do not reduce juvenile crime effectively because the statutes address only one aspect of the problem of juvenile delinquency, lack of parental control.²²² Although inadequate and irresponsible parenting is a factor behind delinquent behavior, other factors, such as social class, educational level, urbanization, living conditions, and social instability, are equally important.²²³ Dr. James Austin, director of research at the National Council on Crime and Delinquency, testified before a congressional subcommittee that experts have linked juvenile delinquency to combinations of factors such as drug abuse, school failure, inadequate family relationships, antisocial values, child abuse, and association with delinquent peers.²²⁴ The most important predictive factor of delinquent behavior is association with a delinquent peer group.²²⁵ Because parental behavior may be one of many influences in the life of a delinquent child, determining whether the parental behavior at issue in a particular case actually caused the delinquency would be almost impossible.²²⁶ Some states have avoided this causation problem by also criminalizing parental behavior that

221. Alexander, *supra* note 38, at 23.

222. See *supra* notes 32-34 and accompanying text; see also Nazario, *What Do We Know About Delinquency?*, 12 UPDATE ON LAW-RELATED EDUC. 8 (1988) (stating that experts cannot agree on a single cause of delinquency).

223. See Note, *supra* note 215, at 334; see also Nazario, *supra* note 222, at 8.

224. *Youth and the Justice System: Can We Intervene Earlier? Hearing Before the House Select Comm. on Children, Youth, and Families*, 98th Cong., 2d Sess. 89 (1984) (statement of James Austin, Director of Research, National Council on Crime and Delinquency). Mr. Austin reported several trends among juveniles: (1) rates of delinquency for serious juvenile offenders generally decrease over time; (2) rates of emotional problems for youth generally decrease over time; (3) rates of drug abuse generally increase over time; (4) serious delinquents have high rates of multiple drug use, emotional problems, school problems, and family problems; (5) serious delinquents are principally male and are associated strongly with delinquent peer groups; (6) association with delinquent peer groups is the most important predictor of serious delinquent behavior. *Id.* at 92-93.

225. *Id.*

226. See Stouthamer-Loeber & Loeber, *The Use of Prediction Data in Understanding Delinquency*, 6 BEHAVIORAL SCI. & L. 333 (1988). The authors surveyed the research done in the area of prediction of juvenile delinquency. They concluded that many factors, including early childhood behavior, family situation, socioeconomic status, and peer groups, may predict later delinquent behavior, but cautioned against excessive reliance on any particular factor. *Id.* at 345. The authors believe that the "processes that lead to delinquency are still poorly understood." *Id.* The authors stated that "the fact that a particular factor predicts delinquency does not mean necessarily that such a factor is causal to delinquency." *Id.* Because many predictive factors are interrelated, a particular factor may predict delinquency "solely by virtue of its association with another, more causally related factor." *Id.*; see also Note, *supra* note 215, at 339-44 (discussing the legal requirements for criminal omissions and the causation problems associated with contributing statutes).

tends to cause delinquency regardless of whether the child actually becomes delinquent.²²⁷

Not only does punishing parents not reduce delinquency, but application of contributing statutes adversely affects the family unit.²²⁸ In general, the fines under these statutes are too small to effect a change in the behavior of the parents,²²⁹ but often reduce the already minimal resources available for parents to provide for the family.²³⁰ Prison sentences can be even more detrimental for the entire family.²³¹ Removing the parent from the home may eliminate the one stable factor in the delinquent child's life and also may leave other children without any parental care.²³² Many commentators believe that these parents need society's help, not its punishment.²³³ Delinquent children are frequently from lower economic levels.²³⁴ Parents of these children often are unable to meet the mental, emotional, and social needs of their children because of a lack of resources, not a lack of will.²³⁵ Punishing parents only exacerbates the problems that cause delinquency. Criminal sanc-

227. See, e.g., ARIZ. REV. STAT. ANN. § 13-3614 (1989); GA. CODE ANN. § 16-12-1 (1988).

228. See Hafen, *The Family As an Entity*, 22 U.C. DAVIS L. REV. 865, 909-15 (1989).

229. Most fines for violating contributing statutes are approximately \$1000. See, e.g., N.Y. PENAL LAW § 80.05 (McKinney 1987); S.D. CODIFIED LAWS ANN. § 22-6-2 (Supp. 1990). The maximum statutory fines, however, vary from \$100 to \$10,000. See, e.g., CAL. PENAL CODE § 272 (West Supp. 1990) (imposing maximum \$2500 fine); N.M. STAT. ANN. § 31-18-15 (Supp. 1990) (imposing maximum \$5000 fine); VT. STAT. ANN. tit. 13, § 1301 (1974) (imposing maximum \$100 fine); WIS. STAT. ANN. § 939.50 (West 1982) (imposing maximum \$10,000 fine).

230. See Ludwig, *supra* note 215, at 733. See generally REPORT ON CHILDREN AND FAMILIES, *supra* note 33, at 1-14 (outlining the economic problems in today's families).

231. In the majority of states, violation of the contributing statute could result in one year in jail. See, e.g., ARK. STAT. ANN. §§ 5-4-401(b)(1), 5-27-205 (1987); HAW. REV. STAT. § 706-663 (1988). In the other states, prison terms could range from 30 days to 18 months to 10 years. See, e.g., CONN. GEN. STAT. ANN. § 53-21 (West 1985) (imposing 10 year term); IOWA CODE ANN. § 903.1 (West Supp. 1990) (imposing 30 day term); N.M. STAT. ANN. § 31-18-15 (Supp. 1990) (imposing 18 month term).

232. See IJA-ABA STANDARDS, *supra* note 191, Standard 9.1 commentary (arguing that imprisonment of a parent is against the child's psychological interest).

233. See S. RUBIN, *supra* note 35, at 24-25; Ludwig, *supra* note 215, at 731-38; see also Ripston, *No Parent Is Safe from Headline Justice*, L.A. TIMES, June 21, 1989, at 7, col. 6.

234. See *Children and Families*, *supra* note 38, at 64.

235. See *supra* note 33 and accompanying text; see also Ripston, *supra* note 233, at 7. A famous New York case illustrates this proposition. See *Humann v. Rivers*, 272 A.D. 352, 71 N.Y.S.2d 321 (1947). A mother was arrested for being "indifferent and irresponsible" and for "failing in her responsibility" as a parent after her 14-year-old son shot three strangers with a stolen gun. The trial judge sentenced the mother to one year in jail under New York's contributing statute. Public interest groups became involved in the case on appeal and discovered that the mother had been mistreated by her own parents, abandoned by her husband and forced to raise two children alone, and was afflicted by mental and emotional problems. The appellate court reversed the conviction because of the admission of hearsay evidence and ordered a new trial if the authorities deemed necessary. For a discussion of this New York case, see S. RUBIN, *supra* note 35, at 24, and Ludwig, *supra* note 215, at 719-20. Because this mother did not encourage the delinquency of her son intentionally, criminal sanctions would have had no effect in this case.

tions simply may be ineffective in this setting.²³⁶

In addition, contributing statutes may be both overinclusive and underinclusive. By punishing parents for failing to exercise reasonable care for or control over their children, the state will punish some parents merely because their child is delinquent, even though the parents tried, but were unable, to control their children's behavior. Alternatively, some parents who do fail to control their children will escape punishment simply because their children did not become delinquent. Because these statutes do not contain a specific intent element, the only difference between these two sets of parents is that one set has a delinquent child. Even though some states do not require an adjudication of the child's delinquency before application of the contributing statute,²³⁷ in practical terms the authorities rarely will discover inadequate parental control without some delinquent act by the child. Because of this detection problem, application of contributing statutes actually occurs too late to prevent delinquency.²³⁸

Finally, the use of contributing statutes against parents is an extremely intrusive method of achieving the state's goal. Contributing statutes are inherently ambiguous and difficult to apply because of their broad language. Judges and jurors must determine whether a parent used reasonable control over a child. Even though reasonableness is a common standard in criminal statutes, it is an inherently subjective inquiry.²³⁹ Parents constantly will have to decide how a disinterested observer would judge a particular behavior. This area is too sensitive and subjective to allow outsiders to make these determinations. The Supreme Court has stated that no societal consensus on the correct way to raise children exists and that the judiciary has no special expertise in the matter.²⁴⁰ In addition, the American Bar Association has recommended that because no best way to raise a child exists, states should limit themselves to protecting children from specific harms.²⁴¹

Contributing statutes may have served a purpose when they were

236. See Ludwig, *supra* note 216, at 732-34 (arguing that criminal sanctions cannot deter unintentional parental misbehavior effectively and could have adverse consequences even if parental behavior is intentional); see also Comment, *BRI v. Leonard: The Role of the Courts in Preserving Family Integrity*, 23 *NEW ENG. L. REV.* 185 (1988) (arguing that the state should protect the family and encourage independent family decisions through the courts).

237. See *supra* note 227 and accompanying text.

238. Ludwig, *supra* note 216, at 732.

239. See IJA-ABA STANDARDS, *supra* note 191, at 49; S. KATZ, *supra* note 36, at 6 (stating that state laws describing the legal responsibilities of parents for their children are "expressions of community expectations about parenthood" and their interpretations "reflect prevailing middle-class mores").

240. *Bellotti v. Baird*, 443 U.S. 622, 638 (1979) (plurality opinion).

241. IJA-ABA STANDARDS, *supra* note 191, at 50.

first enacted,²⁴² but they are an anachronism in criminal law today. The Model Penal Code has substituted a more limited endangerment provision for its contributing statute largely because of the criticisms leveled against contributing statutes.²⁴³ States have other more narrowly tailored statutes to penalize parents who intentionally harm their children or truly neglect them.²⁴⁴ By relying on application of contributing statutes to reduce juvenile crime, state legislatures are avoiding the tough issues surrounding the failure of the juvenile justice system.²⁴⁵

While the state may have a compelling interest in preventing juvenile delinquency, no evidence suggests that policing parental behavior achieves that end. Contributing statutes unnecessarily infringe on parents' fundamental right to raise their children free from undue state interference. These statutes are difficult to apply and have detrimental effects on families. The statutes as applied to parents should fail the strict scrutiny test because the means do not closely fit the end.

V. CONCLUSION

When states use contributing statutes to force parents to control their children, these statutes are vague and an impermissible infringement on the fundamental rights of parents. The statutes that require parents to exercise reasonable or proper control over their children are unconstitutionally vague because they lack even minimal guidelines to limit the discretion of law enforcement officials.²⁴⁶ Although some parents will fail to fulfill the responsibilities that accompany the right to raise their children, the state can reach those parents through properly limited statutes that contain specific intent elements and concrete definitions of delinquency. A parent who knowingly, willfully, or intention-

242. Contributing statutes may have functioned at one time in the same manner as modern child abuse and neglect statutes.

243. MODEL PENAL CODE § 230.4 comment, at 444-52 (1980). The drafters of the Model Penal Code were concerned that the "range of behavior punishable as contributing to delinquency was as broad as the whole penal code and more." *Id.* at 446. The drafters advocated precise purposes for criminal laws. *Id.* at 449. According to the drafters, these broad contributing statutes are "meaningless criminological concept[s]" and are simply a way for legislatures to avoid hard decisions in this area. *Id.* at 450. Model Penal Code § 230.4 "is designed to state the appropriate limits of the function that the criminal law should perform." *Id.* That section requires knowing action by the parent and actual endangerment of the child before liability may attach. *Id.* at 450-52.

244. *Id.* at 450.

245. See Ripston, *supra* note 233, at 7. For a discussion of some of the problems of the juvenile justice system, see Kaufman, *The Child in Trouble: The Long and Difficult Road to Reforming the Crazy-Quilt Juvenile Justice System*, 60 *WASH. U.L.Q.* 743 (1982); Note, *Un-governability: The Unjustifiable Jurisdiction*, 83 *YALE L.J.* 1382 (1974); Middleton, *Punishment or Parenting for Child Criminals*, *Nat'l L.J.*, Apr. 18, 1988, at 1, col. 1.

246. See *supra* notes 117-29 and accompanying text; see also Ripston, *supra* note 233, at 7 (discussing the arbitrariness of California's Parental Responsibility Law).

ally encourages a child to commit a violent criminal act should be punished. The generalized contributing statutes, which are not addressed specifically to parents, may be constitutional in some situations depending on the facts of the case, but these statutes also contain inherently subjective moral standards.²⁴⁷ In addition, while inadequate parental control has been linked to juvenile delinquency, this linkage is too speculative to justify the extensive infringement on the fundamental rights of parents.²⁴⁸ The state cannot interfere in the family setting because of the mere possibility that interference will solve the juvenile crime problem.

Violent juvenile crime is a problem in modern society.²⁴⁹ Although state governments have the right to remedy the problem, the state cannot achieve that goal at the expense of the constitutional rights of parents. State governments should avoid the lure of this easy response to juvenile crime. The causes of juvenile delinquency remain unclear.²⁵⁰ Even if inadequate parenting is a factor, the strong arm of the criminal law is not appropriate in the family context. The same reasons that justify deferring to parental decisions in the typical family situation apply with equal strength when the American family is breaking down.²⁵¹ Instead of penalizing parents for their failures, state officials should focus on solving the multitude of problems that face parents in the 1990s such as the lack of affordable housing, education, and health and child care.²⁵² Maybe if parents could provide better opportunities for their children, the children would be less inclined to commit violent acts.²⁵³

Kathryn J. Parsley

247. See *supra* notes 130-32 and accompanying text.

248. See *supra* subpart IV(D).

249. See *supra* notes 16-26 and accompanying text.

250. See *supra* notes 31-33 and 222-27 and accompanying text.

251. See *supra* notes 177-91 and accompanying text.

252. See REPORT ON CHILDREN AND FAMILIES, *supra* note 33, at 1-50.

253. See *supra* note 33. Many states have implemented programs designed to help potential juvenile delinquents. See Natali, *Orange County Focus: Buena Park*, L.A. Times, June 19, 1990, at 3, col. 2 (Orange County ed.) (discussing program in which police attempt to reach potential gang members and offer family counselling); Rich, *Preschool Care Linked to Drop in Delinquency*, Wash. Post, at A11 (final ed.) (discussing experimental program in Syracuse, New York); Sipchen, *Kids Out of Control*, L.A. Times, May 18, 1989, at 1, col. 4 (home ed.) (advocating "family preservation" projects); Thomas, *Pulling Teens Back from the Edge*, Wash. Post, Sept. 8, 1988, at J1 (final ed.) (describing Washington, D.C. Youth at Risk Program).

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Reworking the Warrant Requirement: Resuscitating the Fourth Amendment

Phyllis T. Bookspan*

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* Copyright © 1991 by Phyllis T. Bookspan and *Vanderbilt Law Review*. Associate Professor of Law, Widener University School of Law, A.B., Lehman College, City University of New York, 1976; J.D., 1983, LL.M., 1987, Georgetown University Law Center. I wish to thank Professors Esther Clark, James Dishm, Barry Friedman, and Leonard Soanov for their thoughtful comments on an earlier draft of this Article. I also thank Jeffrey Silberman for excellent research assistance.