Women at the Forefront: An Examination of the Disproportionate Exposure of Mothers to Liability under Parental Responsibility Laws

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This Note discusses the social and legislative affinity for parental responsibility laws and examines the discriminatory impact of such laws on mothers. This Note argues two-fold that: 1) the mere existence of parental responsibility statutes perpetuates “mother blaming” and disproportionately exposes mothers to liability and are thus discriminatory in effect, and 2) the use of vicarious, strict liability for parents is ineffective and inappropriate in affecting juvenile behavior. Alternative and more effective models to support parents’ roles in thwarting wrongdoing by their children are also discussed.
I. Introduction

Parental responsibility laws, also called parental liability laws, are laws that misguidedy aim to impute responsibility upon parents and guardians for their children’s behavior.¹ These laws can be enacted at both the state and municipal levels of government.² Historically, statutes and ordinances conferring parental liability were based on concepts of tort liability and had the original purpose of ensuring that victims were compensated for their property loss.³ The laws grew out of vandalism statutes that aimed to provide compensation to victims who suffered a loss of or damage to property as a result of juvenile vandalism.⁴

A secondary and latent function of the laws was to curb juvenile delinquency.⁵ The theoretical basis of this secondary, latent function

¹ Tammy Thurman, Parental Responsibility Laws/Are They the Answer to Juvenile Delinquency, 5 J.L. Fam. Stud. 99, 99 (2003). Statutes imposing parental responsibility, “recognize the existence of anti-social juvenile conduct while simultaneously attempting to remedy the problem by sanctioning parental behavior.” Id. at 100.


is that the nature and quality of the parent-child relationship is one factor that may contribute to "children’s propensity to become delinquent." Hence, the theory underlying these laws, parents either had to intentionally allow juveniles to become delinquent, or to engage in willful blindness. However, even under this theory common law limited the possible punishment, as criminal parental liability was not allowed, only civil liability. In contrast, a number of modern parental responsibility statutes aim to “induce increased parental control of their children by holding parents criminally responsible when their children commit delinquent acts.”

As juvenile delinquency increased, a fundamental shift in attitudes towards the importance of parenting occurred, resulting in a

5 Id.

6 Thurman, supra note 1, at 107; Pamela K. Graham, Notes and Comments, Parental Responsibility Laws: Let the Punishment Fit the Crime, 33 Loy. L.A. L. Rev. 1719, 1719 (2000) (listing factors contributing to a juvenile’s delinquency, including “families, economic status, academic achievement, peer groups, community attachment, and susceptibility to the media”).

7 Nicholas, supra note 4, at 224.


retraction of the liberty that parents enjoyed in their parenting styles. Historically, parents have enjoyed a Fourteenth Amendment liberty interest in raising their children, which the Court has not wanted to interfere with.\(^{10}\) The family was viewed as a sanctified unit, charged with the task of teaching moral and cultural values to the next generation.\(^{11}\) However, policymakers began to attribute the trend of delinquency rates to a deterioration of the family and a lack of proper parental supervision. This shift and retraction carried the belief that parents who are abusive, use excessive force or discipline, or coerce their children should be held accountable for the societal harm brought about by the similar behaviors of their children.\(^{12}\)

Though this new legislative mindset may be intuitive or desirable at first glance, the parental responsibility statutes enacted seek to punish parents for children’s behavior that is neither abusive, forceful, nor coercive. The rationale for punishing these acts, as a

\(^{10}\) Pierce v. Soc’y of Sisters, 268 U.S. 510, 534-35 (1925) (affirming “the liberty of parents and guardians to direct the upbringing and education of children”); Smith v. Org. of Foster Families, 431 U.S. 816, 845 (1977) (distinguishing the source of Fourteenth Amendment protection for the liberty interest in the privacy of family affairs as being rooted in human rights, and not in state law like other interests protected by the Due Process Clause of the same amendment); Prince v. State of Mass., 321 U.S. 158, 166 (1944) (“It is cardinal . . . that the custody, care and nurture of the child first reside in the parents whose primary function and freedom include preparation for obligations that state can neither supply or hinder. . . . And it is in recognition of this that these decisions have respected the private realm of family life which the state cannot enter.”).

\(^{11}\) Moore v. East Cleveland, 431 U.S. 494, 503-04 (1977) (highlighting the deep roots of the family as an institution in the history of the United States).

\(^{12}\) Zolman, supra note 3, at 222.
result, is less clear, and in fact, counterintuitive. While few would likely disagree with placing responsibility upon parents who themselves are thieves or graffiti artists, one must question the rationale of holding parents responsible for behaviors that their children clearly learned elsewhere. Hence, critics of parental responsibility laws maintain that such offenses should not be strict liability offenses, nor trigger criminal penalties.13 Critics have also noted the infringement of certain ordinances related to parental responsibility upon children’s rights.14

For the purposes of this Note, laws encouraging responsibility by parents and imposing liability on parents will be treated the same. Furthermore, whereas some parental responsibility statutes rely on a negligence theory,15 this Note will emphasize those statutes that employ vicarious, strict liability. This is because it is the position of this Note that the mere existence of these laws functions to discriminate against women, regardless of their form or underlying legal theory of liability or recovery. Furthermore, as this Note is concerned with the overall potential disparate exposure of mothers to liability under parental responsibility laws as a type of legislation,


15 See infra note 50 and accompanying text (discussing negligence theories for holding parents criminally responsible for children’s violent acts that result in death, and proposing statutes of parental negligence specifically for holding parents accountable through involuntary manslaughter and grossly negligent homicide).
examples of parental responsibility laws across the United States will be provided, as well as instances of “mother blaming” in the media, which is defined by social scientists as “the sexist bias of studying only maternal responsibility for childhood disorders.” Highlighting specific instances of “mother blaming” is important because it is indicative of social attitudes embedded in state laws and municipal ordinances concerned with parental responsibility. Unlike articles on similar topics, this Note will not conduct a state-by-state inventory of currently effective laws. Instead, examples of state and municipal statutes will be used as supporting examples.

This Note argues that parental responsibility statutes and ordinances are discriminatory on their face because they disproportionately expose mothers, as a class, to civil and criminal liability. Society’s propensity to engage in “mother blaming” exacerbates the discriminatory effect of such laws. Hence, it is the position of these papers that such laws utilizing vicarious or strict liability theories to assign liability to parents are unconstitutional. Not only does the broad scope of these laws preclude them from passing constitutional muster, but the government does also not have a compelling interest to justify its intrusion into the sanctified family unit. Specifically, my argument against parental responsibility statutes is two-fold: first, the mere existence of parental responsibility statutes is discriminatory towards women...
because of their disproportionate exposure to liability, and second, both strict and vicarious liability – applied civilly or criminally – are inappropriate mechanisms for holding parents responsible for children’s tortious acts.

This Note will be laid out in five sections. Section I provides a discussion about the history of parental responsibility laws and argue the symbolic purpose of many parental responsibility laws. Section II of this Note covers the legislative form of parental responsibility laws at both the state and local level as well as the scope of these laws. The evolution of the form and scope of parental responsibility laws and the present expansion of such laws to incorporate criminal liability is also discussed. The inappropriateness of vicarious and strict liability theories as the theoretical legal grounding for parental responsibility laws is also covered. Section III discusses the historical context of mothers’ parental duties within the household structure and addresses the discriminatory effect of parental responsibility laws. It is here argued that such laws work to perpetuate “mother blaming”, and in turn unfairly and disproportionately expose women to the sanctions and penalties of these laws. Section III also illustrates the extent of “mother blaming” in the context of school shootings and emphasizes the ineffectiveness of parental responsibility laws in such instances. In conclusion, Section V discusses alternatives to such laws for dealing with juvenile delinquency and future implications of such laws.

II. History of Parental Responsibility Laws
A. Form and Scope of Parental Responsibility Laws

At common law, criminal liability for children’s actions was not allowed.\textsuperscript{17} Original legislative forms of parental responsibility laws only allowed for civil liability, allowing victims of juvenile crimes to recover the real costs of their losses, i.e., actual costs due to damage suffered.\textsuperscript{18} Yet today there are a number of statutes that have been enacted that hold parents criminally responsible for the acts of their children.\textsuperscript{19} Laws employing a theory of vicarious liability in a civil capacity to hold parents strictly liable for their children’s behavior date back to 1846.\textsuperscript{20} However, it was not until the 1990s that significant amounts of states and municipalities began to pass laws that eliminated the requirement of parental intent.\textsuperscript{21}

\textsuperscript{17} See generally Pierce, supra note 6.

\textsuperscript{18} See Nicholas supra note 4, at 224-25.

\textsuperscript{19} See e.g., Peter Applebome, Parents Pay for Sins of Children RETRIBUTION/States Are Standing Tough on Youth Crime, GLOBE AND MAIL (Can) (Apr. 12, 1996) (mentioning a Louisiana statute allowing for the imprisonment of parents who allow their children to have delinquent associates).

\textsuperscript{20} Graham, supra note 6, at 1726 (describing a Hawaii statute that entitled a juvenile wrongdoer’s victims to collect monetary compensation from that juvenile’s parents).

\textsuperscript{21} Id. at 681. See e.g., 9.2.102 LOITERING:
C. Loitering on School Grounds
  2. It is unlawful for any person under the age of eighteen (18) years to loiter or to aimlessly drive or ride about, on or about any street, avenue, highway, road, sidewalk, curb, gutter, parking lot, alley, vacant lot, park, playground, yard, building, place of amusement, or eating place, whether public or private, without the consent or permission of the owner or occupant thereof, during the hours ending at six o’clock (6:00) A.M. and beginning at twelve o’clock (12:00) midnight on Saturday and Sunday mornings, and beginning at ten o’clock (10:00) P.M. on Sunday night through Thursday night. . .
  3. It is unlawful for the parent, guardian, or other adult person having the care and custody of a juvenile under the age of eighteen
In their present form, parental responsibility laws either utilize strict liability theory (e.g., curfew and truancy ordinances), parental misaction (e.g., contributing to the delinquency statutes), or liability based on omission (e.g., statutes criminalizing neglect, improper supervision, or the failure to supervise) to trigger responsibility. In general, these statutes

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22 Municipal curfew and truancy ordinances often have parental responsibility clauses that hold parents vicariously, strictly liable upon a minor's violation. E.g.,
   20:2-4.2. Parents and Others Permitting Violations.
   It shall be unlawful for the parent, guardian or other adult person having the care of a minor under the age of eighteen (18) to knowingly permit such minor to loiter, idle, wander, stroll, or play in, or remain in or be upon the public streets, highways, roads, alleys, parks, playgrounds, wharves, docks or other public grounds, public places and public buildings, places of amusement and entertainment, public transportation facilities, public vehicles used for transportation, vacant lots or other public places within the confines of the City or for the minor to be more than one hundred (100) yards from the minor's place of residence between the hours of 11:00 p.m. and 5:30 a.m. on the following day. The provisions of this paragraph do not apply to any minor accompanied by his or her parent, guardian or other adult person having the care of the minor or custody of the minor, or where the minor is upon an emergency errand directed by his or her parent or guardian, or other adult person having care or custody of the minor.
   a. In addition, it shall be unlawful for any parent or guardian to allow or permit any minor to be in or upon any public place at any time during the hours in which said minor's school is in session, unless such minor has been officially excused (excluding suspension and expulsion) from attendance at such school by school authorities.


23 Thurman, supra note 1, at 103-04; e.g., Lisa Lockwood, Where Are the Parents? Parental Criminal Responsibility for the Acts of Children, 30 Golden Gate U. L. Rev. 497, 499-500 (2000) (discussing how the parents of Kipland Kinkel knew of his obsession with guns, experimenting with explosives, and
cannot punish parents for being parents (i.e., punish the relationship between parent and child based on the status of a person as a parent); nor can they punish parents for their child’s delinquent status. Punishments under these laws range from fines and counseling to imprisonment. However, in order to pass Constitutional muster parental responsibility laws must be narrowly tailored and have a compelling interest; for example, curfew ordinances often explicitly exempt youth who are travelling with parents or guardians, or engaged in the difficulty for them to control him, and still decided to purchase two guns for Kinkel which were in turn used to kill two of his classmates and wound twenty more at Thurston High School in Springfield, Oregon on May 20, 1998); see also David Pimentel, Criminal Child Neglect and the “Free Range Kid”: Is Overprotective Parenting the New Standard of Care?, 2012 Utah L. Rev. 947 (2012), arguing for the flexible interpretation of standards of care to account for variations in parenting styles in criminal child neglect cases.

24 See generally Graham, supra note 6, at 1740; and Neill, infra note 34, at 119 (discussing the Provenzinos’ case). See also sources cited infra note 25.


(a) Generally. It shall be unlawful for the parent, guardian or other person having custody or control of any child 16 years of age or younger to permit or by insufficient control to allow such child to be in or upon the public streets or any other places listed in section 106-227 within the city between the hours of 11:00 p.m. on any day and 6:00 a.m. the following day, or on Fridays and Saturdays, between the hours of 12:00 midnight and 6:00 a.m. the following day, except in circumstances set out in subsections (1) through (6) of section 106-227.

(b) Violation. Upon conviction of violation of this section for the first time, a person shall be given a warning citation. Upon further convictions, a person shall be subject to a fine not to exceed $1,000.00 and costs, or imprisonment in the city jail for not more than 60 days, or work on the public streets or work on the public works of the city for not more than 60 days, or be subject to any one or more of the punishments, subject to all limitations contained in the Charter of the city. Each violation of this section shall constitute a separate offense.”
in Constitutionally protected activities, as well as a few other approved activities.\textsuperscript{26}

The scope of parental liability laws has greatly expanded over time.\textsuperscript{27} Though only originally covering the issue of property damage as a result of a juvenile’s vandalism, parents can now be held responsible for both acts engaged in by juveniles, as well as some of their own culpable actions and omissions. Juvenile acts for which parents are most often held responsible include vandalism,\textsuperscript{28} curfew violations,\textsuperscript{29} truancy,\textsuperscript{30} and theft.\textsuperscript{31} Parents are often held responsible

\textsuperscript{26} See e.g., O’Meilia, supra note 18; accord Doug Denison, Juvenile Curfew, New Sex Offender Rule to Kick In Soon, NEWS JOURNAL (Apr. 11, 2012) (mentioning exempted activities from the scope of a newly adopted curfew ordinance).

\textsuperscript{27} See Susan S. Kuo, A Little Privacy, Please: Should We Punish Parents for Teenage Sex?, 89 Ky. L.J. 135, at 155 (2001), for an overview of the scope of various parental responsibility laws across states.

\textsuperscript{28} E.g., Cook County, Ill., CODE \textsection 58-41 (2012). Some statutes allow for a general liability for damage or harm caused by children, not specifying any particular context. E.g., Ill. Stat., 740 ILCS 115/5 (2013). But see, Owens v. Ivey, 525 N.Y.S.2d 508, (Cty. Ct. of Rochester 1988) (finding that the basis for mothers’ liability under N.Y. Gen. Oblig, Law \textsection 3-112 for injuries and property damage caused in a fight were unconstitutionally based on the parent-child relationship status); Brand v. Toussaint, 901 N.Y.S.2d 898 (Civ. Ct. of Cty. Of N.Y. 2009) (refusing to hold a parent liable for a car window damaged by defendant’s child in the absence of evidence demonstrating the child’s “propensity to cause injury to person or property”).

\textsuperscript{29} Cf. Joey Bunch, Curfew in Douglas Making Comeback, Proposed Law Would Replace the One That Was Nullified, DENVER POST (Jul. 17, 2007) (discussing a proposed county curfew ordinance that would fine parents up to $1,000 for each of their child’s curfew violations); see also Denison supra note 40 (discussing the passage of a municipal curfew ordinance in Dover, Delaware that allows for escalating parental fines, beginning at $50 for a first offense).

\textsuperscript{30} See Janet Stroman, Holding Parents Liable for Their Children’s Truancy, 5 U.C. DAVIS J. JUV. L. & POL’Y 47 (2000); see also E-Views, CONTRA COSTA TIMES (Oct. 10, 2012) for examples of community suggested solutions to the problem of truancy, including holding parents responsible.

for their own failure to supervise a juvenile,\textsuperscript{32} endangering the welfare of a child,\textsuperscript{33} contributing to the delinquency of a minor,\textsuperscript{34} and a bevy of other violations of laws aimed at protecting children.\textsuperscript{35} In the context of youth violence, such laws often vicariously place liability upon parents using principles of tort law such as a duty to control a third party\textsuperscript{36} or a duty to warn when harm caused by a child’s

\url{http://www.attorneygeneral.jus.gov.on.ca/english/courts/scc/recoveringlosses.pdf} (advertising the ease with which victims can recovers from a juvenile offender’s parents under the Ontario, Canada’s Parental Responsibility Act by only having to prove that the child caused the property loss, the defendants are the juvenile offender’s parents, and the total amount of the property loss, hence applying a strict liability standard).

\textsuperscript{32} See Zolman, \textit{supra} note 4, at 224 n. 45 (listing specific failures of parental duty outlined in ‘failure to supervise’ statutes).

\textsuperscript{33} See Paul W. Schmidt, Note, \textit{Dangerous Children and the Regulated Family: The Shifting Focus of Parental Responsibility Laws}, 73 \textit{N.Y.U.L. Rev.} 667, 677 (1998) (discussing the distinguishing elements of “endangering the welfare” statutes from parental responsibility statutes, stating that the latter differed in “the degree to which the new laws specify which juvenile acts indicate improper parenting and the way in which some parental responsibility laws lessen the parental mens rea needed to establish guilt”).

\textsuperscript{34} See Nicholas, \textit{supra} note 4, at 231-232, for a discussion of “contributing to the delinquency” statutes; see also Brian Neill, Comment, \textit{A Retributivist Approach to Parental Responsibility Laws}, 27 \textit{Ohio N.U.L. Rev.} 119, 121 (2000) (distinguishing between “contributing to the delinquency” statutes from general laws assigning parental responsibility). These statutes have been enacted in 49 of 50 states, with Maine being the lone state that has not enacted a “contributing to the delinquency” statute. See also Difonzo, \textit{supra} note 8, at 39. The majority of jurisdictions have “contributing to the delinquency” statutes on the books, but are infrequency used by law enforcement because of their lack of severity of punishment. Jason Emilios Dimitris, Comment, \textit{Parental Responsibility Statutes -- and the Programs That Must Accompany Them}, 27 \textit{Stet. L. Rev.} 655 (1997).

\textsuperscript{35} See \textit{e.g.}, Bay County, Mich., Gen Ord. §41.2313 (2011) (outlining specific duties of parents for which they can be held liable should they not fulfill them.

\textsuperscript{36} Nicholas, \textit{supra} note 4, at 227-28. But see Jordan Erin, \textit{Penalties for Parents Are Illegal, ACLU Says}, \textit{Des Moines Register} (Feb. 21, 2008) (discussing a suit filed against the city of Davenport, Iowa on behalf of a mother who was cited for her son’s curfew violation, claiming that the ordinance’s penalties are illegal, “because it holds parents liable for the actions of another person they may be unable to control).
act or wrongdoing is eminent or foreseeable.\textsuperscript{37} Some states have gone so far as to hold parents responsibility for their children’s engagement in sexual intercourse.\textsuperscript{38} Many parental responsibility laws are triggered simply by a child’s wrongdoing and function in a manner that is akin to strict liability, placing the onus of demonstrating ‘good’ parenting on the parents.\textsuperscript{39}

In this technologically advanced society, children are able to engage in more acts, with a wider range of people, than ever previously envisioned by current parental responsibility statutes. Many of the juvenile acts originally intended to be covered by statute were truancy,\textsuperscript{40} curfew violations, vandalism, and drug use.\textsuperscript{41} Some of the 21st century acts that could possibly lead to the labeling or adjudication of a juvenile as delinquent are copyright infringements or violations,\textsuperscript{42} trademark and intellectual property violations,\textsuperscript{43}

\textsuperscript{37} Nicholas, supra note 4, at 229.

\textsuperscript{38} See Kuo, supra note 27, at 139-142, for a discussion of the prosecution of a mother for allowing her thirteen year old daughter to be “sexually assaulted” by her seventeen year old boyfriend when they willfully engaged in sexual intercourse.


\textsuperscript{41} E.g., 42 U.S.C.A. 1437d(1)(6) (allowing for evictions of families in public housing units after a child’s conviction for a drug offense).

\textsuperscript{42} See e.g., Chad Silver, Note, Censure the Tree for Its Rotten Apple: Attributing Liability to Parents for the Copyright Infringement of Their Minor Children, 3 Cardozo Pub. L. Pol’y & Ethics J. 977 (2006) (arguing that
bullying, cyberbullying, hate crimes, teenage sex, and other technological privacy violations not yet in the purview of the law.

Over time civil penalties for parents were socially determined to be insufficient to neither deter juvenile crime and delinquency, nor encourage parents to have a stake in their children’s behavioral and social outcomes. Critics of civil parental liability assert that penalties are ineffective because they use money as a penalty when the underlying problem of many of these families is poverty. However, placing liability on parents for children’s illegal music downloads would deter children from copyright infringement); Amy L. Tomaszewski, *From Columbine to Kazaa: Parental Liability in a New World*, 2005 U. Ill. L. Rev. 573 (2005) (discussing the appropriateness of liability for minors’ “white collar” violations); Janelle A. Weber, *Don’t Drink, Don’t Smoke, Don’t Download: Parents’ Liability for Their Children’s File Sharing*, 57 Fl. L. Rev. 1163 (2005) (discussing elements required to demonstrate parents’ vicarious liability for a minor’s copyright using theories of contributory infringement and negligent entrustment).

43 It is conceivable that a parent could come under liability for their children’s posting of pictures, .gifs or other copyrighted material on sights such as YouTube, Facebook, Instagram, or Pinterest.


47 See generally Kuo, supra note 27 (discussing the constitutionality of various parental responsibility statutes that place liability upon parents for their children’s engagement in sexual acts).

48 Zolman, supra note 3, at 232-33.
this assumption is flawed in that it is based on the underlying assumption that only juveniles from poor families can be delinquent and that they are only delinquent because they are poor. Furthermore, they assert that civil penalties do nothing to make parents change their behavior.\textsuperscript{49} In reality, children from all walks of life become delinquent and exhibit antisocial behaviors for a variety of reasons.\textsuperscript{50}

From a legislative perspective, the consensus seems to be that laws holding parents criminally responsible for their children’s delinquent or other socially unacceptable acts are the way to go.\textsuperscript{51} Thus, these laws covertly aim to coerce parents into being “perfect”, relying upon the creation of a fear of liability and sanctions, in addition to an active fear of and an aversion to the accompanying public shame. Many violations of parental responsibility and liability statutes are triggered by children’s delinquency outcomes, as opposed to parents’ lack of adequate parenting skills.\textsuperscript{52} Instead of defining ‘proper parenting’, some parental responsibility statutes merely outline what is not good or acceptable parenting in the form of the

\textsuperscript{49} Id.

\textsuperscript{50} See e.g., Albert J. Reiss, Jr. & Albert Lewis Rhodes, \textit{The Distribution of Juvenile Delinquency in the Social Class Structure}, 26 \textit{AMER. SOCIOLOGICAL REV.} 720 (1961) (examining types of conformant versus deviant boys of both lower and middle class status); Edward M. Levine & Conrad Kozak, \textit{Drug and Alcohol Use, Delinquency, and Vandalism Among Upper Middle Class Pre- and Post-Adolescents}, 8 \textit{J. OF YOUTH & ADOLESCENCE} 91 (1979) (finding that causes of upper middle class delinquency and deviance cannot be explained by the same “tangle of pathology” explanations proffered to explain lower class crime).

\textsuperscript{51} Zolman, supra note 3; Nicholas, supra note 4, at 233; e.g., Nicole Garcia, \textit{Mom Jailed for Kids’ Truancy; Hanford Mother Sentenced to 180 Days}, KMHP.COM (Oct. 3, 2012 12:49 AM), http://www.kmph.com/story/19711981/mom-jailed-for-kids-truancy-hanford-mother-sentenced-to-180-days (discussing a California’s county’s prosecutions of mothers under the state’s chronic truancy law).

\textsuperscript{52} Schmidt, supra note 33, at 682.
offense. In essence, these laws rely on theories of vicarious liability in order to blame parents and make them more culpable for children’s acts. However, to vicariously assign liability upon parents is to essentially punish parents for the relationship that they have to their children. Simply put, laws that decrease the requisite mens rea to trigger liability for parents are punishing parents for their status as parents.

Supporters of parental responsibility laws maintain that the laws and penalties encourage just that, that parents be held accountable for the quality of their parenting in the form of taking responsibility for their children’s delinquent acts. These advocates view parental responsibility statutes as an appropriate tool to help parents so long as they are accompanied by appropriate social programs. One author notes that criminal provisions of parental responsibility statutes are often only, “used as leverage to persuade otherwise uncooperative parents to participate in . . . [counseling and parenting] programs.” Such advocates include a number of judges,


54 See generally Dimitris, supra note 33; Howard Davidson, No Consequences – Re-Examining Parental Responsibility Laws, 7 STAN. L. & POL’Y REV. 23 (1996); see also Nicholas, supra note 4, at 243.

lawyers and criminal justice professionals who cite case outcomes as evidence of parents’ roles in children’s delinquency.\textsuperscript{56}

Parental responsibility statutes sometimes hinge on an unarticulated theory of \textit{res ipsa loquitur}. Somewhat akin to strict liability, this doctrine removes the burden of proof from the plaintiff through the demonstration that the nature of the tortuous act or incident that usually would not occur in the absence of negligence.\textsuperscript{57} To many, it is likely common sense that children’s delinquent and antisocial behaviors are due to parents’ shortcomings in their teachings on morals and social conduct,\textsuperscript{58} and therefore these parents should be held liable for any conduct of their children. Those views are based on an irrational assumption that parents possess complete and utter control of their children.\textsuperscript{59} They also question the

\textsuperscript{56} See Difonzo \textit{supra} note 8, at 43-44 (discussing such professionals’ sentiments towards parental culpability for children’s delinquent and antisocial behaviors).

\textsuperscript{57} Rest. 2d of Torts § 328D (1965).

\textit{Res Ipsa Loquitur}

\begin{enumerate}
\item It may be inferred that harm suffered by the plaintiff is caused by negligence of the defendant when
\begin{enumerate}
\item the event is of a kind which ordinarily does not occur in the absence of negligence;
\item other responsible causes, including the conduct of the plaintiff and third persons, are sufficiently eliminated by the evidence; and
\item indicated negligence is within the scope of the defendant’s duty to the plaintiff.”
\end{enumerate}
\end{enumerate}


\textsuperscript{59} Laskin, \textit{infra} note 85, at 1206; Stroman, \textit{supra} note 30, at 50.
effectiveness of such laws given the lack of empirical evidence supporting the rationale.\(^{60}\)

While theoretically parents may be in the best position to control the actions of their children, there is a constant tension between the specific acts of children that the laws purport to encourage parents to take responsibility for, and the realities of the dynamics of the parent-child relationship. Parental responsibility laws often aim to punish parents for behaviors of children that are, arguably, more influenced by peers,\(^{61}\) television,\(^{62}\) and social media.\(^{63}\) For example, courts have held a mother responsible for not preventing the sexual assault of her teenage daughter,\(^{64}\) but have declined to hold


\(^{61}\) Judith Rich Harris, The Nurture Assumption: Why Children Turn Out the Way They Do (Free Press, 2009) (arguing that the influence of peers far outweighs the influence of parents). Cf. Alejandro Gaviria and Steven Raphael, School-Based Peer Effects and Juvenile Behavior, 83 R. OF ECON. AND STATISTICS 257 (2001) (finding positive and significant effects of peer influences at school with the use of drugs, alcohol and cigarettes, as well as church attendance and student drop out decisions).


\(^{63}\) See id. (proposing the academic investigation into the effects of other forms of media on children’s behavioral outcomes).

\(^{64}\) See Kuo, supra note 27, at 139-40, for a description of a case where a mother was found guilty of failing to prevent her daughter from being criminally sexually abused for knowingly allowing her teenage daughter to have sex with her boyfriend. This case is unique in that the mother knew and ‘approved’ of the child’s behavior. The conviction was overturned by the
parents responsible for injuries suffered during an altercation between their child and another juvenile.\textsuperscript{65}

Though parents are almost always subject to some type of parental responsibility statute either at the state or municipal level, the rare invocation of these laws by prosecutors is almost inherently contradictory to their widespread enactment. One way to interpret this discrepancy is that the state realizes that the enforcement of these laws is not the most effective way to encourage family unity and curb juvenile delinquency. Especially if you ascribe to theories that attribute delinquency to broken families, the possibility of criminal prosecution and imprisonment of these single-parent (usually single mother)\textsuperscript{66} heads of households sharply contradicts, and is in fact counterproductive to, the achievement of these goals. Nonetheless, there has been a modern shift in the type of legal liability used to hold parents accountable for children’s responses from civil liability to criminal liability that has serious ramifications for women.

\textbf{B. The Discriminatory Effect of Parental Responsibility Laws}

In an analysis of a state-level parental responsibility statute in Oregon, one author postulates the likelihood of disparate


\textsuperscript{66} See generally Section III.A. and accompanying text, on single parents and household structure.
enforcement of such laws. The author argues that the varied circumstances of cities will cause different levels of government and different municipalities to enforce the laws differently. While the author does not address issues of race and gender, parental responsibility laws have a discriminatory effect on mothers even though they apply - in theory - to all parents or guardians regardless of gender.

Under a union of marriage, both parties willingly agree (i.e., consent) to take joint responsibility for childrearing. In this instance there is a choice, embedded in the choice to enter into a marital union, to split any potential responsibility or liability. However, in childrearing outside of wedlock there tends to be a choice for only one parent as to whether they want to consent to joint responsibility for the child, namely the father. By default, one parent does not have a choice or opportunity to consent to assume such responsibility. In such situations, the duty and responsibility of childrearing tends to naturally fall upon the mother, which she readily assumes but likely does so as a result of a coercive-like social process in which other options are lacking. So, a law that seeks to subject parents to liability for their children’s delinquent acts does no more than punish family status.

67 Kalvig, supra note 13, at 837.
68 Id. at 838.
69 An exception to this is, of course, the case of adoption, which will not be discussed further in this Note.
Even in situations where parents divorce, mothers are often the primary residential caregivers for children, disproportionately subjecting them to liability. In Canida v. Canida, a minor child vandalized a local elementary school, for which the school district sued the parents for damages.\textsuperscript{70} Under Florida statute 721.24, the school district was able to seek damages. The trial court held that the mother was liable for damages but the father was not, reasoning that she was the custodial and residential parent.\textsuperscript{71} As a case of first impression in Florida, the court of appeals examined whether liability for a child’s vandalism should be shared by divorced parents with a decree that grants primary residential custody to the mother a biweekly overnight visitation to the father.\textsuperscript{72} Because appellee (minor’s father) was the noncustodial parent with contact only every other weekend, the court found that he did not have the ability or opportunity to control the child.\textsuperscript{73} The court noted,

Where the parents are divorced and one parent necessarily has primary residential custody over the minor, that custodial parent has the immediate and day-to-day opportunity to exert his or her parental control and discipline over the resident child. In this case, the child lives with the mother, and it is the mother who has routine and daily custody and control over the minor child.\textsuperscript{74}

\textsuperscript{70} 751 So. 2d 647, 647 (1999).
\textsuperscript{71} Id.
\textsuperscript{72} Id. at 648.
\textsuperscript{73} Id. at 649.
\textsuperscript{74} Id.
Thus, even though the parents shared responsibility in child-rearing and decision-making, the court refused to apportion liability between the parents.\textsuperscript{75} In this case, the Florida court got it wrong; the majority’s conclusion was, “unwarranted and virtually emasculates the concept of shared parental responsibility.”\textsuperscript{76} The dissent maintains that ideals of shared parental responsibility, where

“both parents are equally charged with the responsibility of the child’s upbringing and instilling good sense and sound values within the child that will hopefully dissuade the child from engaging in acts of delinquency.”\textsuperscript{77}

However, that the court came out placing the blame on the mother – even in light of a divorce decree where parties conceded to shared responsibility for children – is evidence of the embedded societal tendency to blame mothers for children’s undesirable behavior.

Parental responsibility statutes can also serve as a disincentive for potential caregivers of children from the foster and adoptive care systems, especially older children. Many children in the child welfare system are troubled and may be at greater risk to become deviant and exhibit delinquent behavior.\textsuperscript{78} The lack of a causality requirement in most parental responsibility laws subjects these potential caregivers

\textsuperscript{75} Id.
\textsuperscript{76} Id. at 651 (Green, J., dissenting).
\textsuperscript{77} Id. at 652
\textsuperscript{78} See Joseph J. Doyle, Jr., Child Protection and Child Outcomes: Measuring the Effects of Foster Care, 97 Amer. Econ. R. 1583, 1599 (2007), noting that children’s placement in a child welfare system may have a deleterious effect in terms of juvenile delinquency). See also, Patricia Chamberlain and John B. Reid, Differences in Risk Factors and Adjustment for Male and Female Delinquents in Treatment Foster Care, 3 J. of Child & Family Stud. 23 (1994) (discussing patterns of delinquency of males and females in foster care).
to liability for behaviors exhibited by their foster children that were likely learned from another source. People who know that they could potentially be liable for any wrongdoing committed by their child will be hesitant to adopt certain children. Therefore the push for heightened parental responsibility for children’s wrongdoings has the potential to further undermine the very traditional family structure encouraged by adoption.

**C. Application of Vicarious, Strict Liability is Inappropriate**

This Note will now compare parental responsibility statutes to those conferring liability on a party under conspiracy law using vicarious liability. Liability for one party’s actions is imputed vicariously on other parties to the conspiracy for any act that is committed during the course of the offense at the heart of the conspiracy.\(^7^9\) Vicarious liability is typically employed in crimes involving conspiracies. Under the Pinkerton Rule, *mens rea* is borne of the formation of the conspiracy.\(^8^0\) This is because consent to membership and approval of a co-conspirator’s actions is inherently assumed. Causation is then satisfied under the rationale that the act would not have happened if the conspiracy were not in place.\(^8^1\) It is of note, however, that even under the Pinkerton Rule, co-conspirators are


\(^{80}\) *Id.* at 96.

\(^{81}\) *Id.*
only responsible for those acts committed by other parties to the conspiracy that were reasonably foreseeable in nature.\textsuperscript{82} This is also true for the application of vicarious liability in other contexts, such as the doctrine of \textit{respondeat superior}, which outlines responsibility of an employer for the conduct of an employee. Here, the contractual agreement for the employee to act as an agent of the employer is the basis for liability (embedded in the agreement to hire), so long as employee’s acts were reasonably foreseeable in nature.

The structure and applicability of parental responsibility statutes at both the municipal and state levels are based on the status of the parent-child relationship, and are much more stringent in their structuring and potential application than vicarious liability in cases of conspiracy. In earlier forms of parental responsibility statutes, liability was only vicariously placed upon a parent who knew of their child’s potentially wanton or delinquent ways.\textsuperscript{83} These statutes are intended to be applied as strict liability, setting aside the \textit{mens rea} requirement in conspiracy law. In the alternative, it could be argued that \textit{mens rea} is established when parents fail to instill ‘socially acceptable’ morals and values in their children, but this argument is too subjective and unable to be proven as valid. Whereas vicarious liability and conspiracy law

\textsuperscript{82} Id. at 97.
requires a clear causal path, many forms of parental responsibility statutes do not. If states or municipalities were required to include causation as a condition of liability the attenuated relationship between parental teachings and actions would become obvious.84

One commentator argues that noncustodial parents - who are usually men85 - should not be subjected to liability for their children’s acts because they do not raise their children on a day-to-day basis.86 However, he concedes that, “the primary purpose of the statute[] is to . . . encourage parental supervision.”87 If the enhanced supervision of children is the goal, then it does not, in fact, make sense to excuse a parent who has not terminated their parental rights to the child from liability under the law. Even though a parent may not have physical custody there is still a presumption that the noncustodial parent will be involved in parenting and raising the child; it also does not eradicate the influence of the parent prior to the custody agreement. Excusing noncustodial parents from liability incentivizes noncustodial parental disinvolve by implying that noncustodial parents can delegate their parental duty

84 For example, proving a link between the moral lessons taught to the child and the delinquent act of the child becomes too attenuated and possibly unrelated when you consider all of the opportunities for children to learn the same lesson. These other sources and opportunities that need to be considered include the child’s schooling experiences and exposure, peer influence, non-parental social support, religious influence, the nature of the parental relationship, exposure to media, and any other number of factors.

85 See supra n. 115 and accompanying text.

86 Brick, supra note 171, at 86, 93.

87 Id.
and responsibility.\textsuperscript{88} This in turn simultaneously undermines American family values and works counter to the goals of the family court system. Moreover, this class of noncustodial parents is overwhelmingly populated by men. So, this would further exacerbate the disproportionate impact on women because in situations where there were once two parents, those mothers would no longer be eligible for joint liability, i.e., the sharing the responsibility of penalties with the father.

It has been further argued that “the due process problem arises when the statute imposes liability for the mere status of being a parent and noncustodial parents are not exempted by statute.”\textsuperscript{89} However, parental responsibility statutes that impose strict, vicarious liability raise due process concerns for all classes of parents, not solely in regards to those who are noncustodial. He then relies on \textit{Board of Ed. v. Caffiero}, concluding that, “for a parental liability statute to be valid under the due process clause, it must not impose liability upon classes of people who are not in control of the delinquent child,”\textsuperscript{90} implying that non-custodial parents fall within this class and satisfy the requirement. But, this proposition is based on a flawed assumption: that custodial parents are in control.

\begin{flushright}
88 Id. at 90 (citing \textit{In re JLM}, 109 P.3d 336 (Okla. 2005)).
89 Id. at 87.
90 Id. at 88 (citing \textit{Board of Ed. v. Caffiero}, 431 A.2d 799 (N.J. 1981)), acknowledging the legislative intent behind N.J.S.A. § 18A:37-3 was to “compensate the public and to deter delinquent behavior.” Id. at 804. The court also noted that “[t]he existence of the parent-child relationship provides a rational basis for imposing liability and is a reasonable means to accomplish,” the aforementioned goals. \textit{Id.} at 805.
\end{flushright}
of all of their child’s acts, and that children’s acts are not all influenced by non-custodial parents. It is quite absurd that it is assumed that parents, by virtue of being parents, have unequivocal control over their child’s acts, good or bad. So, if one is against punishing parental status and offending the sanctity of the parent-child relationship, it is illogical to stop the argument at the unconstitutionality for non-custodial parents when the relationship would be equally unconstitutionally punished for custodial parents, too.

Thus, vicarious liability is not an appropriate mechanism for holding parents liable for the acts of their children. The parent-child relationship is not contractual in nature. Further, it is widely acknowledged and accepted by society that children will not seek parental approval of all acts and that parents will not approve of all acts. Parental teachings do not start nor end with a custody order or overcoming infancy. Children’s learning of right and wrong begins at birth and making mistakes and learning from them is an important part of the process of “growing up”. Any statute that unnecessarily interferes in this relationship and associated process is disruptive to the institution of family.

D. The Symbolic Nature of Parental Responsibility Laws

The symbolic origin of many parental responsibility statutes perpetuates “mother blaming” and makes such laws discriminatory in nature towards women. Symbolic lawmaking is when legislative bodies pass laws and ordinances in response to a public outcry or perceived
Parental responsibility laws are an example of symbolic lawmaking efforts in that they “represent a symbolic response to a perceived social problem.” While there are a number of laws that are passed in response to public outcry, only those that are deliberately enacted with no intention of enforcement are deemed symbolic. Parental responsibility laws qualify as symbolic laws because they serve to quell fears of juvenile crime and victimization created by the media and political pundits. These fears are responses to the characterization of crime as being the result of the breakdown of families and occurring mainly on the savage streets of inner cities. Public attitudes about the extent and causes of youth violence have persisted over time despite an actual decline in the actual number of

91 See e.g., TRULIA LOCAL, http://www.trulia.com/local (last visited Jan. 17, 2013) (a detailed interactive map provided by guru real estate website Trulia, detailing concentration of crime in the aggregate by city and at the micro level by block).
92 Schmidt, supra note 33, at 683. See e.g., sources cited infra note 175 (questioning the effectiveness of a proposed curfew ordinance increasing parental penalties as being “symbolic at best” and critiquing its failure to address causes of juvenile curfew violations).
94 See Graham, supra note 6, at 1723, (discussing contemporary trends in family structural dynamics, including the breakdown in family structure, the increase in dual-parent employed homes, and the prevalence of single parent homes); see also E-Views, CONTRA COSTA TIMES (Oct. 10, 2012) (implying that truant youth may not actually have parents and proposing foster care as a solution to truancy). These sentiments are still echoed by the political pundits today. For example, in response to a question on gun control during the October 16, 2012 presidential debate, former Governor and presidential hopeful Mitt Romney attributed the problem of gun violence to single parent households. See infra Section VI and accompanying text.
juvenile offenders\textsuperscript{96} and the lack of an empirical relationship between parenting styles and crime.\textsuperscript{97} As aptly phrased by one scholar,

The express messages of parental responsibility laws are that parents can and should exert significant control over teenagers and that it is appropriate and suitable for the community as a whole to define good parenting and to enforce this standard, by coercion if necessary (since the possibility that the parental responsibility laws will be enforced is always present).\textsuperscript{98}

For example, in 2007 Palm Beach, Florida enacted a curfew ordinance for teenagers frequenting the city’s downtown district with the express goal of preventing teenagers from intimidating adults with their presence and “frighten[ing] adults from the area and hurt[ing] business.”\textsuperscript{99} The ordinance passed unanimously despite police statistics confirming that juveniles accounted for less than five percent of crime in the target district during curfew hours.\textsuperscript{100}

Likewise, a number of parental responsibility laws were enacted as a response to the proliferation of the image of the teenage ‘super-predator’.\textsuperscript{101} Beginning in the late 1960s, children began to be

\begin{enumerate}
  \item Graham, supra note 6, at 1723-24.
  \item Harris, supra note 8, at 29.
  \item Tim O’Meilia, \textit{Youth Curfew for Downtown Gets Unanimous Nod; Ordinance Requires Warnings Before Issuing Citations}, \textit{Palm Beach Post} (Jul. 31, 2007).
  \item Id.
characterized as brazenly deviant and without regard for morals, law, and social order.\textsuperscript{102} Attitudes during this time towards the handling of juvenile delinquents shifted from one of rehabilitation to one of punitive social control, including increased juvenile justice enforcement.\textsuperscript{103} Accompanying this trend of increased and harsher punishment in the juvenile justice system – and an increase in transfers from juvenile to adult court\textsuperscript{104} – was an expansion of parental responsibility laws. However, even though these trends occurred simultaneously, they are inherently inconsistent in ideology: either juvenile delinquents are mature enough to be considered adults, in which case they should be accountable for their own actions, or delinquent youths are immature and children for whom parents should be responsible. Using both theories to sanction both children and their parents, while legal, is morally reprehensible and blatantly bad public policy, as it leaves a discomfort similar to that of double jeopardy. Furthermore, that this strategy has been the trend speaks volumes to the symbolic meaning that policymakers mean to send to both delinquent children and their ‘unfit’ parents.


\textsuperscript{102} Difonzo, \textit{supra} note 8, at 17; accord, Dilulio, \textit{supra} note 28 (arguing that moral poverty “begets” juvenile super-predators that are self-regarding and present-oriented). The author defines moral poverty as the condition of “being without loving, capable, responsible adults who teach you right from wrong.” \textit{Id.}

\textsuperscript{103} Difonzo, \textit{supra} note 8, at 15.

\textsuperscript{104} \textit{Id.} at 32.
Oftentimes, the term ‘unfit’ is used as a synonym for single parents.\textsuperscript{105} Furthermore, single mothers have been easy political scapegoats because of their status as being overwhelmingly poor and minority.\textsuperscript{106} Brush maintains that the default categorization and equating of single mothers as belonging to the undeserving lowest rungs of society, which also includes criminals and addicts, fuels the conservative position that they are unworthy of social support.\textsuperscript{107} However, this categorical tendency has implications of more than just social support programs, as it leads to an inherent devaluing of single families as a family structure.\textsuperscript{108} Additionally, one scholar notes that previously held stereotypes and misconceptions regarding the laziness and moral absence of single mothers by society at large allows people to more easily assign blame to mothers for children’s delinquency.\textsuperscript{109} As a result, symbolic legislative responses function to not only oppress and criminalize minority mothers,\textsuperscript{110} but women as a class, in general, since they are most likely to be single parents.\textsuperscript{111}

\textsuperscript{105} Cf. Lisa D. Brush, \textit{Worthy Widows, Welfare Cheats: Proper Womanhood in Expert Needs Talk about Single Mothers in the United States, 1900 to 1988}, 11 \textit{GENDER AND SOCIETY} 720 (1997)(observing the distinguishing of single mothers from other mothers (married or widowed) deemed “worthy” through the use of terminology such as “unfit” and “undeserving” in social welfare cases).

\textsuperscript{106} Laskin, supra note 85, at 1210.

\textsuperscript{107} Id. at 739.

\textsuperscript{108} See e.g., Linda Gordon, \textit{Single Mothers and Child Neglect,1880-1920}, 37 \textit{AMER. Q.} 173 (1985) (stating that the historical development of and focus of social services on child neglect was a direct response to the subordinate structural position of single mothers as being inadequate, by default, due to their status as single).

\textsuperscript{109} Laskin, supra note 85, at 1210.
It has been argued that even though parental responsibility laws appear to punish or sanction parents on their face, they actually “have not been applied in practice.”\textsuperscript{112} Although the laws may not actually function to put parents in jail, they have been used as threats,\textsuperscript{113} and their potential use as coercive and threatening tools has a multifaceted and disproportionate effect on women. In addition to placing women at an unfair risk of financial and criminal punishment, these laws also disproportionately expose women to the brunt of the public shaming process. Parental responsibility statutes are the manifestation of social attitudes towards parents, in general, and mothers, in particular. Unfortunately, so long as public fear of youth crime is prevalent and people still mistakenly – and illogically – attribute juvenile crime to nontraditional family structures, it is unlikely that parental liability laws will contract and become less

\textsuperscript{110} See id. at 1208 (arguing that “parental liability statutes fail to perform the functions they strive to address ... [and] have negative implications for society, especially on poor, minority women who are likely to be the parents of juvenile offenders”); Naomi Cahn, 1996 Wisc. L. Rev. 399, 481-82 (1996) (“Such [parental responsibility] laws are an example of the continuing stigmatization of poor, predominantly African-American, single mothers.”)

\textsuperscript{111} See infra Section III.A and accompanying text.

\textsuperscript{112} Zolman, supra note 3, at 231. In fact, not only are parental responsibility laws rarely used, they are likely never used because they were enacted with no expectation of enforcement by local police, prosecutors, or municipal government. Harris, supra note 8, at 22-24; see also Thurman, supra note 1, at 103 (discussing the rare enforcement of parental responsibility laws).

The lack of enforcement of parental responsibility statutes, particularly “contributing to the delinquency” statutes, can likely be attributed to the low priority status as a misdemeanor offense, difficulty proving the requisite mens rea of parents, and demonstrating causation. Graham, supra note 6, at 1734-35.

\textsuperscript{113} See Zolman, supra note 3, at 231; infra note 81.
severe.\textsuperscript{114} For this reason it is important to acknowledge the mere existence of these laws and their motivation for being enacted as being discriminatory in principle and practice, since the passage of these statutes is largely based on misconceptions about the causes of juvenile delinquent behavior and its link to parental shortcomings.

One supporter of parental responsibility statutes argues that these laws “need to be enforced through punishment, rather than just serving as threats or symbolic legislation.”\textsuperscript{115} However, the enforcement of these laws would place a real and disproportionate burden on mothers, particularly mothers in families where they already suffer the brunt of ridicule, such as the stereotypes held towards single-parent families.\textsuperscript{116} Enforcing these laws through punishment would serve no function other than to further contribute to the ‘breakdown’ of families that many conservative political pundits already blame as the source of crime, thus possibly perpetuating a cycle of family instability and criminal activity.\textsuperscript{117} Furthermore, enhanced or heightened enforcement without evidence of their effectiveness is irresponsible. Most importantly, the public shaming process is worse than any punishment that the state could impose, as the court of public opinion is often more harsh than any jury.

\textsuperscript{114} Graham, supra note 6, at 1725.

\textsuperscript{115} Id. at 1747.

\textsuperscript{116} See supra n. 16 and accompanying text.

\textsuperscript{117} See sources cited n. 126 & n. 131 and accompanying text.
The question of the symbolic meaning of parental responsibility laws has been raised on occasion.\textsuperscript{118} As mentioned above, the rare enforcement of these statutes leads one to conclude that they function merely to send a message to parents. In an attempt to decipher some of the messages being sent by legislators and policymakers through these symbolic laws, Harris examines curfew laws in depth. The city of Silverton, Oregon was the first city in the nation to pass a quasi-criminal parental responsibility ordinance,\textsuperscript{119} inspiring the state of Oregon to follow suit.\textsuperscript{120} Through a survey of all municipalities in Oregon, Harris found that “parental responsibility laws are not enacted with the expectation that they will be [enforced].”\textsuperscript{121} Nonetheless, curfew ordinances were more likely to be enforced in municipalities with populations of fewer than 30,000 residents.\textsuperscript{122} Most striking, however, was Harris’ finding that municipalities with curfew ordinances that included a parental responsibility component were more likely to enforce their ordinances.\textsuperscript{123}

\textbf{III. Parental Responsibility Laws are Discriminatory}

\textbf{Towards Women}

\textbf{A. Women at the Forefront}

\textsuperscript{118} See generally Harris, supra note 8.
\textsuperscript{119} Id. at 6. Cf. Kalvig, supra note 13, at 830-31.
\textsuperscript{120} Id. at 16.
\textsuperscript{121} Id. at 24
\textsuperscript{122} Id. at 26.
\textsuperscript{123} Harris, supra note 8, at 27.
Women have historically bore the burden of childrearing. Even after varying waves of feminism and the increasing numbers of women participating in the workforce, women are still the parent overwhelmingly responsible for raising children. According to the Census Bureau, over 82% of custodial parents were mothers, and only 17% were fathers. The crux of this parental duty—or obligation—is to instill moral values into children. Not surprisingly, the few cases that have relied upon parental responsibility statutes to prosecute parents have overwhelmingly involved mothers.

We currently live in a culture of blaming and shaming mothers for the slightest of issues, especially those concerning children. When one single parent blogger attempted to argue the benefits of being raised by a single mother, citing the strength in humble experiences and learning through life examples and lessons as a positive

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125 See e.g., Laskin, supra note 85, at 1205 (discussing the prosecution of Gloria Williams under California’s Street Terrorism Enforcement and Prevention (STEP) Act).


benefit, men and women alike took to criticizing and discrediting the idea of successful single motherhood. Single mothers have even been referred to as assaulting the sanctified institutions of marriage and family. Single mothers have also been the target of recent debates surrounding children’s educational outcomes, as some argue that single mothers are not equipped to raise boys, hence their lower academic performance compared to girls. However, researchers have estimated the differential influences of mothers and fathers on childrens’ antisocial behaviors and found support for the proposition that it is actually a father’s absence that increases his daughter’s risk of criminality. Moreover, the authors found no differences in the roles of both mothers and fathers in their influence of sons’ antisocial behaviors. The persistence of the blame of single mothers, irrespective of the lack of the empirical substantiation of such accusations, speaks to the sexist attitudes prevalent within

129 Id.


134 Id.
society of women’s responsibilities and the hegemony of the nuclear family structure.

Women have received the brunt of social blaming when it comes to causes of delinquency. Political pundits have often blamed single-mother births as the cause of the proliferation of the number of criminals, even though aggregate crime trends in recent years have been on the decline. Mothers of better known troubled celebrities are not exempt from the public shaming and social blaming processes either. For example, the mothers of infamously dysfunctional celebrities such as Lindsay Lohan and Britney Spears have been publicly chastised at length for their failed mothering, while the fathers have been largely ignored. Even within academia the blaming of mothers for social and medical woes of children is rampant. Some researchers have gone so far as to study and document the relationship

135 Tim Murphy and Andy Kroll, Santorum: Single Moms Are “Breeding More Criminals”, MOTHER JONES (Mar. 6, 2012 3:00 AM), http://www.motherjones.com/politics/2012/03/santorum-single-mothers-are-breeding-more-criminals (describing 2012 GOP Presidential Candidate Rick Santorum’s thoughts on single moms as ruining the fabric of America and equating single motherhood with the breeding of criminals).

136 Kara Jesella, Sometimes Mothers Can Do No Right, NY TIMES (Jul. 29, 2007), http://www.nytimes.com/2007/07/29/fashion/29moms.html?_r=0 (noting that the standards to which mothers are held reflect values of the middle class and fail to encompass varied standards and techniques of mothering for the lower and upper classes).

137 Cf. Paula J. Caplan and Ian Hall-McCorquodale, Mother-Blaming in Major Clinical Journals, 55 AM. J. OF ORTHOPSYCHIATRY 345 (1985) (a quantitative inquiry into the pervasiveness of social blaming of mothers in scientific studies finding that, even in the wake of the women’s rights movement, the blaming of mothers by academics publishing in medical journals was just as prevalent as before the movement). See also, Paula J. Caplan and Ian Hall-McCorquodale, The Scapegoating of Mothers: A Call for Change, 55 AM. J OF ORTHOPSYCHIATRY 610 (1985) (discussing shifts in social attitudes necessary to bring about a stop to the social blaming of mothers for children’s shortcomings).
between mothers’ prenatal behaviors and children’s delinquency outcomes.\textsuperscript{138} McLanahan and Garfinkel examine secondary data to explore whether the prevalence of single mother households represents the cemented existence of an underclass, finding “a small group of predominantly black single mothers concentrated in northern urban ghettos that is persistently weakly attached to the labor force, socially isolated and [therefore] reproducing itself.”\textsuperscript{139} Despite the small sample that the information is based on, i.e. the low number of black single mothers that fit this profile, sentiments such as these have been used to characterize the experiences of not only black single mothers, but single mothers in general, as being unstable, destructive family units that cannot get along in society and raise children to be productive, law-abiding citizens.

While most laws are only subject to a rational basis review, the discriminatory effect of parental responsibility laws on mothers calls for the government to display a compelling interest in achieving the purpose of such laws. That many parental responsibility statutes are a result of symbolic lawmaking undermines advocates’ purporting that these laws help to fulfill a compelling government interest. Supporters of parental responsibility laws and maintain that government has a “compelling interest” in protecting juveniles from

\textsuperscript{138} See Proceedings from the Francis C. Scott Memorial Lecture, David Farrington, Nov. 1994, 142 ROYAL SOCIETY OF THE ARTS J. 22 (1994) (referencing a number of studies listing relationships between mother’s behaviors, complications during pregnancy, early development interventions, among a number of other factors, and children’s later delinquency).

crime and protecting society from crimes committed by juveniles. However, even if the government’s interest in protecting juveniles was once compelling enough to justify the intrusion into family affairs, the decreases in juvenile violence and delinquency\textsuperscript{140} demonstrate that this interest is no longer compelling. Nonetheless, parental responsibility laws continue to not only remain on the books at all levels of government, but also expand in scope over time.\textsuperscript{141}

**B. The Peculiar Case of School Shootings**

To illustrate the disproportionate and unfair burden placed upon mothers by parental responsibility statutes, this section will examine the issue of handgun possession, the availability of assault weapons, and the tragedies of Jonesboro, Columbine High School, and Sandy Hook Elementary School. This Note argues that in the instances of Jonesboro and Columbine, though there were lawsuits against the parents of the shooters, the fact that the parents were married – and neither of the parents were victims of the shooters – served as a shield from public blame. However, in the case of Sandy Hook, the fact that the shooter’s parents were divorced, and that the mother was also the first victim has particularly given rise to “mother blaming.”

\textsuperscript{140} See supra note 9, and accompanying text.

\textsuperscript{141} E.g., Andrew C. Gratz, Comment, Increasing the Price of Parenthood: When Should Parents Be Held Civilly Liable for the Torts of their Children?, 39 Hous. L. Rev. 169 (2002).
A number of statutes impose liability upon the parents of children who illegally obtain and possess a gun.\textsuperscript{142} Women are less likely to both personally own guns and to live in a household that has a gun.\textsuperscript{143} According to recent Gallup Polls, only half as many women personally own a gun when compared to men, at 23\% and 46\%, respectively.\textsuperscript{144} Similarly, 55\% of women reported that there was no gun located in their household, as compared with only 48\% of men.\textsuperscript{145} Examining gun ownership between men and women within households shows even greater disparities. Twenty percent of women report that another household member owns a gun, while only 6\% of men report the same.\textsuperscript{146} However, as mentioned above, even though women are equal within a marital union, this “equality” leads to the potential overexposure of married women to liability under such laws even though they are less of a source of handguns for children.

During the second presidential debate between President Barack Obama and Former Governor Mitt Romney, single moms were used by Romney as a scapegoat for gun violence. In response to a question on the presidential hopeful’s plan to limit the availability of assault weapons, Governor Romney detailed decreased likelihood of achievement and exposure to poverty as unavoidable side effects of being raised by

\textsuperscript{142} Schmidt, \textit{supra} note 33, at 680.


\textsuperscript{144} \textit{Id.}

\textsuperscript{145} \textit{Id.}

\textsuperscript{146} \textit{Id.}
single parents, which inevitably causes gun violence.\textsuperscript{147} These sentiments are echoed ad nauseum in the debates on gun violence. However, the tragedies of Jonesboro, Columbine High School, and Sandy Hook Elementary give rise to the question of whether parents should be blamed for atrocities and heinous crimes committed by children. The latter tragedy highlights the social problem of mother blaming, thus forcing the question of parental responsibility into the spotlight, opening up the issue to public dialog and scrutiny.

At Westside Middle School in Jonesboro, Arkansas on May 24, 1998, two juvenile assailants opened fire on students and teachers after


CROWLEY: Governor Romney, the question is about assault weapons, AK-47s.

ROMNEY: Yeah, I'm not in favor of new pieces of legislation on -- on guns and taking guns away or making certain guns illegal. We, of course, don't want to have automatic weapons, and that's already illegal in this country to have automatic weapons. What I believe is we have to do, as the president mentioned towards the end of his remarks there, which is to make enormous efforts to enforce the gun laws that we have, and to change the culture of violence that we have.

And you ask how -- how are we going to do that? And there are a number of things. He mentioned good schools. I totally agree. We were able to drive our schools to be number one in the nation in my state. And I believe if we do a better job in education, we'll -- we'll give people the -- the hope and opportunity they deserve and perhaps less violence from that. But let me mention another thing. And that is parents. We need moms and dads, helping to raise kids. Wherever possible the -- the benefit of having two parents in the home, and that's not always possible. A lot of great single moms, single dads. But gosh to tell our kids that before they have babies, they ought to think about getting married to someone, that's a great idea.

Because if there's a two parent family, the prospect of living in poverty goes down dramatically. The opportunities that the child will -- will be able to achieve increase dramatically. So we can make changes in the way our culture works to help bring people away from violence and give them opportunity, and bring them in the American system. Id.
pulling a fire alarm and causing everyone to evacuate the building.\textsuperscript{148} As a result, Andrew Golden and Mitchell Johnson murdered four students and one teacher, wounding ten others.\textsuperscript{149} Given the age of the offenders (Golden was 11 and Johnson was 13), this shooting was especially heinous and shocking to the nation’s conscience. However, absent from the dialog following the incident was the role of the parents of the juveniles. This was particularly peculiar given their age and the perceived prominent role of parents in the transmission of norms, morals, and values to children through their early teenage years. Even though victims of Jonesboro brought civil suits against the parents of Golden and Johnson,\textsuperscript{150} discussions of parental responsibility were virtually absent from public discourse. However, in the suit, plaintiffs alleged parental liability for three reasons: 1) “to promote family values and personal responsibility,”\textsuperscript{151} 2) Johnson and Golden had exhibited violent tendencies, from which the parents did not actively protect the public from,\textsuperscript{152} and 3) the parents’ believed their children were not responsible under the law and, therefore, the

\textsuperscript{150} Complaint, Wright v. Golden, CIV 94-394(B), (Craighead County Cir. Ct. Aug. 10, 1998). Though the ultimate outcome of this case is unclear, one source has indicated the parents of one defendant settled. Andrews, supra note 141, at 383.
\textsuperscript{151} Andrews, supra note 141, at 383.
\textsuperscript{152} Id.
parents should be held vicariously liable. The only inference to liability of the assailants’ families came in the form of this civil suit and an accompanying suit filed against Golden’s grandfather alleging his negligence in the keeping of his gun cabinet. This suit was dismissed in 2000.

The following year, on April 20, 1999, Eric Harris and Dylan Klebold planned and executed a massacre at Columbine High School in Littleton, Colorado leaving twelve students and one teacher dead and twenty-one more injured before turning the guns on themselves and committing suicide. The “significant warning signs” exhibited by the pair were largely ignored by their parents, including the discovery of a disarmed bomb by Harris’ father. One author suggested that Columbine would be the case that eradicates the dormancy of parental responsibility statutes. In the aftermath of Columbine, families of the victims sued the parents of Harris and Klebold, alleging that they were both negligent in their supervision and failed

153 Id. at 384.
155 Id.
158 Id.
159 Graham, supra note 6, at 1741-42.
to act to prevent the shootings;\textsuperscript{160} this case against the parents (and one gun manufacturer) was settled for $2.5 million.\textsuperscript{161} In response to the tragedy, the Youth Gun Crime Enforcement Act of 1999 was proposed but never passed.\textsuperscript{162} This legislation would have made it a crime for parents to allow children access to a gun, or, in the alternative, to fail to take action when they know their child has a gun.\textsuperscript{163} However, even in the context of handgun laws, provisions placing blame on parents are still more symbolic in nature in that they are likely not to be enforced and, moreover, are not an adequate solution to the problem of youth gun violence.\textsuperscript{164}

Over a decade later, on December 14, 2012, a lone gunman, Adam Lanza, shot and killed twenty children and six members of the staff at Sandy Hook Elementary School in Newtown, Connecticut.\textsuperscript{165} In the wake of the shooting, it was released that Lanza suffered from autism, possibly having Asperger’s syndrome.\textsuperscript{166} It was also reported that that

\textsuperscript{160} Andrews, supra note 141, at 386.

\textsuperscript{161} Id.

\textsuperscript{162} Id. at 1743.

\textsuperscript{163} Id.

\textsuperscript{164} Id. at 1745.


the guns used by Lanza in tragedy were legally purchased by Lanza’s mother, Nancy Lanza, who was also his first victim. As a result, one constant theme of media coverage was whether Nancy Lanza is to blame for the massacre. From the perspective of a family friend, one article described Nancy as a single mother caring for her troubled son after a divorce a few years prior. She was described as being responsible with her guns and possessed a strong desire for Adam to ‘fit in.’ Other accounts question her motives for possessing assault rifles and teaching her troubled son how to shoot, in light of his social difficulties.

Perceptions and beliefs of the joint responsibility of Nancy Lanza for the massacre have caused many memorials of the tragedy to focus on the 26 ‘innocent victims,’ leaving her out of the total death toll. But this begs the question, did Nancy’s legal possession of the firearms, well within her Second Amendment rights, mean that she should bear responsibility for her son’s actions? Advocates and mothers of children with mental ailments argue that Nancy Lanza is not to blame, but instead maintain that this tragedy speaks towards the

167 Fitzgerald et al., supra note 152.


170 Cf. id.

171 U.S. Const. amend. II.
greater issue of mental illness and its taboo status within society.\textsuperscript{172} It is also interesting to note the general absence of Adam Lanza’s father from the discussion of blame. Even when afforded the opportunity to confront Lanza’s father, the family of one victim refused to place blame on Peter Lanza, while maintaining that Nancy was responsible.\textsuperscript{173} Though the Lanzas were divorced, the divorce was not finalized until 2009. So, while apparently not to blame in the public eye, Adam Lanza’s father was present and raised him until he was almost an adult, making him, in actuality, at least partially culpable.

While the presence of two parents - and thus a hegemonic, nuclear household - seemed to act as a shield for the parents from public blame in Jonesboro and Columbine, the divorced status of the Lanzas exposed Nancy Lanza to “mother blaming”. Though the parents of the assailants at Jonesboro and Columbine were not guarded from civil lawsuits seeking damages from parents claiming their not exercising proper control, negligent entrustment, or inadequate supervision of their children,\textsuperscript{174} they were saved from the public shaming process. However, the incident at Jonesboro did inspire Arkansas legislators to

pass a law placing strict liability upon parents whose children possess a firearm on school premises, a reaction that was rather symbolic in nature. Unfortunately, Nancy Lanza’s status as a single mother provided her no such shield, and her status as her son’s first victim has been blamed on her single mother status. The perpetual blaming of Nancy Lanza highlights the ways in which “mother blaming” and parental responsibility laws disproportionately burden mothers. Currently, Connecticut statutes allow for parents to be held responsible for the tortious acts of minors, but this statute neither prevented the tragedy nor ameliorated the harm and effect of the aftermath. For one, Adam Lanza was past the age of majority. Regardless of the circumstances, it is far-fetched to continue holding parents responsible for the actions of their adult children, as the link between parenting and the child’s criminal outcome is too attenuated. However, even this important legal fact in terms of the applicability of parental responsibility statutes has failed to curb the “mother blaming” on Nancy Lanza, as public opinion seems to prefer to perpetually blame a mother for actions of their adult children.

(a) The parent of parents or guardian . . . of any unemancipated minor or minors, which minor or minors willfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle, shall be jointly and severally liable with the minor or minors would have been liable for the damage or injury if they had been adults.
(b) This section shall not be construed to relieve the minor or minors from personal liability for the damages or injury.
(c) The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.
(d) As used in this section, “damage” shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof.
Even if Adam Lanza were to have been a minor, the disproportionate burden of both public shame and potential legal liability against her estate illustrate the discriminatory effect of parental responsibility laws.

C. Sending Mothers Symbolic Messages

While some parental responsibility laws are enacted as reactions to disconcerting social woes such as juvenile violence, in other situations, the enforcement of existing ordinances is ramped up in anticipation of troubling incidents involving juveniles. However, a recent incident may indicate that public support for general parental responsibility laws may be weaker in the context of extremely trivial situations. Ashley Warden, the mother of a three-year-old in Piedmont, Oklahoma was ticketed for her potty-training child’s “public urination” on the front lawn of their property; the corresponding fine was $2,500. The officer was then said to have amended the offense to that of contributing to the delinquency of a minor. Over the course

177 See e.g., Kristen Netterstrom, Board Revisiting LR Curfew Law Proposals Following Teens’ Deaths, ARKANSAS DEMOCRAT-GAZETTE, Sept. 28, 2011 (discussing proposed changes to the curfew law in Little Rock, Arkansas that would steepen the penalties for parents permitting their children’s violation of the ordinance). These changes were put forth for consideration following the “fatal shooting of a teenager who was out past curfew.” Id.


of the following week there was a wave of public outrage, leading the Piedmont Police Department to issue a public statement, an apology, and drop the charges.\textsuperscript{181}

From a legal perspective this situation is alarming for a number of reasons, the first being that nowhere in the city’s municipal code does it make clear which offense encompasses urinating in public, which raises issues of fair warning and notice.\textsuperscript{182} Second, the city’s municipal code also does not make clear the civil liability of parents for any child’s action other than for a violation of the curfew ordinance.\textsuperscript{183} Third, the mother’s act of not preventing her child from disrobing and urinating in public does not fall under the code’s definition of “contributing to the delinquency of a minor” without extremely lenient interpretation.\textsuperscript{184} Furthermore, the General Penalties

\begin{footnotesize}
\begin{enumerate}
\item[183] See id. at § 10. The city of Piedmont does not have a catchall provision for parental responsibility in the traditional formation of such a statute. Nowhere outside of the city’s curfew ordinance does the code provide for the liability of parents for children’s actions. See CITY OF PIEDMONT, OKLA., CODE § 10-517 (establishing the city’s curfew ordinance).
\item[184] id. at § 10-515. The Piedmont municipal code defines contributing to the delinquency of a minor as
\begin{quote}
Any person who shall knowingly or willfully cause, aid, abet, or encourage a minor to be, to remain, or to become a delinquent child, as defined by state law, shall be guilty of an offense.”
\end{quote}
CITY OF PIEDMONT, OKLA., CODE § 10-515b.
Oklahoma state law defines a “delinquent child” as including
\end{enumerate}
\end{footnotesize}
provision of the municipal code does not allow for fines for a first offense of more than $500.\textsuperscript{185}

Nonetheless, this case lends great support to the argument that parental responsibility laws perpetuate mother blaming. By ticketing Warden for an unclassified offense for an amount that is five times the legal limit allowed by local ordinance,\textsuperscript{186} the officer symbolically implied the young mother lacked parenting skills needed to exercise control over her child. It speaks volumes that the officer saw a child doing something that would be “unacceptable” (but not clearly illegal) if done by an adult, and felt he needed to hold the mother responsible and decided to symbolically relay his disapproval of her parenting practices through the issuance of an exorbitant ticket. The absence of a clear ordinance conferring liability upon parents may have worked in the favor of Warden, but in many places around the country the police officer would have the letter of the law behind him.

\textit{"... [A] minor ... who shall have been or is violating any penal statute of this state, or who shall have been or is committing any one or more of the following acts, to wit: (f) Willfully, lewdly, or lasciviously exposing his or her person, or private parts thereof, in any place, public or private, in such manner as to be offensive to decency, or calculated to excite vicious or lewd thoughts, or for the purpose of engaging in the preparation or manufacture of obscene, indecent, or lascivious photographs, pictures, figures or objects.”}\textsuperscript{OKL. STAT. TIT. 21 § 857(4) (2012).}
In order for the parent to have been contributing to the delinquency of a minor, the conduct of the minor child would, logically, need to rise to the level of delinquency. However, the urination of a toddler being potty trained should hardly be interpreted as willfully offensive or indecent, under any standards.

\textsuperscript{185} Id. at § 1-108.

\textsuperscript{186} Id.
The officer’s indifference to the situation of Warden potty-training her son, and his crusade-like attempt to sanction Warden for her ‘bad’ parenting is an example of the social blaming of mothers and exemplifies the potential vulnerability of mothers at the mercy of parental responsibility statutes. The possibility of Warden being found liable for her toddler’s urination on their private property further complicates and highlights issues of broad applicability of such parental responsibility statutes being applied in situations outside of the scope for which they were intended.

IV. Discussion and Conclusion

A. Alternatives to Parental Responsibility Laws

In general, parental responsibility laws that aim to punish parents as a way to control juvenile delinquency are short-sighted in that they do not address other causes of juvenile delinquency.\(^{187}\) The need to continuously expand the scope and severity of parental responsibility laws is evidence in and of itself that these laws are ineffective. The laws first expanded from solely imposing civil liability to also imposing criminal liability. In terms of scope, the laws have been extended from only being applicable in the context of property damage to now potentially holding parents responsible for a possibly ever-increasing number of juvenile acts. However, it is impossible to gauge the effectiveness of parental responsibility statutes because of their lack of enforcement.\(^{188}\) Nonetheless, the

\(^{187}\) Thurman, supra note 1, at 104-05.
expansion of these laws without knowing their effectiveness speaks volumes of the symbolic nature of these laws as a response to a perceived social need for them. The social function of parental responsibility statutes, as there is no apparent legal function, is an important consideration in determining the discriminatory nature of these laws, and possible alternatives.

One alternative model that has been advocated for involves the collaboration between judges, social service professionals, and community programs. Another author argues for the exercise of parental control through legislation based on rational assumptions along three dimensions—spatial, social, and chronological—and pertaining to relationships that the juvenile maintains. These three dimensions acknowledge that parents’ ability to supervise their children varies depending on their proximity to their children, their children’s social environments, and children’s age. Family group counseling, which aims to “secure an apology from the offender to the victim, acknowledge community censure, and work out an agreement to rectify the harm both to the victim and to the community” is another model that has been proposed. These models all tend to use

188 Graham, supra note 6, at 1734.
189 Thurman, supra note 1, at 108-09.
191 Id.
192 Difonzo, supra note 8, at 83.
alternative dispute resolution strategies and therapeutic techniques to work towards the amelioration of problems from the root.\textsuperscript{193}

A more simplistic, but inexplicably less popular idea involves the enacting of laws and policies that support parents in their role, as opposed to those that punish them. For example, the juvenile delinquency and victimization in terms of serious violent offenses is significantly higher between the hours of 3:00 p.m. and 6:00 p.m.;\textsuperscript{194} it is likely that other juvenile deviant behaviors occur during this timeframe as well. As times change, increasing numbers of parents work traditional jobs between the hours of 9:00 a.m. and 5:00 p.m. States should give serious thought to lengthening the school day, as school is the “job” of children and this would help prevent unsupervised latch-key kids from having an opportunity to commit a crime or become victimized. A longer school day would also support parents by providing a place where they know their children are being properly supervised and not left to their own devices.

At the very least states and municipalities should implement programs that support parents in obliging the curfew laws. One way to do this is through the operation of curfew centers that service youth offenders and connect them with social services. Such a program has been implemented in Wilmington, Delaware. During the summer of 2012

\textsuperscript{193} Id. at 81.

the city both extended the hours of local community centers and reinstated a curfew center program. The curfew program achieved a commendable success rate during its implementation in a previous year which “resulted in 200 youths being issued a first time warning for curfew violations;” of these youth, only five percent received a second summons for a total success rate of ninety-five percent. The Wilmington initiative was created in response to a spike in gun violence resulting in homicides within the city, with the intention of disincentivizing youth from engaging in “risky and unsafe” behaviors. The success of this programmatic strategy can be explained in two ways. First, the city uses its curfew ordinance as a tool for helping parents to protect their children. This is highlighted by the city’s use of the community centers to provide safe places for kids and the provision of social services to juvenile violators and their parents at the curfew center. Second, this strategy also highlights the fact that violence is a community problem and effectively leverages community resources to highlight the problem. If parental responsibility laws stay on the books for purposes of community and societal comfort, they should be accompanied by such programs that effectively use them as a tool to support families, as opposed to as a punitive measure.

196 Id.
197 Id.
198 Id.
B. Conclusion

This Note has broadly discussed the discriminatory impact of parental responsibility laws by disproportionately exposing mothers to liability. Due to the lengthy historical context of mothers’ parental duties and more prominent roles in raising children, as well as their disproportionate likelihood of being single parent heads of households, laws that seek to hold parents legally responsible have a discriminatory effect on women as a class. Given the decrease over time in both juvenile delinquency and juvenile victimization, parental responsibility laws no longer fulfill a compelling government interest. However, without a complete shift in the discourse surrounding parental roles, teen violence, and juvenile delinquency, it is unlikely that pressure to enact, enhance, or enforce parental responsibility statutes in situations involving violence and charged community emotions will disappear. Nonetheless, the mere existence of these laws perpetuates society’s acceptance of mother blaming for all social ailments involving children. In the absence of finding a mechanism so that parental responsibility laws can be applied in a manner that does not overexpose mothers to liability, these laws should not be in effect. Such laws that are created as a result of symbolic lawmaking processes and have far-reaching consequences work to maintain the subordinate status of mothers - and women, in general - within American society.

In addition to their potential disparate impact on women as a class, these laws have logical shortcomings in their existence and
potential application. For one, such symbolic laws and their lack of enforcement do not significantly contribute to decreasing juvenile delinquency. If the end goal is truly to effectively, and permanently, counter crimes committed by and against juveniles, then the means toward that goal needs to address the causes of such violence. The focus on parental responsibility is a distracting side dish to the main course of the causes of violence in the United States. And to truly get at the crux of the issue, both policymakers, police officials, and citizens alike must explore the factors (both individual and structural) within society that foster an acceptance of juvenile crime or create the appropriate climate for juvenile crime and victimization to occur. Short of a truly holistic approach to solving juvenile delinquency, and a shift in discourse of its causes away from “mother blaming”, parental responsibility laws merely function to work against the very mothers – both married and single – who are committed to raising their children “right” and teaching them how to function in society.