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Recent Developments in Nontraditional Alternatives in Juvenile Justice

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Recent Developments in Nontraditional Alternatives in Juvenile Justice

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I. INTRODUCTION

In the past ten years, juvenile crime in the United States has increased at an alarming rate.[1] Policymakers concerned with the rapid increase in juvenile crime currently find themselves at a familiar crossroads. The national mood demands a rigid posture toward juvenile offenders.[2] At the same time, those concerned with the future of delinquent children realize that some form of rehabilitative action is necessary to address underlying problems.[3] As communities struggle

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1. Richard Lacayo, *When Kids Go Bad*, TIME, Sept. 19, 1994, at 60 (recognizing the significant increase in juvenile crime in the United States during the past six years). In 1994 there were 1403 juvenile offenders detained in Illinois' jails. SOURCEBOOK OF CRIMINAL JUSTICE STATISTICS, BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE 532 (1994) [hereinafter SOURCEBOOK].

2. *See* George E. Furtado, *Juvenile Hearing Boards: Communities Respond to Juvenile Crime*, R.I. BAR J., May, 1996, at 17 (stating that "[l]ong gone are the days of compassion for youthful transgressors—it is now more like a Clint Eastwood spaghetti western: shoot first and ask questions later"); *see also* SUSAN GUARINO-GHEZZI & EDWARD J. LOUGHRAN, BALANCING JUVENILE JUSTICE 101 (1996) (describing the juvenile courts as becoming "more offense-oriented and less offender-oriented").

3. *See* Furtado, *supra* note 2, at 17. Mr. Furtado states that "what we need are bold strikes against the forces that turn young human beings into violent criminals. At the very least, we need community-based assistance to receptive youths." *Id. See also* THOMAS J. BERNARD, THE CYCLE OF JUVENILE JUSTICE 166 (1992) (noting that there are essentially three ideas which form the driving force behind juvenile justice policy: (1) juvenile crime is at an exceptionally high level; (2) the present juvenile justice policies

with these conflicting attitudes, there is a growing understanding that derelict behavior is best addressed with family and community involvement.[4]

Over the past several years, an increasing number of community-based programs have been initiated throughout the United States to deter or rectify delinquent behavior.[5] Similarly, several Illinois communities have implemented policies consistent with this national trend.[6] This Article will review some of these recent trends and explore their potential benefits and pitfalls.

First, this Article will provide a brief background on the history of juvenile justice policy in the United States.[7] This Article will then discuss teen court programs that many communities have initiated in response to recent surges in juvenile crime.[8] Specifically, this Article will discuss the process through which these programs allow a teen peer jury to review and punish juvenile defendants for their actions.[9] In addition, this Article will discuss the social policies and legal philosophies which have underscored the development of teen court as a juvenile justice mechanism,[10] and it will examine the statutory basis for teen court in Illinois, important practical aspects of the program, and the expected benefits such programs can provide.[11] Next, this Article will discuss how local communities are placing greater responsibility with parents through the use of parental responsibility

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make the problem worse; and (3) changing those policies will reduce juvenile crime). *See also* Carol Sternhell, *If Johnny Breaks the Law Should Mommy Go to Jail?*, 222 GOOD HOUSEKEEPING, No. 3, Mar. 1, 1996, at 69 (stating that "over the long term juvenile crime rates have remained flat," but acknowledging that children between the ages of 10 and 17 are currently committing a higher percentage of all violent crimes than in 1990).

4. Hon. Larry W. Moran, *Involving Montana's Youth in the Justice System: A View from the Bench*, MONT. LAW., June, 1996, at 7. Judge Moran writes:

> History indicates that in a democracy a law will be effective only so long as it is accepted by the majority; otherwise it will be ignored or changed. Laws affecting juveniles are no exception. The message is obvious: An effective juvenile justice system which promotes the voluntary acceptance of the rule of law requires that the thoughts, ideas and recommendations of juveniles be part of the process.

Id.

5. See *infra* Parts III-V on teen court programs, parental responsibility ordinances, and juvenile curfew legislation.

6. *See infra* note 29 and accompanying text; *see also* notes 116-19 (discussing a local Illinois parental responsibility statute).

7. *See infra* Part II.

8. *See infra* Part III.

9. *See infra* Parts III.C-D.

10. *See infra* Part III.

11. *See infra* Part III.

ordinances, which impose vicarious liability upon parents for the actions of their children.[12] This Article will enumerate and review the legal obstacles and challenges to the implementation of such ordinances, concluding that parental responsibility laws may be particularly vulnerable to constitutional attack.[13] Finally, this Article will discuss the recent proliferation of curfew regulations as a means of addressing after-hours delinquency.[14] The Article will focus on the legal underpinnings and possible constitutional pitfalls of juvenile curfews, determining that such enactments may provide a constructive alternative to traditional juvenile justice policy.[15] In conclusion, this Article suggests that the current juvenile crime problem calls for the infusion of humanistic and community-based policies and programs into Illinois' juvenile justice system. As the system exists today, this Article laments, the goal of drastically reducing juvenile crime in Illinois may remain just a benevolent ambition.

II. BACKGROUND OF THE JUVENILE COURT SYSTEM IN THE UNITED STATES

The American juvenile court system was created at the turn of the century.[16] Distinct notions of juvenile justice arose, in part, out of a series of cases including and following the United States Supreme Court's seminal decision in *In re Gault*.[17] The philosophy behind juvenile justice policy after *In re Gault* recognized the many differences that exist between criminal acts committed by delinquent children and those committed by adults.[18] The developing juvenile court system thus focused on crime prevention and measures designed to steer young offenders away from a destructive lifestyle of habitual, criminal activity.[19]

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12. *See infra* Part IV.

13. *See infra* Part IV.C.

14. *See infra* Part V.

15. *See infra* Parts V.A-B.

16. *See* Marianne McConnell, *Mediation—An Alternative Approach for the New Jersey Justice System?*, 20 SETON HALL LEGIS. J. 433, 436 (1996); *In re* Gault, 387 U.S. 1 (1967).

17. 387 U.S. 1 (1967). The Court held that juveniles are entitled to written notice of charges, the right to counsel, the right to confrontation and cross-examination, the privilege against self-incrimination, the right to transcripts of proceedings, and the right to appellate review. *Id.* at 2-3. The juvenile justice system originated in Cook County, Illinois in 1899, focusing on preventative measures and attempting to keep the child out of the criminal justice system after arrest. *Id.* at 14-15.

18. *See* McConnell, *supra* note 16, at 436.

19. *See id.* at 436 n.15.

Prior to *In re Gault* and the courts' increased sensitivity to children's rights, children and adults were tried and sentenced in the same criminal courts.[20] Unlike adult offenders, however, children did not receive the same liberties in criminal courts because juvenile offenses were considered civil in nature.[21] As a result, juvenile offenders received neither the protections afforded adults "nor the solicitous care and regenerative treatment postulated for children."[22]

Following the Court's decision in *In re Gault*, several cases expanded the procedural protections available for child offenders.[23] Three viewpoints encompass the ideas that have helped to shape juvenile justice policy.[24] The first viewpoint, the "criminal approach," is based on the belief that an individual's criminal conduct is within their control and thus should be punished by society.[25] In effect, as autonomous beings, criminal defendants are ultimately responsible for their deviant conduct. The second viewpoint, the "welfare approach," advances the position that criminal offenders are but symptoms of more fundamental and pervasive societal ills.[26] For crime to abate, this theory postulates, underlying societal defects must first be remedied. The last viewpoint, the "community approach," extends from the "labeling theory" or the proposition that individuals selected by the justice system can be, by virtue of their experiences within the system, effectively transformed into criminals.[27] Proponents of this theory

20. *See id.* at 439; *see also In re* Gault, 387 U.S. at 14. In *Gault*, Gerald Gault, age fifteen, had been taken into custody for allegedly making lewd remarks to a neighbor by telephone. *Id.* at 4. When Gerald was taken into custody, his parents did not receive notice from the police. *Id.* at 5. Gerald and his family were also never advised of the charges against him or of his right to an attorney. *Id.* at 10. The accusing party was not present at the hearing and was thus not available for cross examination. *Id.* at 5. When Gerald was ruled a juvenile delinquent, the decision was unappealable because juvenile appeals were not then permitted in Arizona. *Id.* at 8. Furthermore, as no record was made of the proceedings, no transcripts were available in the event of future action. *Id.* at 10.

21. *See* McConnell, *supra* note 16, at 439 (citing *Gault*, 387 U.S. at 10).

22. Kent v. United States, 383 U.S. 541, 556 (1996) (finding a juvenile court order which waived jurisdiction of a minor not in compliance with the Juvenile Court Act).

23. *See, e.g.*, Breed v. Jones, 421 U.S. 519 (1975) (extending the protection against double jeopardy to children); *In re* Winship, 397 U.S. 358, 364 (1970) (holding that juveniles are entitled to the "beyond a reasonable doubt" standard of proof for offenses which would be considered criminal if committed by an adult).

24. *See* McConnell, *supra* note 16, at 437 n.18 (citing PHYLLIDA PARSOLE, JUVENILE JUSTICE IN BRITAIN AND THE UNITED STATES 9-10 (1978)).

25. *Id.* (citing PHYLLIDA PARSOLE, JUVENILE JUSTICE IN BRITAIN AND THE UNITED STATES 9 (1978)) (noting that the "unpleasantness of a fine or imprisonment becomes a method of motivating a change to more acceptable behavior").

26. *Id.* (citing PHYLLIDA PARSOLE, JUVENILE JUSTICE IN BRITAIN AND THE UNITED STATES 10 (1978)) (noting that the "welfare approach" is very protective of the offender).

27. *Id.* at 437 n.18 (citing PHYLLIDA PARSOLE, JUVENILE JUSTICE IN BRITAIN AND THE

argue that juvenile court stigmatizes children "who have been elected as deviants," thus fostering in young offenders a predisposition to commit new crimes in the future.[28]

III. TEEN COURT

One community-based alternative to traditional juvenile court recently implemented in many Illinois communities is "teen court." [29] Teen court programs are based on similar programs implemented throughout the nation.[30] These programs have been initiated in twenty-five states.[31] Typically, in such a program, a juvenile defendant who has previously plead guilty, *nolo contendre*, or "responsible" appears before a jury of his or her peers for sentencing.[32] While individual programs differ, often the only adult participants are a volunteer attorney acting as judge and a juvenile officer acting as bailiff. Teenagers assume the role of other court personnel as well as jurors.[33] After the admitted offense is read, a teen jury will typically listen to testimony regarding the offense and return with a recommended

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UNITED STATES 18 (1978)).

28. *Id.* (citing PHYLLIDA PARSOLE, JUVENILE JUSTICE IN BRITAIN AND THE UNITED STATES 18 (1978)) (stating that "[t]he typical juvenile court proceeding 'serves the purpose of a degradation ceremony'").

29. Programs exist in many communities in Illinois, such as Round Lake and Hoffman Estates. *See* Joan Giangrasse Kates, *Administrator Is Sought for Teen Court*, CHI. TRIB., July 24, 1995, § 2, at 3; Julie Schwarzbach, *Round Lake Area Teen Court Program Proposal*, at 9 (May 10, 1995).

30. *See, e.g.*, David J. Chaffee, *Teen Court: Empowering Teens to Judge Teens*, 22 COLO. LAW., Nov. 12, 1993, at 2521 (discussing a teen court program in Denver, Colorado). The teen court program in Denver, sponsored by the Denver Bar Association, is based on the successful teen court model in Odessa, Texas. *Id.*

31. ABA statistics report that there are presently 246 teen courts, youth courts, student courts, and peer court programs in 25 states, including: Alaska (2), Arkansas (1), Arizona (16), California (21), Colorado (12), Florida (25), Georgia (1), Hawaii (1), Iowa (3), Idaho (4), Illinois (3) (ABA statistics fail to report all programs presently operating in Illinois), Indiana (10), Kansas (1), Kentucky (5), Louisiana (4), Massachusetts (1), Michigan (3), Missouri (9), North Carolina (7), Nebraska (1), New Mexico (19), Nevada (2), New York (18), Ohio (2), Oklahoma (5), Oregon (6), Pennsylvania (4), South Carolina (1), South Dakota (1), Texas (51), Utah (6), and Vermont (1). SPECIAL COMMITTEE ON YOUTH EDUCATION FOR CITIZENSHIP, ABA, TEEN COURT, STUDENT COURT, YOUTH COURT, AND PEER JURY PACKET (Aug. 9, 1995).

32. *See* Frederic B. Rodgers, *How to Create and Conduct a Teen Court Program*, 34 JUDGES' J., No. 3, at 16, 18 (1995) (discussing how young teen court defendants learn about their responsibilities to the community and become accountable to their schools, neighborhoods, and their peers).

33. In some programs, teens will assume the role of prosecuting attorney, defense attorney, and in some limited instances, judge(s). Tracy Godwin, *Teen Courts: Empowering Youth in Community Prevention and Intervention Efforts*, PERSPECTIVES, Winter, 1996, at 20.

sentence for the minor offender.[34] Teen court programs instituted in various jurisdictions in both Illinois and throughout the United States report successful results.[35] Further, the American Bar Association House of Delegates, by Resolution, has recommended adoption of such programs.[36]

The philosophy underlying the teen court program is that teenagers are less likely to run afoul of the law if they are involved in a judicial proceeding that exerts positive peer pressure in an educational setting.[37] Further, offending teens are less likely to become involved in illegal activity after participating in a judicial process in which their peers determine the sentence.[38] Lastly, proponents of teen court emphasize, these programs are aimed at promoting feelings of self-esteem, motivation for self-improvement, constructive attitudes toward authority, and responsibilities of citizenship—all feelings which discourage future criminal and self-destructive behavior.[39]

A. Statutory Basis of Program

While Illinois does not have a statute specifically authorizing the teen court program, some have asserted that Illinois' Juvenile Code implicitly sanctions such a program.[40] Whether characterized as a

34. For a discussion of common teen court sentencing procedures, see Rodgers, *supra* note 32 and accompanying text; *see also infra* Part III.E.

35. *See* Chris Patterson, *Bay County Bar Forwards Teen Court as Juvenile Sanction Alternative*, 69 FLA. B.J. 95 (1995) (discussing the serious problems posed by repeat juvenile offenders in a local Florida judicial circuit and the "positive" and "dramatic" results realized through the Bay County teen court program).

36. The Recommendation adopted by the ABA House of Delegates reads:

> RESOLVED, That the American Bar Association encourages state and territorial legislatures, court systems and bar associations to support and assist in the formation and expansion of diversionary programs, known as Youth Courts, where juvenile participants, under supervision of volunteer attorneys and advisory staff, act as judges, jurors, clerks, bailiffs, and counsel for first time juvenile offenders who are charged with misdemeanors and consent to the program.

SPECIAL COMMITTEE ON YOUTH EDUCATION FOR CITIZENSHIP, ABA, TEEN COURT, STUDENT COURT, YOUTH COURT, AND PEER JURY PACKET (Aug. 9, 1995).

37. *See* Godwin, *supra* note 33, at 20 (listing the objectives of teen court).

38. *See* Rodgers, *supra* note 32, at 18 (noting that teen jurors learn about "the importance of devising a fair, constructive sentence" and about applying the principals of deterrence, rehabilitation, victim restitution, and punishment).

39. *See* Moran, *supra* note 4, at 7 (stating the objective of the juvenile justice system: "To stop illegal conduct, bring behavior into conformity with the law, and advance generally accepted moral principles").

40. *See* 705 ILL. COMP. STAT. 405/1-3(15) (West Supp. 1996), 705 ILL. COMP. STAT. 405/5-6 (West 1993). While Illinois does not have a statute expressly authorizing a teen court type program, some jurisdictions, such as Texas, do have such a statute. *See*,

"station adjustment," "community service," or "other appropriate action," the Code seemingly sanctions the operation of the teen court program. For example, the Illinois Juvenile Code defines a "station adjustment" as an "informal handling of an alleged offender by a juvenile police officer."[41] This definition, in connection with chapter 705, section 405/5-6 of the Illinois Code may allow for the teen court program. Section 405/5-6 provides in relevant part:

> (3) The juvenile police officer may take one of the following actions:
>
> (a) station adjustment with release of the minor;
>
> (b) station adjustment with release of the minor to a parent;
>
> (c) station adjustment, release of the minor to a parent, and referral of the case to community services;
>
> (d) station adjustment, release of the minor to a parent, and referral of the case to community services with informal monitoring by a juvenile police officer;
>
> (e) station adjustment and release of the minor to a third person pursuant to agreement of the minor and parents;
>
> (f) station adjustment, release of the minor to a third person pursuant to agreement of the minor and parents, and referral of the case to community services;
>
> (g) station adjustment, release of the minor to a third person pursuant to agreement of the minor and parent, and referral to community services with informal monitoring by a juvenile police officer;
>
> (h) release of the minor to his or her parents and referral of the case to a county juvenile probation officer or such other public officer designated by the court;

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e.g., TEX. CRIM. P. CODE ANN. § 45.55 (West Supp. 1997). The Texas statute provides in pertinent part:

> (a) A justice or municipal court may defer proceedings against a defendant who is under the age of 18 or enrolled full time in an accredited secondary school in a program leading toward a high school diploma for 90 days if the defendant:
>
> (1) is charged with a misdemeanor punishable by fine only or a violation of a penal ordinance of a political subdivision, including a traffic offense punishable by fine only;
>
> (2) pleads nolo contendre or guilty to the offense in open court with the defendant's parent, guardian, or managing conservator present;
>
> (3) presents to the court an oral or written request to attend a teen court program; and
>
> (4) has not successfully completed a teen court program in the two years preceding the date that the alleged offense occurred.

Id.

41. 705 ILL. COMP. STAT. ANN. 405/1-3(15) (West 1993).

. . . .

(k) any other appropriate action with consent of the minor and a parent.[42]

A teen court program is likely permitted under the aegis of the above statutory sections, given the broad language.

B. Benefits of Program

Promoters of the teen court initiative assert that such programs accomplish numerous goals for both the minor offender and the teen volunteers.[43] First, the programs encourage a sense of responsibility and awareness of the consequences of criminal behavior.[44] Second, by virtue of its nature as a legal proceeding operated solely by and for teens, teen court imparts a positive attitude and respect for law and authority.[45] Third, it familiarizes teens with the positive aspects of the legal justice system.[46] Fourth, teen court educates as well as provides an opportunity for juvenile offenders to develop and sharpen interpersonal and communication skills required of productive members of society.[47] Fifth, the availability of teen court reduces the caseload in courts handling minor violations.[48] Sixth, teen court

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42. 705 ILL. COMP. STAT. 405/5-6 (West 1993).

43. *See* Moran, *supra* note 4, at 7. Judge Moran discusses how "peer pressure" can be an effective deterrent to crime. *Id.* When used as a positive force "'peer pressure' can assist parents, law enforcement, and the courts in preventing criminal behavior, and aid in rehabilitating those youths who have committed criminal acts." *Id.* For the benefits of "peer pressure" to be realized, however, "juveniles must be brought into the juvenile justice system in capacities other than perpetrators and defendants." *Id. See also* Rodgers, *supra* note 32, at 17-18.

44. *See* Chaffee, *supra* note 30, at 2522 (illustrating the positive effects of teen court through the story of Shawna Mattison). Shawna Mattison performed every role in the teen court program and states that the program inspired her to pursue a career in the law. *Id.*

45. *See* Moran, *supra* note 4, at 7 (discussing the need for a more community inclusive juvenile justice system). As Moran notes:

> In our present juvenile justice system, laws are made by adults, enforced and adjudicated by adults, and punishments are inflicted by adults. Unfortunately, the system does not reflect that everyone, including juveniles, has a responsibility to control crime, and a direct duty to assert and impress on fellow citizens, regardless of age, the necessity of obeying the law.

Id. Bearing this in mind, positive peer pressure must be employed by the juvenile justice system to convey to today's youths the message that criminal activity is as offensive to young people as it is to adults. *Id.*

46. Carol Jones, *Routes for Youth, Santa Rosa, California—Teen Court Evaluation of 1994 Activities and Goals: Characteristics, Backgrounds and Outcomes of Program Referrals* at 3 (June 1995). *See also* Schwarzbach, *supra* note 29, at 1.

47. *See* Godwin, *supra* note 33, at 20.

48. Stacey Colino, *Welcome to Teen Court*, CAL. LAWYER, February, 1991, at 34.

provides exposure to the realities and consequences of the judicial system.[49] Finally, teen court allows teens to evaluate the proper punishment for an offense.

Nationally, many teen court programs report low recidivism rates. For example, in Odessa, Texas where the traditional juvenile justice program reports a recidivism rate of 30% to 50%, the teen court program reports a recidivism rate of less than 5%.[50] In Hoffman Estates, Illinois, the local police department reports that in 1993, 95% of juveniles involved in the program did not become repeat offenders.[51] Also from 1993, Gila County, Arizona, reports a recidivism rate of less than 12%, and Montgomery, Indiana, reports a recidivism rate between 10% and 15%.[52] Lastly, Anchorage, Alaska and Denver, Colorado, report rates of less than 4% and 15%, respectively.[53] While the reader is cautioned that such programs diversely define "recidivism,"[54] these results are certainly encouraging.

Teen court programs have also earned an impressive record in disposing of cases. In Odessa, Texas, a chosen peer jury will hear between 15 and 20 cases on a given night.[55] In fact, since the Odessa program's inception, 8,000 teens have been referred and over 80,000 hours of community service have been performed.[56] Similarly, the teen court program in Saginaw, Michigan reports docketing between 300 to 400 teen court cases per year.[57] In general, several court systems have acknowledged that their teen court programs alleviate some of the unmanageable pressure burdening the juvenile courts.[58]

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49. *ABA Special Committee on Youth Education for Citizenship, Teen Courts: What They Are and What They Do*, 13 LRE REP. 5 (Winter 1992) [hereinafter LRE REP.].

50. *More Teens Now Judged by Peers*, CHI. TRIB., Dec. 21, 1994, at 22.

51. *See* Schwarzbach, *supra* note 29, at 9.

52. Deborah Williamson et al., *Teen Court: Juvenile Justice for the 21st Century?*, 57 FED. PROBATION, June 1993, at 54.

53. *See* LRE REP., *supra* note 49, at 5.

54. *See* Schwarzbach, *supra* note 29, at 9; Godwin, *supra* note 33, at 20-21.

55. Letter from Tammy Hawkins, court coordinator of Odessa, Texas, to the author (on file with the author). In the letter, Tammy Hawkins writes in part:

> Odessa Teen Court, Inc., defines success for the program by the low recidivism rate—which is between 2%-5%. Measuring success of the program's contribution to the community constitutes the youth themselves. These youth have learned that when laws are broken, punishment is a consequence. But even with punishment in the form of hours to serve and jury duties to perform, the youth has contributed to his/her community.

Id.

56. *Id.*

57. Mary Church, *Teen Juries Levy Pertinent Penalties on Their Peers*, SAGINAW NEWS, Nov. 10, 1991, at 2C.

58. *See* Colino, *supra* note 48, at 34.

C. *Eligibility*

Typically, teen court programs allow offenders from 10 to 18 years old to participate,[59] although some programs will process children as young as 7 and as old as 19.[60] Often, the decision to refer a case will be made by the charging authority, such as a police department, sheriff's office, school authority, or juvenile court.[61] As stated, these minors will have already admitted guilt in some form.[62] Further, eligible offenders ordinarily need to have parental consent, and typically, a participant cannot be a repeat offender.[63]

The flexibility of teen court programs is evidenced by the wide variety of offenses that many of them have addressed.[64] In one program, for example, eligible offenses include vandalism, trespass, burglary, petty theft, assault, arson, dangerous weapons, theft, drug violations, disturbing the peace, and stolen property.[65] Other programs address school misconduct[66] and minor felonies.[67] In addressing a broad spectrum of juvenile offenses, teen court programs aim to chill delinquent conduct at its earliest stage.

D. *Schedule of Proceedings*

Ordinarily, to initiate teen court proceedings, a minor who has admitted guilt is referred by a police department, sheriff's office, school district, or juvenile court.[68] While each program has unique procedures, many of the programs contain common elements.

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59. *See* Chaffee, *supra* note 30, at 2522 (noting that all of the participants of the Denver teen court program are recruited from the Denver public schools from the eighth through twelfth grades).

60. *See* Godwin, *supra* note 33, at 22.

61. *See, e.g.*, Rodgers, *supra* note 32, at 20 (discussing how various law enforcement agencies refer youthful offenders to teen court programs). "Officers who wish to refer a case to Teen Court annotate summons and complaint forms with a request that Teen Court be considered by the assistant district attorney reviewing the case." *Id.*

62. *See supra* text accompanying note 32.

63. Carol Jones, *Teen Court, Evaluation of 1994 Activities and Goals/Routes for Youth, Santa Rosa, California*, (June 1995). Some teen court programs even allow repeat offenders to participate. *Id.*

64. *See, e.g.*, Chaffee, *supra* note 30, at 2521 (noting that most teen court cases involve shoplifting and fighting). Only offenses which are considered violations against the municipal code are heard in the Denver teen court program. *Id.*

65. *Id.*

66. *See Peer Pressure Puts Teens on the Right Track*, JUDICIAL FORUM (Florida), August 1990, at 4.

67. *Id. See also* LRE REP., *supra* note 49, at 5 (noting that the teens referred to the program have been cited or arrested for such offenses as minor misdemeanors, traffic violations, serious violations of school policy, and minor felonies).

68. *See supra* note 61 and accompanying text.

Typically, the proceedings begin when the peer jury is sworn-in, the attorneys are introduced, and the judge reads the charge.[69] Next, the prosecution and the defense each deliver an opening statement, followed by the direct and cross-examination of witnesses.[70] Thereafter, the peer jury is given instructions on the proceedings and the minor offender takes the witness stand to be questioned by members of the jury.[71] In Crawford County, peer jurors are provided a list of suggested questions.[72] After concluding testimony, a final instruction is given by the judge, and lastly, a recommended sentence is issued by the jury.[73]

Some programs have adopted rather unconventional procedures. In Saginaw County, Michigan, for example, a peer jury is allowed to question parents in attendance.[74] In Crawford County, Michigan, a peer jury is allowed to question the minor offender both in and out of the presence of the offender's attending parents.[75]

E. Sentence

Peer juries commonly issue traditional punishments, including future participation as a teen court juror, financial restitution, counseling, in-house detention, and community service.[76] Many teen court juries also creatively tailor the sentence to the circumstances of the offending minor. For example, peer juries often require the minor offender to write a letter of apology or an extensive essay concerning the offense.[77] In one case, where a peer jury found that a parent failed

69. *See* JUDICIAL FORUM, *supra* note 66, at 4.

70. *Id.*

71. *See* John Hunter, *The Teen Jury Program in the Crawford County Probate Court*, COLLEAGUE, Oct. 1990, at 12.

72. *Id.* at 10. *See also* Rodgers, *supra* note 32, at 42 (discussing the typical forms of evidence and the procedures for introduction of evidence in teen court trials). Evidence is ordinarily in the form of oral testimony and written statements. *Id.* Defense may submit two letters of support and prosecution may submit a victim statement or letter from a school official. *Id.* Live witnesses who voluntarily agree to attend the hearing may be called to testify under oath, but no witnesses will be compelled to testify or attend Teen Court proceedings. *Id.*

73. *See* Hunter, *supra* note 71, at 10 (discussing the proceedings in Crawford County teen court).

74. *See* Church, *supra* note 57, at 2C.

75. *See* Hunter, *supra* note 71, at 11. For a discussion of the forms, agreements, consents, worksheets, sentence limits, descriptions of duties of prosecutor and defender, scripts, verdict forms, referrals, subpoenas, and orders used in the Westminster teen court in Colorado, see Rodgers, *supra* note 32, at 42. For an example of transcripts of proceedings from the Westminster teen court, see Rodgers, *supra* note 32, at 43.

76. *See* LRE REP., *supra* note 49, at 5.

77. *See* Church, *supra* note 57, at 2C.

to spend sufficient time with the offender, the parent was required to spend at least one hour a day with the minor offender.[78] Several of the programs are thus quite sophisticated in their approach to sentencing. In many instances, the jurors work off of predetermined sentencing guidelines.

Compliance with the sentence is normally monitored by a teen court coordinator. Ordinarily, if the teen completes the program, he or she will not acquire a permanent record.[79] However, in many jurisdictions, if the teen fails to comply with the sentence, the matter will be transferred to the regular court system. Some teen court programs, prior to proceedings, warn the charged offender against retribution toward peer jurors. In Crawford County, for example, the teen court program addresses the jurors' concern of offender retribution by warning the offender that any such retribution would be immediately referred to the local prosecuting authority for a potential criminal investigation.[80]

IV. PARENTAL RESPONSIBILITY ORDINANCES

Another response to the rise in juvenile crime is parental responsibility ordinances.[81] In general, these ordinances punish parents for the misdeeds of their children.[82] Illinois communities are included among the several municipalities which have enacted forms of these laws.[83]

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78. *See* Hunter, *supra* note 71, at 12.

79. *See* Colino, *supra* note 48, at 34.

80. *See* Hunter, *supra* note 71, at 11.

81. *See* Kate Griffin, *Towns Looking at Parental Responsibility*, CHI. TRIB., Oct. 27, 1994, § 2, at 7. Parental responsibility ordinances have been enacted in Arlington Heights, Mt. Prospect, Glencoe, Wilmette, and other communities in Illinois. *Id.* In addition, in June, 1994, a model parental responsibility ordinance was drafted by the Northwest Municipal Conference, an association of 35 municipalities and townships. *Id.* The ordinance holds parents responsible for the actions of minors who drink in the parents' home or cars, even if the parents are not present. *See* Christi Parsons & Andrew Martin, *Party's Over, Even for Parents*, CHI. TRIB., Oct. 1, 1994, at 1.

82. Naomi R. Cahn, *Pragmatic Questions About Parental Liability Statutes*, 1996 WIS. L. REV. 399, 401 (1996). *See generally* Michelle L. Casgrain, *Parental Responsibility Laws: Cure for Crime or Exercise in Futility?*, 37 WAYNE L. REV. 161 (1990); Howard Davidson, *No Consequences—Re-examining Parental Responsibility Laws*, 7 STAN. L. & POL'Y REV. 23 (1995-96); Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, NOTRE DAME J.L. ETHICS & PUB. POL'Y 303 (1991); Kathryn J. Parsley, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of their Children*, VAND. L. REV. 441 (1991).

83. *See* Griffin, *supra* note 81, at 7.

Although these ordinances generally penalize a parent for knowing or willful participation in the child's infraction, some Illinois municipalities have recently passed ordinances that vicariously impose criminal liability where the parent has minimal or no knowledge of the minor's actions.[84] In light of increased juvenile crime, it is understandable that policymakers have turned to parents to guard against delinquency.[85] However, the nature of some of these enactments leave them vulnerable to legal challenge.[86]

A. Background

Parental responsibility laws have been in existence since the early 1900s.[87] Although all fifty states have laws that impose civil fines on parents for juvenile misdeeds, only Kentucky, Louisiana, Missouri, New York, Ohio, Oregon, and Wyoming currently impose criminal sanctions on parents who fail to control or supervise their childrens' behavior.[88] In Illinois, however, some communities have enacted local parental responsibility ordinances.[89] One stated purpose is "to oblige parents to control their children to prevent intentional harm to others."[90]

In the past several years, local authorities have enacted ordinances designed to motivate parents to exercise greater control over the activities of their children.[91] Recent local ordinances not only impose liability on parents for their "knowing" and "willful" participation in a particular misdeed, but also impose liability for less culpable mental states.[92] These laws are an understandable response to recent surges

84. *See, e.g.*, AURORA, ILL., CODE OF ORDINANCES § 29-1 (1996).

85. *See* Karl Zinsmeister, *Parental Responsibility and the Future of the American Family*, 77 CORNELL L. REV. 1005, 1009 (1992) (advocating the passing and enforcement of laws giving parents greater accountability for the actions of their minor children).

86. *See infra* Parts IV.B-C.

87. *See* Irving A. Gladstone, *The Legal Responsibility of Parents for Juvenile Delinquency in New York State: A Developmental History*, 21 BROOK. L. REV. 172, 173 (1955).

88. Michael Dizon, *Parental Criminal Liability Plans Walk a Fine Line*, CHI. TRIB., June 19, 1996, at 1. In Illinois, state legislators have recently pushed for the enactment of a state law making parents criminally liable for a broad spectrum of crimes committed by their children. *Id.*

89. *See, e.g.*, PALATINE, ILL., CODE OF ORDINANCES ch. 12, art. XVIII, §§ 12-268 to 12-271 (1996); MOUNT PROSPECT, ILL., CODE OF ORDINANCES § 23.601 (1996).

90. Robison v. First State Bank, 495 N.E.2d 637, 639 (Ill. App. 3d Dist. 1986).

91. *See, e.g., Should Good Parents Be Jailed When Bad Children Break Laws*, JET, June 27, 1994, vol. 86 (num. 8), at 14; John Leo, *Punished for the Sins of the Children*, U.S. NEWS & WORLD REPORT, June 12, 1995, vol. 118 (num. 23), at 18.

92. *See* PALATINE, ILL., CODE OF ORDINANCES ch. 12, art. XVIII, § 12-268 (1996);

in juvenile crime.[93] However, the inherently attenuated nature of vicarious liability leaves them susceptible to legal challenge.

Commentators have suggested various legal challenges to parental responsibility laws.[94] These challenges include issues of overbreadth,[95] Eighth Amendment protections (against cruel and unusual punishment),[96] equal protection,[97] vicarious criminal liability,[98] vagueness,[99] and substantive due process.[100] The following sections will consider the latter two challenges to recent ordinances—vagueness and substantive due process.[101]

B. Vagueness

One challenge to parental responsibility ordinances is the "void-for-vagueness" doctrine.[102] This doctrine mandates that a criminal law must be struck down as void if it is so vague that "'men of common intelligence must necessarily guess at its meaning and differ as to its application.'"[103] A vagueness challenge is grounded in the Due Process Clauses of the Fifth and Fourteenth Amendments.[104] The purpose of this doctrine is, *inter alia*, to prevent the arbitrary and discriminatory enforcement of unclear laws.[105]

AURORA, ILL., CODE OF ORDINANCES § 29-27 (1996).

93. Interestingly, very few parents have been charged under these laws, leading some to speculate that the laws are intended to be educational rather than punitive. Parsons & Martin, *supra* note 81, at 1.

94. *See, e.g.*, S. Randall Humm, *Criminalizing Poor Parenting Skills as a Means to Contain Violence By and Against Children*, 139 U. PA. L. REV. 1123, 1138 (1991) (quoting Connally v. General Constr. Co., 269 U.S. 385, 391 (1926)); Parsley, *supra* note 82, at 448-59.

95. *See* Catherine Clements, Williams v. Garcetti*: The Constitutionality of Holding Parents Criminally Liable for the Acts of Their Children*, 25 GOLDEN GATE U. L. REV. 417, 431-33 (1995).

96. *See* Penelope D. Clute, *"Parental Responsibility" Ordinances—Is Criminalizing Parents When Children Commit Unlawful Acts a Solution to Juvenile Delinquency?*, 19 WAYNE L. REV. 1551, 1566-67 (1973).

97. *Id.* at 1567-68.

98. *See* Toni Weinstein, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 863-66 (1991).

99. *See* Parsley, *supra* note 82, at 448-59.

100. *Id.* at 459-71.

101. *See infra* Parts IV.B and IV.C.

102. *See* Cahn, *supra* note 82, at 412-13.

103. Humm, *supra* note 94, at 1138 (quoting Connally v. General Constr. Co., 269 U.S. 385, 391 (1926)).

104. *Id.*

105. *See* Cahn, *supra* note 82, at 412.

In *Grayned v. City of Rockford*,[106] the Supreme Court noted that vague laws are offensive for several reasons.[107] First, such laws fail to give the person of ordinary intelligence a reasonable opportunity to conform their behavior.[108] Second, vague laws, by failing to express explicit standards, are subject to arbitrary and discriminatory enforcement.[109] Third, such laws tend to inhibit protected freedoms.[110]

Illinois courts have examined the "void-for-vagueness" doctrine as well.[111] In Illinois, courts have held that to be unconstitutionally vague, a statute must be so indefinite, and so ill-defined, that people must guess at its meaning.[112] For example, Illinois' Second Appellate District has held that "a statute is unconstitutionally vague on its face only if it provides no standard of conduct at all, meaning that the ambiguity is so pervasive that the statute is incapable of any valid application."[113]

The ill-defined nature of some recent parental responsibility ordinances leaves them susceptible to a vagueness challenge.[114] For example, an ordinance recently enacted in Palatine, Illinois, seeks to broaden the net of parental liability by diminishing the quantum of knowledge necessary to impose liability.[115] Under the Palatine ordinance, the term "knowingly" is defined as "[h]aving general knowledge of, or reason to know, or a belief or ground for belief which warrants further inquiry or inspection."[116] The Palatine

106. 408 U.S. 104 (1972).

107. *Id.* at 108.

108. *Id.*

109. *Id.* at 108-09.

110. *Id.* at 109. The *Grayned* court noted that "[u]ncertain meanings inevitably lead citizens 'to steer for wider of the unlawful zone' . . . than if the boundaries of the forbidden were clearly marked." *Id.* (quoting Baggett v. Bullitt, 377 U.S. 360, 372 (1964) (quoting Speiser v. Randall, 357 U.S. 513, 526 (1958))).

111. *See, e.g.*, People v. Blackorby, 586 N.E.2d 1231, 1239 (Ill. 1992); People v. R.G., 546 N.E.2d 533, 549 (Ill. 1989).

112. *See Blackorby*, 586 N.E.2d at 1233; *see also R.G.*, 546 N.E.2d at 549 (recognizing that "[a] legislative enactment is unconstitutionally vague if its terms are so indefinite that persons of common intelligence must necessarily guess at its meaning and application").

113. People v. Sonntag, 605 N.E.2d 1064, 1069 (Ill. App. 2d Dist. 1992).

114. *See infra* notes 115-21 and accompanying text.

115. PALATINE, ILL, CODE OF ORDINANCES ch. 12, art. XVIII, § 12-268(2) (1996) (defining knowingly as "a belief or ground for belief which warrants further inquiry or inspection.").

116. *Id.* For an identical definition of "knowingly" see MOUNT PROSPECT, ILL, CODE OF ORDINANCES art. IV., § 23-601 (1996). *See also* People v. Herr, 409 N.E.2d 442 (Ill. App. 2d Dist. 1980) (holding that a person acts knowingly "when he is consciously

ordinance further broadens parental liability by declaring it to be unlawful for a parent "to knowingly or negligently act, or fail to act, in such a manner as to facilitate or contribute to any violation or attempted violation of any state law or municipal ordinance by said minor."[117] Under this ordinance, a parent may be held liable for unknowingly failing to act. The questionable ability of such nebulous standards to apprise parents of their legal obligations,[118] however, makes the ordinances exceedingly vulnerable to a vagueness challenge.[119]

Ordinances such as Palatine's may be vulnerable to a vagueness objection for failing to guide parents as to their legal obligation. The Palatine ordinance's requirement that parents act where they have "knowledge . . . which warrants further inquiry" may be challenged on the basis that such a standard does not unambiguously convey when a parental obligation is triggered.[120] Rather, the expressed

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aware that his conduct is practically certain to cause the result"). *See also* 720 ILL. COMP. STAT. ANN. 5/4-5 (West 1993 & Supp. 1996) (defining knowledge as when the actor is consciously aware that his conduct is of such a nature as to meet the circumstances defined in the offense).

117. PALATINE, ILL., CODE OF ORDINANCES ch. 12, art. XVIII, § 12-269. Section 12-269 provides in full:

> It shall be unlawful for any parent or legal guardian of an unemancipated minor residing with said parent or legal guardian to knowingly allow or to knowingly permit said minor to violate or attempt to violate any state law or municipal ordinance or to knowingly or negligently act, or fail to act, in such a manner as to facilitate or contribute to any violation or attempted violation of any state law or municipal ordinance by said minor.

Id.

118. *Id.* Section 12-270 of the Palatine Ordinance outlines the liability of a parent or legal guardian of a minor offender:

> Subject to the conditions contained in 12-269 the parent or legal guardian of an unemancipated minor who has custody of such minor shall be jointly and severally liable for any fine, condition or reparation imposed by a court, and for full restitution to any injured or damaged party or parties for the willful or malicious acts of said minor child provided that said amount shall not exceed $1,000; provided however, that said parent or legal guardian has been served with a summons or notice to appear and written notice setting forth the charges against said minor child in the original cause as provided by law.

Id. at § 12-270.

119. The New Hampshire Supreme Court in *State v. Akers*, for example, struck down a similar parental responsibility ordinance as unconstitutionally vague. 400 A.2d 38, 40 (N.H. 1979) (invalidating N.H. REV. STAT. ANN. § 269-C:24 IV (Supp. 1977)). The statute provided that "parents . . . will be responsible . . . for any violations of this chapter by any person under the age of 18." *Akers*, 400 A.2d at 39. The court held that this language violated due process because it failed to specifically identify acts which would lead to criminal liability. *Id.* at 40. *See also* Cahn, *supra* note 82, at 412 (discussing *Akers*, 400 A.2d at 40).

120. *See* PALATINE, ILL., CODE OF ORDINANCES ch. 12, art. XVIII, § 12-268. *See also supra* note 102-10 (discussing the void for vagueness doctrine).

standard requires the parent to guess what behavior compels further inquiry. Potentially, then, parents may be held liable for their child's actions when their knowledge is entirely attenuated from those actions. In light of the United States Supreme Court and Illinois decisions discussed above,[121] the Palatine ordinance could very well fail if challenged on vagueness grounds.

C. Substantive Due Process

An expansive parental responsibility ordinance also risks being challenged as violative of the substantive due process provisions of the United States Constitution and the Illinois Constitution.[122] This risk exists because many of these ordinances, as written, may infringe upon parents' fundamental right to raise their children.[123]

Since *Meyer v. Nebraska,*[124] the United States Supreme Court has recognized the paramount significance of parents' right to "establish a home and bring up children."[125] Although somewhat amorphous, this fundamental right has nonetheless been referenced in various Supreme Court cases.[126] In *Pierce v. Society of Sisters,*[127] for example, the Supreme Court recognized that parents "have the right, coupled with the high duty, to recognize and prepare [a child] for additional obligations."[128] Additionally, in *Prince v. Massachusetts,*[129] the Court explained that "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."[130] Several years later, in *Griswold v.*

121. *See supra* notes 106-13 and accompanying text.

122. *See* Parsley, *supra* note 82, at 459. The author points out that while vagueness challenges to parental liability statutes are more common, a substantive due process challenge may be more likely to succeed. *Id.* The Illinois due process clause is located at ILL. CONST. art. I, § 2.

123. *Id. See also* Cahn, *supra* note 82, at 414-15 (stating that parental liability statutes may "offend substantive due process because they impinge on a fundamental right . . . the parent-child relationship").

124. 262 U.S. 390 (1923).

125. *Id.* at 399.

126. *See infra* notes 127-39 and accompanying text. The Supreme Court has rarely directly addressed the parental right to raise children. *See* Parsley, *supra* note 82, at 462. However, the Court "has continued to recognize the fundamental nature of parental rights in a variety of other situations." *Id.*

127. 268 U.S. 510 (1925).

128. *Id.* at 535.

129. 321 U.S. 158 (1944).

130. *Id.* at 166.

Connecticut,[131] the Supreme Court affirmed *Meyer* and *Pierce*,[132] and, in *Stanley v. Illinois*,[133] the Court stated that "[t]he integrity of the family unit has found protection in the Due Process Clause of the Fourteenth Amendment."[134]

More recently, in *Bellotti v. Baird*,[135] the Supreme Court reaffirmed its commitment to parental rights and declared that "deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children."[136] Later, in *Lassiter v. Department of Social Services*,[137] the Court made plain that parental rights deserve deference "absent a powerful countervailing interest."[138] In short, the Supreme Court has clearly and consistently recognized the fundamental nature of parental rights.[139]

Given that the parental right is a fundamental right,[140] in order to pass constitutional muster a parental responsibility municipal ordinance must satisfy a two-step analysis.[141] The first part requires that the statute further a compelling state interest.[142] The second part mandates that the ordinance be narrowly tailored to achieve that compelling interest.[143] Applying this analysis, an expansive parental responsibility ordinance most likely will satisfy the first consideration.[144] However, there is some question as to whether the

131. 381 U.S. 479 (1965).

132. *Id.* at 483.

133. 405 U.S. 645 (1972).

134. *Id.* at 651.

135. 443 U.S. 622 (1979).

136. *Id.* at 638.

137. 452 U.S. 18 (1981).

138. *Id.* at 27 (quoting Stanley v. Illinois, 405 U.S. 645 (1972)).

139. *See* Parsley, *supra* note 82, at 462-63.

140. *See supra* text accompanying notes 124-39.

141. *See* Parsley, *supra* note 82, at 459. *Cf. Stanley*, 405 U.S. at 652 (discussing a state's goals and the means used to achieve them in the context of a fourteenth amendment challenge to a state procedure terminating parental rights).

142. *See* Parsley, *supra* note 82, at 459. *Cf. Stanley*, 405 U.S. at 652 (stating that "removing [a child] from the custody of his parents...when his welfare or safety . . . cannot be adequately safeguarded" is a "legitimate interest[ ]").

143. *See* Parsley, *supra* note 82, at 459. *Cf. Stanley*, 405 U.S. at 652 (stating "we are here not asked to evaluate the legitimacy of the state ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible").

144. *See* Parsley, *supra* note 82, at 465 (commenting that the "state's compelling interest for [parental liability statutes] is the protection of society from the wrongful acts of children").

"means" are sufficiently tailored to the "ends" to survive the second prong of the test.[145]

By imposing vicarious liability on a parental guardian, a municipality seeks to protect society from the wrongful and harmful acts of children, as well as to protect the child who is inclined to commit these acts.[146] This dual interest is the basis for many, if not all, such statutes. The Supreme Court, when considering a similar interest, found it to be compelling.[147] In *Parham v. J.R.*,[148] the Court acknowledged that a state can constitutionally control parental discretion in situations where the physical or mental health of a child is jeopardized.[149] An ordinance designed to discourage minors from undertaking illicit acts could thus be regarded as serving a compelling state interest.

Although the protection of society and children is decidedly a compelling interest, there is some debate as to whether vicarious liability imposed upon parents is ever sufficiently tailored to meet its intended goal.[150] Little information exists on the benefits of such laws. Furthermore, several authorities reviewing this issue maintain that such laws do not appreciably reduce juvenile crime.[151] For example, a study conducted during the 1960s by the Department of Health, Education, and Welfare indicates that the sixteen states that had enacted civil parental responsibility laws had slightly higher crime rates than those states without similar laws.[152]

Other commentators also have argued that parental responsibility laws do not appreciably curb juvenile delinquency.[153] For example, a

145. *See* Parsley, *supra* note 82, at 467-71.

146. *See supra* note 142.

147. *See* Parham v. J.R., 442 U.S. 584 (1979).

148. 442 U.S. 584 (1979).

149. *Id.* at 603; *see also* Wisconsin v. Yoder, 406 U.S. 205, 228-29 (1972) (holding that mandatory state school attendance laws would not be enforced on Amish teens where the Amish tradition was to keep teens on the farm until age 16 and no evidence of health endangerment was found).

150. *See supra* notes 140-45 and accompanying text (discussing the two step analysis).

151. *See infra* notes 153-55 and accompanying text.

152. Alice B. Freer, *Parental Liability for Torts of Children*, 53 KY. L.J. 254, 264-65 (1964) (citing a 1963 study by the Juvenile Delinquency Studies Branch, Division of Research, Children's Bureau, Welfare Administration, Department of Health, Education and Welfare, on the effectiveness of parental civil liability laws). *But see Town in Wisconsin Debates Fining Parents of Delinquents*, CHI. TRIB., Sept. 3, 1995, § 6 at 8. In Silverton, Oregon, where parents may be prosecuted after their child has two violations within a six-month period, reports a 53% drop in juvenile crime since the parental responsibility laws enactment. *Id.*

153. *See infra* notes 154-56.

1948 study conducted by a Toledo, Ohio judge on the efficacy of Toledo's parental responsibility ordinance asserts that punishing parents has no effect on reducing juvenile delinquency.[154] Lastly, many courts have even rejected the presumption that parental influence is an overriding cause of juvenile misconduct.[155] Thus, the belief that parental actions are directly responsible for juvenile delinquency, an assertion upon which parental responsibility laws are based, has found little support among courts and secondary authorities.[156]

Various experts agree, however, that a number of factors contribute to juvenile delinquency.[157] These factors include drug abuse, school failure, inadequate family relationships, antisocial values, child abuse, and association with delinquent peers.[158] In light of these factors, many commentators have questioned whether parental responsibility ordinances accomplish their intended goal.[159] As such, these ordinances may very well be struck down if faced with a substantive due process challenge.

V. JUVENILE CURFEWS

In light of the long and extensive history of juvenile curfew legislation,[160] it is paradoxical that curfew laws are discussed as a

154. *See* Parsley, *supra* note 82, at 467-68 (citing Judge Paul Alexander, *What's This About Punishing Parents?*, 12 FED. PROBATION 23 (1948)). According to Parsley, Judge Alexander reviewed 1027 cases, 500 of which involved parents as defendants. *Id.* at 467 n.217.

155. *See, e.g.*, Doe v. Trenton, 362 A.2d 1200, 1203 (N.J. Super. Ct. App. Div. 1976). In *Doe*, the Superior Court of New Jersey held that a Trenton ordinance that fined parents for juvenile misconduct failed to meet due process requirements. *Id.* at 1202-03. Specifically, the *Doe* court rejected a statutory presumption that "parental influence is an overriding cause of juvenile misconduct." *Id.* at 1203. *See also* Clute, *supra* note 96, at 1563 n.84 (citing to a state court's lament that even psychologists and sociologists "cannot agree on the most effective methods of child rearing").

156. Although various authorities have rejected the notion that a child's crime is a product of improper parenting, some Illinois communities have enacted ordinances based on this presumption. For example, an Aurora, Illinois ordinance presumes that a parent, absent evidence to the contrary, is guilty of improper parenting where an unemancipated minor is adjudicated to be in violation of the law, the parent receives notice of the violation and, within two (2) years, the minor commits another violation. AURORA, ILL., CODE OF ORDINANCES §§ 29-27 (1996). This infraction is a misdemeanor. *Id.*

157. *See, e.g.*, Parsley, *supra* note 82, at 468.

158. *See* Clute, *supra* note 96, at 1567 (noting that such laws may punish parents for activity beyond their control); Parsley, *supra* note 82, at 468 (citing "social class, educational level, urbanization, living conditions, and social instability" as factors in addition to irresponsible parenting that contribute to delinquent behavior).

159. *See, e.g.*, Parsley, *supra* note 82, at 467-71.

160. *See* Thistlewood v. Trial Magistrate, 204 A.2d 688, 690-91 (Md. 1964) (discussing the history of juvenile curfews). *See also* SOURCEBOOK, *supra* note 1, at 124-

recent trend.[161] People have generally considered curfews to be effective weapons against crime.[162] As a result, policymakers throughout the nation are calling for more expansive laws to restrict minors' activities after dark,[163] and, in many cases, they have enacted new curfew laws.[164] These juvenile curfew laws, however, are not free from legal challenges.[165]

A. Recent Trends in Juvenile Curfew Statutes

Juvenile curfews serve a number of objectives.[166] First, policymakers hope that curfews will save lives.[167] Police officers recognize that curfews can reduce the pool of victims of crime.[168] In addition, curfews may reduce the pool of criminals on the streets.[169]

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25. Some cities have had curfews for close to one hundred years. *Id.* For instance, Portland, Oregon passed its original juvenile curfew in 1906, and Honolulu has had its since 1896. *Id.* at 126-27. A number of cities have enacted curfew laws in recent years. In 1994 alone, cities like New Orleans, Miami, and Orlando, Florida, passed juvenile curfews. *Id.* at 124-29.

161. *See infra* notes 167-85.

162. *See generally* T. Markus Funk, *A Mere Youthful Indiscretion? Reexamining the Policy of Juvenile Delinquency Records*, 29 U. MICH. J.L. REFORM 885 (1996); Tona Trollinger, *The Juvenile Curfew: Unconstitutional Imprisonment*, 4 WM. & MARY BULL. RTS. J. 949 (1996).

163. *See* Trollinger, *supra* note 162, at 960-63 (recognizing the desire of politicians to enact curfew statutes). Trollinger cites to one public official, for instance, who testified that juveniles out after their curfew can become lookouts for drug pushers. *Id.* at 962 n.70.

164. *See infra* notes 178-85 and accompanying text (discussing amendments to Illinois' curfew law which makes it more rigorous).

165. *See infra* Part V.B.

166. Stated goals include: "(1) reduc[ing accident injuries] involving juveniles; (2) reduc[ing] additional time for officers in the field; (3) provid[ing] additional options for dealing with gang problems; (4) reduc[ing] juvenile peer pressure to stay out late; and (5) assist[ing] parents in the control of their children." Qutb v. Strauss, 11 F.3d 488, 494 n.8 (5th Cir. 1993).

167. *See* Trollinger, *supra* note 162, at 961. One local official has stated that "[w]e don't know how many lives the curfew will save. But if it saves one, if it protects that four year old, if it says to them, 'The streets [are] not the place for you,' then it's time for a curfew." *Id.* at 960-61. Trollinger acknowledges the argument that "[i]f juveniles are confined to their homes, they cannot commit or be victimized by crime—at least public crime." *Id.* at 961.

168. *Id.*

169. *Id.* One policymaker testified, "I have personally observed the gangs and the crack houses. I've seen the kids that should be at home asleep or studying out there being lookout people for the drug pushers." *Id.* at 962-63 n.70 (citing Victor Inzunza, *Both Sides Rest in Suit Over Dallas Curfew*, FORT WORTH STAR TELEGRAM, July 24, 1991, at B4).

Most importantly, curfews can assist parents in imposing parental responsibility.[170]

As a result of a curfew's impact, curfew laws are being strongly encouraged and often enacted at the federal, state, and local level.[171] A 1996 Justice Department survey found that 73% of the 200 largest United States cities have enacted curfews in response to present juvenile crime rates.[172] At the federal level, President Clinton has praised curfews and suggested that communities impose curfews as early as 8 p.m.[173] President Clinton's comments are consistent with his promise in 1997 to concentrate on juveniles as both perpetrators and victims.

Consistent with federal policy, Illinois and its communities have sought to curtail juvenile delinquency through the passage of curfew laws.[174] For example, Chicago, which has had various curfews since 1915, requires children under 17 to be indoors between 10:30 p.m. and 6 a.m. on the weekdays, and 11:30 p.m. and 6 a.m. on the weekends.[175] Chicago authorities report that over the past several years, violations of the curfew laws have slowly decreased.[176] Specifically, Chicago Police noted 94,048 curfew violations in 1993, 83,063 in 1994 and 82,407 in 1995.[177]

In view of the success of these laws, Chicago council members have proposed harsher penalties for curfew violations.[178] For example, council members have proposed that teenagers driving cars after curfew have their vehicle impounded.[179] Under one such

170. *Id.* at 961. A former police chief stated: "Parents also need an ordinance. Parents need to be reminded of their responsibility to control the behavior of their kids." *Id.* at 959 n.64. Another observer stated that "[a]nyone that argues that it should solely be the parents' responsibility to set curfews and keep their kids at home just does not realize the extent to which parental authority has been eroded." Ann Melvin, *City Curfew is a Victory for Parents*, DALLAS MORNING NEWS, Nov. 27, 1993, at 31A.

171. *See supra* note 160 and accompanying text. *See also* Trollinger, *supra* note 162, at 949-50 (observing the increasing use of curfew laws as a response to rising crime rates).

172. William Neikirk & Charles M. Madigan, *Curfew Crusade, Restrictions a Tool for Police to Wield*, CHI. TRIB., May 31, 1996, at 20.

173. *Id.*

174. *Id. See also* SOURCEBOOK, *supra* note 1, at 124-29. Communities like Peoria and Rockford also have curfews. *Id.* at 127-28.

175. Neikirk & Madigan, *supra* note 172, at 20.

176. *Id.*

177. *Id.*

178. Jacquelyn Heard, *Curfew Proposal Delayed; 2 Alderman Object to Seizing Vehicles*, CHI. TRIB., June 11, 1996, at 3.

179. Jacquelyn Heard, *Curfew Violators May Be Hit Where It Hurts: City Alderman Want to Seize their Wheels*, CHI. TRIB., June 1, 1996, at 5.

proposal, owners of an impounded vehicle would be responsible for the curfew violation plus a $500 car-retrieval fine in addition to the $105 city towing fee and the $10 per day storage cost.[180]

Most importantly, Illinois recently toughened its curfew statute.[181] The General Assembly amended the statute in late 1996, and it became effective on January 1, 1997.[182] The recent amendment subjects parents and those "in control" to greater liability for curfew infractions.[183] Specifically, the amendment increases penalties against parents who "knowingly permit a person" in their custody or control to violate the state's curfew.[184] The amended statute now punishes parents not just with increased fines, but also with community service.[185]

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180. *Id.*

181. Pub. Act No. 89-682, § 10, 1996 Ill. Legis. Serv. 3431-32 (West) (to be codified at 720 ILL. COMP. STAT. ANN. § 555/1(b) and (c)). The amendment changed subparts (b) and (c). The statute now reads as follows:

> (a) It is unlawful for a person less than 17 years of age to be present at or upon any public assembly, building, place, street, or highway at the following times unless accompanied and supervised by a parent, legal guardian, or other responsible companion at least 18 years of age approved by a parent or legal guardian or unless engaged in a business or occupation which the laws of this State authorize a person less than 17 years of age to perform:
>
> 1. Between 12:01 a.m. and 6:00 a.m. Saturday;
> 2. Between 12:01 a.m. and 6:00 a.m. Sunday;
> 3. Between 11:00 p.m. on Sunday to Thursday, inclusive, and 6:00 a.m. on the following day.
>
> (b) It is unlawful for a parent, legal guardian, or other person to knowingly permit a person in his or her custody or control to violate subparagraph (a) of this Section.
>
> (c) A person convicted of a violation of any provision of this Section shall be guilty of a petty offense and shall be fined not less than $10 nor more than $500, except that neither a person who has been made a ward of the court under the Juvenile Court Act of 1987, nor that person's legal guardian, shall be subject to any fine. In addition to or instead of the fine imposed by this Section, the court may order a parent, legal guardian, or other person convicted of a violation of subsection (b) of this Section to perform community service as determined by the court, except that the legal guardian of a person who has been made a ward of the court under the Juvenile Court Act of 1987 may not be ordered to perform community service. The dates and times established for the performance of community service by the parent, legal guardian, or other person convicted of a violation of subsection (b) of this Section shall not conflict with the dates and times that the person is employed in his or her regular occupation.

182. *See id.* (to be codified at 720 ILL. COMP. STAT. 555/1(b) and (c)).

183. *Id.* (to be codified at 720 ILL. COMP. STAT. 555/1(b) and (c)).

184. *Id.* (to be codified at 720 ILL. COMP. STAT. 555/1(b) and (c)).

185. *See id.* (to be codified at 720 ILL. COMP. STAT. 555/1(b) and (c)).

B. Judicial Scrutiny of Juvenile Curfews

Illinois courts have sanctioned juvenile curfew laws for some time.[186] In 1976, in *People v. Chambers,*[187] the Illinois Supreme Court held that the state curfew law was constitutional.[188] In *Chambers,* two teenagers challenged their arrest under the state curfew statute, arguing that the law unconstitutionally infringed on their rights of assembly, association, speech, and freedom of travel.[189] Ruling against the teens, the court first recognized that the state's traditional power to protect children limits a juvenile's rights to assemble and travel.[190] Moreover, the court acknowledged the state's legitimate interest in reducing juvenile crime, which was rapidly increasing at the time of the *Chambers* decision.[191]

Despite *Chambers*, in recent years, courts in several other jurisdictions have invalidated curfews on various constitutional grounds.[192] For example, in *Hutchins v. District of Columbia,*[193] a court in the District of Columbia held that a nighttime curfew failed to withstand a strict scrutiny analysis.[194] In *Hutchins,* the court first held that minors have a fundamental right to travel and assemble freely.[195]

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186. *See* People v. Chambers, 360 N.E.2d 55 (Ill. 1976). *See also* Village of Deerfield v. Greenberg, 550 N.E.2d 12 (Ill. App. 2d Dist. 1990) (holding local curfew ordinance constitutional).

187. 360 N.E.2d 55 (Ill. 1976).

188. *Id.* at 59.

189. *Id.* at 56. At the criminal trial, the two plaintiffs, both teenagers, had been found guilty of violating the Illinois curfew and had been fined ten dollars. *Id.*

190. *Id.* at 57-58. Although the court stated that rights to assemble and to travel freely have been upheld by the United States Supreme Court, the *Chambers* court recognized limitations placed on a juvenile, reasoning:

> In legislating for the welfare of its children, the State is not required, in our opinion, to proceed upon the assumption that minor children have an absolutely unlimited right not only to choose their own associates, but also to decide when and where they will associate. Recognition of such a right would require a wholesale revision of the large body of law that related to guardian and ward, parent and child, and minors generally.

Id.

191. *Id.* at 58. The *Chambers* court noted that juvenile crime had increased dramatically during the 1970s and that the increase was not "wholly attributable" to the post-World War II baby boom. *Id.*

192. It should be noted that the *Chambers* decision was not unanimous, and the dissenting judge argued that the curfew was unconstitutional. *Id.* at 59 (Goldenhersh, J., dissenting). Justice Goldenhersh argued that the curfew was void for vagueness and too subjective. *Id.* at 59-60 (Goldenhersh, J., dissenting).

193. 942 F. Supp. 665 (D.D.C. 1996).

194. *Id.* at 680.

195. *Id.* at 671-72. The court did state that some other jurisdictions do not recognize a fundamental right for minors to freely travel. *Id.* at 671.

Applying a strict scrutiny analysis,[196] the court ruled that the District of Columbia did have a compelling interest in enacting the curfew.[197] However, the court then held that the curfew was not narrowly tailored to the District's compelling interest.[198] The court, for example, noted that the statistical evidence presented indicated that most juvenile crime occurs in the afternoon and declines throughout the day.[199] Further, the court observed that the curfew was unlikely to impact crime because many crimes "occur at home, and involve family, friends, and acquaintances."[200] Such statistical evidence may undercut Illinois' curfew law.[201]

The Iowa Supreme Court also recently struck down a local curfew on constitutional grounds. In *City of Maquoketa v. Russell*,[202] the Iowa Supreme Court struck down a local curfew ordinance that imposed liability where the minor was outside during restricted hours, unaccompanied by an adult and not taking a direct route between home and employment, or between "home and a parentally approved supervised activity."[203] The Iowa Supreme Court held that this ordinance was over-broad and infringed upon protected freedoms.[204] The *Maquoketa* court noted that the enactment infringed upon protected freedoms by preventing minors from attending late night church services, political functions, and from other activities protected by the First Amendment.[205] In the next several years, it will be interesting to see if a similar challenge is made to Illinois' curfew law and local ordinances.

196. *Id.* at 674. The court stated that "[t]o withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest." *Id.*

197. *Id.* at 674.

198. *Id.* at 674-80.

199. *Id.* at 676.

200. *Id.*

201. Other arguments may also undercut the Illinois curfew law. For instance, some observers argue that the curfew is far from a "panacea" for crime. *See* Trollinger, *supra* note 162, at 963. The observers have recognized that the most serious crimes are still committed by adults. *Id.* at 965. Even the Illinois Supreme Court in *Chambers* conceded the limited effectiveness of a curfew. *See* People v. Chambers, 360 N.E.2d 55, 59 (Ill. 1976) (recognizing that "[t]he causes of the shocking increase in juvenile crime lie too deep").

202. 484 N.W.2d 179 (Iowa 1992).

203. *Id.* at 180-81, 186.

204. *Id.* at 186.

205. *Id.* at 184-86.

VI. CONCLUSION

Juvenile delinquency presents one of society's most urgent and complex problems. Over the past several years, policymakers have attempted to remedy juvenile delinquency through a number of different programs and enactments. Those at the front line realize that juvenile crime is best addressed at the family and community level. Over the past several years, community response has taken the form of teen court programs, parental responsibility laws and curfew laws.

In addition to the measures discussed above, communities are experimenting with several other thoughtful programs to curtail recent trends. In Cook County, a pilot Juvenile Court Drug Program has been implemented with the help of a federal grant.[206] This eighteen month program is designed to monitor the success of an early intervention program for minors who have been involved in substance abuse and charged with a delinquent act. Underlying this pilot program is the presumption that drug treatment and related sanctions are most effective when initiated soon after the minor's arrest. It is the hope of Cook County officials that by removing drugs from the juvenile's environment, the dividend will be a reduction of other types of delinquency.

In another program, DuPage County officials have teamed up with Boy Scouts of America in an effort to divert juvenile offenders away from the court system.[207] This program seeks to redirect first-time, nonviolent offenders and provide them with a positive alternative to the court system. In addition to requiring community service, a minor involved with the program may make field trips to the DuPage Court Jail to speak with inmates. Also, minors may take field trips to the county coroner's office. This is another creative, community-involved program that could impact and rectify a juvenile's behavior.

Programs such as those discussed in this Article struggle with the often arduous task of isolating those individualized actions and environments that spawn delinquency. Programs relying on family and community involvement are perhaps the most conducive to providing an intensive atmosphere that nourishes and steers the juvenile toward productive behavior. The creativity, energy, and thoughtfulness underlying these programs virtually guarantee that benefits will result.

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206. *See* Judicial Advisory Council, Juvenile Division of the Circuit Court of Cook County, Cook County Juvenile Court Drug Program.

207. Brendan M. Stephens, *Boy Scouts Step to the Fore with Program to Keep Suburban Youths Out of Court*, CHI. DAILY L. BULL., Nov. 21, 1996, at 1.