

Family Impact Analysis of Wisconsin Statutes Addressing Parental Responsibility for Juvenile Behavior

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Introduction

Parents legally have the right and authority to care for their children. They also have a responsibility to make sure that this duty is carried through. Parental responsibility laws attempt to influence and regulate parenting behaviors with the goal of reducing juvenile misbehavior. Are they effective? What are the consequences of established public policies on dimensions of family life? The purpose of this study was to assess Wisconsin Statutes using a Family Impact Analysis in order to show whether those same statutes are beneficial to the family system.

Increasingly family professionals are suggesting that policymakers take a family perspective in policymaking, encouraging them to consider the consequences of public policies on family systems. The first step in doing this is to ask the right questions. Family impact analysis analyzes policy, assesses how it impacts various aspects of family well-being such as family stability, family support and responsibilities, family involvement and interdependence, family partnership and empowerment, family diversity, and specifically how it impacts vulnerable families.

Literature Review

Parental responsibility statutes are not a recent public policy phenomenon. In 1903, Colorado passed a law that made contributing to the delinquency of a minor a crime, and since that time 43 states have passed similar laws. According to Applebome (1996), laws started being enforced concerning parental responsibilities for their juveniles in the late 1980s and early 1990s

due to the increases in juvenile crime and street crime. States began a more rigorous enforcement of compulsory education laws to hold parents responsible for their child's attendance at school. In 1995, ten states passed parental responsibility laws that either fined, required counseling sessions, or sometimes imprisoned parents. More states have followed suit in the last decade.

A public attitude toward treatment of juvenile offenders and parental responsibility for such misbehavior is varied. One public survey reported that for crimes children commit with a parent's gun, males and females were equally in favor of holding parents responsible; whites were more in favor than nonwhite populations, and the older you were, the more in favor of holding parents responsible you were likely to be (Sourcebook of Criminal Justice Statistics Online, 1995).

Delinquent acts committed by youth are handled in various ways. The percentage of juvenile delinquents that were handled within the police department and released ranged from 16.5% -29.4%, and those who were referred to juvenile court jurisdiction ranged from 63.8%-73% (Juvenile Offenders 2002). One aspect of the juvenile justice system is to rehabilitate minors who commit delinquent acts and protect them with future employment opportunities; on the flip side, the juvenile justice system also states that parents can be held accountable for child's behavior and crimes based on a state-by-state basis. With minor offenses where parental involvement is implied, probation is suggested for the juvenile. Those with a history of offenses are usually referred to a detention center (Juvenile Offenders 2002).

The Supreme Court of Wisconsin stated in Bankert v. Threshermen (1983) that the common law does not make parents routinely liable of damages their children initiated except in four circumstances. They include when the parent negligently entrusts the child with

instrumentality that can cause harm; when the child is acting on the parent's wishes or as their agent; and when they know that the child could cause harm and do not stop it. In Hopkins v. Droppers (1926), the first negligent-entrustment case, the court pointed out that parents are not liable by virtue of their parental relationship alone, but instead are liable based on some participation by the parent, whether that is negligent entrustment or negligent failure. (*Negligent entrustment* is the when you put something in someone's care or protection and you fail to take proper care in seeing the care is followed through correctly. *Negligent failure* results in failure from the omission of expected or required action (The new oxford dictionary, 2001)). In both court cases, the parents were found not to be responsible for their child's actions.

Although the first court cases in Wisconsin dealing with the parental responsibility issue were as early as 1926, California was one of the first states to apply this concern in ways that affected local levels. In 1988, California legislature enacted Senate Bill No. 1555 that aimed to control violent criminal street gang activity (William v. Reiner 1991). Knowing of or active participation in street gang activities by an individual was decided to be punishable by a misdemeanor or a felony, and the parent was to be held accountable for exercising reasonable care, supervision, and control of their minor child.

A prominent case occurred in Wisconsin in 1995. One fourth-grade student, Jason Hein, diagnosed with ADHD (Attention Deficit Hyperactivity Disorder) was taken off his medication by his parents in April 1989. The parents failed to notify the proper authorities at his school and did not consult with any physician to inform themselves about the consequences of discontinuing the medication (Nieuwendorp v. Hein, 1995). Throughout the following year Jason's behavior was frequently out of control and his teacher, Nieuwendorp, was forced to remove him from the classroom. Upon escorting Jason outside the room, he refused to walk down the stairs, and pulled

Nieuwendorp's hair with enough force that she fell down. The teacher suffered injury to her neck and sued the Heins on account of negligence for these reasons: (a) Jason failed to control his behavior, (b) the Heins failed to exercise reasonable care with respect to their son, and (c) the Heins failed to control their son. The verdict was in favor of Nieuwendorp based on the Heins being deemed negligent in controlling Jason and on the view that the resulting negligence led to the teacher's injuries.

Example of laws/policies aimed at helping parents by educating them and preventing imposed fines have occurred all over the United States. In Bloomington, Illinois, for example, local groups and officials united to make services more available to youths and families (Schults, 1998). The voiced concerns pertained to topics ranging from domestic abuse to juvenile delinquency, and the group looked at options for prevention as well as intervention. They concluded that parenting classes could include in-home counseling in addition to public meetings.

In South Bend, Michigan, a parental responsibility ordinance law aimed at "detering juvenile problems concerning truancy, drug/tobacco use, firearms control, observance of local curfew, and malicious destruction of personal property or theft" (Baker, 1997). The ordinance established a fine up to \$500 for first time offenders or court ordered counseling.

Sonderegger (1997) wrote that in Missouri the topic of discussion centered on changing the focus from parental responsibility to parental notification. This shift was influenced by parental accounts that they felt like the laws were interfering with their parenting space. An example of this would be to notify parents for the first offense if their child breaks the curfew and cite them for a misdemeanor violation the next time.

A great example of parental negligence resulting in parents being held accountable happened in Chicago, Illinois. A 10-year-old boy fired a .22 caliber rifle that was made accessible to him in his parent's house. The result was that the parents faced the charges. However, it was also stated that if the parents underwent counseling, no other charges would be filed (Koziarski 1998).

Overall, one of the places that had set the standard and created international interest was in Silverton, Colorado. There an ordinance was created and implemented that could fine a maximum of \$2500 to parents for crimes their children commit. If the parent successfully completed a parent effectiveness program they could be fined no more than \$100 (Municipal Ordinance No. 94-132 1995). Naturally, this ordinance had mixed reviews. It created national awareness because communities and parents vocalized their concerns and questions to the extent of the responsibility of curbing juvenile delinquency. This ordinance in Silverton, CO was one of the first laws that was implemented.

Laws that looked at only fining parents for negligence have been passed in several states. In Dubuque, Iowa, for example, a curfew was set for minors that limited times that they could be in public places or on city streets with a few exceptions. Fines for breaking curfew were set at \$25 for the first offense, and up to \$200 for fourth and subsequent offenses. Additionally it was said that policy makers were not trying to be parents, but "we would like to think parents understand where we are coming from" ("Parents face fines if kids break curfew," 1998). Although it is not normal for parents to be sued, it is possible. In a case involving a higher monetary consequence, TCF National Bank wanted to hold parents of eight teens responsible for a \$90,400 robbery (Novak, 1999).

With all family public policies, there are mixed reviews. Those who are in favor of policies that hold parents accountable base their views on account of evidence that a breakdown within the family system occurs and that juvenile offenses can't be solved without bringing parents into the equation (Applebome, 1996). These laws also force parents to be held accountable for their children and create an awareness of underlying problems. They are not aimed at punishing parents for their child's crimes, but for lack of parental responsibility (actions) leading up to the delinquency (Galler, n.d.). Those who oppose parents being held responsible for their juvenile delinquency base their reasoning on the following points, (a) it is unconstitutional for parents to be held accountable for crimes they did not commit (Collins 1990), (b) you endanger families by further pulling them apart, (c) it adds to the burdens of families in trying to raise their children, and (d), delinquency is a result of a lack of parenting *skills*, and child misbehavior could involve other outside factors like social development, poverty, teaching practices, and reinforcement (Galler, n.d.). Those opposed also state that enforcing these laws is a reactive rather than proactive stance and problems are compounded.

Specific Wisconsin Policies and Explanation

A few Wisconsin statutes state specifics concerning the role of parent responsibility for juvenile misbehavior.

Restatement of the Law of Torts, § 316 n3, n4 (2001)

N3. "A parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent (a) knows or has reason to know that he has the ability to control his child, and (b) knows or should know of the necessity and opportunity for exercising such control.

N4. Parental liability can also be imposed for negligent entrustment in a situation where a parent negligently entrusts a child with an instrumentality, which may become a source of danger to others” (Nieuwendorp v. Hein 1995).

Wisconsin Statute § 895.035 (2001)
Parental liability for acts of minor child

A parent first needs to have legal or physical custody of the child at the time an incident occurs. If the parent(s) are liable under common law, they are responsible for damages to property (replacing, repairing, and/or removing). Examples of damages include: markings, drawings, writings, etching on property, replacing the value of stolen property, and/or for personal injury attributed to the willful, malicious, or wanton acts of the child.

Wisconsin Statute § 48.415 (2001)
Grounds for involuntary termination of parental rights:

. . . (6) *Failure to assume parental responsibility.* Failure to assume parental responsibility is proved if parent(s) have never had a substantial relationship with the child. Substantial relationship means the acceptance and exercise of significant responsibility for the daily supervision, education, protection, and care of the child. (This section was deemed important on the basis of needing to know where parents stand regarding their relationship with their child, and how that affects their accountability as a parent. An article by Roberson (1999) details specifics concerning this topic. This article takes into account what is in the child’s best interest and states that each occurrence of juvenile misbehavior is weighed seriously.)

All in all, these laws explicitly state that parents are responsible for their child’s actions if they have legal/physical custody of their child at the time an incident occurs. Additionally they, as parents, have to deal with the consequences, whether that is monetarily or by taking

educational parenting classes. In Wisconsin, the maximum amount that parent(s) may have to pay to a school board or governing body that is claiming occurrence of an incident is \$20,000, plus the addition of tax and attorney fees. The maximum amount of recovery from any parents may not exceed the amount specified in section 799.01, with a few exceptions (Parental liability for acts of minor child 2001).

Family Impact Analysis

The Wisconsin Statute § 895.035 (2001) is an example of explicit family policy directed at juveniles and their parents and could ultimately include the possibility of termination of parental rights. The law is intended to influence juvenile and parental behavior and could also affect the family structure if a juvenile is taken out of the home, or a parent is put in jail for not paying resultant fines.

Using family impact analysis criteria developed by the Coalition of Family Organizations (Ooms & Preister, 1988) the application of six guiding principles that serve as assessment criteria on Wisconsin Statute § 895.035 (2001) are presented.

Principle #1- Family Stability

When children are present in the family, it is essential that public policies and programs stabilize families through endorsing family, parental, and marriage commitments, the aim of principle one. Wisconsin Statute § 895.035 (2001) intends to strengthen parental commitment between the parents and their children, but does not necessarily strengthen the commitment between both parents. Ideally it strives to empower parents by making them more aware of consequences, but ultimately it is the parents who choose which path to take, i.e. the degree of parental involvement with their juvenile prevents misbehavior or leads to misbehavior.

The structure of the family is affected if there is a termination of parental rights or a change in legal guardianship. The only way a family could be separated is if the parent would be jailed for failure of paying accrued fines or if the juvenile was put on probation or in a detention center. Ultimately, if either of these situations occurred, it would weaken the family structure.

Principle #2- Family Support and Responsibilities

This principle looks to what extent are families responsible and supportive unto themselves. Ideally, family policies are the most favorable when they support family functioning rather than replace or take over family functions. Government intervention only occurs when parents do not take their parental responsibilities seriously (Wisconsin Statue § 895.035 2001). Society tends to view family responsibilities as private and parents have considerable autonomy in the rearing and socialization of their children until the minor breaks the law. Implementation of this policy occurs at the local level, where communities individually try to provide parenting educational classes as it also tries to build on existing family support networks. The goal is not to punish through fines, etc. but to force, if necessary, involved parenting. The statute does explicitly state that parents are responsible financially for misdemeanors their child commits and enforces such fines on the parents. This could negatively impact families on or below poverty line and those with limited other resources.

Principle #3- Family Involvement and Interdependence

It is essential that family policies take into account all family members in order to be most effective. This principle demonstrates that effective policies need to recognize the importance of family ties and interdependence. This statute acknowledges the extent and complexity of the responsibilities of parenting but clearly requires family involvement. It implies that a juvenile's misbehavior is in part the result of inadequate parental guidance or

supervision. Parents are accountable for their minor children and are expected to be influential in guiding actions and consequences of their dependents. The law can also force mediation between family members and the juvenile delinquent, the probation officer, the counselor, a detention facility, and the court system. Competing needs of the adolescent versus those of the parent are considered and decided on a case by case basis with regulations guiding each decision. For instance, the law tries to look out for the best interest of the adolescent and the whole family based on the thesis that parental involvement is the optimal way to do this. However, the policy does not address the mechanism by which families can do this nor does it address the circumstances (e.g., changes in family structure, poverty) that perhaps contribute to the lack of parental supervision.

Principle #4- Family Partnership and Empowerment

This principle shows that the most effective way to empower a family is to give them information and choices, and treat all members equally with trust and respect. Ensuring family partnership is a basic intent of this policy. Under this law, families are given decision-making skills and choices, and their choice of which path they take, i.e., the degree of parental involvement with their juvenile, can empower or immobilize them. It implies that parents are partners with authorities with the message of “you do your part and we’ll do ours.” Family autonomy is breached when the juvenile breaks the law. There is public intervention at that point and parental autonomy to “parent” as one wishes is limited with the state enforcing its value about appropriate parental supervision. The law attempts to support parents by trying to get information into the public arena with informative meetings, educational classes, and other supportive services.

Principle #5- Family Diversity

The aim of this principle is to identify the best way to analyze a family system. The goal is to look at the family system in a functional way, defining a family by what it does instead of by how it looks. Doing this recognizes the reality of diverse family forms and supports them as they perform their family functions. Wisconsin Statue § 895.035 (2001) is a public law, and therefore applies to all families, regardless of race, ethnic origin, socio-economic status, or cultural expectations and values. It could be interpreted as empowering all families to be more effective in handling their own values and traditions as long as those values include adequate (as defined by Wisconsin policy makers) parental control and supervision of their children.

Principle #6- Targeting Vulnerable Families

This principle addresses the need for family public policies to prioritize those families who are in the most need, and implement efforts at prevention. As previously mentioned, because this law is not specifically directed at low-income families, it may have the intended effect of further exacerbating their economic problems if they are facing monetary fines for their child's misbehavior. For some families, a lack of access to a variety of resources (e.g., monetary, educational) may result in less ability to adequately supervise their children and subsequently make them more vulnerable to the consequences of parental responsibility laws.

Conclusion

Laws that establish parental accountability for juvenile misbehavior do so in an attempt to force parents to assume the responsibility that they have been given by virtue of parenthood. Such policies are intended to empower parents in involvement in the discipline of their children. While this is a worthy endeavor, such laws may also have the unintended negative consequence of making a bad situation even worse for already vulnerable families. Effectiveness of the

Wisconsin Statue § 895.035 (2001) can be based on your accord or discord with the degree to which parents should be responsible for juvenile misbehavior. Policies involving parental responsibility may also be more effective when coupled with preventive efforts to address broader issues that may contribute to family problems such as poverty and a lack of access to resources.

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