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Fighting Collateral Sanctions One Statute at a Time: Addressing the Inadequacy of Child Endangerment Statutes and How They Affect the Employment Aspirations of Criminal Offenders

Sarah Wetzel

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**FIGHTING COLLATERAL SANCTIONS ONE STATUTE AT
A TIME: ADDRESSING THE INADEQUACY OF CHILD
ENDANGERMENT STATUTES AND HOW THEY AFFECT
THE EMPLOYMENT ASPIRATIONS OF CRIMINAL
OFFENDERS**

*Sarah Wetzel**

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I. INTRODUCTION

Today, an estimated sixty-five million Americans fight a constant battle to obtain employment as a result of both legal and non-legal societal stigmas created by their criminal records.¹ Moreover, one in three American citizens will be arrested and acquire a criminal record by the time he reaches the age of twenty-three.² With numbers like these, it becomes clear that criminal records are no longer rare exceptions reserved for the pariah members of society, but instead rather common and, as Professor Michael Pinard would say, “omnipresent” in America.³ While the judicial system imposes obvious punishment on these individuals by way of incarceration or probation, it also imposes subtler, indirect penalties. These penalties will continue to haunt them for the rest of their lives, placing many in a “semi-outlaw status.”⁴ Additionally, new collateral sanctions may be imposed at any time, and they may even affect individuals retroactively.⁵ The academic society often refers to these sanctions in different ways, such as “civil disability statutes,”⁶ “collateral consequences,”⁷ “collateral sanctions,”⁸ and several other variations and combinations of similar phrases. To maintain consistency and assist readability, this Comment will exclusively refer to such barriers as collateral sanctions in all subsequent sections.

The number of employers using background checks to pre-screen potential employees is rising, as is the number of persons allowed access to “sealed” criminal records.⁹ Between the growing number of persons

1. Michelle Natividad Rodriguez & Maurice Ensellem, *65 Million “Need Not Apply:” The Case for Reforming Criminal Background Checks for Employment*, THE NAT’L EMP’T LAW PROJECT 3 (2011), available at http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1; Michael Pinard, *Criminal Records, Race, and Redemption*, 16 N.Y.U. J. LEGIS. & PUB. POL’Y 963, 964 (2013).

2. Pinard, *supra* note 1, at 964.

3. *Id.*

4. Margaret Colgate Love, *Paying Their Debt to Society: Forgiveness, Redemption, and the Uniform Collateral Consequences of Conviction Act*, 54 HOW. L.J. 753, 754 (2011).

5. See Gabriel J. Chin, *The New Civil Death: Rethinking Punishment in the Era of Mass Conviction*, 160 U. PA. L. REV. 1789, 1791 (2012).

6. Love, *supra* note 4, at 754.

7. Amy P. Meek, *Street Vendors, Taxicabs, and Exclusion Zones: The Impact of Collateral Consequences of Criminal Convictions at the Local Level*, 75 OHIO ST. L.J. 1, 2 (2014).

8. Robert H. Gorman, *Collateral Sanctions in Practice in Ohio*, 36 U. TOL. L. REV. 469, 469 (2005).

9. Joann Sahl, *Battling Collateral Consequences, the Long Road to Redemption*, 49 NO. 3

having a criminal record and the number of persons able to obtain access to these records,¹⁰ it becomes nearly impossible for offenders to gain meaningful employment or any employment at all.¹¹ In light of the fact that offenders who do not obtain employment are more likely to return to prison, it is extremely important that offenders are able to obtain work after finishing their formal punishment.¹² While many states and the federal government are becoming increasingly aware of this problem, most of the attempts made to alleviate the pressure on offenders have been insufficient or impractical.¹³

As collateral sanctions have received much attention in the past years and more legislators are realizing the need to increase the regulations concerning such sanctions, another layer of this problem is emerging. While this particular issue has arisen out of the legislative branch as well, it occurs long before collateral sanctions are imposed and essentially determines when an individual's actions will constitute criminal activity. Unfortunately, some criminal statutes are inefficient, ineffective, and have a disparate impact on lower income individuals.¹⁴

CRIM. LAW BULLETIN ART 1, 8 (2013).

10. Technology and the information age have enabled both public and private entities and individuals to access criminal records via internet databases. Pinard, *supra* note 1, at 970.

11. For example, in Ohio, "at the same time the Ohio legislature was narrowing the list of offenses eligible for sealing, it was also enlarging the class of persons who could access the sealed records." Thus, having a criminal record sealed for employment purposes may be completely useless if the law provides for the employer to have access to such sealed records. Sahl, *supra* note 9, at 8. In such vein, Professor Pinard agrees and argues that most people struggling to overcome criminal records have to go much farther than the mere sealing of the records and actually seek gubernatorial pardon. Pinard, *supra* note 1, at 966.

12. Lack of ability to obtain employment as well as an inability to find housing are the "markers of family and financial stability and, as such, are two predictors for recidivism." Pinard, *supra* note 1, at 972; Love, *supra* note 4, at 765; Meek, *supra* note 7, at 35; Adriel Garcia, Comment, *The Kobayashi Maru of Ex-Offender Employment: Rewriting the Rules and Thinking Outside Current "Ban the Box" Legislation*, 85 TEMP. L. REV. 921 (2013).

13. Ohio has created something called the Certificate of Qualification for Employment via Senate Bill 337, which assists ex offenders by making mandatory employment sanctions discretionary and also by providing employers with a complete defense to negligent hiring claims. The application process is very lengthy and difficult to understand, though. Sahl, *supra* note 9, at 7. The EEOC released guidelines that prohibit flat bans on employment based on criminal records, but many employers explicitly violate such guidelines. MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 153-54 (Rev. ed. 2011) (referencing a recent study done by the National Employment Law Project that found many employers still expressly refusing to even consider applicants with criminal records). A growing number of states are creating "Ban the Box" legislation, which prohibits employers from using a check-box indicator for criminal convictions on their applications. Many of these states lack further legislation that protects employers from negligent hiring claims, though, so Ban the Box is actually creating a lot of tension because many employers are stuck in a "legal minefield," where they are simultaneously liable for both negligent hiring and discrimination. Garcia, *supra* note 12, at 923.

14. Upon doing a search for "collateral sanctions," in LexisNexis (October 18, 2014), the

In particular, this Comment explores child neglect and endangerment statutes that are customarily vague and commonly enforced unevenly by prosecutors, permitting criminal neglect or endangerment charges and convictions against low-income individuals and against other individuals who practice “free-range” parenting. These convictions exacerbate the root problems because these statutes label some innocent citizens as offenders and subject them to severe collateral sanctions, such as inability to obtain employment. Simultaneously, however, the statutes allow others who endanger children to escape through cracks in the statute with lesser punishment or no stigma whatsoever.¹⁵ Thus, not only are some citizens unjustly punished, but also they are permanently scarred by the existence of a criminal record. Examples of this problem arise frequently; one does not need to look much farther than a local newspaper or public-opinion blog to see specific illustrations of these types of statutes.¹⁶ If the justice system is to remain respected in society and legitimately serve its purpose, it must ensure that these problematic statutes are amended such that they reflect the values and purposes underlying criminal law.¹⁷ Society will begin to resent and disregard the legal system if it fails to make these amendments because citizens, especially those negatively affected by such statutes, will come to believe their actions are futile and meaningless in the eyes of an arbitrary legal system.¹⁸

author was able to find over 300 law review articles, and as mentioned earlier, estimates there are many more because of the fact that authors refer to these barriers in several different ways.

15. See *infra* notes 191 and 231-233 and accompanying text.

16. One fairly recent argument was concerning “Stand Your Ground” statutes. Sarah Childress, *Is There Racial Bias in “Stand Your Ground” Laws?*, FRONTLINE (July 31, 2012), <http://www.pbs.org/wgbh/pages/frontline/criminal-justice/is-there-racial-bias-in-stand-your-ground-laws/>. Another example is that of the disparity found in statutes that differentiate between crack and powder cocaine, or those that target black and Latino communities for “needle possession” arrests. Kevin B. Zeese & Paul M. Lewin, COMMON SENSE FOR DRUG POLICY, THE EFFECTIVE NATIONAL DRUG CONTROL STRATEGY (1999); Also, New York’s “Stop and Frisk” statute gained a lot of publicity after the New York Civil Liberties Union produced an analysis to show that the law was racially-biased and offending millions of innocent New Yorkers. *Racial Justice: Stop-and-Frisk Practices: Stop-and-Frisk Data*, NEW YORK CIVIL LIBERTIES UNION, <http://www.nyclu.org/content/stop-and-frisk-data> (last visited Feb. 12, 2016).

17. Dressler and Garvey claimed that there are essentially two main theories underlying criminal law: utilitarian and retributive. While the utilitarian theory focuses on creating a safe environment for the community as a whole, retributive theory is more concerned with righting a wrong in morality. In either case, statutes that punish those who are not culpable while allowing dangerous offenders to remain in the community without punishment do not qualify. JOSHUA DRESSLER AND STEPHEN GARVEY, CASE AND MATERIALS ON CRIMINAL LAW 32-41 (6th ed., West 2012).

18. Fuller argued that all legal systems must maintain eight general principles in order to function as an actual, substantive legal system rather than just a nominal legal system. See LON

Although all state legislatures have created some form of this statute,¹⁹ many are highly prejudicial and ineffective because they are used to punish some individuals based on their low socioeconomic status, cultural practices, or inability to sufficiently provide for their children.²⁰ At the same time, they allow for others to knowingly, legally harm children.²¹ Thus, collateral sanctions and criminal records increase and continue to bar more individuals from gaining employment post-conviction.²² Moreover, these inefficient, ineffective child endangerment statutes serve to aggravate the situation by prejudicially labeling some violators as criminals and tarnishing their reputations, while allowing other culpable persons to continue harming children without experiencing any legal repercussions. Different states use various labels to designate child “endangerment” in their statutes, including, but not limited to, “endangering children,”²³ “aggravated child abuse,”²⁴ “aggravated child neglect,”²⁵ and “abandoning or endangering a child.”²⁶ To avoid confusion and aid comprehension, this discussion will refer to all of these statutes as child endangerment statutes.

FULLER, *THE MORALITY OF LAW* 33-41 (rev. ed., Yale University 1969).

19. U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES: CHILD WELFARE INFORMATION GATEWAY, https://www.childwelfare.gov/systemwide/laws_policies/state/can/ (last visited Oct. 22, 2014).

20. In many cases, a phenomenon known as structural violence is to blame. As Webster and Perkins stated, “Over one third of homeless families have an open case for child abuse or neglect, and one in five have lost a child to foster care.” Linda Webster & Douglas D. Perkins, *Chapter 28 Redressing Structural Violence Against Children: Empowerment-Based Interventions and Research*, in *PEACE, CONFLICT, AND VIOLENCE: PEACE PSYCHOLOGY FOR THE 21st CENTURY* (D.J. Christie, R.V. Wagner, & D.A. Winter eds., Prentice-Hall 2007) (2001). Similarly, Pinard noted the link between homelessness and the loss of child custody. Pinard, *supra* note 1, at 972.

21. Ortega argued that, “Laws enacted to protect child laborers, child performers, and models in general are either too narrow or too vague to adequately protect the welfare of minors in the industry, or are simply non-existent.” Kelly Ortega, Note, *Striking a Pose: Protecting the Welfare of Child Models*, 35 *CARDOZO L. REV.* 2534, at 2538 (2014); Also, Professor Howell focused on the inadequacy of child endangerment statutes in the context of religious healing, stating that “[an] estimated one to two dozen American children die each year because their parents neglect to get them medical help, choosing instead to pray for their healing” Shirley Darby Howell, *Religious Treatment Exemption Statutes: Betrayest Thou Me with a Statute?*, 14 *SCHOLAR* 945, 947 (2012). Similarly, severe mental and emotional, and at times even physical abuse of gay, lesbian, transgender, and transsexual children and teens often goes unpunished. *See generally* Mitchell Gold, *Crisis: 40 Stories Revealing the Personal, Social, and Religious Pain and Trauma of Growing up Gay in America* (2008).

22. *See infra* notes 48-54 and accompanying text.

23. OHIO REV. CODE ANN. 2919.22 (West, Westlaw through 2015 Files 1 to 26 of the 131st GA).

24. TENN. CODE ANN. § 39-15-402 (West, Westlaw through end of the 2015 First Reg. Sess.)

25. TENN. CODE ANN. § 39-15-402.

26. TEX PENAL CODE § 22.041 (West, Westlaw through end of the 2015 Reg. Sess. of the 84th Legis.).

This Comment, in general, identifies the vagueness and the unequal interpretation and enforcement of child neglect, child endangerment, and psychological abuse laws enacted by states. This Comment will begin by addressing the inadequacies of the criminal justice system generally in Part II, focusing on collateral sanctions and their effects on recidivism. Then, Part III will discuss child endangerment statutes that are applied ineffectively and in a disparate manner to reach lower income individuals. Part IV specifically addresses the vagueness of child endangerment statutes and how that leads to parents who make certain child-rearing decisions, or are simply too poor to properly care for their children, to be subject to criminal charges. The consequences of child endangerment charges are discussed in Part V. Part VI discusses instances where children are actually endangered, using lesbian, gay, bisexual, and transgender (“LGBT”) children and underage models as examples, where the criminal statutes are not properly utilized to punish this behavior. This highlights the disparate application of these statutes in the current legal system.

II. PUNISHMENT WITHOUT CEASE

Having a criminal record in the United States has become increasingly common.²⁷ Twenty-five percent of American adults have a criminal record,²⁸ and as of March 2014, over 2.4 million Americans were legally confined in correctional or rehabilitative facilities.²⁹ Ninety-five percent of these individuals will be released back into society.³⁰ Thus, even more are under some type of supervision by way of parole or probation, and millions of others are living their lives under the stigma of a criminal record.³¹ These numbers make it clear that criminals are no

27. See Pinard, *supra* note 1, at 964.

28. Rodriguez & Ensellem, *supra* note 1, at 3.

29. Peter Wagner & Leah Sakala, *Mass Incarceration: The Whole Pie*, PRISON POLICY INITIATIVE, 1 (2014), available at <http://www.prisonpolicy.org/reports/pie.html>.

30. See Sahl, *supra* note 9, at 2 (drawing from information contained in the 2008 report from the Pew Center on States).

31. As Professor Gabriel Chin noted, “Indeed, there are two million people in American prisons and jails, a huge number, but one which is dwarfed by the six-and-a-half million or so on probation or parole and the tens of millions in free society with criminal records.” Chin, *supra* note 5, at 1791; Also, as Sahl stated, “One in thirty-one Americans is under some type of correctional control—prisons, jails, probation, or parole.” Sahl, *supra* note 9, at 3; Similarly, Mathias Heck stated, “More people convicted inevitably means more people who will ultimately be released from prison or supervision . . .” Mathias H. Heck, Jr., testimony on behalf of the ABA, for the hearing on *Collateral Consequences of Criminal Convictions and the Problem of Over-Criminalization of Federal Law*, before the Comm. on the Jud. Task Force on Over-Criminalization of the U.S. H.R. (2014), available at http://judiciary.house.gov/_cache/files/8d74a3cf-1df8-4c94-ab7d-

longer the few outlaw members in society that lurk in the shadows, waiting to commit violent crimes.³² In fact, most of these offenders are convicted for non-violent crimes, and they do not even have a history of violence.³³ Rather, they are merely one of the sixty-five million, or more than one in four, American adults with a criminal record.³⁴

While offenders experience direct, formal punishment for the crimes that they commit, such as incarceration, probation, court costs and fines, or other forms of governmental supervision, they must also face the tens of thousands of collateral sanctions that will be civilly imposed on them, often indefinitely, for the rest of their lives.³⁵ These sanctions include: voter disenfranchisement, revocation of professional licenses, deportation, ineligibility for federally-funded welfare assistances, eviction from housing, and several other legitimate, rational sanctions. They also involve some that are seemingly arbitrary or over

76d5b5117fcd/heck-witness-testimony.pdf.

32. Love, *supra* note 4, at 754; Also, as Wagner and Sakala stated, “[T]he enormous churn in and out of our confinement facilities underscores how naive it is to conceive of prisons as separate from the rest of our society.” Wagner & Sakala, *supra* note 29, at 1.

33. Almost three-fourths (72.1%) of people incarcerated in federal prisons are serving their sentences for non-violent crimes and have no history of violent acts, The Sentencing Project, *The Federal Prison Population: A Statistical Analysis*, available at http://www.sentencingproject.org/doc/publications/inc_federalprisonpop.pdf. More than three thousand juveniles are incarcerated for “status” offenses, meaning that the crimes they committed are not even legal violations for adults but rather technical, procedural issues. Wagner & Sakala, *supra* note 29, at 2. Also, twenty-two thousand individuals are incarcerated for various immigration-related crimes. *Id.* at 2. Similarly, Kathleen Miles noted, “[P]eople convicted of two broad categories of nonviolent crimes—drugs and immigration—make up over 60 percent of the U.S. prison population.” Kathleen Miles, *Just How Much the War on Drugs Impacts Our Overcrowded Prisons*, in *One Chart*, HUFFINGTON POST (March 10, 2014, 7:30 AM), http://www.huffingtonpost.com/2014/03/10/war-on-drugs-prisons-infographic_n_4914884.html.

34. Rodriguez & Ensellem, *supra* note 1, at 3. In furtherance of the concept that many offenders are non-violent, Rodriguez and Ensellem told the story of a developmentally-disabled man who unknowingly accepted a package containing drugs and was then convicted of conspiracy to commit a drug offense. *Id.* at 4. Love also acknowledges the fact that there are millions of Americans with criminal records. Love, *supra* note 4, at 754. Similarly, the United States Department of Labor reported that one in three American adults now has a criminal record. United States Department of Labor, *Complying with Nondiscrimination Provisions: Criminal Record Restrictions and Discrimination Based on Race and National Origin*, (2013), <http://www.dol.gov/ofccp/regs/compliance/directives/dir306.htm> (last visited Feb. 14, 2016).

35. The American Bar Association estimates that there are over 45,000 collateral sanctions in the United States as of June 2014. Heck, *supra* note 31, at 1. Also, many collateral sanctions will apply indefinitely, even long after the offender has been rehabilitated. Sarah B. Berson, *Beyond the Sentence—Understanding Collateral Consequences*, NIJ JOURNAL NO. 272, (2013), available at <http://nij.gov/journals/272/Pages/collateral-consequences.aspx>. Similarly, Pinard recounts meeting ex-offenders who are still dealing with collateral sanctions, though they have been rehabilitated for as long as twenty years. Pinard, *supra* note 1, at 965.

inclusive.³⁶ In fact, many refer to collateral sanctions as hidden or invisible because most defendants are either completely unaware of them at the time of pleading and sentencing, or they do not realize that such sanctions will continue to affect them and pose barriers for an indeterminate period of time.³⁷

Additionally, some of these sanctions may be imposed after an arrest, before any formal court proceedings or convictions occur.³⁸ Even when there actually is a conviction and the defendant is aware of the existence of collateral sanctions, he may have a very difficult time in determining which collateral sanctions will result from his particular conviction due to the disorganization and informal structure of these sanctions.³⁹ To make the situation even more daunting, these sanctions continue to be created every day. Because they are not considered actual punishment but rather regulatory law, they receive little or no evaluation or review beyond a reasonable discretion standard.⁴⁰ This means that the court will not closely scrutinize the statute or ensure that it is proportional to the crime.⁴¹ Rather, it will only ask whether the

36. Chin, *supra* note 5, at 1790. Also, while some of these sanctions serve legitimate, well-founded purposes, such as preventing those convicted of fraud from working with trusts or banks, or preventing violent offenders from obtaining guns, others are basic penalties imposed broadly over any and all persons with criminal records. Heck, *supra* note 31, at 1; Miedel noted that even a misdemeanor conviction may preclude an individual from receiving federally-funded assistance for housing, food, student loans, etc. Florian Miedel, *Increasing Awareness of Collateral Consequences Among Participants of the Criminal Justice System: Is Education Enough?*, N.Y. UNIFIED COURT SYS., available at <https://www.nycourts.gov/ip/partnersinjustice/Is-Education-Enough.pdf>. Also speaking about overly-broad collateral sanctions, Sahl discusses the issue of ex offenders being unable to continue in higher education because of the background checks conducted by universities. Sahl, *supra* note 9, at 4.

37. This issue is of particular concern because the decision to take a plea bargain or enter a guilty plea is ultimately an assessment of risk, one which cannot be accurately determined if the defendant is unaware of the possible consequences. Miedel, *supra* note 36, at 2. More specifically, judges and defense attorneys are typically not required to be aware of collateral sanctions and thus have no duty or no knowledge to inform the defendant. Heck, *supra* note 31, at 3.

38. As Miedel noted, “Arrest, alone, can result in the suspension of professional licenses for security guards, taxi drivers, barbers, nurses.” Miedel, *supra* note 36, at 1. Similarly, Smyth notes, “Among the most damaging types of records are not convictions at all—they are arrest records where the person charged has received a favorable disposition such as a dismissal or acquittal.” Smyth, *infra* note 44, at 44.

39. The National Institute of Justice has provided for the creation of databases that allow users to search for various collateral sanctions. Berson, *supra* note 35, at 1.

40. Professor Chin goes as far as to suggest that collateral sanctions have become the new “civil death,” an outdated form of punishment that “extinguished most civil rights of a person convicted of a crime and largely put that person outside the law’s protection. Chin, *supra* note 5, at 1790; In particular, the state may at any time create new collateral sanctions, this power being controlled only by a reasonable discretion standard. *Id.* at 1791.

41. *Id.* at 1808.

legislature acted reasonably in creating the statute.⁴²

Similarly, some effects of the criminal stigma arise later in the social arena.⁴³ For example, many landlords, employers, public entities, and various private individuals are beginning to require background checks.⁴⁴ A fact that most do not realize is that offenders establish criminal records even sans conviction. Thus, offender's arrests and records will show up on these background checks, even though they were never convicted of the alleged crime.⁴⁵ As J. McGregor Smyth noted, "Criminal records are easy to create and nearly impossible to destroy. Every step in the criminal justice process—from arrest to prosecutor review, state and federal criminal history, inquiry, arraignment, disposition, sentencing, and incarceration—creates a record at multiple agencies."⁴⁶ To make matters worse, much of the information produced in these reports is inaccurate, meaning that many offenders are judged for things that they did not do or crimes that they did not commit.⁴⁷

In particular, those collateral sanctions that relate to employment seem to be the most debilitating.⁴⁸ The National Institute of Justice (NIJ), as a result of the Court Security Improvement Act of 2007, granted funding to the American Bar Association (ABA) so that it could collect data concerning collateral sanctions in order to produce a database by which users may search for both state and federal level collateral sanctions.⁴⁹ From this project, the ABA determined that eighty-two percent of collateral sanctions were related to employment.⁵⁰

42. *Id.*

43. For more examples of the non-legal, social stigma that accompanies a criminal record, see generally Pinard, *supra* note 1. Similarly, for more examples, see generally Alexander, *supra* note 13 (Alexander's work discusses the debilitating social stigma that accompanies a criminal record in the United States).

44. J. McGregor Smyth, Jr., *Reintegration: A Model for Mitigating Collateral Consequences of Criminal Proceedings*, 24 FALL CRIM. JUST. 42 (2009).

45. Amy L. Solomon, *In Search of a Job: Criminal Records as Barriers to Employment*, NIJ JOURNAL NO. 270, 43 (2012), available at <http://www.nij.gov/journals/270/Pages/criminal-records.aspx>.

46. Smyth, *supra* note 44, at 45; These various agencies take their reports and sell them or provide them for free online, where private, commercial companies collect the data and produce background-check reports. *Id.* at 45.

47. *Id.* at 45.

48. Pinard refers to employment as being one of the two "most intractable barriers," the other being housing. Pinard, *supra* note 1, at 966. Similarly, Sahl noted that employment is the area of life most affected by collateral sanctions. Sahl, *supra* note 9, at 2. In the same vein, Alexander devotes several pages of her book to the struggles that ex offenders face in attempting to obtain employment. Alexander, *supra* note 13, at 148-54.

49. Berson, *supra* note 35, at 1.

50. Sahl, *supra* note 9, at 2 (commenting on the results of the NIJ funded survey concerning

Furthermore, they found that merely having a criminal record reduces one's chances of receiving a job callback by fifty percent.⁵¹ Many who are aware of the devastating effects of collateral sanctions have written about this issue in an attempt to expose the discrimination and assist offenders in their struggle to obtain employment.⁵² For example, Amy Solomon, co-chair of the staff working group of the Attorney General's Reentry Council, made a compelling argument before the Equal Employment Opportunities Commission (EEOC) when she asserted, "This [criminal] record will keep many people from obtaining employment, even if they have paid their dues, are qualified for the job and are unlikely to reoffend."⁵³

In response to such suggestions and reports, several states, the federal government, and the EEOC have taken steps to alleviate some of the barriers posed by collateral sanctions. As mentioned, the NIJ provided funding for the ABA to collect and systematize the sanctions and put them into a more user-friendly form.⁵⁴ Likewise, the ABA urged each state to create similar databases.⁵⁵ Also, the EEOC issued guidelines for employers, requiring that they use criminal records as only one factor in determining whether to hire, rather than using them as an ultimate barrier.⁵⁶ Several states enforced these new guidelines by creating "Ban the Box" legislation, which requires employers to remove

collateral sanctions).

51. *Id.* at 2.

52. *See generally* Sahl, *supra* note 9 (Sahl wrote about the lasting effects of a criminal record, particularly about how many end up having to resort to filing for pardons from the governor in order to overcome collateral sanctions). *See also* Pinard, *supra* note 1, at 966; Love, *supra* note 4, at 760-64; Rodriguez & Ensellem, *supra* note 1, at 1-2; Gorman, *supra* note 8, at 469; Alexander, *supra* note 13, at 148-54.

53. Solomon, *supra* note 45, at 43.

54. This database is available at <http://www.abacollateralconsequences.org/>, and it allows users to search by individual jurisdictions. The user can access an interactive map in which he will click on the appropriate state, or he may choose to search for federal, D.C., Puerto Rico, or the U.S. Virgin Isles. It also provides general instructions for using the site, which can be found under the "User Guide" tab.

55. The ABA made this recommendation after receiving an address from Justice Kennedy concerning the problem of collateral sanctions, specifically the fact that the American system often forgets about offenders after they are sentenced. Kennedy urged the ABA to recognize that, because of the increasing role that collateral sanctions are playing, most offenders are just beginning their struggle with the law at such point in time. Associate Justice Anthony M. Kennedy, Address at the American Bar Association Annual Meeting (Aug. 9, 2003), *available at* http://www.supremecourt.gov/publicinfo/speeches/viewsspeech/sp_08-09-03.

56. The new guidelines required employees to look at individual applicants on a case-by-case basis rather than merely dismissing them because of a criminal conviction. Tammy R. Pettinato, *Defying "Common Sense?": The Legitimacy of Applying Title VII to Employer Criminal Records Policies*, 14 NEV. L.J. 770 (2014).

a check box on job applications that inquires about criminal records, delaying such questions until later in the interview process.⁵⁷ In particular, the state of Ohio, via Senate Bill 337, created a Certificate of Qualification for Employment (CQE), which allows offenders to file petitions with their respective courts of common pleas.⁵⁸ If the petition is granted, the offender may offer it to a potential employer to show that he has been living a law-abiding life and does not pose an unreasonable risk to anyone in society, as well as to provide the employer a complete defense to any negligent hiring claims that may arise if the individual does act out and harm someone within the employer's scope of duty of care.⁵⁹

Despite all of these efforts and the honorable intentions that motivated them, extreme disparity and complications still exist for offenders trying to obtain employment. While many states are following the recommendations of the ABA to create collateral sanction databases, many collateral sanctions are not listed on such databases because of the current organization, or more accurately, lack of organization, of the sanctions.⁶⁰ Also, despite the EEOC's new guidelines for avoiding hiring discrimination, many employers blatantly violate such rules and continue to explicitly deny applicants because of their criminal records.⁶¹ Similarly, "ban the box" initiatives are proving to be more of a nominal representation rather than an actual solution. They purport to give offenders hope, but in reality these initiatives may hinder those with prior convictions even more in their search for employment.⁶² Even

57. Sahl lists the cities and counties that have passed "ban the box" legislation thus far. Sahl, *supra* note 9, at 3.

58. *Certificate of Qualification for Employment*, OHIO DEP'T OF REHAB. & CORR. (Sep. 22, 2014), <http://drc.ohio.gov/web/cqe.htm>.

59. *Id.*

60. In the information provided concerning the ABA's database, the user is warned, "These so-called 'collateral consequences' of convictions have been promulgated with little coordination in disparate sections of state and federal codes, which makes it difficult for anyone to identify all of the penalties and disabilities that are triggered by conviction of a particular offense." See note 54 for the link to this database.

61. For examples of such job advertisements, see Alexander, *supra* note 13, at 153-54. In the same vein, Pettinato argued that the EEOC's new recommendation actually evoked negative reactions from the legal community and society in general. Pettinato, *supra* note 56, at 771.

62. Dave Oberting, Executive Director of Economic Growth DC, argued that ban the box actually makes employers more afraid of potential employees because they have no way of knowing which applicants have criminal records. Because of this, he claims that they instead stereotype persons immediately, mainly African-American men, based on appearances and deny employment without any evidence of criminal convictions. He suggested fighting employment discrimination of offenders by allowing for more types of offenses to be sealed and by creating a specific job-placement firm that would work exclusively with offenders trying to reenter society. Dave Oberting, *The Problem with Ban the Box*, ECONOMIC GROWTH DC (July 5, 2014),

Ohio's Senate Bill 337, which appeared to be a major step toward relieving collateral sanctions, is flawed in that it made more crimes ineligible for sealing as well as allowing more individuals access to sealed records.⁶³

III. SOCIETAL HARM THAT RESULTS FROM INEFFECTIVE CHILD ENDANGERMENT STATUTES

Once one has acknowledged the complexity of a criminal record and the debilitating shame that it creates, it becomes clear that criminal statutes must be effective and just to ensure that only deserving individuals are tainted with such stigma and also to guarantee that dangerous offenders are fairly punished. Over the years, American society has persistently demanded that several unjust laws be amended to serve the true notion of justice, particularly via the efforts of civil and human rights organizations.⁶⁴ Unfortunately, the main reason that most of these laws receive such attention is because they affect minority and low-income groups of people in a disparate manner. For example, many sentencing laws have been attacked on the basis that they unfairly sentence minority-group offenders to longer, harsher sentences than those handed to more affluent, white criminals.⁶⁵ Similarly, other laws

<http://economicgrowthdc.org/the-problem-with-ban-the-box/>.

63. Sahl provides a brief history of the state's sealing statute, enacted in 1974, which only barred sealing for offenses unqualified for probation and certain traffic offenses. The original statute also only allowed judges, police, and prosecuting attorneys to see sealed records. Now, every few years, the state adds new offenses to the list of ineligible offenses, as well as allowing people outside of the criminal justice system access to sealed records. Sahl, *supra* note 9, at 4.

64. In March 2014, several petitioners at the 150th session of the Inter-American Commission on Human Rights expressed disapproval of the "stand your ground" laws being used in numerous U.S. states, particularly in how the laws are inherently racist against minority groups. *Report on the 150th Session of the IACHR*, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, (2014), available at <http://www.oas.org/es/cidh/prensa/docs/report-150.pdf>. Similarly, the American Civil Liberties Union (ACLU) criticized Alabama House Bill 56, arguing, "It creates a range of new immigration-related crime, with draconian penalties attached . . . a shocking throwback to the days of de jure segregation, HB 56 attempts to make a class of individuals non-persons in the eyes of the law." *Analysis of HB 56, 'Alabama Taxpayer and Citizen Protection Act'*, AMERICAN CIVIL LIBERTIES UNION, (June 13, 2011), available at <https://www.aclu.org/immigrants-rights/analysis-hb-56-alabama-taxpayer-and-citizen-protection-act>. Likewise, in an article delivered at the Criminal Sentencing Guidelines Conference, another statute that received significant attention because of its inherent racial qualities was that which differentiated between crack and powder cocaine in the sentencing of drug offenders. Carissa Byrne Hessick, *Race, Gender, and Class at a Crossroads: A Survey of Their Intersection in Employment, Economics, and the Law: Criminal Sentencing Guidelines Conference Article: Race and Gender as Explicit Sentencing Factors*, 14 J. GENDER RACE & JUST. 127 (2010).

65. One of the most popular of these inherently biased sentencing laws was that focusing on the differential treatment in crack versus powder cocaine offenses. As Hessick noted, many

like “stand your ground,”⁶⁶ and New York’s “stop and frisk,”⁶⁷ that appear facially neutral, have been criticized for disparately affecting racial minorities.

Despite the attention paid to unjust laws, one particular type of statute has failed one of society’s most vulnerable populations—children. Current child endangerment statutes are particularly vague in terms of what constitutes criminal neglect⁶⁸ and psychological abuse. They do not clearly explain which types of actions constitute “neglect” or “abuse” and, thus, are prohibited.⁶⁹ At the same time, they are also used broadly to punish certain minority and low socioeconomic groups for practices that may be culturally entrenched or the result of structural violence.⁷⁰ In some states, the statutes are effectively written to capture serious offenders, but due to improper prosecutorial discretion they are not properly utilized.⁷¹ Thus, the problem lies not only in the structure of the statute, but also in the way that it is enforced and interpreted by the courts. Even worse, many statutes are outdated and provide religious exemptions that allow adults to physically, mentally, and emotionally harm children.⁷²

In contrast, American society often goes out of its way, both legally and politically to ensure that children are protected.⁷³ Evidence of this

commentators argued, “[C]rack cocaine penalties unfairly differentiate between conduct ordinarily associated with black offenders and conduct ordinarily associated with white offenders, and punish the former more severely.” See Hessick, *supra* note 53 at 138. Likewise, inherently-racial sentencing laws have been the subject of several academic studies. See Jill K. Doerner and Stephen Demuth, *The Independent and Joint Effects of Race/Ethnicity, Gender, and Age on Sentencing Outcomes in U.S. Federal Courts*, 27 JUSTICE QUARTERLY 1 (2010); John F. Pfaff, *The Myths and Realities of Correctional Severity: Evidence from the National Corrections Reporting Program on Sentencing Practices*, 13 AM. LAW ECON. REV. 491 (2011). More specifically, Timothy Droske wrote in particular about the disparity in Native American sentencing laws. He noted that Native American offenders who commit crimes outside of “Indian Country,” or off the reservation, receive much lesser sentences in state courts than those who commit the same offenses while in Indian Country, under federal court jurisdiction. Timothy J. Droske, *Correcting Native American Sentencing Disparity Post-Booker*, 91 MARQ. L. REV. 723 (2008).

66. Childress, *supra* note 16.

67. New York Civil Liberties Union, *supra* note 16.

68. See *infra* notes 79-89 and accompanying text.

69. Chase Cooper, *Confronting Religiously Motivated Psychological Maltreatment of Children: A Framework for Policy Reform*, 20 VA. J. SOC. POL’Y & L., 1, 14 (2012).

70. See Pimentel, *infra* note 137, at 949-50; see also Gilman, *infra* note 110, at 540.

71. See *infra* note 118 and accompanying text.

72. For examples of these religious exemptions, see *infra* note 81.

73. Each state has specific statutes to protect children, which allow the state to come in and inhibit adults who may be harming or neglecting children. Howell, *supra* note 21, at 956-64; Howell also noted that some of the laws intended to protect children actually do so at the expense of adults. Thus, the public policy behind such law suggests that it is politically popular to defend and protect minors. *Id.* at 957.

arises most often in the media because the public shames alleged and convicted child offenders;⁷⁴ however, it also arises in both common law and statutory legal history, both of which strive to protect susceptible children from self-serving adults.⁷⁵ It is clear that society views children as a unique class of individuals requiring special protections that are not typically afforded to adults in similar situations.⁷⁶ Attempting to reconcile efforts to protect the vulnerable child with the existing, ineffective child endangerment statutes has resulted in a very confused society where thousands of children are left unprotected, dangerous adults are at large, and others are stamped as offenders for acts that most would not consider criminal. Part IV discusses (1) several instances of loving parents who misinterpret the blurry requisite standards of care, (2) all-too-frequent abuse that escapes the statutes, and (3) other situations that actually do fall under the protection of the statutes, but due to misinterpretation by the courts or improper prosecutorial discretion, do not seem to result in the proper punishments.

IV. THE FINE LINE BETWEEN PARENTAL CHOICE AND CRIMINAL CHILD ENDANGERING

Child endangerment statutes are notoriously vague, leaving many individuals questioning which types of parenting decisions are acceptable and which will expose them to criminal liability. The Model Penal Code describes the crime as “knowingly endanger[ing] the child’s

74. For example, the media has recently focused on the case of NFL athlete Adrian Peterson, as he was charged and then convicted of child abuse for “whooping” his child. *NFL Star Adrian Peterson Arrested for Child Abuse*, BBC (Sept. 13, 2014, 05:07 ET), <http://www.bbc.com/news/world-us-canada-29186682>. Similarly, the Catholic church is under fire for countless allegations of child abuse and “paedophile priests.” *Looming Shadows: a Bid to Hold the Catholic Leadership Responsible for Paedophile Priests*, THE ECONOMIST, (May 17, 2014), <http://www.economist.com/news/international/21602248-bid-hold-catholic-leadership-responsible-paedophile-priests-looming-shadows>. Another interesting news article discussed why child molesters are among the most hated inmates in prison. Thus, even other criminal members of society hold these types of offenders to be particularly culpable. Brian Palmer, *Are Child Molesters Really the Most Hated People in Prison?*, THE SLATE GROUP (Nov. 15, 2011), http://www.slate.com/articles/news_and_politics/explainer/2011/11/jerry_sandusky_out_on_bail_are_child_molesters_tormented_in_american_prisons_.html.

75. Professor Howell wrote a very informative discussion concerning the intent behind child endangerment laws, which comes from a greater societal desire to hold children’s rights superior to those of adults. She provided examples from common law areas of contracts, torts, and criminal law, as well as statutes that protect children in terms of criminal sentencing. Further, she pointed out the continued support of the federal government in enacting several acts created to protect children, such as the Juvenile and Delinquency Prevention Acts of 1974 and the Uniform Drinking Age Act. Howell, *supra* note 21, at 956-64.

76. For a more detailed discussion on this issue, see Howell, *supra* note 21, at 956-64.

welfare by violating a duty of care, protection or support.”⁷⁷ The following explanatory notes then purport to “limit the reach of the criminal law to situations where a parent, guardian, or other person supervising the welfare of a child under 18 knowingly endangers the child’s welfare by violating a duty of care, protection or support.”⁷⁸ Thus, an offender must knowingly commit the act, but which acts actually create criminal liability are unclear.

Many states follow the guidelines set by the Model Penal Code and generally prohibit any acts that may harm children physically, mentally, or morally, yet they fail to mention what kinds of acts may fall under these provisions.⁷⁹ Those states that actually do have more detailed statutes prohibit very specific acts, including, but not limited to: allowing a child to be near methamphetamine use or production,⁸⁰ sexual conduct,⁸¹ torture,⁸² abandonment,⁸³ and depriving the child of food, clothing, shelter, or health care.⁸⁴ They leave other instances, particularly those relating to criminal neglect, open to the discretion of

77. MODEL PENAL CODE § 230.4 (AM. LAW. INST. 1962).

78. MODEL PENAL CODE § 230.4.

79. For example, see N.Y. PENAL LAW § 260.10 (West, Westlaw through L.2015, chapters 1 to 387); CAL. PENAL CODE § 273a (West, Westlaw through urgency legis. through Ch. 807 of 2015 Reg. Sess. and Ch. 1 of 2015-2016 2nd Ex. Sess.); 720 ILL. COMP. STAT. ANN. 5/12C-5 (West, Westlaw through P.A. 99-482, with the exception of P.A. 99-480, of the 2015 Reg. Sess.) (This statute actually provides one very specific prohibition in the case of leaving a child alone in a motor vehicle for more than ten minutes.); MO. REV. STAT. § 568.050 (West, Westlaw through the end of the 2015 Veto Sess. of the 98th GA); ALA. CODE § 13A-13-6 (West, Westlaw through Act 2015-520 of the 2015 Reg. and 1st Special Sess.); ARIZ. REV. STAT. § 13-3619 (West, Westlaw through the First Reg. Sess. of the 52nd Legis.).

80. IOWA CODE § 726.6(1)(e) (West, Westlaw through end of the 2015 Reg. Sess.); OHIO REV. CODE ANN. § 2919.22(B)(6) (West, Westlaw through 2015 Files 1 to 26 of the 131st GA); N.M. STAT. ANN. § 30-6-1(J) (West, Westlaw through end of the First Special Sess. of the 52nd Legis. 2015).

81. MO. REV. STAT. § 568.045(1)(2) (West, Westlaw through the end of the 2015 Veto Sess. of the 98th GA); N.J. REV. STAT. §2C: 24-4 (West, Westlaw through L.2015, c. 238 and J.R. No. 13).

82. OHIO REV. CODE ANN. § 2919.22(B)(2); IOWA CODE § 726.6(1)(c); TENN. CODE ANN. § 39-15-402(a)(3) (West, Westlaw through end of the 2015 First Reg. Sess.); N.M. STAT. ANN. § 30-6-1(D)(2).

83. TEX. PENAL CODE ANN. § 22.041(a) (West, Westlaw through end of the 2015 Reg. Sess. of the 84th Legis.); IOWA CODE § 726.6; COLO. REV. STAT. § 19-3-102 (West, Westlaw through the First Reg. Sess. of the 79th GA 2015); ALASKA STAT. § 11.51.100 (West, Westlaw through the 2015 First Reg. Sess. and Second Special Sess. of the 29th Legis.); N.M. STAT. ANN. § 30-6-1(B).

84. IOWA CODE § 726.6(1)(d); MONT. CODE ANN. § 45-5-628 (West, Westlaw through chapters effective July 1, 2015, 2015 Sess.); MICH. COMP. LAWS SERV. § 750.136(b)(c) (West, Westlaw through P.A.2015, No. 166 of the 2015 Reg. Sess., 98th Legis.); ALASKA STAT. § 11.51.100(a)(4); ME. REV. STAT. tit. 17, § 554(B-3) (West, Westlaw through the 2015 First Reg. Sess. of the 127th Legis.).

the police, child protective services, and the prosecutor.⁸⁵ Many of the statutes that do mention neglect require the prosecutor to show that the parent has exposed the child to a substantial risk,⁸⁶ failed to exercise reasonable care,⁸⁷ or recklessly endangered the child.⁸⁸ Yet, as could be expected, differences in culture and personal opinion have led to many parents not even realizing that they have exposure to criminal liability until the time of arrest.⁸⁹

For decades, poor parents have struggled with this vagueness as they face child endangerment charges when financial constraints have made them unable to meet the required standards of care.⁹⁰ In these instances, parents are typically charged with criminal neglect because they cannot afford food, clothing, or housing or because they send children to school dirty and hungry.⁹¹ Today, parents of all socioeconomic levels are being threatened by such charges for making decisions that have traditionally fallen within legal parental discretion. For example, the media has highlighted the case of a Maryland couple that let their ten-year-old son and six-year-old daughter walk home alone from a park near their home.⁹² The parents, a climate-science consultant and physicist, claimed that they believe in “free-range” parenting and made a conscious, calculated decision to let their children walk home alone from the park in order to help them develop vital life skills in self-reliance and responsibility.⁹³ As the parents stood by in complete shock, a full police and Child Protective Services investigation ensued after a

85. See *infra* notes 273-275 and accompanying text.

86. ALA. CODE § 13A-13-6 (West, Westlaw through Act 2015-520 of the 2015 Reg. and First Special Sess.).

87. The Massachusetts statute requires that the adult must expose the child to a risk that “constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.” MASS. ANN. LAWS ch. 265, § 13L (West, Westlaw through Chapter 111 of the 2015 First Ann. Sess.).

88. N.M. STAT. ANN. § 30-6-1(A)(3); ME. REV. STAT. tit. 17, § 554(C).

89. See *Ohio Father Arrested After 8-Year-Old Son Skips Church to Play in Neighborhood*, CBS CLEVELAND (June 27, 2014), available at <http://cleveland.cbslocal.com/2014/06/27/ohio-father-arrested-after-8-year-old-son-skips-church-to-play-in-neighborhood/> (Tells the story of a father who did not even know he had violated the law until the police showed up at his home with his son who had skipped church to go to the local dollar store). See also *infra* note 95.

90. For an example, see *infra* notes 137-142.

91. See Gilman, *infra* note 102, at 511-13 (discussing the varying definitions of criminal neglect and the difficulty in determining what constitutes such behavior).

92. Donna St. George, *Parents Investigated for Neglect After Letting Kids Walk Home Alone*, THE WASHINGTON POST (Jan. 14, 2015), available at http://www.washingtonpost.com/local/education/maryland-couple-want-free-range-kids-but-not-all-do/2015/01/14/d406c0be-9c0f-11e4-bcfb-059ec7a93ddc_story.html.

93. *Id.*

neighbor reported seeing the children walking without an adult.⁹⁴

As demonstrated by the previous example, many parents do not actually know which types of decisions will expose them to criminal liability. Parents across the nation are sharing their stories online in various parenting blogs and forums, relaying their concerns and seeking advice for avoiding criminal liability as they do their best to raise their children responsibly.⁹⁵ National Public Radio (NPR) recently aired a segment concerning the issue of free-range parenting and found that most states do not even specify a particular age at which children may be left alone.⁹⁶ Such a gap in the law has led to many parents, such as the couple from Maryland, being charged with criminal child endangerment merely for allowing their children to play alone at near-by parks or travel home alone from school.

A. Disparate Prosecutorial Discretion and Misinformed Courts Allow for the Prosecution of Adults for Child-Care Decisions that Do Not Actually Harm Children.

In the case of underprivileged families, many parents want to care for their children and believe that they are doing the best they can, but sometimes they fall short of what the law has determined acceptable and thus lose their children while simultaneously gaining criminal records. One of the core problems underlying these types of situations is a concept that social scientists have termed “structural violence.”⁹⁷ Structural violence arises when sociopolitical and socioeconomic

94. *Id.*

95. For an example, see Kim Brooks, *The Day I Left My Son in the Car*, SALON (Jun. 3, 2013), available at http://www.salon.com/2014/06/03/the_day_i_left_my_son_in_the_car/ (Here, a mother describes the embarrassment and confusion she experienced when coming home to find police at her home after a stranger reported her for leaving her son in the car for a few minutes as she ran into a store). See also Lenore Skenazy, *No Child Left Outside: Another Mom Arrested for Letting Kid Play in Park*, REASON.COM (Jul. 29, 2014), available at <http://reason.com/blog/2014/07/29/no-child-left-outside-another-mom-arrest>; *Cops and CPS Interrogate Mom Who Let 6 y.o. Play Outside*, FREE RANGE KIDS (Sep. 16, 2014), available at <http://www.freerangekids.com/cops-and-cps-interrogate-mom-who-let-6-y-o-play-outside/> (Comments below the story chronicle concern from other parents who wish to practice free-range parenting.).

96. Jennifer Ludden, *Kids' Solo Playtime Unleashes 'Free-Range' Parenting Debate*, NPR (Feb. 18, 2015), available at <http://www.npr.org/blogs/health/2015/02/18/384050825/kids-solo-playtime-unleashes-free-range-parenting-debate>.

97. Webster & Perkins, *supra* note 20, at 1. The concept has grown in popularity over the past decade, and many social scientists are using it to understand and analyze various power structures that harm groups of people with very little power in the overall population. For another example, see PAUL FARMER, *PATHOLOGIES OF POWER: HEALTH, HUMAN RIGHTS, AND THE NEW WAR ON THE POOR*, 29-50 (2005).

systems are configured in a manner that oppresses, abuses, and dominates specific groups in a population while allowing exceptions and privileges for other groups that hold greater power and wealth.⁹⁸ The United States harbors an unusual amount of structural violence, which is perpetuated by the idea of the “American Dream.”⁹⁹ The idea provides that every American has an equal opportunity to thrive in this country and also an equal opportunity to fail, which suggests that those who do fail have done so out of choice, apathy, or moral turpitude.¹⁰⁰ Further, the elites in society have determined it is their duty to “fix” the people who fail rather than repair the fractured social and economic systems that have created the perceived failures.¹⁰¹ Those with criminal convictions and low income are often automatically lumped into this category of lazy, undeserving, and morally corrupt people, creating a cycle of poverty and inferior social class status.¹⁰² Unfortunately, the combination of structural violence and poverty results in a very dangerous environment for raising children.¹⁰³

The structural violence that affects those with low income shows itself in a number of ways, but homelessness in particular plays a major role.¹⁰⁴ In fact, many of the activities that homeless families take part in on a daily basis just to survive have been criminalized so that being poor and homeless has almost become a crime in itself.¹⁰⁵ Over one-third of

98. Webster & Perkins, *supra* note 20, at 1.

99. *Id.* at 2.

100. *Id.* Also, Webster & Perkins provided another example in the “Welfare Reform Movement” that took place in the 1990s. During this time, government programs believed the problem to be a result of sloth and irresponsibility and thus aimed to fix poor people themselves rather than the broken economic and social systems that held them captive. As a result the people remained poor and undereducated, and those deemed “undeserving” lost government support. *Id.* at 2-3.

101. *Id.*

102. Michele Gilman noted this oppressive cycle of structural violence when he quoted, “By reducing parental capacity to parent children, by further weakening already challenged family structures and resources, and by making already disadvantaged families and communities even less economically viable, incarceration helps to reify a social dynamic that is likely to encourage further involvement in crime.” Gilman, *infra* note 110, at 497 (citing Lawrence D. Bobo, *Crime, Urban Poverty, and Social Science*, 6 DU BOIS REV. SOC. SCI. RES. ON RACE 273, 276 (2009)).

103. As Webster & Perkins noted, “Unfortunately, many poor children are viewed as the troublesome byproducts of undeserving people, and not as the result of the politics and economics of structure-based inequalities in the way resources are distributed.” Webster & Perkins, *supra* note 20, at 2.

104. *Id.* at 3.

105. Gilman spoke of the criminalization of homelessness and said, “Cities across America are making the daily tasks of living for the homeless a crime, passing laws that forbid sleeping, eating, begging, or sitting in public spaces. In some cities, it is even illegal for groups or individuals to serve food to homeless people.” Gilman, *infra* note 147 at 497.

homeless families are involved in a welfare case for neglect or abuse.¹⁰⁶ It does not take many inferential links for one to guess why this is the case. Life on the streets is completely unsuitable for children, and even those parents who manage to obtain meager housing must often deal with extremely poor living conditions and frequent moves that interfere with children's health, education, and emotional wellbeing.¹⁰⁷ Likewise, healthcare becomes another major struggle that those with low income face when trying to care for their children. Unique among its Western counterparts, the United States does not have universal healthcare, meaning that most poor families must make their best attempts to survive without the medical care that they need.¹⁰⁸ Again, children bear the brunt of this, illustrated by the fact that the country ranks seventeenth in infant mortality rates, compared to other Western countries.¹⁰⁹

This cycle of structural violence is not a new problem, and those with the fervor to resolve such injustices have made attempts to do so. In an effort to mitigate some of the criminal liability that poor parents may face when unable to take care of their children, some states have created a "poverty defense."¹¹⁰ Alas, this defense is only a start, and it is useless when applied in a welfare system that does not fully understand the causes and consequences of poverty.¹¹¹ When the criminal defendant pleads this defense, the judge may then allow the jury to consider how his life experience in severe poverty may have influenced both his state of mind as well as his actions.¹¹² Importantly, the poverty defense only applies to "failure-to-act" cases of neglect and not to deliberate acts of child abuse.¹¹³ This difference is quite significant when considering that out of the 436,321 cases of child maltreatment in 2010, 78.3% of those

106. Webster & Perkins, *supra* note 20, at 3.

107. *Id.* at 4.

108. *Id.* at 5.

109. *Id.* It should also be noted that the infant mortality rate for African Americans in the United States is even higher. At 17.6 per 100,000 black infants dying, this rate is more closely akin to that of a third-world country. *Id.*

110. This defense arose from the 1973 case *United States v. Alexander*, 471 F.2d 923, 926 (D.C. Cir. 1973). Michele Estrin Gilman, *The Poverty Defense*, 47 U. RICH. L. REV. 495, 495. Seven states allow for the poverty defense in criminal child neglect cases, and more than half of the states allow for the defense in civil neglect cases. *Id.* at 510.

111. *Id.* at 553.

112. *Id.* at 495. The poverty defense is available for civil cases of child neglect in about half of the states, but only a few will recognize it as a defense for criminal neglect. Though this note concerns criminal defendants in particular, charges may vary by jurisdiction. Some states will seek criminal charges on as many child neglect cases as possible, while others prefer to leave such matters to family or juvenile courts. *Id.* at 518.

113. As Gilman noted, "[A]buse results from an affirmative, intentional act, while neglect results from a parent's failure to act." *Id.* at 511.

involved neglect rather than abuse.¹¹⁴ Hence, a majority of child maltreatment cases that go through the courts are not the result of abuse or intentional harm but rather poor education or a parent's inability to provide for the child.

The scope and theory of neglect also leads to confusion in this area of law. Whereas other criminal actions are clearly defined, there is no agreement on what actually constitutes neglect.¹¹⁵ The concept is culturally specific, and it changes over time.¹¹⁶ Thus, what may have been acceptable in one cultural group for the past several generations may no longer be sufficient in the eyes of current mainstream culture.¹¹⁷ Also, some jurisdictions will find criminal neglect in almost all cases of suspected neglect, while others will reserve such decisions for family or juvenile courts.¹¹⁸

One law professor went so far as to argue that a majority of such findings of neglect are actually only findings of poverty, rather than of maltreatment.¹¹⁹ Professor Gilman claimed that the poverty defense may actually hurt poor families rather than helping them because it clouds the scene and gives other actors in the legal system the sense that something is being done to help people when in reality the parents are still facing an immense, overwhelming struggle to keep their families together.¹²⁰ Rather than being a separate, affirmative defense, the parent wishing to raise a poverty defense must bring it as a "failure of proof" defense.¹²¹ Thus, the prosecutor is not required to show that the defendant parent had sufficient funds to provide care for the child. Instead, the parent himself must show that he was indeed impoverished and thus unable to properly care for his child.¹²² Though some parents do succeed in arguing this defense, "inadequacy of income" remains the most common reason for why defendant parents lose these cases.¹²³ Additionally, most of the children who are removed from their homes come from poor

114. *Id.* Neglect is by far the most common type of child maltreatment. In 2010, physical abuse accounted for 17.6%, sexual abuse for 9.2%, and psychological abuse for 8.1%. *Id.*

115. *Id.* at 512.

116. *Id.*

117. *Id.*

118. *Id.* at 518. For example, prosecutors in New York City will typically charge any parent suspected of neglect with criminal neglect, while other jurisdictions prefer to have the family or juvenile courts determine such matters.

119. *Id.* at 515.

120. *Id.* at 553.

121. *Id.* at 523.

122. *Id.*

123. *Id.*

families.¹²⁴ Thus, parents who succeed in arguing the poverty defense have most likely done so only because the court had an unusually keen understanding of the relationship between poverty and neglect or because the judge's personal beliefs led him to such a decision.¹²⁵

Therefore, it follows that many courts need a better understanding of poverty in order to see how it affects parents' abilities to care for their children, rather than blindly associating poverty with culpability.¹²⁶ Such a nuanced understanding will allow judges to better discern which defendants should be afforded the poverty defense,¹²⁷ and which are truly unable or unwilling to care for their children, despite governmental and judicial assistance.¹²⁸ As Gilman noted, "[S]uccess can result when poor families are not judged in isolation for their failings, but rather have their challenges and barriers taken into account within a large societal context."¹²⁹ In these cases, rather than charging the parents with criminal child endangerment, the court may instead choose to create more realistic management plans that include increased governmental assistance and more thorough investigation to determine whether children are actually being harmed.¹³⁰ In this manner, the court will also be able to identify those parents who are actually unwilling or unable to care for their children, regardless of the amount of assistance provided.¹³¹ The necessary changes will neither be simple nor quick, but Gilman believes that they are possible.¹³²

It is necessary to address all of the aforementioned problems if poverty is to be truly understood and treated appropriately within the criminal justice system. Changing the current concept of poverty within the legal system will require the assistance of social caseworkers, criminal defense attorneys, guardians ad litem, and judges.¹³³ Many caseworkers and attorneys in this area are overworked and thus do not

124. Many theorists argue about welfare law concerning the proper balance between parent and child rights, but almost all are in agreement that these cases primarily affect the poor. *Id.*

125. *Id.* at 523.

126. *Id.* at 540.

127. *Id.*

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.* at 539. As Gilman said, "Success does not mean that parents always win; there are some cases in which no amount of services or support will lead to acceptable levels of parenting." *Id.*

132. *Id.* at 544. Gilman also mentioned instances of judges recognizing the economic hardships that poor parents endure and cases of parents successfully arguing the poverty defense. *Id.* at 545.

133. *Id.* at 544.

have the ability to devote the necessary time or provide access to the resources crucial for tackling broader societal issues concerning poverty and child neglect.¹³⁴ Also, most of these hearings do not involve testimony from experts who may explain the specific hardships affecting those impoverished in the area, such as high unemployment rates, unaffordable housing, and insufficient mental health care.¹³⁵ Finally, each of these actors holds personal biases concerning race, sex, class, and impresses them on parents who are most often female, minority, and impoverished.¹³⁶ All of the above problems need to be overcome in order to accomplish the goal of changing how poverty is treated within the framework of the current justice system.

B. The Cultural Attack on Free-Range Parents

As worrisome as the prosecution of individuals based on socioeconomic status is the fact that the state may prosecute some parents for making decisions that most of the population would deem legal and within personal judgment. Though it seems that self-proclaimed free-range parents are most at risk, the underlying issue is really a cultural battle over the extent to which parents should be allowed to make their own determinations in raising their children.

For instance, in Bozeman, Montana, a university professor took her three children, aged three to twelve, along with a couple of other similarly-aged children from her neighborhood, to the local mall.¹³⁷ The mother left the children at the mall for a couple of hours, instructing the older children to watch after the young ones.¹³⁸ The children had a cell phone with them, access to food at the mall, and both of the 12-year-olds had completed babysitter training at a local hospital.¹³⁹ Also, the outing occurred in the middle of the afternoon, and the children's father was working less than five minutes away.¹⁴⁰ When the two twelve-year-old children went into dressing rooms for a few minutes, staff at the retail store called the police, and the mother was arrested and charged with child endangerment.¹⁴¹ The mother fully believed that what she had done

134. *Id.*

135. Though the child welfare agency may have experts, individual parents often do not have the money to pay their own mental health experts to testify on their behalf. *Id.*

136. *Id.*

137. David Pimentel, *Criminal Child Neglect and the "Free Range Kid": Is Overprotective Parenting the New Standard of Care*, 2012 UTAH L. REV. 947, 968 (2012).

138. *Id.*

139. *Id.* at 994.

140. *Id.* at 993.

141. *Id.* at 968.

was acceptable, as would probably many other parents, and she begged for leniency on the basis that it was her first offense and she had learned her lesson.¹⁴² Yet, the prosecutor disregarded her argument and chastised the mother on the basis that she herself would never leave her children alone at the mall.¹⁴³

Similarly, in *State v. Hughes*, an Ohio judge convicted a father of child endangerment after he allowed his five-year-old daughter to wait in the cab of his pick-up truck while he went into a store.¹⁴⁴ The father left the truck running so that the air conditioner could keep the child comfortable, and he set up a portable DVD player so that she could watch a cartoon while waiting.¹⁴⁵ He also left her with a cell phone that she knew how to use in case of emergency.¹⁴⁶ The appellate court, relying on *State v. Reyes*, did overturn the conviction, but it did so only on the grounds that the father's actions did not create the "substantial risk" or "significant possibility" of harm necessary for a criminal conviction.¹⁴⁷ The appellate court did, however, make it clear that the father's actions were unacceptable and irresponsible.¹⁴⁸ Though some may side with the prosecutor in these cases and believe that parents who leave children alone for any amount of time, no matter the circumstance, should be held liable and criminally charged, it is likely that most would find such determinations within a zone of legitimate and legal parental discretion.

The vagueness of child endangerment statutes, along with the vast amount of prosecutorial discretion, has led to very culture-specific enforcement.¹⁴⁹ Just as in cases with impoverished parents, courts may selectively punish those parents who do not fit into the cultural status quo.¹⁵⁰ The woman who left her children at the mall in Montana had grown up in Puerto Rico with seven other siblings.¹⁵¹ Families in the Latino community often assume that older children will care for and look after their younger siblings, which would explain why the woman thought her actions were acceptable.¹⁵² In fact, that mother even

142. *Id.*

143. *Id.*

144. *Id.* at 970.

145. *Id.*

146. *Id.*

147. *Id.* (citing *State v. Reyes*, No. 17-09-02, 2009 WL 248802 (Ohio Ct. App. Aug. 17, 2009)).

148. *Id.*

149. *Id.* at 973.

150. *Id.* at 977.

151. *Id.* at 978.

152. *Id.*

mentioned that she began to feel as if she were trapped in a “culture war” as the trial wore on and her correspondence with the prosecutor grew increasingly strained.¹⁵³ Yet, as the *Reyes* court noted, such differences and parental choices may appear irresponsible, but they certainly do not rise to the level of criminal child endangerment.¹⁵⁴

V. COLLATERAL CONSEQUENCES RESULTING FROM CHILD
ENDANGERMENT CHARGES PLACE AN OVERWHELMING BURDEN ON
OFFENDERS SEEKING EMPLOYMENT.

A child endangerment conviction creates devastating disabilities for an individual searching for employment. Unfortunately, many of those charged with the offense are unaware of collateral sanctions at the time of pleading and sentencing.¹⁵⁵ Attorneys are not legally required to inform their clients of such consequences, and many offenders will take plea bargains without realizing that these sanctions will be imposed immediately after a guilty plea is accepted and continue to follow them for the rest of their lives.¹⁵⁶ Likewise, after completing a criminal sentence, many believe that they have repaid their debt to society and wish to begin a new, clean life only to find that one of the basic steps in doing so, gaining employment, is nearly impossible.¹⁵⁷ This harsh reality becomes even more upsetting in cases where disparate child endangerment statutes serve to punish those who simply cannot afford to take care of their children or those who unknowingly make “poor” child-rearing choices in the eye of a particular prosecutor. While these offenders bear such extreme burdens for their actions, they simultaneously watch others actively and intentionally harm children and escape the hands of justice. Many are left confused and unsure of what actions may constitute child endangerment, constantly worried that their parental discretion may be judged a criminal offense.

Not only is this depressing and unfair for those charged with child endangerment, but it is a problem that affects all of society. One of the most vulnerable classes, children, is left unprotected, and an increasing portion of the population is prevented from working and earning an honest living. As mentioned, the majority of child endangerment convictions are the result of “negligent” parenting or inadequacy of

153. *Id.* at 980.

154. *See id.* at 971.

155. *See* Miedel, *supra* note 36, at 2.

156. *See supra* notes 35-37 and accompanying text.

157. *See generally* Sahl, *supra* note 9 (discussing the severe collateral sanctions that affect an offender’s employment opportunities, as well as the ineffectiveness of expungement).

income, rather than active child abuse.¹⁵⁸ When a parent receives such charge and then is prevented from working to create a better environment for her child, life begins to feel quite hopeless.

Many offenders attempt to file for expungement or record sealing to rid themselves of the conviction that prevents employment. In 2012, eight states enacted statutes that allow certain offenders to expunge or seal criminal records.¹⁵⁹ Similarly, five states launched legislation that significantly diminished the barriers created by collateral sanctions.¹⁶⁰ In many of these states, however, a child endangerment charge cannot be expunged because it is considered a violent charge and therefore ineligible.¹⁶¹ In Georgia, only cases that were never referred for prosecution or dismissed are eligible for expungement, meaning that only those individuals considered legally innocent are eligible for expungement.¹⁶² Regardless, these processes only limit the visibility of criminal records, meaning that mandatory collateral sanctions will still prevent an employer from hiring an offender even if he is unaware of the criminal charge or desires to hire the individual despite her conviction.¹⁶³ In some cases, newly passed collateral sanctions or revised employment contracts will force an employer to fire an offender who has been a valuable employee for many years because the new law or contract prohibits the employer from employing an individual with certain convictions.¹⁶⁴ Thus, even if the offender makes it past the interview process and background check, she may still fail to obtain the position due to the lurking child endangerment conviction, and she may later lose it if the conditions of her employment change or a new sanction is imposed by the legislature.

To make collateral sanctions more apparent and manageable, the American Bar Association created a publicly-accessible database online

158. Gilman, *supra* note 110, at 511. Neglect is by far the most common type of child maltreatment. In 2010, physical abuse accounted for 17.6%, sexual abuse for 9.2%, and psychological abuse for 8.1%. *Id.*

159. Delaware, Georgia, Louisiana, Ohio, Maryland, North Carolina, Tennessee, and Utah. *State Reforms Reducing Collateral Consequences for People with Criminal Records: 2011-2012 Legislative Round-Up*, LEGAL ACTION CENTER (2012), available at <http://www.nelp.org/page/-/sclp/2012/statecollateralconsequenceslegislativeroundupsept2012.pdf?nocdn=1>.

160. *Id.* at 2.

161. UTAH CODE ANN. § 77-40-105 (West, Westlaw through 2015 First Special Sess.); OHIO REV. CODE ANN. § 2901.01(A)(9) (West, Westlaw through 2015 Files 1 to 26 of the 131st GA); DEL. CODE ANN. tit. 11 § 1105 (West, Westlaw through 80 Laws 2015, ch. 193).

162. LEGAL ACTION CENTER, *supra* note 159, at 9.

163. See Sahl, *supra* note 9, at 2.

164. *Id.* (Discussing the case of Ms. Smith, whose employer of two years signed a contract that would force him to fire her based on her thirteen-year-old conviction).

where individuals may learn about the sanctions that affect their ability to gain employment post-conviction.¹⁶⁵ A few states have also created their own databases by which offenders may search via the child endangerment code number or by the job that they are seeking in order to learn which specific collateral sanctions will create a barrier to employment.¹⁶⁶ Nonetheless, merely knowing about these sanctions does not make them go away, and finding out that hundreds of sanctions may potentially completely bar one's chances of gaining employment can be overwhelming. Several states have more than two hundred collateral sanctions.¹⁶⁷ Some have more than five hundred¹⁶⁸ collateral sanctions that block individuals with felony-level child endangerment convictions from obtaining a job. Likewise, many other states have more than two hundred sanctions affecting employment for those with misdemeanor child endangerment convictions.¹⁶⁹ Thus, offenders with such convictions are particularly limited in the types of positions they may hold, and the negative social stigmas that often accompany these convictions create an added impediment.

VI. SOME ADULTS ACTIVELY HARM CHILDREN AND ESCAPE CRIMINAL LIABILITY.

Just as the vagueness of child endangerment statutes allows law enforcement and the courts to convict and punish parents who are not harming their children, it also allows other individuals to freely abuse and endanger children without criminal liability. In some cases, the statutes even provide exemptions for adults who harm children on religious grounds.¹⁷⁰ Because of the harsh stigma and collateral sanctions attached to a child endangerment conviction, it is especially upsetting to convicted offenders that these individuals retain all of their liberties while the children they harm continue to suffer. Part VI

165. As mentioned, the ABA's database provides information for collateral sanctions in all 50 states. *See supra* note 54.

166. Ohio created its own database, available at <http://civiccoho.org/>. Columbia Law School created a "Collateral Consequences Calculator" for the state of New York, available at <http://calculator.law.columbia.edu/>.

167. Iowa has 217, Oklahoma has 296, New York has 364, Washington has 239, Maryland has 265, Florida has 405, and Illinois has 441. This information was provided by the ABA database. *See supra* note 54.

168. Ohio has 570, Texas has 512, and California has 511. This information was provided by the ABA database. *See supra* note 54.

169. Ohio has 261, New York has 260, Texas has 263, California has 377, and Florida has 223. This information was provided by the ABA database. *See supra* note 54.

170. *See infra* note 177 and accompanying text.

suggests that current child endangerment laws could be used to protect two segments of children who suffer serious consequences at the hands of parents or other adults and, yet, are currently considered infrequently for prosecution under existing child endangerment laws. These two groups of children are (1) gay, lesbian, transsexual, or otherwise non-gender-conforming (LGBT) children, who are often forced into conversion therapy in an attempt to coerce assimilation or even forced to live on the streets; and (2) children who aspire to attain modeling careers at the will of exploitative, abusive adults.

A. Harmful Religious Exemptions and Vague Psychological Abuse Standards Allow Parents to Impose Dangerous Assimilation Demands on LGBT Children.

Lesbian, gay, bisexual, transgendered, and other children who do not fit contemporary sex or gender molds are often under fire for their sexual orientations and gender expressions. Though most of these children face unjustified abuse on a daily basis, many child endangerment statutes contain specific religious exemptions that allow for unfettered abuse that is religiously backed. Religious exemption provisions constitute one of the main sources of disparity regarding current child endangerment statutes. Religious exemptions may provide guardians a defense against criminal child endangerment charges when, for example, they employ religious healing methods, typically referred to as “faith healing,” rather than conventional medical treatment.¹⁷¹ Before 1974 and the Department of Health, Education and Welfare’s (HEW) enactment of the Child Abuse and Neglect Prevention and Treatment Act (CAPTA),¹⁷² only eleven states had religious exemptions for faith healing.¹⁷³ CAPTA required that a state create a religious exemption in order to receive federal funding, which resulted in almost every state adding one to its child endangerment statute.¹⁷⁴ One can see an example of such provision in Ohio’s statute,¹⁷⁵ which reads:

171. Rebecca Williams, Note, *Faith Healing Exceptions Versus Parens Patriae: Something’s Gotta Give*, 10 FIRST AMEND. L. REV. 692, 700 (2012).

172. *Id.*

173. *Id.* at 701.

174. *Id.*

175. OHIO REV. COD ANN. § 2919.22(A) (West, Westlaw through 2015 Files 1 to 26 of the 131st GA). For more examples of religious exemption provisions, see IOWA CODE § 726.6(1)(d) (West, Westlaw through end of the 2015 Reg. Sess.); MINN. STAT. § 626.556(2)(f)(5) (West, Westlaw through end of the 2015 First Special Sess.); TENN. CODE ANN. § 39-15-402(C) (West, Westlaw through end of the 2015 First Reg. Sess.); OKLA. STAT. ANN. tit. 21, § 852.1(B) (West, Westlaw through Chapter 399 (End) of the First Sess. of the 55th Legis. 2015); WIS. STAT. §

It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

Even though HEW removed the obligation in 1983,¹⁷⁶ thirty-nine states still offer religious exemption as a defense to criminal child endangerment.¹⁷⁷ However, it should be noted that the American Academy of Pediatrics (AAP), American Medical Association (AMA), and National Committee for the Prevention of Child Abuse have contested fervently the religious exemptions as they apply to child endangerment statutes.¹⁷⁸ The AAP explicitly stated that the religious exemption provides parents an inexcusable defense to criminal charges and actually encourages them to avoid necessary medical treatment for their children.¹⁷⁹

While the religious exemptions are inherently harmful, vague definitions of psychological abuse put many children in an even more dangerous situation because the state has failed to clearly define which types of actions amount to mental and emotional abuse. Several statutes do not even refer to psychological abuse at all.¹⁸⁰ The Missouri statute prohibits “knowingly [acting] in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old,”¹⁸¹ but it does not mention any type of risk to mental or emotional well-being. Also, while some statutes do prohibit psychological harm, they only explicitly list the types of physical actions that are abusive.¹⁸² In contrast, they ban psychological abuse in general and fail to explain what types of actions may constitute such abuse.¹⁸³ Rather than

948.03(6) (West, Westlaw through 2015 Act 60); 23 PA. CONS. STAT. § 6304 (West, Westlaw through 2015 Reg. Sess. Acts 1 to 49).

176. Williams, *supra* note 171 at 701.

177. Richard A. Hughes, *The Death of Children By Faith-Based Medical Neglect*, 20 J.L. & RELIGION 247, 248 (2004).

178. Williams, *supra* note 171, at 701.

179. *Id.* at 702.

180. TENN. CODE ANN. § 39-15-402; 720 ILL. COMP. STAT. ANN. 5/12-21.6 (West, Westlaw through P.A. 99-482, with the exception of P.A. 99-480, of the 2015 Reg. Sess.); MO. ANN. STAT. § 568.045 (West, Westlaw through end of the 2015 Veto Sess. of the 98th GA); WYO. STAT. ANN. § 6-4-403 (West, Westlaw through the 2015 Gen. Sess.); OKLA. STAT. ANN. tit. 21, § 852.1; MD. CODE ANN., CRIM. LAW § 3-601 (West, Westlaw through the 2015 Reg. Sess. of the GA); N.M. STAT. ANN. § 30-6-1.

181. MO. ANN. STAT. § 568.045.

182. For an example, see Iowa’s statute, IOWA CODE § 726.6 (West, Westlaw through the end of the 2015 Reg. Sess.).

183. See Cooper, *supra* note 69, at 41.

prohibiting particular actions that will cause psychological abuse, they focus on observable harm that may result from such abuse.¹⁸⁴ For example, Iowa's statute prohibits "an intentional act or series of intentional acts[] [that] evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor."¹⁸⁵ It then lists types of physical actions the state considers abusive but provides no further explanation as to what types of actions will constitute psychological abuse. Similarly, South Dakota's statute prohibits emotional or mental injury, but only as measured by subsequent observable impairment:

[E]motional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior¹⁸⁶

The combination of religious exemptions and vague psychological definitions creates a dangerous environment¹⁸⁷ in which parents may impose severe mental and emotional abuse on children, for example, those who do not fit traditional sex and gender norms. Currently, there are an estimated 320,000 to 400,000 homeless lesbian, gay, bi-sexual, or transgender (LGBT)¹⁸⁸ children in the United States.¹⁸⁹ While 1.6 to 2 million youths experience homelessness every year, twenty to forty percent of this population identify as LGBT¹⁹⁰ and experience homelessness because they have been rejected by religious parents and

184. *Id.* at 41.

185. IOWA CODE § 726.6(1)(c). For more examples of statutes with vague psychological abuse standards, see S.D. CODIFIED LAW § 26-8A-2(7) (West, Westlaw through the 2015 Reg. Sess., Exec. Order 15-1, and Supreme Court Rule 15-16); MICH. COMP. LAWS SERV. §750.136b(g) (West, Westlaw through P.A.2015, No. 166 of the 2015 Reg. Sess., 98th Legis.).

186. S. D. CODIFIED LAWS § 26-8A-2(7).

187. See Cooper, *supra* note 69, at 14.

188. It should be noted that the LGBT acronym varies. It often refers to the list mentioned in the text above, but it often includes other groups of people, such as asexuals, transsexuals, sexual-rights allies, pansexuals, queers, etc. The acronym LGBT is typically used to refer in general to all people who feel as if they share sexism as a form of oppression. University of Michigan, *LGBT Terms and Definitions*, available at <http://internationalspectrum.umich.edu/life/definitions>.

189. The Center for American Progress noted that 320,000 to 400,000 LGBT children face homelessness every year, but that this number is likely much higher now because these numbers were calculated before the start of the last major economic recession. Nico Sifra Quintana, Josh Rosenthal, & Jeff Krehely, *On the Streets: The Federal Response to Gay and Transgender Homeless Youth*, CENTER FOR AMERICAN PROGRESS 6 (2010), available at <http://cdn.americanprogress.org/wp-content/uploads/issues/2010/06/pdf/lgbtyouthhomelessness.pdf>.

190. The Center for American Progress noted that the National Alliance to End Homelessness estimate LGBT kids to make up about 20% of homeless youth, while the National Gay and Lesbian Task Force believes that number to be as high as 40%. *Id.*

ousted from their homes.¹⁹¹ To exacerbate this situation, the law has criminalized most of the survival techniques that these and other abandoned children employ, such as theft, drug use, and prostitution.¹⁹²

Furthermore, those that do not end up homeless often face an even worse fate as they realize that they must fight a constant battle to retain their identities amid a sea of assimilation demands that their parents impose.¹⁹³ Assimilation demands can be extremely detrimental to a child in terms of mental and emotional development, especially because children already inherently occupy a particularly vulnerable position in the typical family structure in that they must depend on their parents for basic needs, such as food, shelter, and emotional support.¹⁹⁴ When children experience such demands, they often begin to feel as though they have no network of support, which, unsurprisingly, leads to an increased rate of depression, suicide, substance abuse, and decreased productivity in general.¹⁹⁵ Even if the child manages to be one of the lucky few who does not end up coping via self harm, he will inevitably become less confident in his own identity and fail to develop the vital ability to express himself as an autonomous individual.¹⁹⁶

Some religious parents take assimilation demands to the extreme and force LGBT children into reparative therapy.¹⁹⁷ Such therapy, also

191. Some LGBT children feel so much rejection and fear from their parents that they would rather commit crimes and be sent to juvenile hall rather than go back home and face the rejection. As stated in a powerful quote from Jarrod Parker, “Some kids actually commit crimes to get a record so that they’ll be sent to juvenile hall instead of home—and these are otherwise good kids!” Gold, *supra* note 21, at 86.

192. Forty-four percent of homeless LGBT children report that they have been asked by someone to sell sex in exchange for money, food, drugs, shelter, or clothing. Quintana, Rosenthal, & Krehely, *supra* note 189, at “Fast facts.” As prostitution is a criminal offense, it is also deemed one of such “survival crimes” that these youths commit in order to survive on the streets. *Id.* at 13.

193. Examples of such assimilation demands include, but are not limited to, “verbal harassment and name-calling, threatening a child with rape in order to ‘cure’ her same-sex attractions, blocking access to LGBT friends, partners, or support groups, or subjecting the child to conversion therapy.” Orly Rachmilovitz, *Family Assimilation Demands and Sexual Minority Youth*, 98 MINN. L. REV. 1374, 1380 (2014).

194. As Rachmilovitz pointed out, general family dynamics may make it even harder for the child to fight assimilation demands because she knows that she is in a lower position of power compared to her parents, and she may be afraid to challenge such demands out of fear that her parents will not continue to provide for her needs. *Id.* at 1390. In terms of emotional support particularly, many children find it impossible to question their parents because the type of conversation necessary to do so must be initiated by the child, which is extremely hard to do without assistance from some type of legal or social institution. *Id.* at 1391.

195. *Id.* at 1388.

196. Because assimilation demands are a form of parental rejection, they cause the child to become isolated and lose the necessary trust and intimacy necessary for developing properly into a healthy, self-sufficient adult. *Id.* at 1390.

197. Ian Moss, Note, *Ending Reparative Therapy in Minors: An Appropriate Legislative*

known as “conversion” therapy, is the general term that describes a variety of treatments, including psychoanalysis, shock therapy, the “reframing” of deviant sexual desires, social-skills training for re-assigning gender, and aversive behavioral therapy.¹⁹⁸ The exact therapy may differ by case, but every reparative practitioner’s ultimate goal is re-wire the LGBT individual to not only stop being gay, but to actually become sexually interested in the opposite sex.¹⁹⁹ The main problem with such therapy is that there is no empirical evidence to support its success,²⁰⁰ but there is plenty to show that it is extremely detrimental to the well-being of the individual being treated,²⁰¹ as well as evidence that proves it to be unsuccessful.²⁰²

While many argue that such therapy should be acceptable because it offers a way for religious families to help children who may be struggling with homosexuality,²⁰³ which they believe to be a

Response, 52 FAM. CT. REV. 316, 318 (2014).

198. In some cases, the therapy may even include complete social isolation and shaming. *Id.* at 318; Rachmilovitz further defined conversion therapy as “therapy, which attempts to change same-sex sexual orientation or gender nonconformity ‘back’ to heterosexuality or gender conformity.” Rachmilovitz, *supra* note 193, at 1387.

199. See Moss, *supra* note 197, at 317.

200. The American Psychological Association determined that “same-sex attractions, feelings, and behaviors are normal variances of human sexuality and that efforts to change sexual orientation have not been shown to be effective or safe.” *Id.* at 318. (quoting *Position statement on Therapies Focused on Attempts to change Sexual Orientation (Reparative or Conversion Therapies)*, AMERICAN PSYCHIATRIC ASSOCIATION (2000), available at <http://www.psychiatry.org/practice/professional-interests/diversityomna/diversity-resources/apa-position-statements-related-to-diversity>). To make matters worse, most practitioners who offer reparative therapy are unlicensed because they meet the “clergy/religious” practitioner exception in mental health professional licensing laws. *Id.* at 317.

201. Children who experience parental rejection via forceful reparative therapy are eight times more likely to attempt suicide and six times more likely to become depressed than their LGBT peers who have accepting and supportive parents. *Id.* Similarly, research done on individuals after the therapy is completed has shown a significant pattern of depression, anxiety, suicide, impotence, relationship dysfunction, and even genital mutilation. *Id.* at 318. The states of New Jersey and California have actually banned reparative therapy being used on minors. *Id.* at 317.

202. Because being LGBT is not actually a disease or mental illness, such individuals cannot be “cured.” Quoting the American Psychiatric Association again, Moss argued, “[T]here is a foreseeable risk of harm associated with the [reparative] therapy; it is medically unnecessary because homosexuality is not a condition to be ‘cured’; and there is no evidence that Reparative Therapy is effective.” *Id.* at 318.

203. In some cases, the courts have actually determined assimilation demands to be outside the realm of parental rights. When the court sees parents “knowingly and admittedly abus[ing] their children in order to assimilate them into mainstream, straight society,” they tend to determine that such actions are not a part of parental rights. Rachmilovitz, *supra* note 193, at 1414. This does not happen very often, though, due to the grievous level required by most abuse/neglect statutes. Thus, most children facing assimilation demands are not considered by the court to be abused or neglected. *Id.*

condemning sin, the American Psychological Association has actually approved and condoned an alternative method of therapy called Affirmative Therapeutic Intervention. They have shown this type of therapy to be both successful and safe, in contrast to dangerous, futile conversion therapy.²⁰⁴ Rather than trying to fight an individual's inner workings, this type of therapy works to help the LGBT child reconcile his feelings with his religion so that he may continue to develop his own identity, while also remaining steadfast in his chosen faith.²⁰⁵ The American Psychological Association prefers this type of therapy over reparative therapy because it requires a legally-licensed mental health practitioner, who takes a neutral stance to the patient's sexual orientation, in order to help guide her in exercises necessary for becoming comfortable with herself, rather than imposing a pre-determined assimilation strategy upon her.²⁰⁶

Despite the scientific and testimonial evidence concerning the dangers associated with conversion therapy, it remains legal in almost every state.²⁰⁷ In 2012, California, via Senate Bill 1172, became the first state to prohibit state-licensed practitioners from using conversion therapy on minors.²⁰⁸ Similarly, in 2013, the state of New Jersey also enacted Assembly Bill 3371, which has the same effect.²⁰⁹ Most recently, the District of Columbia followed suit and enacted Bill 20-0501 to accomplish the same goal.²¹⁰ A handful of other states have introduced similar bills, but as of December 2014, none have been enacted.²¹¹ The aforementioned bills ban all Sexual Orientation Change Efforts (SOCE), which include, "practices by mental health providers that seek to change an individual's sexual orientation."²¹² If a licensed practitioner violates the bill, the appropriate licensing body will punish him.²¹³ The statutes also provide special exclusions for positive therapies

204. This type of therapy has been shown to help reduce conflicts within the individual with little or no risk of harm. Moss, *supra* note 197, at 319.

205. Affirmative Therapy works to help the individual understand that he can be both religious and homosexual. Its main focus is identity development, rather than identity reformation. *Id.*

206. *Id.*

207. *#BornPerfect: The Facts About Conversion Therapy—Active Laws and Legislation: The Details*, NATIONAL CENTER FOR LESBIAN RIGHTS (2015), available at <http://www.nclrights.org/bornperfect-the-facts-about-conversion-therapy/#q6>.

208. *Id.*

209. *Id.*

210. *Id.*

211. *Id.*

212. Moss, *supra* note 197, at 320 (citing CAL. BUS. & PROF. CODE § 865(b)(1)).

213. *Id.* at 321. Though the punishments vary, they typically range from probation to denial or revocation of license. *Id.*

such as Affirmative Therapeutic Therapy.²¹⁴ These bills seem like an appropriate solution, but they fail because they only prohibit state-licensed professionals from engaging in such activity.²¹⁵ Many of the individuals offering SOCE services are not licensed practitioners but rather members of the clergy, which means that the statutes have no effect on them whatsoever.²¹⁶

It becomes clear that many LGBT children are not adequately protected from the psychological harms that adults impose. SOCE bans have created a slight deterrence to such abuse, but applying child endangerment statutes, specifically prohibitions concerning psychological harm, to these actions would allow the states to criminally prosecute adults who knowingly and actively abuse children while trying to “cure” them of sexual deviancy. Doing so would further allow the state to punish all adults harming the child rather than having to find the particular licensed practitioner administering the treatment, which in many cases does not exist.

B. States May Fail to Apply Child Endangerment Statutes in Cases Where Children are Abused.

Though many parents who impose assimilation demands on their children do so in good faith without realizing the harm such demands may cause,²¹⁷ some individuals knowingly and purposely take advantage of and harm children every day, yet remain in society and are often applauded for their work.²¹⁸ Consider the case of child modeling in New York; adults frequently abuse and exploit children, yet the state requires its citizens to rely on civil rights and cultural arts statutes rather than using its criminal child endangerment statute to prosecute such

214. *Id.* at 320.

215. *Id.*

216. Many of those who practice SOCE therapies do not even need to pursue medical or professional degrees because they fall under “clergy/religious practitioner” exceptions. *Id.* at 317.

217. Because of the strong religious influences found in reparative therapy, many parents who force their children into it are recommended to do so by their priest or pastors and thus legitimately believe that what they are doing is in the child’s best interest, lest he should face an eternity of condemnation for his sinful life. *Id.* at 316. Similarly, even those demands not driven by religious influences are often innocent in that the parents believe they are just encouraging their children to conform more to mainstream ideals, in order to be a part of the American “melting pot.” Rachmilovitz, *supra* note 193, at 1383.

218. Photographer Jason Parry took photographs of a fifteen-year-old model that were overtly sexual in nature and then published them against the girl and her parents’ wishes. After publishing, he went even further and sold the image to a clothing brand, which then distributed the image via mass retailer Urban Outfitters. Ortega, *supra* note 21, at 2551.

individuals.²¹⁹ Every year, adult executives in the professional modeling industry enter into legally-enforceable contracts with minor child models.²²⁰ Having a general concept of the theories underlying basic contract law automatically raises a red flag in the mind of anyone hearing of such behavior.²²¹ While the most notable fashion models reach high levels of fame and success, a majority are also extremely young at the time of discovery, and they begin their careers as underage and naïve children.²²² In fact, most models are scouted before they reach the age of sixteen, when they are particularly vulnerable to the idea of the glamorous life of a high-fashion model.²²³ In reality, due to the unrealistic expectations of the modeling industry and the vicious nature of modeling contracts, many will end up “blatantly taken advantage of, left in debt, and alone.”²²⁴

Traditional contract law prohibits enforcement of contracts against minor parties, but in terms of modeling contracts in particular, the law favors modeling agencies over the welfare of child models.²²⁵ In order to protect modeling agencies, state laws may allow the parent or guardian of a child model to enter the contract as well, in order to ensure that the child follows through with her obligations.²²⁶ While this alone should

219. *Id.* at 2552.

220. In the state of New York, section 35.03 is a statute designed to protect the adult employer by requiring that the parent of the child model agree to enforce performance of the contract. This may occur even when the parent herself is naïve to the world of fashion modeling and thus not aware of the possible negative consequences that such an agreement will have on the child’s future. Ortega, *supra* note 21, at 2549.

221. A short excerpt from a case involving a contract between an adult and a minor avowed this theory when it stated, “Those who deal with a minor must do so charged with the knowledge of the controlling principle of law which, as here, may work some injustice in individual cases but affords, in general, the protection of minors against their own improvidence at a time when they are presumed to be incapable of protecting themselves.” IAN AYERS AND GREGORY KLASS, *STUDIES IN CONTRACT LAW* 440 (8th ed., Foundation Press 2012) (citing *Davis v. Cleveland*, 92 N.E.2d 827, 829 (Ohio App. 1950)).

222. Ortega discussed in depth the “striking dissimilarities” between what many young girls perceive the high-fashion modeling world to be, compared to the stark realities that they actually encounter after signing binding contracts, sometimes written in languages they cannot even read. Ortega, *supra* note 21, at 2537.

223. Some models are scouted as young as twelve or thirteen, and the average model begins her career between thirteen and sixteen. *Id.* at 2540. Many believe the world of modeling to be runways, glamorous advertisements for clothing and jewelry, etc., but in reality, only a small handful of those scouted actually make it to that point in their careers. *Id.* at 2539.

224. *Id.* at 2537.

225. While adult models often succeed in bringing claims against agents via privacy laws, child models often cannot do the same because they lack the legal right to void the contract. *Id.* at 2549.

226. To make matters worse, the adult guardians co-signing these contracts are often just as unfamiliar with modeling contracts as their children, putting them into a situation in which they are promising their children will do things that are most likely against their interest or welfare. *Id.*

make one wary, several other unethical, dangerous obligations and practices coalesce to place the child in an extremely dangerous environment. To start, many young models begin their careers by moving into overcrowded apartments occupied by other underage models, separating them from their families and any type of adult supervision.²²⁷ Because of this isolation, many begin to rely solely on their agencies for basic needs like food, clothing, shelter, and security, as well as business and legal advice.²²⁸ Also, over half²²⁹ attend photo shoots and casting calls alone, which sets them up as easy prey for “intimidating crews and predatory directors.”²³⁰

To put a face on such abuse, Ortega recalled a disturbing incident when she illustrated the case of Hailey Clauson, a model who entered the New York modeling scene at age fifteen.²³¹ When her photographer presented his shots to Clauson’s parents, they expressed concern over one photo in particular, which posed the young girl in a provocative, “overtly suggestive pose,” and forbade the photographer from using the shot.²³² Nevertheless, the photographer went ahead and not only posted the photo to various fashion blogs and websites, but also sold it to a commercial retailer who then produced the image on t-shirts for mass consumption.²³³ Though Clauson and her parents have filed a complaint, they will only be paid monetary damages if they win the suit, which means that the underlying issues of exploitation and abuse will remain unresolved, and agents will continue to prey on other underage models without the consequences of criminal charges.²³⁴

In addition to these dangers, child models are also forced to meet various obligations if they wish to remain on track to become one of the top few successful models.²³⁵ These requirements often pertain to the appearance of the models, such as height, weight, and body size.²³⁶ Such

227. *Id.* at 2540.

228. *Id.* (citing Sara Ziff, *Opinion, Regardless of Age, It’s About Rights*, N.Y. TIMES (Nov. 12, 2012, 2:17 PM) <http://www.nytimes.com/roomfordebate/2012/09/13/sweet-16-and-a-runway-modelregaldess-of-a-fashion-models-age-is-about-rights>).

229. An estimated fifty-six percent of child models are “rarely” or “never” accompanied by a guardian on set. *Id.* (quoting *Child Models vs. Other Child Performers: An Overview, The Model Alliance*, <http://modelalliance.org/comparisons-and-reasons-for-change> (last visited Mar. 19, 2014)).

230. *Id.*

231. *Id.* at 2550.

232. *Id.* at 2551.

233. *Id.*

234. *Id.*

235. While many young models are scouted, only a small percentage of those will make it to the top and become the supermodels they aspire to be. *Id.* at 2539.

236. As Ortega noted, “A fashion model must be tall, thin, beautiful, extremely confident, and

physical requirements are necessary in an industry that creates art via the human body, but many of them become so demanding that models develop eating disorders and substance abuse problems in order to meet the demands and cope with the accompanying stress.²³⁷ In addition to such physical requirements, many young models are also encouraged to drop out of school and forego formal education so that they may attend photo shoots and auditions that occur during all hours, day and night.²³⁸ This demand is especially dangerous because it prevents the model from developing other skills and creating a back up plan for when she becomes too old to stay in the industry.²³⁹ Even if the young model manages to get past all of these barriers, she is first and foremost a small business owner selling her body as a product, and she must find financial compensation in order to earn a living.²⁴⁰ While other occupations compensate individuals for specific projects or hours spent in the office, many designers pay models in clothing or merely by the “exposure they are expected to receive from the gig, receiving nothing tangible.”²⁴¹ This alternative compensation is not a supplement but actually the only form of payment, which means that the model is left with no cash compensation whatsoever.²⁴²

In an effort to address such abuse, the Council of Fashion Designers of America (CFDA) created and published a list of recommendations for

must also have a healthy dose of luck in order to be scouted and selected by one of the nation’s top modeling agencies, which only represent perhaps a couple of hundred models at any given time.”
Id.

237. The average model weighs about 23% less than the average woman in the United States. *Id.* at 2541. Models must look as young as possible and maintain impossibly thin bodies to stay at the top of their agencies and obtain work. *Id.* After they begin to look “too old” to become successful models, they will no longer have a place in the agency. *Id.* Sixty-four percent of models have been asked specifically by their agencies to lose weight and 31.2% have had an eating disorder. Seventy-seven percent are exposed to drugs or alcohol, and 68.3% reported depression or anxiety. *Id.* at 2542.

238. While many models who are hired are urged to drop out of school, Ortega cited New York Fashion Week as an example. During this particular event, fittings can last until four in the morning, making it nearly impossible for the models to maintain a conventional school schedule. *Id.* at 2541.

239. Most models have very little formal education. *Id.* at 2540 (citing ASHLEY MEARS, PRICING BEAUTY: THE MAKING OF A FASHION MODEL, 78-80 (2011)). When the models become too old to continue modeling, they are often helpless because they have no other education or skills to apply toward careers other than modeling. *Id.* at 2541.

240. It is very rare for models to be paid regularly, which makes financial security near impossible. Some models are paid a flat or hourly rate based on how much notoriety they gain, but this does not happen very frequently. Most of the time, they are paid only in free gifts from the designers. *Id.* at 2542.

241. *Id.*

242. The average fashion model earns \$32,000 per year, and her career lasts about five years. *Id.*

improving and defending the rights and welfare of child models.²⁴³ Similarly, Vogue Magazine and the Model Alliance, which was established by a former child model, created and adopted a set of rules to deter exploitation within the industry.²⁴⁴ The State of New York also enacted a statute that required child models younger than eighteen to obtain work permits before becoming employed.²⁴⁵ The state further amended part of its labor laws to include “runway or print models” within its definition of “child performers.”²⁴⁶ The new laws compel employers to obtain special permits before employing child models and to provide a teacher that fulfills state education standards.²⁴⁷ Unfortunately, most of these efforts failed. The president of the CFDA actually violated one of the new guidelines a few years later,²⁴⁸ and Vogue violated one of its new age guidelines fewer than six months after publishing it.²⁴⁹ Even worse, the New York statute lasted only nine years²⁵⁰ and appeared in only one state court opinion²⁵¹ despite the fact that designers, photographers, agents, and parents continued to violate its authority.²⁵² These violations obviously harm the child models in terms of health and education, but they may also come into play later on during their careers as they make important business decisions. The New York State Supreme Court has held that contracts between underage models and employers who have failed to obtain permits are null and void,²⁵³ which appears a victorious ruling on its face, but is actually harmful to child models who need such contracts enforced in order to succeed in their careers.²⁵⁴

243. *Id.* at 2543. (citing N.Y. ARTS & CULT. AFF. LAW § 35.05).

244. *Id.* at 2544-45.

245. *Id.* at 2547 (citing N.Y. LAB. LAW § 150). This amendment replaced the N. Y. ARTS & CULT. AFF. LAW § 35.05.

246. *Id.* (citing N.Y. LAB. LAW. § 150).

247. *Id.* (citing N.Y. LAB. LAW § 152).

248. CFDA president Dian von Furstenberg hired a fifteen-year-old model to walk the runway in one of her shows in 2011, four years after the CFDA released the new guidelines. *Id.* at 2544.

249. Vogue Japan used a fourteen-year-old model in its December 2012 issue, and Vogue China also used a fourteen-year-old model in its August 2012 issue. *Id.* at 2545.

250. The statute was replaced by an amendment in New York’s labor laws. *See supra* note 245 and accompanying text.

251. Ortega *supra* note 21 at 2546 (citing Metro. Model Agency USA, Inc. v. Rayder, 643 N.Y.S.2d 923 (Sup. Ct. 1996)).

252. Violation of § 35.05 would have resulted in a criminal misdemeanor, which suggests that the state’s legislature viewed the issue very seriously. Yet, the fact that it appeared in only one case illustrated how weakly it was actually enforced. *Id.*

253. In *Metropolitan Model Agency USA, Inc. v. Rayder*, the court held a contract between an underage model and her agency null and void because it violated § 35.05. *Id.* at 2547.

254. The *Metropolitan* decision applies to all contracts between underage models and their agencies. Because a majority of these contracts are in violation of § 35.05, many young models who

Ortega argued that an alternative response to such abuse might arise in New York's child endangerment statute, which was intended to "protect the physical health, morals and well-being of children."²⁵⁵ She contended that the statute was meant to restrict a wide range of actions that may harm children, leaving the court the discretion to interpret and apply the statute in particular cases as it sees fit.²⁵⁶ Though the state could use the statute against employers in the modeling industry, to this date it has not applied it in such cases.²⁵⁷ Ortega suggested that the court could easily apply the child endangerment statute to these employers, citing the Clauson case as a prime example.²⁵⁸ The photographer in that case purposely placed the child model in sexually suggestive poses and provided her with alcohol, both of which are individual violations²⁵⁹ under the statute, and he was also aware that the child was in fact underage.²⁶⁰ Thus, this employer purposely took advantage of the child model and put her in danger, but no current criminal statute will stop him, and the available civil recourse is incomplete.²⁶¹

Again, as in the case of abuse against LGBT children, minor models must sustain such abuse by adults while the state stands idly by and fails to apply its child endangerment statute. Just as the bans on SOCE treatments in a few states are ultimately ineffective in stopping the psychological abuse on children, New York's civil penalties leave many child models injured and suffering life-long consequences. Even worse, the adults carrying out such abuse in these cases remain free of not only criminal prosecution but also complete civil consequences as well.

VII. CONCLUSION

Criminal records used to be quite rare in the United States, affecting

need the assurance of their contracts will be left without legal recourse if the agency breaches. *Id.* at 2548.

255. *Id.* at 2553 (citing N.Y. PENAL LAW § 260.10).

256. *Id.* at 2555.

257. *Id.* at 2554.

258. *Id.* at 2555.

259. Due to the positions that the photographer chose, he showed that he gave her alcohol and also encouraged her to drink it or at least told her to act as if she was consuming it. Providing a minor with alcohol is "affirmative evidence of awareness of a likelihood of harm under section 260.10." *Id.* (citing *People v. Strickland*, 909 N.Y.S.2d 846 (App. Div. 2010)).

260. *Id.* at 2558.

261. As previously mentioned, even if Clauson wins her civil suit, she will only be awarded monetary damages, and the harm of exploitation and abuse will go unpunished, leaving her photographer to chase after another young model. *See supra* note 234 and accompanying text.

only a small group of ill or dangerous individuals in need of punishment or rehabilitation.²⁶² In those times, the rest of the population could view such individuals as outlaws and essentially banish them from further societal interaction.²⁶³ Today, in an age where one in four Americans holds a criminal record, society as a whole must begin to question why this is the case and what it can do to assure that these individuals are effectively rehabilitated and able to reenter society. With such a significant portion of the population affected, it is neither wise nor efficient to ignore the problem and refuse successful reentry to offenders.²⁶⁴

Being unable to find employment after release from prison or probation is one of the root causes of recidivism.²⁶⁵ Many offenders will struggle to find work for years, even decades, after serving their formal sentences.²⁶⁶ Collateral sanctions make the search even more daunting, stripping offenders of their confidence and ability to gain steady, fulfilling employment. Many will seek assistance in expunging their records only to learn that sealing their convictions does not shield them from the effects of such collateral sanctions.²⁶⁷ Under such conditions, the goal of employment becomes virtually impossible for many offenders.

To make matters worse, society taints some individuals with criminal records merely because they have failed to meet proscribed legal standards in taking care of their children. As they are forced into the courts and condemned for what seems to be the rest of their lives, they watch others freely harm and exploit children while maintaining all of their liberties. Parents who impose assimilation demands on LGBT children, which have been scientifically proven to be extremely detrimental to children's health and livelihood, often see no legal repercussions whatsoever, let alone criminal charges.²⁶⁸ Even those who

262. See generally Love *supra* note 4. (Love discussed the evolution of criminal sentencing and the effects of having a criminal record.).

263. See Chin, *supra* note 5, at 1794.

264. "When someone has paid their debt to society and really turned it around and they still can't get a job it is unhealthy for the entire community." Rachel Dissell, *New Employment Certificates May Help Those Convicted of Crimes Get to Work*, THE PLAIN DEALER (Jan. 10, 2014), http://www.cleveland.com/court_justice/index.ssf/2014/01/new_employment_certificates_be.html (citing Judge Joan Synenberg).

265. Pinard, *supra* note 1, at 972.

266. See generally Sahl, *supra* note 9. (Sahl highlighted the struggle that many offenders face when trying to obtain employment.).

267. Sahl, *supra* note 9, at 3.

268. See generally Rachmilovitz, *supra* note 193. (Rachmilovitz detailed the detrimental effects of that even subtle assimilation demands may have on children.).

have taken medical or professional oaths will only be subject to the penalties of their own professions if found employing SOCE therapies in their practices.²⁶⁹ Even more upsetting, adults in the fashion industry will continue to trap children in contracts in order to take advantage of their immaturity and use them for their bodies until they no longer meet the strict image ideals. Afterward, they will leave the child models in debt, used up, and alone.²⁷⁰ Similarly, these adults will face civil penalties at most, which will not even prevent them from repeating their abusive acts.²⁷¹

While these adults who endanger and abuse children remain at large, other low-income, often undereducated adults will face not only civil sanctions, but criminal charges that will affect them for the rest of their lives.²⁷² Parents who only want the best for their children must make tough decisions about how to provide for their children, as they struggle to provide the basic necessities of living. At the same time, they must also worry about social workers and courts that do not understand the complexities of poverty, as well as prosecutors who may be waiting to charge them with criminal child endangerment based on observable signs that do not necessarily constitute maltreatment, such as dirty clothes or poor nutrition.²⁷³ Similarly, other parents who believe that they are making ordinary, legitimate decisions may find themselves pulled into the criminal justice system at the whim of a finicky prosecutor.²⁷⁴ Concerns like these create constant fear and anxiety in the minds of parents everywhere, causing them to second guess every step they take in rearing their children, lest they wish to risk criminal liability.²⁷⁵

269. Moss, *supra* note 197, at 321.

270. Ortega, *supra* note 21, at 2537.

271. *Id.* at 2551.

272. See *supra* notes 39-43 and accompanying text.

273. See Gilman, *supra* note 110, at 518.

274. See *supra* notes 150-154 and accompanying text.

275. See *supra* note 211 and accompanying text.