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Contributing to Delinquency: An Exercise in Judicial Speculation

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CONTRIBUTING TO DELINQUENCY: AN EXERCISE IN JUDICIAL SPECULATION

I. INTRODUCTION

JUVENILE DELINQUENCY, like many diseases, emanates from a complex meshwork of causes, many of which are unidentified. The obvious, although perhaps oversimplified, solution to prevent juvenile delinquency has been to isolate and control through legislation some of its suspected causes. Many of these enacted solutions, however, have failed to accomplish their intended purpose.

In legislative efforts to protect minors from potentially corrupting adult influences, the drafters went too far. They did not enact specific criminal statutes, which would permit the prosecution of those who actively and knowingly expose children to venal, immoral or perverted acts. Instead, they have adopted criminal contributing statutes encompassing broadly stated behavior for which a person may be prosecuted irrespective of any prior notice as to the criminality of his or her conduct or influence. The real victim in many prosecutions under contributing statutes has become the accused and not the minor.

An overwhelming majority of states have statutes making it a criminal offense to contribute to the delinquency of a minor. Although the statutes have proved to be a fertile source for the prosecution of adults in a wide variety of circumstances and relationships involving minors, the scope and constitutional validity of such statutes have seldom been appraised.[1] In the wake of *State v. Hodges*,[2] declaring the Oregon contributing statute[3] invalid as being unconstitutionally vague, reappraisal is necessary.[4] Without considering, except as alluded to incidentally, the affect which marriage[5] and the reaching of statutory age limits[6] have upon the status of a minor, the conceived purpose, scope and application of contributing to delinquency statutes shall be considered within the penumbra of the constitutional "void for vagueness" doctrine.

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[1] *See* Gies, *Contributing to Delinquency*, 8 ST. LOUIS U.L.J. 59 (1963) [hereinafter cited as Gies]; Comment, *Contributing to Delinquency Statutes—An Ounce of Prevention?*, 5 WILLAMETTE L.J. 104 (1968) [hereinafter cited as *An Ounce of Prevention*].

[2] 254 Ore. 21, 457 P.2d 491 (1969). *See also* 15 VILL. L. REV. 767 (1970).

[3] ORE. REV. STAT. § 167.210 (1968) (repealed 1971).

[4] The State v. Hodges decision held that the Oregon statute was unconstitutional not only in its failure to meet the demands of due process, but also in its prohibited delegation of legislative power to the judge and jury, contrary to Article 1, Section 21 of the Oregon Constitution. 254 Ore. at 28, 457 P.2d at 494.

[5] *See* Annot., 14 A.L.R. 2d 336 (1950).

[6] *See* Annot., 73 A.L.R. 2d 874 (1960).

II. HISTORICAL PERSPECTIVE

Although at common law minors were protected from certain specific adult indiscretions,[7] the common law did not recognize a comprehensive crime of contributing to the delinquency of a minor.[8] It was not until 1903, when Colorado enacted a law creating the crime of contributing to the delinquency of a minor,[9] that specific legislative endorsement was given to the protection of juveniles from the corrupting influences of adults.

At the turn of the century which ushered in the contributing to delinquency offense, children were fostered under the protection of the state's police powers in an effort to prevent their exposure to corrupting societal influences.[10] The statutory design was an attempt to save children from morally corrupting sectors of society until the children were able to fend for themselves. The concept arose out of a public policy of preventing delinquency.[11] The attitudes, assumptions and philosophies of the time were influential in this development.

Initially the courts strictly construed the contributing to delinquency statutes.[12] The statutes were constrained to cover as few persons and circumstances as the language would permit. It was not until the judiciary became more receptive to the goals of the statutes that the breadth of the statutes was expanded. With the approval of the courts, contributing to delinquency came to be defined as "a broad term involving conduct toward a child in an unlimited variety of ways which tends to produce or to encourage or to continue conduct of the child which would amount to delinquent conduct".[13]

III. STATUTORY CONSTRUCTION AND SCOPE

Since the crime of contributing to the delinquency of a minor is a statutory rather than a common law creation, the elemental particulars of the crime are largely a matter of statutory construction. Therefore, in order to evaluate the offense in light of void for vagueness arguments,[14] it is

[7] *See* Gies, *supra* note 1, at 62 & n. 14 for an historical analysis of contributing to delinquency legislation.

[8] Love v. State, 211 Miss. 606, 52 So. 2d 470, 471 (1951); State v. Dunn, 53 Ore. 304, 99 P. 278 (1909); State v. Williams, 73 Wash. 678, 132 P. 415, 416 (1913).

[9] Law of March 7, 1903, ch. 94, Colo. Sess. Laws 198.

[10] *See generally* Gibson v. People, 44 Colo. 600, 99 P. 333 (1909).

[11] *See* People v. Cohen, 62 Cal. App. 521, 526, 217 P. 78, 80 (1923); State v. Adams, 95 Wash. 189, 163 P. 403, 405 (1917).

[12] *See* Gies, *supra* note 1, at 63.

[13] Commonwealth v. Stroik, 175 Pa. Super. 10, 15, 102 A.2d 239, 241 (1954).

[14] *See* Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 CORNELL L. Q. 195 (1955), in which the author discusses four rationales that the courts have used in their refusal to find a statute unconstitutionally vague: first, a construction of the statute in such a way that uncertainty may be avoided; secondly, finding a requirement of intent which would clarify the

essential that the crime, its language, and its elements be at least summarily reviewed.

A. The Offense Defined

The offense of contributing to the delinquency of a minor has generally been designated as a misdemeanor.[15] In at least one jurisdiction, however, a violation of a contributing statute has been designated as a felony.[16] The penalties for a violation of a particular state's statute likewise varies with the jurisdiction.[17] Therefore, a conviction on a contributing charge is dependent primarily upon the language of the particular statute under which an accused is prosecuted.

Many jurisdictions have wrestled with the statutory language providing punishment for "anyone" or any "person" who contributes to the delinquency of a child.[18] The contributing to delinquency statutes have been construed to be employed against parents,[19] persons who stand *in loco parentis* to the minor with direct legal responsibility for the child's welfare,[20] as well as against persons who are legal strangers to the minor.[21] With few exceptions, it has been generally held that a minor cannot be found guilty of contributing to the delinquency of another minor.[22]

The philosophical justification for the enactment of contributing statutes appears to be the punishment of negligent parents in order to encourage a more protective attitude toward their children and to discourage other

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crime; thirdly, discovering external standards which clarify the statute; and finally, comparing the statute with other statutes earlier declared constitutionally certain.

[15] *See, e.g.*, Smithson v. State, 34 Ala. App. 343, 39 So. 2d 678 (1949); People v. Wortman, 137 Cal. App. 339, 30 P.2d 565 (1934); Broadstreet v. State, 208 Miss. 789, 45 So. 2d 590 (1950); State v. Montalbo, 33 N.J. Super. 462, 110 A.2d 572 (Hudson County Ct. 1954); State v. Rose, 89 Ohio St. 383, 106 N.E. 50 (1914); State v. Clevenger, 161 Wash. 306, 296 P. 1054 (1931).

[16] State v. McKinley, 53 N.M. 106, 202 P.2d 964 (1949); *cf.* United States v. Meyers, 143 F. Supp. 1 (D. Alaska 1956).

[17] *Compare* OHIO REV. CODE ANN. § 2151.99 (Page Supp. 1974) (which provides for a maximum penalty of $1,000 or 6 months imprisonment or both), *with* N.M. STAT. ANN. § 40A-6-3 (1972) (which provides for a maximum penalty of $5,000 or 5 years imprisonment in the penitentiary or both).

[18] *See, e.g.*, Zambrotto v. Jannette, 290 N.Y.S. 338, 160 Misc. 558 (Dom. Rel. Ct. 1936); State v. Hutchison, 222 Ore. 533, 353 P.2d 1047, 1053 (1960); Commonwealth v. Jordan, 136 Pa. Super. 242, 7 A.2d 523 (1939); Winters v. State, 139 Tex. Crim. 328, 139 S.W.2d 789 (1940).

[19] *See, e.g.*, State v. Scallan, 201 La. 1026, 10 So. 2d 885 (1942).

[20] *See, e.g.*, Sass v. People, 48 Colo. 125, 109 P. 263 (1910); People v. Lee, 226 Ill. 148, 107 N.E. 112 (1914).

[21] *See, e.g.*, People v. Miller, 145 Cal. App. 2d 473, 302 P.2d 603 (1956); State v. Plastino, 67 Wash. 374, 121 P. 851 (1912).

[22] *See, e.g.*, Harris v. Souder, 233 Ind. 287, 119 N.E.2d 8 (1954); State v. Iverson, 231 Ore. 15, 19, 371 P.2d 672, 674 (1962).

parents from the dereliction of their parental duties. Since the culpability of parental misguidance under contributing statutes has been adequately discussed in several recent articles,[23] emphasis will be placed on the application of contributing statutes against adults as a class.

B. Mens Rea As An Element

Despite the traditional view that mens rea, or criminal intent, is an essential element of a criminal offense, many jurisdictions do not require mens rea as an essential element of the crime of contributing to the delinquency of a minor.[24] The reasons for this apparent contradiction vary with the jurisdiction. It has been stated that an accused engages in relations with a minor at his peril;[25] that requiring intent would erect a barrier which would defeat the enforcement of the contributing statute;[26] and that an act made unlawful on the basis of public policy requires no showing of intent.[27] Some courts, however, in order to clarify the crime in the face of void for vagueness attacks, have found a requirement of intent whenever either a derivative of the word "wilful" appears in the statute,[28] or the accused demonstrates knowledge of facts which should cause the defendant to believe that his or her conduct was illicit.[29]

Such an awareness of wrongdoing or knowledge of the facts making the act unlawful, however, are only occasionally considered as elements of the crime of contributing to the delinquency of a minor and, therefore, need not be proved to obtain a conviction under a contributing statute.[30]

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[23] *See generally* S. RUBIN, CRIME AND JUVENILE DELINQUENCY, ch. 2 (3rd ed. 1970) [hereinafter cited as Rubin]; Kenny & Kenny, *Shall We Punish the Parents?*, 47 A.B.A.J. 804 (1961); Shong, *The Legal Responsibility of Parents for Their Children's Delinquency*, 6 FAM. L. Q. 145 (1972); Note, *Criminal Liability of Parents for Failure to Control Their Children*, 6 VAL. L. REV. 332, 334-37 (1972).

[24] *See, e.g.*, Anderson v. State, 384 P.2d 669, 672 (Alaska 1963); State v. Hardy, 232 La. 920, 95 So. 2d 449 (1957); State v. Sobelman, 199 Minn. 232, 271 N.W. 484 (1937); State v. Johnson, 88 N.W.2d 209 (N.D. 1958); State v. Hoffman, 236 Ore. 98, 385 P.2d 741, 743 (1963). *See generally* Annot., 31 A.L.R. 3d 848 (1970), suggesting that irrespective of the view held in the jurisdiction, the practitioner should defend on the basis of a lack of mens rea to commit the offense and insist that mens rea be proved by the state as an element of the offense. Additionally, counsel should protect the record and preserve the issue for appeal. In some jurisdictions, the practitioner may even present the lack of a requisite mens rea with a view toward mitigation of punishment.

[25] *See* Anderson v. State, 384 P.2d 669 (Alaska 1963); State v. Kominis, 73 Ohio App. 204, 55 N.E.2d 344 (1943). *But cf.* State v. Friedman, 35 Ohio Op. 39, 74 N.E.2d 285 (C.P. 1947).

[26] *See* People v. Reznick, 75 Cal. App. 2d 832, 171 P.2d 952 (1946).

[27] *See* Territory v. Delos Santos, 42 Hawaii 102 (1957).

[28] *See, e.g.*, Slaughter v. District of Columbia, 134 A.2d 338 (D.C. Mun. Ct. App. 1957); State v. Bullins, 226 N.C. 142, 36 S.E.2d 915 (1946).

[29] *See, e.g.*, State v. Cutshaw, 7 Ariz. App. 210, 437 P.2d 962 (1968).

[30] *See, e.g.*, Pittman v. State, 43 Ala. App. 683, 199 So.2d 698 (1967); Marsh v. State, 104 Ind. App. 377, 8 N.E.2d 121 (1937); Wright v. State, 86 Tex. Crim. 434, 217 S.W. 152 (1919); State v. Westfall, 126 W. Va. 476, 29 S.E.2d 6 (1944).

In the case of *In re Lewis*,[31] for example, a bowling alley proprietor was convicted of contributing to the delinquency of a fifteen year old employee who was employed without working papers. The conviction rested on the fact that the boy, so employed, was thus enabled to see where money was kept and consequently succumbed to the temptation to steal.

Similarly, only a few jurisdictions have required the prosecution to show that the accused knew the victim to be a minor in order to obtain a conviction.[32] In the California Court of Appeals decision of *People v. Reznick*,[33] a hotel clerk was successfully prosecuted under a contributing statute for permitting a minor to be registered and to spend the night in the hotel with a sailor who was not her husband. Although the hotel clerk inquired and was informed that the sailor and the minor were married, he had failed to ask the age of the minor. The California Court of Appeals held that ignorance of the actual age of the minor was no defense.

C. Causing or Tending to Cause Delinquency: The Ohio Model

In a majority of jurisdictions it is not necessary to present evidence that the minor has in fact become a delinquent in order to secure a conviction for contributing to the delinquency of a minor.[34] In these jurisdictions, the minor's subsequent delinquency is not an essential element of the crime.[35] These statutes, either impliedly or by express language, have been construed to penalize acts which may only have a *tendency* to cause or encourage delinquency.[36] However, in most jurisdictions even the final effect on the child of the conduct charged as contributing to the delinquency of the minor is not relevant in determining the guilt or innocence of the accused.[37] It is the category of behavior which appears to be punished rather than the specific instance of conduct. The only causative element necessarily required is that the proscribed act be committed in the presence of the minor.[38]

While it is generally held that it is neither necessary to allege nor prove

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[31] 193 Misc. 676, 84 N.Y.S.2d 790 (Child. Ct. 1948).

[32] *See, e.g.*, Chambers v. State, 247 Ind. 445, 215 N.E.2d 544 (1966); Gottlieb v. Commonwealth, 126 Va. 807, 101 S.E. 872 (1920). *Contra*, Commonwealth v. Sarricks, 161 Pa. Super, 577, 56 A.2d 323 (1948); Jung v. State, 55 Wis. 2d 714, 201 N.W.2d 58 (1972).

[33] 75 Cal. App. 2d 832, 171 P.2d 952 (1946).

[34] *See, e.g.*, State v. Locks, 94 Ariz. 134, 382 P.2d 241 (1963); Roach v. State, 222 Ark. 738, 262 S.W.2d 647 (1953); People v. Norris, 254 Cal. App. 2d 296, 62 Cal. Rptr. 66 (1967); Fletcher v. State, 256 Md. 310, 260 A.2d 34 (1970); State v. Blount, 60 N.J. 23, 286 A.2d 36 (1972); Commonwealth v. Marlin, 452 Pa. 380, 305 A.2d 14 (1973). *See also* Note, 4 ARK. L. REV. 477 (1950), which reviews conflicting court decisions on this issue.

[35] *See generally* Annot., 18 A.L.R. 3d 824, 827 (1968).

[36] *Id.*

[37] *See generally* authorities cited notes 34 & 35 *supra.*

[38] *See, e.g.*, People v. Bernstein, 51 Cal. 2d 655, 335 P.2d 669, 671 (1959).

that the minor has actually become a delinquent, the Ohio contributing statute and the cases interpreting it have attempted to make a distinction between actually contributing to delinquency and engaging in conduct which could merely tend to cause delinquency. Ohio Revised Code Section 2151.41[39] provides in pertinent part:

> No person shall abuse a child or aid, abet, induce, cause, encourage, or contribute to the dependency, neglect, unruliness, or delinquency of a child or ward of the juvenile court, or act in a way tending to cause delinquency or unruliness in such child.

Whenever an accused has been charged under the statute with "contributing to delinquency" the minor's actual delinquency must be shown.[40] When the accused has been charged with acting "in a way tending to cause delinquency", however, a showing of actual delinquency is unnecessary.[41] The Ohio Supreme Court decisions of *State v. Miclau*[42] and *State v. Gans*[43] provide the best illustration of the statutory distinction made under the Ohio contributing statute.

In *State v. Miclau*, the police had been informed that a fifteen year old and two companions had been served intoxicating liquor at a local restaurant. The police enlisted the co-operation of the minor and the informant adult (a friend of the minor's) to order intoxicating liquor from an employee of the accused restaurant manager. Since the liquor was immediately confiscated by police officers, the minor was held not to have committed an act of delinquency, having neither purchased nor imbibed the liquor. The restaurant manager's conviction was reversed on the basis that the element of delinquency was not established. Therefore, in Ohio when an accused is charged with contributing to the delinquency of a minor, the delinquency of the minor is a fact to be established as is any other

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[39] OHIO REV. CODE ANN. § 2151.41 (Page Supp. 1974). Rather than restrict the scope of the Ohio contributing statute, the Ohio legislature in 1969 amended this section to encompass the broad term "unruliness" as a further aspect of the crime of contributing to the delinquency of a minor.

[40] *See* Fisher v. State, 84 Ohio St. 360, 95 N.E. 908 (1911). However, in State *ex. rel.* Meng v. Todaro, 161 Ohio St. 348, 119 N.E.2d 281, 282 (1954), the Ohio Supreme Court held that:

> . . . a finding or adjudication in a separate proceeding that a minor is delinquent is not a condition precedent to the maintenance of a prosecution for contributing to the delinquency of a minor, where the affidavit filed against the one charged with contributing to the delinquency and the evidence on his trial shows that the minor is delinquent.

[41] *See* State v. Clark, 92 Ohio App. 382, 110 N.E.2d 433 (1952).

[42] 167 Ohio St. 38, 146 N.E.2d 293 (1957).

[43] 168 Ohio St. 174, 151 N.E.2d 709 (1958). *See also* 5 How. L.J. 120 (1959); 35 N. D. L. REV. 166 (1959).

necessary element in a criminal prosecution. The contributing act must result in a direct outpouring of delinquent behavior.[44]

In *State v. Gans,* the parents of an eleven year old girl, who transported her to West Virginia and consented to her marriage there, were found guilty of acting in a way tending to cause the delinquency of their child. The decision held that the purpose of the latter portion of the Ohio statute is to prevent delinquency "rather than to await such delinquency and then punish the adult offender".[45] The Ohio Supreme Court observed that the child's marriage was contrary to public policy as reflected in Ohio's marriage statutes, and that such conduct could result in the child's becoming a truant from school or in the endangering of the morals of her fellow classmates.

It has been further argued as a justification for the language, "acting in a way tending to cause delinquency", that "no legislator could conceivably be expected to anticipate all the acts that could reasonably be expected to cause the delinquency of any given juvenile."[46] However, in his dissent in *Gans*[47] Justice Taft decried the majority's application of this clause as "imaginative speculation". In applying the clause to arrive at the *Gans* decision, Justice Taft argued that the majority found it necessary to "stretch the words" of the contributing statute "as far as they will reasonably go, and apparently even much farther, in a direction away from that called for by the elementary rule of strict construction of penal statutes", in order to discover any trace of delinquency.[48]

Despite the apparent exactitude in the Ohio legal distinction regarding the offenses of contributing to the delinquency of a minor or acting in a way tending to cause delinquency, the distinction may be without a difference.[49]

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[44] *See* Fisher v. State, 84 Ohio St. 360, 95 N.E. 908 (1911), where it was stated that without evidence in the record of the actual conviction of the minor as a delinquent, the charge of contributing to delinquency must fail no matter how culpable the accused's acts may have been. The rationale appears to have been that if a child had not become a delinquent, an accused could not have contributed to the delinquency. In order to avoid this problem of proof, in 1913, the second clause of OHIO REV. CODE § 2151.41 was enacted.

[45] 168 Ohio St. 174, 176, 151 N.E.2d 709, 710 (1958).

[46] State v. Crary, 10 Ohio Op. 2d 36, 38, 155 N.E.2d 262, 264 (C. P. 1959).

[47] 168 Ohio St. 174, 184, 151 N.E.2d 709, 715 (1958) (Taft, J., dissenting).

[48] *Id.* at 185, 151 N.E.2d at 716.

[49] At least one Ohio court has affirmed a conviction where the accused was charged in the alternative with violating both provisions of the Ohio contributing statute. With circuitous legal reasoning an Ohio court of appeals in State v. Hannawalt, 26 Ohio L. Abs. 641 (Ct. App. 1938), upon evidence that the accused committed an act of forcible rape upon the minor, found the accused guilty of acting in a way tending to contribute to the girl's delinquency. The court noted that the minor quit her employment as a result of the publicized misfortune and might suffer a possible loss of her self-respect. The court further conceded that if the minor consented to sexual intercourse, as alleged by the accused, such consent would constitute an act of immoral conduct which would define her as a delinquent. The

Since the penalty for either offense is the same,[50] the prosecutor may circumvent the strict requirements involved in an allegation of the former offense by merely alleging the latter; that is, that the accused has acted in a way tending to cause delinquency. The implication is that *Miclau* might have been decided differently if the accused restaurant manager had been charged with acting in a way tending to cause delinquency.

In *State v. Hodges*,[51] the Oregon Supreme Court considered catch-all language in that state's contributing statute[52] which provided:

> When a child is a delinquent child as defined by any statute of this state, . . . *any person who does any act which manifestly tends to cause any child to become a delinquent child*, shall be punished upon conviction . . . . (emphasis added)

Although the Oregon courts had previously upheld the contributing statute against other void for vagueness challenges,[53] this clause of the statute was declared void on its face by the Oregon Supreme Court because it contained no standards by which a jury could determine guilt. The last clause of the Ohio contributing statute[54] is strikingly similar to the now unconstitutional Oregon statute. Yet, despite the fact that a person may be convicted in Ohio for tending to cause delinquency even absent a showing of resultant delinquency, the constitutionality of the Ohio statute has been upheld against void for vagueness arguments.[55]

In a 1959 article appraising the Ohio contributing statute and other Ohio statutes involving charges against adult offenders,[56] Judge Don J. Young, Jr. began:

> It is true, of course, that the Ohio statutes on this subject are so

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accused would then, by his own admission, be guilty of contributing to the delinquency of the minor.

[50] OHIO REV. CODE ANN. § 2151.99 (Page Supp. 1974), which makes a conviction of either offense a first degree misdemeanor. *See* note 17 *supra*.

[51] 254 Ore. 21, 457 P.2d 491 (1969).

[52] ORE. REV. STAT. § 167.210 (1968) (repealed 1971).

[53] *See, e.g.*, State v. Gordineer, 229 Ore. 105, 366 P.2d 161 (1961); State v. Harmon, 225 Ore. 571, 358 P.2d 1048 (1961); State v. Peebler, 200 Ore. 321, 265 P.2d 1081 (1954); State v. Stone, 111 Ore. 227, 226 P. 430 (1924).

[54] The last clause of OHIO REV. CODE § 2151.41 provides in pertinent part: "No person shall . . . act in a way tending to cause delinquency or unruliness in . . . [a] child."

[55] *See* State v. Poney, 19 Ohio Misc. 51, 48 Ohio Op. 208 (Juv. Ct. 1966); State v. Coterel, 97 Ohio App. 48, 123 N.E.2d 438 (1953), *appeal dismissed*, 162 Ohio St. 112, 120 N.E.2d 590 (1954). State v. Coterel upheld the constitutionality of the prior contributing statute: Law of April 29, 1937, 117 Laws of Ohio 534, *as amended*, OHIO REV. CODE ANN. § 2151.41 (Page Supp. 1974).

[56] Young, *Charges Against Adult Offenders in the Juvenile Court*, 32 OHIO BAR 224 (Nov. 11, 1959).

broad that there is usually very little question as to whether or not they have been violated.[57]

There is little question in the opinion of this writer that, under the constitutional standards to be recited below, the above stated clause of Section 2151.41 of the Ohio Revised Code is void for vagueness. Other states' contributing statutes may be prone to similar attacks for vagueness.

IV. THE VOID FOR VAGUENESS DOCTRINE

A. In General: The Standards

As enunciated by the United States Supreme Court, an individual has a constitutional right to be warned of what may constitute criminal conduct.[58] This constitutional right attaches so that an individual need not speculate as to the meaning and boundaries of a statute prescribing penalties for stated conduct. That a criminal statute shall not be uncertain or vague is implicit in the sixth amendment right "to be informed of the nature and cause of the accusation" and in the due process clauses of the fifth and fourteenth amendments.[59]

Whether a criminal statute is void for vagueness depends in part upon the rights involved and upon statutory construction. Under the rule of *Thornhill v. Alabama*,[60] an attempt will not be made to narrow the application of a statute normally impinging upon first amendment or other fundamental rights in order to save its constitutionality. However, under the rule of *United States v. National Dairy Products Corp.*,[61] where fundamental rights are not involved, the courts will consider a challenged statute as restricted to its factual application in an effort to save its constitutionality. Therefore, whether a criminal statute is void for vagueness is a question of degree. Although some vagueness may be tolerated in a

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[57] *Id.*

[58] *See e.g.*, Giaccio v. Pennsylvania, 382 U.S. 399 (1966); Baggett v. Bullitt, 377 U.S. 360 (1964); Lanzetta v. New Jersey, 306 U.S. 451 (1939); McBoyle v. United States, 283 U.S. 25, 27 (1931). *See generally* Collings, *Unconstitutional Uncertainty—An Appraisal*, 40 CORNELL L. Q. 195 (1955); Note, *Void for Vagueness Doctrine in the Supreme Court*, 109 PA. L. REV. 67 (1960).

[59] *See, e.g.*, United States v. L. Cohen Grocery Co., 255 U.S. 81, 89-93 (1921), in which the Lever Act § 4, 40 Stat. 276 (1917), *re-enacted as* Act of October 22, 1919, ch. 80, § 2, 41 Stat. 297, was held to violate U.S. CONST. amends. V and VI, which require an ascertainable standard of guilt to be fixed by Congress rather than by courts and juries; McSurely v. Ratliff, 282 F. Supp. 848, 851 (D.C. Ky. 1967), *appeal dismissed*, 390 U. S. 412 (1967), in which the court applied U.S. CONST. amends. VI and XIV to hold invalid that section of the Kentucky Sedition law under which a person could be indicted for suggesting constitutional change "by means other than lawful means", since what constituted "lawful means" was left to the discretion of the judge.

[60] 310 U.S. 88 (1940); *cf.* United States v. Petrillo, 332 U.S. 1, 9-12 (1947).

[61] 372 U.S. 29, 33 (1963).

criminal statute, the statute creating the offense must be sufficiently explicit to inform those who may be subject to it of the particular conduct on their part which will render them liable to its penalties.

A criminal statute must fail, as applied against an accused, if when tested under due process standards it:

(a) fails to give a person of ordinary intelligence fair notice that his or her contemplated conduct is forbidden by the statute,[62] or

(b) encourages arbitrary and erratic arrests and convictions.[63]

The void for vagueness doctrine has recently been applied by the United States Supreme Court to strike down a vagrancy ordinance in *Papachristou v. Jacksonville*.[64] The Court based its decision on the grounds, in addition to the above stated standards, that the ordinance made criminal, activities which by modern standards are normally innocent, and also placed unfettered discretion in the hands of the police. The application of these standards to an evaluation of contributing to delinquency statutes betrays the uncertainty upon which such statutes thrive.

B. As Applied to Contributing Statutes

The United States Supreme Court has yet to rule upon the constitutionality of a contributing to delinquency statute.[65] Of those states which have considered the constitutionality of such statutes, however, four have declared aspects of the legislation unconstitutional.[66] The initial impetus for these

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[62] United States v. Harriss, 347 U.S. 612 (1954).

[63] Thornhill v. Alabama, 310 U.S. 88 (1940); Herndon v. Lowry, 301 U.S. 242 (1937).

[64] 405 U.S. 156 (1972).

[65] *See, e.g.*, Etherton v. United States, 249 F.2d 410 (9th Cir. 1957), *cert. denied*, 355 U.S. 919 (1958); Brockmueller v. State, 86 Ariz. 82, 340 P.2d 992 (1959), *cert, denied*, 361 U.S. 913 (1959); Dokes v. State, 241 Ark. 720, 409 S.W.2d 827 (1966), *cert. denied*, 389 U.S. 901 (1967); State v. Vachon, 306 A.2d 781 (N.H. 1973), *rev'd on other grounds*, 414 U.S. 478 (1974); State v. Gans, 168 Ohio St. 174, 151 N.E.2d 709 (1958), *cert. denied* 359 U.S. 945 (1959); Commonwealth v. Randall, 183 Pa. Super. 603, 133 A.2d 276, *cert. denied*, 355 U.S. 954 (1957); State *ex. rel.* Shoreline School Dist. 412 v. Superior Court, 55 Wash. 2d 177, 346 P.2d 999 (1959), *cert. denied*, 363 U.S. 814 (1960).

[66] Stone v. State, 220 Ind. 165, 41 N.E.2d 609 (1942); State v. Vallery, 212 La. 1095, 34 So. 2d 329 (1948); State v. Hodges, 254 Ore. 21, 457 P.2d 491 (1969); State v. Gallegos, 384 P.2d 967 (Wyo. 1963). In State v. Vallery the Supreme Court of Louisiana reviewed the section of its criminal code in which contributing to the delinquency of a juvenile was defined as:

> [T]he intentional enticing, aiding or permitting, by anyone over the age of seventeen, of any child under the age of seventeen, and no exception shall be made for a child who may be emancipated by marriage or otherwise, to:
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> . . . .
>
> (7) Perform any sexually immoral act . . . . LA. REV. STAT. ANN. § 14:92 (West 1974).

Due to the failure of the Louisiana legislature to define with precision the conduct sought to be prohibited, the court held that the indefiniteness and uncertainty as to what constituted "immoral acts" rendered this section of the act void.

constitutional attacks on the contributing statutes originated in the United States Supreme Court opinion of *Musser v. Utah*,[67] in which a Utah statute proscribing "acts injurious to the public morals" was held unconstitutional, as being in violation of the due process clause of the fourteenth amendment.

Of the states which have considered void for vagueness challenges to contributing statutes and have found such statutes to be valid,[68] few, if any, have reconsidered and reassessed their contributing statutes since the *Hodges* decision. One commentator has stated that:

> It is evident from the cases decided to date that the state courts have felt that the policy to prevent delinquency which lies behind the contributing statutes and the purpose to protect children, weigh much heavier on their scales than any unfairness or deprivation of liberty that may result from vague and imprecise language.[69]

In upholding the constitutionality of contributing statutes against attacks charging void for vagueness, state court decisions have expressed a rationale similar to that stated in *State v. McKinley*.[70] In that decision the New Mexico Supreme Court stated:

> The ways and means by which the venal mind may corrupt and debauch the youth of our land, both male and female, are so multitudinous that to compel a complete enumeration in any statute designed for the protection of the young before giving it validity would be to confess the inability of modern society to cope with juvenile delinquency.[71]

In State v. Gallegos the Supreme Court of Wyoming reviewed its Child Protection Act which provides in pertinent part:

> It shall be unlawful for any person (including but not limited to parent, guardian, or custodian) knowingly to commit any of the following acts with respect to a child under the age of 19 years:
>
> . . . .
>
> (d) to cause, encourage, aid or contribute to the endangering of the child's health, welfare or morals. WYO. STAT. ANN. § 14-23 (1965).

The court held the provision to violate due process, as it furnished no standard as to what constituted endangering of a child's health, welfare or morals.

[67] 333 U.S. 95 (1947).

[68] *See, e.g.*, United States v. Meyers, 143 F. Supp. 1 (D. Alaska 1956); Brockmueller v. State, 86 Ariz. 82, 340 P.2d 992 (1959); State v. Barone, 124 So.2d 490 (Fla. 1960); McDonald v. Commonwealth, 331 S.W.2d 716 (Ky. 1960); State v. Fulmer, 250 La. 29, 193 So. 2d 774 (1967); State v. Simants, 182 Neb. 491, 155 N.W.2d 788 (1968); State v. Montalbo, 33 N.J. Super. 462, 110 A.2d 572 (Hudson County Ct. 1954); State v. Koessler, 58 N.H. 102, 266 P.2d 351 (1954); Commonwealth v. Randall, 183 Pa. Super. 603, 133 A.2d 276 (1957); State v. Tritt, 23 Utah 2d 365, 463 P.2d 806 (1970); State v. Friedlander, 141 Wash. 1, 250 P. 453 (1926); Jung v. State, 55 Wis. 2d 714, 201 N.W.2d 58 (1972).

[69] *An Ounce of Prevention, supra* note 1, at 119 & n. 101.

[70] 53 N.M. 106, 202 P.2d 964 (1949).

[71] *Id.* at 111, 202 P.2d at 967.

Despite extensive legislative and judicial experience with contributing statutes, courts have similarly protested attacks on their constitutionality, and the broad statutes have remained virtually unchanged, neither detailing nor encompassing the particular acts which court cases have determined to be the actual offenses.

Although a stated crime may generally acquire definiteness from a course of judicial construction, this has not been the case with the contributing to delinquency offense. The particular conduct prohibited under contributing to delinquency statutes varies greatly from statute to statute. The various jurisdictions have left initial determinations to both arresting officers and prosecutors, and final determinations to both the jury and the juvenile court, as to whether the particular conduct of an accused is criminal under a state contributing statute.[72] If there is a basic fallacy to the concept of contributing to delinquency statutes, it is that the broad unspecified actions of an adult, which are found to be criminal only through a final determination by judge and jury, could have been foreseen by the accused to have criminal consequences, resulting from its probable immoral influence on a minor.

In *Stone v. State*,[73] the Indiana Supreme Court, without dissent, examined that state's contributing statute[74] and found it void for vagueness. In a discussion of its rationale the Indiana court elaborated on the void for

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[72] *See, e.g.*, People v. Diebert, 117 Cal. App. 2d 410, 256 P.2d 355 (1953); MODEL PENAL CODE § 207.13, Comment (Tent. Draft No. 9, 1959) wherein it is stated:

> The basic error that appears to account for the prevalence of the legislation here disapproved is the assumption that the comprehensive terms in which jurisdiction is commonly conferred upon juvenile courts over 'delinquent, dependent or neglected' children are also appropriate to define a criminal offense. It is one thing to give broad scope to an authority to promote the welfare of children, but quite another thing to give a criminal court equivalent latitude in defining crimes for which adults shall be punished.

[73] 220 Ind. 165, 41 N.E.2d 609 (1942).

[74] The Indiana contributing statute reviewed in Stone v. State provided in pertinent part:

> It shall be unlawful for any adult to commit any act or omission which would in any way encourage or tend to cause any child to come within the provisions of this act or to counsel or encourage any child to commit any of the acts specified in Sec. 5, subsection A of this act . . . . Law of March 13, 1941, ch. 233, § 18, [1941] Ind. Acts 913.

Section 5 of subsection A provided in part:

> Sec. 5. (A) Jurisdiction. The court shall have exclusive jurisdiction in proceedings concerning any child living or found in the county:
>
> (1) Who has violated any law of the state or any ordinance or regulation of a subdivision of the state.
>
> (2) Who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian, or custodian.
>
> (3) Who is habitually truant from school or home.
>
> (4) Who is habitually or so conducts himself as to injure or endanger the morals of himself or others. Law of March 13, 1941, ch. 233, § 5 [1941] Ind. Acts 904.

For the current Indiana statute see IND. ANN. STAT. § 10-812 (Burns 1956).

vagueness standards as applied to the 1941 act:

> To construe the statute as literally intended to provide punishment by imprisonment for counseling or encouraging any or every isolated act, which might tend in the slightest degree to encourage conduct upon the part of a child which might bring it within the jurisdiction of the juvenile court, or within the provisions of subsection (A) of section 5, would result in punishing as a crime many acts or omissions so trivial in themselves that it cannot be rationally concluded that it was intended that they should be made criminal. There is nothing in the act to indicate where the line is to be drawn between trivial and substantial things. It must be left to the judgment of each trial judge who is required to pass upon the sufficiency of affidavits or indictments. Such a statute is clearly bad for uncertainty.[75]

It is difficult if not impossible under most contributing statutes to define the particular acts which cause or tend to cause delinquency of a minor since the statutes treat all offenders in one class. As has been demonstrated, notice of the specific acts in reference to minors which would subject an adult to a prosecution for contributing to delinquency can be garnered only by viewing the cases which have arisen under the broad terms of the statutes. In analyzing such cases it has been suggested that:

> First, there are acts which are not considered crimes in themselves, however meretricious they may be, but which become crimes because of real or imputed consequences which they do or may bring about . . . . In the second class are offenses which might otherwise have been tried under more specific provisions of the criminal code, rather than as contributing offenses.[76]

Of paramount concern is the fact that contributing statutes are generally invoked in situations specifically dealt with by other penal statutes. Despite the existence of these specifically applicable statutes, which generally provide for more stringent penalties, contributing to delinquency statutes have most often been used in two areas: first, to convict adults for sexual misconduct with or in the presence of a minor[77] and secondly, for furnishing a minor with intoxicating liquor.[78] Since conduct of this nature is specifically prohibited by statute, the contributing to delinquency statute has become merely a lesser charge under which the perpetrator may be punished. The

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[75] Stone v. State, 220 Ind. 165, 175, 41 N.E.2d 609, 613 (1942).

[76] Gies, *supra* note 1, at 68.

[77] *See generally* Annot., 31 A.L.R. 3d 848 (1970); Annot., 18 A.L.R. 3d 824 (1968) (where a compilation of cases supporting this proposition is provided).

[78] *Id.*

charge of contributing to the delinquency of a minor has served also as either a convenient catch-all offense or a lesser offense to which one can plea bargain.

Although the list is not intended to be inclusive, adults have been convicted under contributing statutes for encouraging a minor to leave home;[79] encouraging or permitting the minor to enter a tavern,[80] dance hall,[81] or poolroom;[82] marrying a minor;[83] giving, selling, or prescribing dangerous drugs to a minor;[84] instructing a minor not to salute the flag;[85] causing or encouraging a minor to associate with immoral persons;[86] encouraging a minor to take part in a protest;[87] and for failure of a divorced husband to make support payments under a court decree.[88] While it is difficult to perceive criminal culpability in many of these activities, those that are culpable could easily have been prosecuted under the detailed prohibitions of other specific legislative enactments contained in other sections of a state's penal code.

The danger exists that the crime of contributing to the delinquency of a minor has become a means of avoiding the burden of proof required to be met under these other statutes dealing with specific criminal offenses.[89]

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[79] *See, e.g.*, People v. Calkins, 48 Cal. App. 2d 33, 119 P.2d 142 (1941); People v. Hall, 55 Ill. App. 2d 113, 204 N.E.2d 40 (1965); People v. Owens, 13 Mich. App. 469 164 N.W.2d 712 (1968); State v. Harris, 105 W. Va. 165, 141 S.E. 637 (1928).

[80] *See e.g.*, State v. Hardy, 232 La. 920, 95 So. 2d 499 (1957); State v. Scallan, 201 La. 1026, 10 So. 2d 885 (1942) (where a father was convicted of violating the contributing statute for permitting his child to enter a nightclub); State v. Sobelman, 199 Minn. 232, 271 N.W. 484 (1937).

[81] *See, e.g.*, State v. Rosenfield, 111 Minn. 301, 126 N.W. 1068 (1910); State v. Johnson, 88 N.W.2d 209 (N.D. 1958).

[82] *See, e.g.*, Anss v. State, 16 Ohio App. 502 (1922).

[83] *See generally* Annot., 68 A.L.R. 2d 745 (1959).

[84] *See* People v. DePaula, 43 Cal. 2d 643, 276 P.2d 600 (1954) (where the court stated as dictum that the use of a minor to transport narcotics contributes to the delinquency of the minor); State v. Tritt, 23 Utah 2d. 365, 463 P.2d 806 (1970). *See generally* Annot., 36 A.L.R. 3d 1292 (1971).

[85] *See, e.g.*, State v. Davis, 58 Ariz. 444, 120 P.2d 808 (1942), *cert. denied*, 319 U.S. 775 (1943). Defendants, Jehovah's Witnesses, taught, instructed, and directed their children to refuse to salute the flag while attending public school. It was alleged that the defendants knew that their children would be expelled upon their refusal to salute the flag. The effect of such cases was reversed when the United States Supreme Court held in Board of Education v. Barnette, 319 U.S. 624 (1943) that compulsary flag salute statutes are unconstitutional; *cf.* People v. Chiafreddo, 381 Ill. 214, 44 N.E.2d 888 (1942); Partain v. State, 77 Okla. Crim. 270, 141 P.2d 124 (1943) (both decided after *Barnette*).

[86] *See, e.g.*, State v. Johnson, 145 S.W.2d 468 (Mo. App. 1940).

[87] *See, e.g.*, Hubbard v. Commonwealth, 207 Va. 673, 152 S.E.2d 250 (1967).

[88] *See, e.g.*, Bradley v. Commonwealth, 380 S.W.2d 211 (Ky. 1964).

[89] *See* Pustoy v. State, 12 Ohio L. Abs. 560, 561 (Ct. App. 1932) where it is stated:

> The nature of the charge permits wider latitude in the character of proof required to support it than would be permitted upon a charge of other specific offenses such as rape or assault with intent to rape or kill. One may be guilty of the offense of contributing

For example, in *People v. Lew*,[90] the defendant was acquitted of statutory rape despite certain proof of engaging in intercourse with the minor but was convicted of contributing to her delinquency, under equally certain proof that the victim was a prostitute. The continued existence of contributing statutes promotes such selective enforcement through recourse to the broad statutory prohibitions. At least to the extent of this apparent overlap of criminal offenses, there is no demonstrated need for contributing statutes.

While it appears that delinquency cannot be predicted to arise upon the occurrence of any particular act committed in the presence of a child, state courts, nevertheless, have retained assumptions adopted by the statutory drafters that certain acts of adults cause or tend to cause delinquency. In line with community standards for the assessment of such causes, the courts and legislatures have left the determination to the jury as to whether the particular conduct of an accused under the circumstances was a violation of the contributing statute. Thus, broadly drawn contributing to delinquency statutes enable both juvenile courts and courts of general criminal jurisdiction to adjudge adults guilty of a violation of such statutes on the basis of what, under traditional guidelines, could be considered as non-criminal conduct.

As a result, enforcement is generally more selective under the state contributing statute than under other state penal statutes.[91] The zeal of the prosecutor and the police as well as the sentiment of the community plays a vital role in the determination of who is to be prosecuted under a contributing statute.[92] Several writers have echoed the fear that a defendant can be legally victimized by such statutes.[93] Since the defendant's conduct may have been founded upon good motives, the real victim in many instances of the enforcement of contributing statutes is the accused. The defendant may merely be a victim of circumstances while pursuing humanitarian rather than criminal motives. For example, a school counselor faces the threat of such a prosecution for providing birth control advice and birth control pills to students;[94] and, a minister for giving refuge to a troubled runaway. Given the vagueness of the contributing statute, it is not difficult to perceive the

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to the delinquency of a minor by conduct or a series of acts, the commission of no one of which would in itself constitute a crime.

[90] 78 Cal. App. 2d 175, 177 P.2d 60 (1947).

[91] *See, e.g.*, State v. Suchy, 31 Ohio Misc. 265, 277 N.E.2d 459 (C.P. 1971) (contributing statute not employed where minor is exposed to illegal acts for purposes of assisting police).

[92] RUBIN, *supra* note 23, at 30, has suggested that "probably one reason why the laws are not on their way out is that they are enforced only sporadically. If they were persistently enforced their unjustified harshness would convince many that the laws should be repealed".

[93] *See* T. BURGUM & S. ANDERSON, THE COUNSELOR AND THE LAW, 115 (1975); RUBIN, *supra* note 23.

[94] T. BURGUM & S. ANDERSON, THE COUNSELOR AND THE LAW, 115 (1975).

possibility of an adult inadvertently crossing the bounds of permitted conduct.

Courts have consistently failed to make a subjective consideration as to the nature of the victim of the contributing offense. Apparently, "it is not what the behavior did to this particular child, but what it might conceivably do to most children, or perhaps to some children, that makes it punishable."[95] At least one court has acknowledged that "an act which might lure one child into the paths of sin might prove repulsive and abhorrent to another, working out an exactly opposite effect."[96] Due to an inherent strong moral character a minor may cling even more tenaciously to virtuous ways despite or because of the repulsiveness of such an act.[97] Furthermore, if a child is of such a tender age that the defendant's conduct is meaningless to the child, the act may leave no lasting impression.[98]

Generally the victim is viewed as a naive youth lead astray by the actions and influence of an adult. By ignoring the minor's prior delinquency or propensity toward delinquency, the courts may be convicting adults on the basis of conduct induced by the minor. Since peer group relationships have been acknowledged as a possible causative factor of delinquency,[99] a situation can be envisioned in which a sixteen or seventeen year old induces a friend of eighteen years or more to take part in a criminal act. Even if the act is ordinarily non-criminal, but is one which may be prosecuted under a contributing statute, the adult may be convicted for contributing to the minor's delinquency despite the insignificant difference in their ages or maturity and lack of any criminal intent on the part of the accused to corrupt his younger friend.

The affect of contributing to delinquency statutes in deterring juvenile delinquency appears to be insignificant. In an assessment of the contributing statutes one investigator has emphasized: "They are too vague to deter acts which they do not specify, and they are superfluous in deterring acts represented elsewhere in the statute books."[100] In a comprehensive ten year study of the merit of prosecuting parents under contributing statutes, Judge Paul W. Alexander of the Lucas County Domestic Relations and Juvenile Court, Toledo, Ohio, found that a noticeable rise in delinquency was neither affected nor counterbalanced by these prosecutions.[101] No evidence was found

95 Gies, *supra* note 1, at 66.

96 State v. Stone, 111 Ore. 227, 235, 226 P. 430, 433 (1924).

97 *See, e.g.*, People v. McGougal, 74 Cal. App. 666, 241 P. 598 (1925).

98 *See, e.g.*, People v. Gruhl, 320 Ill. App. 489, 51 N.E.2d 615 (1943) (minor was 3 years old).

99 *An Ounce of Prevention, supra* note 1, at 106 & n. 18.

100 Gies, *supra* note 1, at 80.

101 Alexander, *What's this About Punishing Parents?*, 12 FED. PROB. 23 (1948).

that punishing parents had any affect whatsoever on curbing delinquency. One can only hypothesize that similar results would be evident in the records of other courts. Where the conduct proscribed under the contributing statute is not only ordinarily non-criminal, but is also not clearly delineated within the statute, criminal punishment fails to deter effectively similar future conduct.

Several authorities in the juvenile justice area have proposed the repeal of contributing statutes citing their potential for abuse.[102] The Model Penal Code has also disavowed the loosely drafted contributing to delinquency statutes. As an alternative to contributing to delinquency statutes the American Law Institute has proposed Model Penal Code Section 230.4.[103] Unlike existing contributing statutes this Model Penal Code section provides:

> A parent, guardian, or other person supervising the welfare of a child under 18 commits a misdemeanor if he knowingly endangers the child's welfare by violating a duty of care, protection or support.

The comment to the tentative draft of this proposed statute made reference to the significance of the provision:

> [I]ts significance lies as much in what it does not make criminal as in what it does penalize. Notably, it will not be an offense under this or any other Section of the Code to 'contribute to the delinquency' or 'corrupt the morals of a child '. . . .[104]

Although a specification of offenses is preferable, the Model Penal Code provision provides an alternative to a complete enumeration of the specific activities which may be deemed to constitute objectionable conduct in relations with minors. By limiting the protection of minors to intentional derelictions by adults of specific duties owed while supervising the welfare of a minor, vague goals of the possible prevention of delinquency are abandoned in favor of the present protection of the child's welfare. Offenses not covered under the Model Penal Code provision could be prosecuted under specific criminal statutes.

V. CONCLUSION

While the general purpose of contributing statutes may be considered laudatory, the scope of the statutes encompasses in one category a variety of possible acts which may constitute crimes only upon final determination by a judge or jury. As evidenced herein, there exists a propensity for abuse

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[102] *See* RUBIN, *supra* note 23, ch. 2, Gies, *supra* note 1.

[103] MODEL PENAL CODE § 230.4 (Proposed Official Draft, 1962).

[104] MODEL PENAL CODE § 207.13, Comment (Tent. Draft No. 9, 1959).

in the application of contributing to delinquency statutes toward making criminal, acts which are innocent in themselves. Judged as penal laws, the contributing to the delinquency of minors statutes stretch the permissible limits of due process guarantees. However, despite imprecise language and a failure to enumerate types of behavior which could apprise or notify one prior to the commission of an act that it may later be charged as criminal, most states have continued to uphold such statutes against charges that they are void for vagueness. Upon a simple reading of the statutes it is hard to endorse the belief expressed by one court that such statutes "are sufficiently certain and definite to apprise men of ordinary intelligence of the conduct which the statute prohibits".[105] While prosecutions for contributing to delinquency continue to arise inadvertently out of a variety of circumstances, there remains a definite lack of uniformity of possible punishable acts. The lack of notice provided by the statutes is justified by the state courts on the basis that "in view of the diverse factors that enter into such cases, it becomes a question of fact to be left to the jury . . . . "[106] As so aptly stated by the United States Supreme Court, "well intentioned prosecutors and judicial safeguards do not neutralize the vice of a vague law".[107]

Therefore, legislative and judicial reappraisal of their state's contributing to delinquency statute is mandated to assess: first, whether constitutional requirements have been met; second, the impact such statutes have had as a deterrent to delinquency; and third, whether a specific statutory language is available which would detail and encompass the acts for which individuals may be prosecuted under the contributing statute, through reference to court cases.

In this manner, the particular contributing statute can be evaluated in an effort to insure fair notice of what may be held to constitute offenses in relationships with minors. Discarding the contributing statutes in favor of specific legislation proscribing designated acts or at a minimum, enacting legislation similar to Model Penal Code Section 230.4, would better insure the protection of all parties, both the minor and the well intentioned adult.

GLENN W. SODEN

[105] Brockmueller v. State, 86 Ariz. 82, 84, 340 P.2d 992, 994 (1959), *cert. denied*, 361 U.S. 913 (1959).

[106] State v. Stone, 111 Ore. 227, 236, 226 P. 430 (1924).

[107] Baggett v. Bullitt, 377 U.S. 360, 373 (1964).