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Contact: Randall Wilson, Legal Director, ACLU of Iowa, Des Moines (available through the evening, also).

Davenport's Unfair "Parental Responsibility" Ordinance Turned Over by Iowa Supreme Court

The ordinance punished parents even when they were not at fault, the Court rules.

The Iowa Supreme Court issued a ruling today in the case of a Davenport, Iowa, woman who was cited with parental neglect as a result of the independent actions of her uncontrollable 17-year-old, 6-foot 2-inch, 200 pound teenager.

Police had picked up her son, a former honor roll student, after he began running with a troubled group of teenagers, disobeying his mother, and smoking marijuana. The record shows that Ms. Hensler did everything that experts recommended in order to curb her son's behavior.

Nevertheless, the City of Davenport charged Ms. Hensler with two violations of its parental responsibility ordinance. Upon subsequent violations caused solely by her son's personal actions, Ms. Hensler could have been fined up to \$750 per day or more by the City. Represented by the ACLU of Iowa, Ms. Hensler brought suit in Iowa District Court to halt further enforcement of the statute.

"This ordinance violates fundamental fairness by punishing parents for the sins of their children," said ACLU of Iowa Legal Director Randall Wilson. "This was an overly restrictive ordinance."

The ACLU also had a problem with the ordinance's lack of due process. "There was no provision in the ordinance for determining whether or not there was any actual guilt by either the child or the parent," Wilson said.

Michael McCarthy, the Davenport cooperating attorney in the case, said, "The ordinance was unfair because it relieved the city of any obligation to prove anything, other than the fact that there had been a police intervention of some sort. It made it impossible for parents to rebut it."

Writing for a unanimous Iowa Supreme Court, Justice Wiggins ruled that the city had a right to enact an ordinance dealing with irresponsible parenting; but that before it can punish a parent, the City "must prove by clear, satisfactory, and convincing evidence that a parent failed to exercise reasonable parental control of his or her minor, and the 'occurrence' was caused by the parent's failure to exercise reasonable parental control."

"We are elated with this decision," said Randall Wilson, legal director for the ACLU of Iowa, which brought the case on Ms. Hensler's behalf. "It should go without saying that simply allowing governments to visit the apparent sins of teens upon their parents is a poor, and fundamentally unfair way, to control delinquency."

Under the ordinance, parents could receive warnings, mandatory classes, or fines even if police merely suspected a child of committing a delinquent act. It did not matter if the son or daughter was later acquitted of all charges.

"There are obviously parents who are neglectful," said McCarthy. "But we already have a comprehensive system in the juvenile court and the Department of Human Services better equipped to deal with the myriad and varied reasons that a teenager would misbehave. In this case, the mother was doing everything she could."

The case was originally filed in Scott County, Iowa District court in February of 2008 by Hensler, who was represented by the ACLU's McCarthy and Wilson. The City of Davenport appealed after an adverse decision by District Court Judge Gary D. McKenrick, who ruled that the ordinance violated the due process rights of parents. Ms. Hensler's case was selected for a special Supreme Court oral argument session held before law students at Drake University on March 2 of this year.

Under the civil rights statutes, the City will be required to pay Ms. Hensler attorney's fees (which will be fully determined at a later date). Importantly, the city will no longer be able to punish parents without first making a clear and convincing showing to a judge that a parent is actually responsible for delinquent behavior by a son or daughter.

"As a practical matter, that will be a very difficult thing for the city to prove," said Wilson. "I doubt that the city will ever follow through."

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