

# Paying the Price for Our Children's Torts: Exploring Parental Liability Statutes Employed in the South

by Kevin Phillips<sup>1</sup>

America's youth are committing serious crimes with serious costs.<sup>2</sup> Just two years ago in Alabama, youths burned down the Daniel Pratt Mill in Prattville— a historic landmark.<sup>3</sup> In 2004, a Minnesota Teen pleaded guilty to releasing a variant of the Blaster virus on the internet crippling more than a million computers.<sup>4</sup> The public is becoming increasingly alarmed at the seriousness

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<sup>1</sup> B.A. in English, Auburn University in Montgomery; M.S. in Foundations of Education, Troy State University in Troy; J.D. Candidate, Faulkner University's Thomas Goode Jones School of Law.

<sup>2</sup> *Juvenile Crime*, Juvenile Justice FYI, at [http://www.juvenilejusticefyi.com/juvenile\\_crimes.html](http://www.juvenilejusticefyi.com/juvenile_crimes.html) (last visited Oct. 1, 2004). "Juveniles are defined by the OJJDP as youth under the age of 18. In 1999, the year analyzed in the OJJDP's National Report Series, juveniles composed 17% of all U.S. arrests. Youth under the age of 15 made up 32% of the juvenile arrests and youth between 15 and 17 made up the larger percentage of the arrests, at 68%. Youth under the age of 15 were arrested in 67% of arson cases and 51% of sex offense (excluding rape and prostitution) cases. Youth between the ages of 15 and 17 were most likely to be arrested for DUI violations (97%) and embezzlement cases (94%). Theft, simple assault, and drug use crimes represented the highest number of arrests overall. Approximately 380,500 juvenile theft arrests were made during the year; youth under the age of 15 were involved in 40% of these arrests. Youth under the age of 15 were involved in 43% of the 237,300 simple assault arrests, and 16% of the 198,400 drug abuse arrests." *Id.*

<sup>3</sup> Marty Roney, *Teens Face Arson Case Judge Today*, MONTGOMERY ADVERTISER, Oct. 9, 2002, at C1.

<sup>4</sup> Gene Johnson, *Minnesota Teen Pleads Guilty to Unleashing Blaster Variant*, THE ASSOCIATED PRESS, Aug. 11, 2004, available at <http://www.securityfocus.com/news/9315> (last visited Oct. 2, 2004).

of the crimes that youths are perpetrating and demanding action.<sup>5</sup> The state Legislatures, aware of the cost of these crimes, have begun to enact legislation which vicariously places blame on the parents for the torts of their children.<sup>6</sup> These parental liability statutes provide a wide range of remedies from \$1000.00 maximum to unlimited liability.<sup>7</sup> These statutes however are in direct conflict with the common law rule of parent-child liability.<sup>8</sup>

Against this backdrop of parental liability for the torts of their minor children, the question has been asked, “which parent pays and why?”<sup>9</sup> But the question should go beyond merely who pays and should include the implications of the stress these new laws place on the family unit. One court has held that only the parent with whom the child is living is responsible for the acts of the child<sup>10</sup>— and therein lies the rough. For if, in the end, these statutes accomplish their desired ends, the family unit will suffer. Parents will be forced to take drastic measures if

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<sup>5</sup> Neil Probst & Regan Loyola Connolly, *Larkin Proposes New Curfew*, MONTGOMERY ADVERTISER, Aug. 8, 2003, at C1; *see also* Eric Stringfellow, *Teen Crime Cant Be Fought with Magic Wand*, THE CLARION-LEDGER, July 25, 2004, available at <http://www.clarionledger.com/apps/pbcs.dll/article?AID=/20040725/COL0601/407250359/1189> (last visited October 2, 2004).

<sup>6</sup> *See* ALA. CODE § 6-5-380 (2004); FLA. STAT. ANN. § 741.24 (West 2003); GA. CODE ANN. § 51-2-3 (2004); LA. CIV. CODE ANN. ART. 237 (WEST 2004); MISS. CODE ANN. § 93-13-2 (2004); TENN. CODE ANN. § 37-10-103 (2004).

<sup>7</sup> *See id.*

<sup>8</sup> *See* Parker v. Wilson, 60 So. 150, 152 (Ala. 1912) (stating that “mere fact of paternity does not make the father liable for the torts of his minor child”).

<sup>9</sup> Canida v. Canida, 751 So. 2d 647 (Fla. Dist. Ct. App. 1999); Gearity v. Salvo, 485 A.2d 940 (Conn. Super. Ct. 1984); *In re* William George T., 599 A.2d 886 (Md. Ct. Spec. App. 1992).

<sup>10</sup> *Id.*

they suspect their child may be a problem. The only options will be to divorce and one parent keep the assets and the other one the child<sup>11</sup> or give the child up to the state and have no contact with the child<sup>12</sup> until it is of age.

This paper explores the topic of parental liability for the torts of their minor children. Part I of this paper will discuss the development of the common law rule of parental liability for torts committed by their children. Part II will discuss the state statutes for a selection of southern states who have adopted some form of liability for parents. Part III will compare the rationale of these laws and their specific application in case law. Part IV will explore the statutes, determine they serve only a limited purpose of compensation, but at the expense of the integrity of the family unit. Part V will conclude that the approach used by Tennessee should be a model for states who wish to address the problems associated with many parental liability statutes.

### **I. The Development of the Common Law Rule.**

The common law rule for parental liability was based on the master-servant relationship.<sup>13</sup>

Sir William Blackstone explained the concept as this:

IF a servant, lastly, by his negligence does any damage to a stranger, the master shall answer for his neglect: if a smith's servant lames a horse while he is shoeing him, an action lies against the master, and not against the servant. But in these

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<sup>11</sup> *Id.* These cases all stand for the proposition that if the parents are divorced, it is the parent who has custody and control that will be liable.

<sup>12</sup> *See Pizzo v. Graves*, 453 So. 2d 592 (La. Ct. App. 1994); *Potomac Ins. Co. v. Torres*, 401 P.2d 308 (N.M. 1965); *Canida v. Canida*, 751 So. 2d 647 (Fla. Dist. Ct. App. 1999).

<sup>13</sup> *See Tift v. Tift*, 4 Denio 175 (N.Y. Sup. Ct. 1847) (holding that father not responsible for act done by daughter where he did not direct the act, the act was done while he was not there); *Foster v. Essex*, 17 Mass. 479 ( 1821). (explaining the master servant relationship necessary to charge the master with the torts of the servant).

cases the damage must be done, while he is actually employed in the master's service; otherwise the servant shall answer for his own mis-behaviour.<sup>14</sup>

This common law rule was adopted by courts sitting in the new United States.<sup>15</sup> As early as 1805, American courts recognized the common law rule as applicable in the new United States.<sup>16</sup> The Supreme Court of Massachusetts stated

It seems to be well established, by ancient and modern decisions, that the master is liable for every act done by the servant in the course of his employment, the law implying, from their relation, and from the circumstances of the act, that it is done by the procurement and command of the master.<sup>17</sup>

The facts of the *Grinnell* case concern a deputy who was ordered by the sheriff Phillips to seize the property of Grinnell.<sup>18</sup> Grinnell sued the Sheriff in trespass for the deputies acts. The Grinnell court essentially followed Blackstone's Commentary and the common law of England in deciding the case.

In 1821, the Supreme Court of Massachusetts again upheld the common law maxim that the master is liable for the acts of his servant.<sup>19</sup> In *Foster v. Essex Bank*, a bank was held liable for the cashier who removed \$32,000 in gold coin from a cask that had been entrusted to the bank.<sup>20</sup> Again the court stated that the common law required the master to be liable for the

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<sup>14</sup> 1 William Blackstone, Commentaries \*419.

<sup>15</sup> See *Foster v. Essex Bank*, 17 Mass. 479 (1821).

<sup>16</sup> *Grinnell v. Phillips*, 1 Mass 530 (1805).

<sup>17</sup> *Id.* at 535.

<sup>18</sup> *Id.* at 537.

<sup>19</sup> *Foster*, 17 Mass. at 509.

<sup>20</sup> *Id.* at 504. The prior history of this case, as found on LexisNexis details the entire factual situation for the interested reader.

actions of his servant.<sup>21</sup> Interestingly enough, *Foster* cites to *Mechanic's Bank of Alexandria v. Bank of Columbia*<sup>22</sup> as recognizing this same principle. This Supreme Court case seems to be the first to address the common law rule. The Supreme Court states that “in the diversified exercise of the duties of a general agent, the liability of the principal depends upon the facts, 1. That the act was done in the exercise, and, 2. Within the limits of the powers delegated.”<sup>23</sup>

While all of these cases address the general issue of liability of the master for the tort of the servant, an 1884 opinion issued by the Supreme Court of Georgia specifically addressed the issue of a parents liability for the torts of his child.<sup>24</sup> This case indicates that the Code of Georgia in effect at the time of the case actually had adopted the common law rule. The Georgia Supreme Court states that “a person is liable for torts committed by his wife, and for those committed by his child or servant, by his command, or in the prosecution and within the scope of his business, whether the same be by negligence or voluntary. Code, § 2961.”<sup>25</sup> The facts of *Lockett* however do not deal specifically with an instance testing the common law rule where a

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<sup>21</sup> *Id.*

<sup>22</sup> 18 U.S. 326 (1820).

<sup>23</sup> *Id.* at 337. In this case, the court couches the terms in principal and agent. For the purposes of master/servant, or principal agent, the court in *Foster* views the terms as roughly synonymous.

<sup>24</sup> *Lockett v. Pittman*, 72 Ga. 815 (1884).

<sup>25</sup> *Id.* at 817. At the time of the writing of this article, the writer had been unable to unearth a copy of Georgia's Code from the 1800's.

parent is being held liable for the acts of his child. In *Lockett*, an overseer was charged with killing a cow that had wandered into a planted field.<sup>26</sup>

In 1847, the Supreme Court of New York caused to be published the opinion of *Tift v. Tift*.<sup>27</sup> This case specifically deals with the issue of parental liability for the tort of a minor child. In *Tift*, a father was sued after his daughter set the family dog on an expensive hog that wandered into their yard.<sup>28</sup> The court begins the opinion by stating that the father was not answerable for the “act of his daughter, done in his absence, and without his authority or approval.”<sup>29</sup> Implicit in the courts holding is the common law rule for imposing liability upon parents when their children commit torts. The reference in the case to *Foster*, which addresses the general issue of master servant relationship, illustrates that the parent child relationship is to be treated like the master servant relationship by close analogy.<sup>30</sup>

A 1904 case from the state of Georgia, *Chastain v. Johns*<sup>31</sup>, again explores the common law rule. As mentioned earlier in this paper, the Georgia Code had formally adopted by statute the common law rule making the parent liable for the torts of his child under certain circumstances. In *Chastain*, a farmer brought suit against the parents of a boy who had

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<sup>26</sup> *Id.* at 816.

<sup>27</sup> 4 Denio 175 (1847).

<sup>28</sup> *Id.* This information was obtained from the prior history of the case and is not found in the opinion. The prior history can be found on LexisNexis before the actual opinion of the case.

<sup>29</sup> *Id.* (citing *Foster v. Essex Bank*, 17 Mass. 479 (1821)).

<sup>30</sup> Compare *Tift*, 4 Denio at 177, with *Foster*, 17 Mass. at 509.

<sup>31</sup> 120 Ga. 977 (1904).

maliciously shot a horse, a hog, other stock, cattle, all total worth \$1000.00.<sup>32</sup> The court begins its analysis by pointing out that “[l]iability of a parent for the tort of a child is governed by the ordinary principles of liability of a principal for the acts of his agent, or a master for his servant. It does not arise out of a mere relation of parent and child.”<sup>33</sup>

The court goes further stating that liability is not imposed simply because the child lives with the parent and is under the direction and control of the parent.<sup>34</sup> This court then justifies this reliance on the common law by stating,

Any other rule than the one here announced would work the greatest hardship and injustice; for it would impose upon the parent liability regardless of the question of negligence on his part, for acts of his child with the responsibility of which he could not, in reason and common sense, be justly charged.<sup>35</sup>

It is this very “reason and common sense” that will be assailed by legislatures all over the south at the end of the twentieth century. Indeed by the 1990's Alabama, Georgia, Tennessee, Florida, Louisiana, Mississippi all had some form of strict liability imposed upon parents by the legislature.<sup>36</sup>

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<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 978-79.

<sup>34</sup> *Id.* at 979.

<sup>35</sup> *Id.*

<sup>36</sup> *See* ALA. CODE § 6-5-380 (2004); FLA. STAT. ANN. § 741.24 (West 2003); GA. CODE ANN. § 51-2-3(2004); LA. CIV. CODE ANN. ART. 237 (West 2004); MISS. CODE ANN. § 93-13-2 (2004); TENN. CODE ANN. § 37-10-103 (2004).

Alabama, much like Georgia at the beginning of the twentieth century, adhered to the common law principle that parents are not liable for the tort of their child simply because of the relationship of parent to child.<sup>37</sup> The Alabama Supreme Court pointed out that

[t]he strict relation of master and servant invariably arises out of contract, express or implied. It involves an engagement by the servant to do something for the master, and the master's liability to strangers for the negligence of his servant is founded upon the idea that he controls the manner of the performance of the thing to be done.<sup>38</sup>

In this case, the father was sued for a tort committed by his son while the son was driving the family car.<sup>39</sup> The child was not working for the father, nor was he doing any family business.<sup>40</sup>

The court reasoned that it would be necessary to meet the common law requirements. To do otherwise

has no firm foundation in reason or common sense. In theory it overlooks well-settled principles of law; in practice it would interdict the father's generosity, and his reasonable care for the pleasure or even the well-being of his children, by imposing an universal responsibility for their acts. As said in *Doran v. Thomsen*, 76 N.J.L. 754, 71 A. 296, 19 L.R.A. (N. S.) 335, 131 Am. St. Rep. 677: "It would subject a parent to liability if he bought for his son a baseball or for his daughter a golf club, and, by permitting them to be used by his children for their appropriate purposes, injury occurred."<sup>41</sup>

Thus, the Alabama Supreme Court upheld the common law principle that parents should not automatically be held liable for the torts of their children.

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<sup>37</sup> See *Parker v. Wilson*, 60 So. 150, 152 (Ala. 1912).

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 151.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 153.

Louisiana, with its civil code, employed a different approach. While most American courts were adopting the common law of England, Louisiana, once a French colony, had adopted and employed the civil code.<sup>42</sup> Under the Louisiana Civil Code that was in effect in 1885, the father was held responsible for the tort of his child.<sup>43</sup> In the case of *Mullins v. Blaise* the facts show that on Christmas night, the Blaise children were outside in the street shooting off roman candles.<sup>44</sup> Mr. Blaise's six year old son pointed his roman candle at a crowd of children that had gathered to watch the fireworks. One of the flaming balls struck Mary Mullins in the eye and caused serious and permanent damage to her eye.<sup>45</sup>

The Supreme Court of Louisiana reasoned that under Art. 2318 of the Code, "[t]he father, or after his decease the mother, are responsible for the damage occasioned by their minor or unemancipated children residing with them or placed by them under the care of other persons."<sup>46</sup> This provision of the code, explains the court, "imputes the fault to the father."<sup>47</sup> It effectively creates a presumption that the injury "resulted from a lack of care, watchfulness and discipline on his part, in the exercise of the paternal authority. This is the very reason and foundation of the rule."<sup>48</sup> The court then makes the distinction between the civil Code of France and the Civil Code

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<sup>42</sup> See *Mullins v. Blaise*, 37 La. Ann. 92 (1885).

<sup>43</sup> *Id.* at 93.

<sup>44</sup> *Id.* at 92.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 93.

<sup>48</sup> *Mullins*, 37 La. Ann. at 93.

as adopted by Louisiana. Under the French Code at the time, there existed a rebuttable presumption of responsibility.<sup>49</sup> The court states that the language is clear and unambiguous and that the intent of the legislature was “to impose a sort of strict liability upon parents as a responsibility flowing from parental authority.”<sup>50</sup>

The early development of the common law in most states and the civil code in Louisiana reached very divergent ends. The strict liability imposed under the code did not find favor on American courts and most courts found policy reasons in support of not allowing recovery from parents unless some agency relationship existed. But this trend has been altered in the last 20 years. State Legislatures now impose liability where none was found at the common law. Part II of this paper will discuss the state statutes of Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee.

## **II. Selected Statutes Imposing Vicarious Liability on Parents**

Most states now impose upon the parents, by statute, responsibility for their child’s torts. This holds true throughout the Southeast with Alabama, Florida, Georgia, Mississippi, Tennessee, and Louisiana all having some form of tort liability for the parents of a child who commits a tortious act.<sup>51</sup> Section Two focuses on these parental liability acts and differing

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<sup>49</sup> See *Turner v. Bucher*, 308 So. 2d 270, 273 (La. 1975). See also 2 M. Planiol, *Treatise on the Civil Law* 507-508, 510, Nos. 909, 910B (LSLI trans. 1939).

<sup>50</sup> *Turner*, 308 So. 2d at 273.

<sup>51</sup> See ALA. CODE § 6-5-380 (2004); FLA. STAT. § 741.24 (West 2003); GA. CODE ANN. § 51-2-3 (2004); MISS. CODE ANN. § 93-13-2 (2004); TENN CODE ANN. § 37-10-103 (2004); LA. CIV. CODE ANN. ART. 237 (West 2004).

approaches codified by the legislatures in these southern states to deal with this issue. The major issues that arise from these statutes are how much should the parent be liable for, does the statute create strict liability? If the statute creates strict liability, how old should the child be before the parents are held liable for the actions of the child? An examination of the relevant statutes and case law will reveal answers to some of these questions, but perhaps not to all of them.

Under Alabama law, when a child commits a tort “[t]he parent or parents, guardian, or other person having care or control of any minor under the age of 18 years with whom the minor is living and who have custody of the minor shall be liable for the actual damages sustained.”<sup>52</sup> While this section does provide for strict liability for the parents of a child tortfeasor, that is not to say that this act is a blanket provision for damages however. Alabama limits the amount that an injured party can recover under Ala. Code section 6-5-380 to an amount not to exceed One Thousand Dollars (\$1000).<sup>53</sup> Alabama law then further limits when a recovery may be had by adding that the injury must have been caused by “the intentional, willful, or malicious act of the minor.”<sup>54</sup> This standard would apparently exclude any negligent act on the part of the minor.<sup>55</sup> The legislature completed section 6-5-380 by adding in part b that the enactment of this legislation was not intended to limit the liability of the parent for a child’s torts that already

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<sup>52</sup> ALA. CODE § 6-5-380 (2004).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> *See Sutherland v. Roth*, 407 So. 2d 139 (Ala. Civ. App. 1981).

existed under Alabama law.<sup>56</sup> Therefore, if other causes of action already existed, this legislation would not preempt any other possible remedy available to a potential plaintiff.

A brief discussion of the terms “intentional, willful and malicious” discloses the limited nature of acts that will fall within the statute and the implications that this could have on a potential recovery from a young tortfeasor. According to the Alabama court of civil appeals, all three “are terms of general and widespread legal usage and have accepted meanings.”<sup>57</sup> An act is intentional if

the actor has intelligence enough to understand the physical nature and consequences of his act, and. . . consciously directs his action so that the injury of the insured is the natural or probable consequence thereof, then that injury is the result of an intentional act. Of course, the injury of the person must be intended, as well as the act which causes such injury.<sup>58</sup>

While this standard might seem difficult to meet, it is the easiest standard of the three listed to meet. The latter two become more difficult to prove, especially with a young actor. An act will only be deemed willful if

an act [is] done with evil intent or bad motive or purpose, unlawful, and without legal justification. It implies not only the voluntary and intentional doing of an act, but also the intending of the result which follows from the doing of the act. Such is the meaning of the word as it is found in our penal statutes and as it is used in describing a tortious act or injury.<sup>59</sup>

The last term in the section is malicious. An act will be deemed malicious for the purposes of section 6-5-380 if there is “the intentional doing of an unlawful act to the injury of another...

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<sup>56</sup> ALA. CODE § 6-5-380 (2004).

<sup>57</sup> *Sutherland*, 407 So. 2d at 140.

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 141.

When a person, without just cause or excuse, intentionally does a wrongful act, it constitutes malice.”<sup>60</sup>

Additionally important in these terms is the implication that a young actor might be incapable of forming the intent necessary to satisfy the statute. This point is not directly addressed in the act itself, rather it seems that a blanket liability is placed on the parents who then would have to disprove that a young actor could not fit within the terms of the act.<sup>61</sup> In any event, where the injury caused by the child tortfeasor is substantial, Alabama’s parental liability statute offers little in the way of actual compensation for the injury.

Mississippi falls squarely between the limits on recovery imposed by Alabama and Georgia. Under Mississippi Law, “[a]ny property owner shall be entitled to recover damages in an amount not to exceed Five Thousand Dollars (\$ 5,000.00), plus necessary court costs, from the parents of any minor under the age of eighteen (18) years and over the age of ten (10), who maliciously and willfully damages or destroys property belonging to such owner.”<sup>62</sup> Interestingly enough, Mississippi has included court costs in the statute. This is also provided for in Alabama and Georgia statutes.<sup>63</sup> As attorney fees can be in the thousands of dollars, this is a boon to the injured party.

Another significant difference in the Mississippi’s statute is that the age of the minor is defined as being between ten (10) and eighteen (18). Both Alabama and Georgia avoid specific

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<sup>60</sup> *Id.*

<sup>61</sup> *See id.* at 140.

<sup>62</sup> MISS. CODE ANN. § 93-13-2(1) (2004).

<sup>63</sup> *See* ALA. CODE § 6-5-380(a) (2004); GA. CODE ANN. § 51-2-3(a) (2004).

ages. Using specific ages begs the question, “is a child below the age of ten not capable of malicious and wilfully destroying something?”<sup>64</sup> What this does avoid is the inherent arguments that could be made concerning the culpability of a young child below the age of ten(10). If the child has to meet the standards of willful and wanton, the issue will arise as to intent and knowledge of the consequences of the act when it is committed by a young actor.<sup>65</sup>

The Georgia Code, like the Alabama Code, provides that some relief may be obtained from the parents of a child who has committed certain torts. Under the Georgia Code, section 51-2-3(a)

Every parent or guardian having the custody and control over a minor child or children under the age of 18 shall be liable in an amount not to exceed \$10,000.00 plus court costs for the willful or malicious acts<sup>66</sup> of the minor child or children resulting in reasonable medical expenses to another, damage to the property of another, or both reasonable medical expenses and damage to property.<sup>67</sup>

The most significant difference between the Georgia and the Alabama statutes is the amount of compensation that an injured party can recover. While Alabama keeps the amount very low, a mere one thousand dollars(\$1000), Georgia has at least recognized that claims will often reach

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<sup>64</sup> See *Sutherland*, 407 So. 2d 139 (defining terms willful and malicious). No case on point in Mississippi has been found that would support the arbitrary ages included in the statute. It could very well be difficult to show that a young child met the requisites of the terms in the statute. *But see* *Standard v. Shine*, 295 S.E.2d 786, 788 (S.C. 1982) (stating that minors of any age can commit intentional torts).

<sup>65</sup> See *Sutherland*, 407 So. 2d 139.

<sup>66</sup> See *Landers v. Medford*, 133 S.E. 2d 403 (Ga. Ct. App. 1963) (discussing willful and wanton act).

<sup>67</sup> GA. CODE ANN. § 51-2-3(a) (2004).

into the thousands of dollars. The Ten Thousand (\$10,000) dollar figure<sup>68</sup> adopted by the Georgia Legislature seems to better reflect an actual amount of damages.

Georgia also allows that section 51-2-3 “shall be cumulative and shall not be restrictive of any remedies now available to any person, firm, or corporation for injuries or damages arising out of the acts, torts, or negligence of a minor child under the ‘family-purpose car doctrine,’ any statute, or common law in force and effect in this state.”<sup>69</sup> This is significant in Georgia where, under the family purpose doctrine, the parents may be held responsible for such things as the child’s use of an automobile; but less so in Alabama where this doctrine is not employed.<sup>70</sup> This clause serves to protect the other remedies that the injured party may have in addition to those added by the statute. The reference to “cumulative” simply means in this context that more than one recovery cannot be had for the same incident.<sup>71</sup>

Tennessee arguably has the best reasoned statute concerning the liability of parents for the torts of their minor children. Under Tennessee law,

A parent or guardian shall be liable for the tortious activities of a minor child that cause injuries to persons or property where the parent or guardian knows, or should know, of the child's tendency to commit wrongful acts which can be expected to cause injury to persons or property and where the parent or guardian

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<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at (b).

<sup>70</sup> Compare *Cabral v. White*, 352 S.E. 2d 162 (Ga. Ct. App. 1987)(applying the family purpose doctrine) with *Winfrey v. Austin*, 71 So. 2d 15 (Ala. 1954) (rejection of the family purpose doctrine).

<sup>71</sup> For a discussion on what recovery may be had, see *Alvarez v. Striegel*, 471 So. 2d. 1356 (Fla. Dist. Ct. App. 1985) (plaintiffs were not entitled to double recovery of their actual damages).

has an opportunity to control the child but fails to exercise reasonable means to restrain the tortious conduct.<sup>72</sup>

There one key difference between Tennessee's law and the laws of the other southern states surveyed in this paper. Tennessee law provides a rebuttable presumption whereby the parents, if they can prove that they could not have prevented the act by their due diligence, will not be held liable for the tort committed by the child.<sup>73</sup>

Another interesting aspect of Tennessee's approach is the two prong test set out in the section 37-10-103. Under this section, it must be shown that the parents (1) knew or should have known of the child's proclivities and (2) the parent had the opportunity to control the child, but did not.<sup>74</sup> But 37-10-103 should not be read to create unlimited liability on the part of the parents. Indeed, this section must be read in conjunction with section 37-10-101.<sup>75</sup> Section 37-10-101 provides that

Any municipal corporation, county, town, village, school district or department of this state, or any person, or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an action in assumpsit in an amount not to exceed ten thousand dollars (\$ 10,000) in a court of competent jurisdiction from the parents or guardian of the person of any minor under eighteen (18) years of age, living with the parents or guardian of the person, who maliciously or willfully causes personal injury to such person or destroys property, real, personal or mixed, belonging to such municipal corporation, county, township, village, school district or department of this state or persons or religious organizations.<sup>76</sup>

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<sup>72</sup> TENN. CODE ANN. 37-10-103(a)(2004).

<sup>73</sup> *Id.*; see *Turner*, 408 So. 2d at 273 (discussing rebuttable presumptions under the French Code).

<sup>74</sup> § 37-10-103.

<sup>75</sup> See *Lavin v. Jordan*, 16 S.W.3d 362 (Tenn. 2000).

<sup>76</sup> TENN. CODE ANN. § 37-10-101 (2004).

Under this section, there is a ten thousand dollar(\$10,000) cap on damages. This places Tennessee in the same range as Georgia on how much money can be recovered. But unlike Georgia, Tennessee affords more protection to the parents.<sup>77</sup>

Florida's approach in many respects mirrors the one employed by Alabama.

Florida law provides that injured parties

shall be entitled to recover damages in an appropriate action at law, in a court of competent jurisdiction, from the parents of any minor under the age of 18 years, living with the parents, who maliciously or willfully destroys or steals property, real, personal, or mixed...<sup>78</sup>

Florida however has chosen to abandon any limitations placed on the liability of parents. As early as 1980, Florida courts had enunciated a cogent policy argument for imposing such strict liability upon the parents for the torts committed by their children.<sup>79</sup> In upholding the constitutionality of section 741.24 of Florida's statutes, the Florida civil court of appeals stated that

this statute, intended to aid in reducing juvenile delinquency by imposing liability upon parents who control minors, is neither unreasonable, arbitrary nor capricious. We further hold that the state has a legitimate interest in the subject (controlling juvenile delinquency), and that there is a rational relationship between the means used (imposing of liability upon parents of children who wilfully or maliciously damage property) and this object.<sup>80</sup>

A question which arises under this line of reasoning is, what if the parents are putting forth their best efforts in attempting to control the child? According to the language of this opinion, even

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<sup>77</sup> Compare GA. CODE ANN. § 51-2-3(a) (2004) with TENN. CODE ANN. §§ 37-10-101, 103 (2004).

<sup>78</sup> FLA. STAT. ANN. § 741.24 (West 2003).

<sup>79</sup> See *Stang v. Waller*, 415 So. 2d 123 (Fla. Dist. Ct. App. 1982).

<sup>80</sup> *Id.* at 124.

should the parents be doing everything possible to control the child, they will be liable for an infinite amount of damages.

The Florida court of appeal for the second district answered the question of parental liability for restitution by seeming to create an exception to the general parental liability rule under section 741.24.<sup>81</sup> While *In the Interest of M.D. v. Florida* actually involved the application of another statute imposing liability upon parents, the courts said that section 39.11 must be construed in harmony with section 741.24.<sup>82</sup> Considering the two sections together, this Florida Court of Appeal held that in order to avoid having to pay restitution for the delinquent acts of the child, the parent had to show that they had gone above and beyond the what a normal parent would do in order to control a delinquent child.<sup>83</sup> While this opinion seems to create an exception to the general rule, it only applies to actions for restitution under section 985.231(1)(a)(6). Thus, the general rule for strict liability under section 741.21 was not altered by this construction.

The only possible way it seems for a parent to avoid liability under section 741.21 is to divorce his or her spouse and give over custody of the children at that time.<sup>84</sup> The Florida district court of appeals reasoned that “it is the crucial element of parental control over the minor child that indicates who will bear liability for that child's acts.”<sup>85</sup> The court reasoned that

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<sup>81</sup> *In the Interest of: M.D. v. Florida*, 561 So. 2d 1259 (Fla Dist. Ct. App. 1990).

<sup>82</sup> *Id.* at 1260.

<sup>83</sup> *Id.* at 1261.

<sup>84</sup> *Canida v. Canida*, 751 So. 2d 647 (Fla. Dist. Ct. App. 1999).

<sup>85</sup> *Id.* at 649.

in cases of divorced parents, the parent who has custody of the child is the one who should bear the responsibility for the torts committed by the children living with him/her because that parent should over-see the day-to-day care of the child.<sup>86</sup> While it seems logical that the parent keeping and caring for the child should bear responsibility for his discipline, the logic falls apart where two parents are divorcing and they already know they have a problem child. The policy here would seem to promote a situation where the child could prove unwanted by both parents.

While Tennessee may be said to represent one end of the liability spectrum, Louisiana perhaps represents the opposite pole of that same spectrum. Louisiana, even more so than Florida, holds the parents of a child who commits a tort liable for the damages caused by that child. If you will recall, Florida places no limits on liability. However, Florida does still require that the act be willful and wanton. These limitations are not found in the Louisiana Civil Code. This Code provides that “[f]athers and mothers are answerable for the offenses or quasi-offenses committed by their children, in the cases prescribed under the title: Of Quasi-Contracts, and of Offenses and Quasi-Offenses.”<sup>87</sup> Further investigation into this civil code reveals that under article 2318,

The father and the mother and, after the decease of either, the surviving parent, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons. The same responsibility attaches to the tutors of minors.<sup>88</sup>

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<sup>86</sup> *Id.*

<sup>87</sup> LA. CIV. CODE ANN. ART. 237 (West 2004).

<sup>88</sup> ART. 2318 (West 2004).

The liability imposed under this statute is absolute. This is the truest strict liability statute of all the ones surveyed in the South.<sup>89</sup>

### III. Application of State Statutes in Case law

The cases which actually apply the various parental liability statutes are not many at the appellate and state supreme court levels. This could be because parents cannot afford to appeal cases or it is just as likely that the plaintiff has urged another theory of recovery in the case in order to avoid the monetary limitations imposed by the statute.<sup>90</sup> Nevertheless, the cases that are available should give some indication as to the particular nuances of suits charging parents under liability statutes.

An Alabama case, *Sutherland v. Roth*<sup>91</sup>, explores the burden that is placed on a party seeking compensation under section 6-5-380. In *Sutherland*, Ms. Roth was having a baby shower at her home.<sup>92</sup> She invited two of her good friends, Ms. Sutherland and Ms. Buchanan to this happy event. Ms. Sutherland was even a co-hostess. Ms. Sutherland brought her two children with her. Ms. Buchanan also brought her daughter. The children all liked Ms. Sutherland and she liked them. When the party started, the children were sent outside to play. The best place they could find was the top of Ms. Roth's Stingray Corvette. They used the windshield as a slide and

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<sup>89</sup> See *Turner v. Bucher*, 308 So. 2d 270 (La. 1975) (holding that the liability imposed under Louisiana's Civil Code is absolute and flows from parental responsibility); *but cf.* *Underwood v. American Ins. Co.*, 262 F. Supp. 423 (E.D. La. 1966)(finding that someone has to be at fault, either the parent or the child for the liability to attach).

<sup>90</sup> *Williamson v. Daniels*, 748 So. 2d 754 (Miss. 1999).

<sup>91</sup> 407 So. 2d 139 (Ala. Civ. App. 1981).

<sup>92</sup> *Id.*

the top as a trampoline. They did One hundred eighty-eight dollars worth of damage. Ms. Roth brought suit and was awarded the one hundred eighty eight dollars in damage.<sup>93</sup>

The appellate court begins by pointing out that under “the common law, the mere fact of parenthood does not render parents responsible for their child’s torts.”<sup>94</sup> The only option available to Ms. Ross is section 6-5-380. Under this section, the person bringing suit must show that (1) the parent has custody of the child, (2) the child lives with the parent, (3) the child is under 18, (4) she has to prove harm caused by child, (5) she has to show that the child acted intentionally, willfully, or maliciously.<sup>95</sup>

There was no dispute concerning elements one through four as the facts above suggest. The point of contention in this case was showing that the children acted intentionally, wilfully, or maliciously.<sup>96</sup> The court, after defining each of these terms, finds that “the evidence failed to prove that any of the minors committed any intentional, willful or malicious act, as those terms are defined by law.”<sup>97</sup> With these terms defined, it makes it very difficult to show that a young child, the children in the case were 5,6,7, could have formed the intent necessary to meet the definitions.

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<sup>93</sup> *Id.* at 139-40.

<sup>94</sup> *Id.*

<sup>95</sup> *See* ALA. CODE § 6-5-380 (2004).

<sup>96</sup> *Sutherland*, 407 So. 2d at 140.

<sup>97</sup> *Id.* at 141.

The result surely would not have been the same in Louisiana. The Supreme Court of Louisiana interpreted Louisiana Civil Code article 2318 in *Turner v. Bucher*.<sup>98</sup> In this case, a six year old boy was riding his bicycle on the side walk in New Orleans.<sup>99</sup> He accidentally ran into the backside a sixty-two year old woman. She was injured and brought suit against the parents of the boy for the damages.<sup>100</sup> The Louisiana Supreme Court first points out that there is not disputed by the parties that the child “could not be capable of fault or negligence.”<sup>101</sup> This court goes on to add that “the court of appeal found no independent negligence by the father” that might be used to charge the father directly for the tort.<sup>102</sup> The court then interprets article 2318 and states that

Louisiana Civil Code art. 2318 is contrary to the French concept of a rebuttable presumption; in the former, the language is clear and unambiguous that it was the legislative intent to impose a sort of strict liability upon parents as a responsibility flowing from paternal authority. That liability is considerably stronger than the presumption at French law as it does not permit parents to escape responsibility by showing an absence of negligence on their part with regard to the "garde" or care of minor children.<sup>103</sup>

Therefore the court holds that the father is liable for the act of his son, even though the son could not have been himself held liable.<sup>104</sup>

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<sup>98</sup> 308 So. 2d 270 (La. 1975).

<sup>99</sup> *Id.* at 271.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 272.

<sup>103</sup> *Turner*, 308 So. 2d at 273.

<sup>104</sup> *Id.* at 277.

The Supreme Court of Louisiana may have altered what must be shown in order to hold parents liable for their child's torts in the 2001 case *Jones v. Cobb*.<sup>105</sup> In this case children were playing sand lot baseball.<sup>106</sup> A twelve year old boy was up to bat.<sup>107</sup> He did not know that an eight year old girl was standing behind him. When he swung the bat to hit the ball, he hit and injured the girl instead. She was hospitalized for a week in intensive care and eventually recovered. Her parents then brought suit seeking between six and seven thousand dollars to pay hospital bills not covered by insurance.<sup>108</sup>

The court begins its analysis with a discussion of the applicable statute. The court points out that under the Louisiana Civil Code article 2318 the plaintiff must show (1) the she was damaged, (2) that the damage was caused by a minor and unemancipated child, (3) that the child resides with the parent.<sup>109</sup> Once these elements have been shown, the court reasons, the parents are responsible for the damage caused by the child.<sup>110</sup> The liability attaches even though the child is of "tender years" and could not have formed the intent necessary to commit the tort.<sup>111</sup>

Interesting enough the court then goes on and interprets the definition of article 2318 to mean that "the parent of a minor child is liable for the damage caused by the child's conduct *which*

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<sup>105</sup> 793 So. 2d 495 (La. Ct. App. 2001).

<sup>106</sup> *Id.* at 496.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> See LA. CIV. CODE ANN. ART. 2318 (West 2004).

<sup>110</sup> *Jones*, 793 So. 2d at 497 (stating that the article creates strict liability for the parent).

<sup>111</sup> *Id.* at 497-98.

*creates an unreasonable risk of injury to others, even though the parent himself is not personally negligent and the child is too young to be personally negligent.*”<sup>112</sup> Where the act is negligent, the court adopts a risk utility test.<sup>113</sup> This creates a two part test to satisfy. The first three elements above must be shown and also the risk-utility test must be satisfied.<sup>114</sup>

The Georgia Court of Appeals took a very straightforward approach in interpreting what a plaintiff has to show in order for a parent to be held liable under Georgia Code section 51-2-3. In *Jackson v. Moore*,<sup>115</sup> Ms. Jackson’s sixteen year old son decided he wanted to take his mother’s car and go get himself something to eat.<sup>116</sup> The only problem was that his mother never gave him permission to take the car. He took the keys from her purse while she was taking a shower and did not tell her he was leaving or that he was taking her car. Ms. Jackson’s son, on his way to get something to eat, struck Mr. Moore who was riding a bicycle in the street in an erratic manner.<sup>117</sup>

The Georgia Court of Appeals begins its analysis of this case with reference back to the common law. The court states that

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<sup>112</sup> *Id.* at 499 (emphasis added).

<sup>113</sup> *Id.* The factors include (1) the claims and interests of the parties; (2) the probability of the risk occurring; (3) the gravity of the consequences; (4) the burden of adequate precautions; (5) individual and societal rights and obligations; and (6) the social utility involved. *Id.*

<sup>114</sup> *Id.*; see also L. Sue Hayan, *The Civil Liability of Soldiers for the Acts of Their Minor Children*, 115 MIL. L. REV. 179, 195 (1987) (contending that Louisiana’s courts often do not apply the strict liability standard). For Florida’s approach in negligence cases see *Snow v. Nelson*, 450 So. 2d 269 (Fla. Dist. Ct. App. 1984).

<sup>115</sup> 378 S.E.2d 726 (Ga. Ct. App. 1989).

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

It is well settled that by common law and in this state unless changed by statute, parents are not liable in damages for the torts of their minor children merely because of the parent-child relationship, when liability exists it is based on a principal-agent or a master-servant relationship where the negligence of the child is imputed to the parent, or it is based on the negligence of the parent in some factual situation such as allowing the child to have unsupervised control of a dangerous instrumentality.<sup>118</sup>

The court then reasons that the boys mother cannot be held liable on a theory of negligence because she had not acted negligently in leaving her keys in her purse.<sup>119</sup> Indeed, she had not even given the child permission to use the car.<sup>120</sup> Neither could the boy's mother be held liable on the agency theory because he was not acting for his mother or on her orders.<sup>121</sup> However, there was still the issue of Georgia's Parental Liability Statute. This statute "imposes limited liability upon a parent for the 'willful or malicious acts' of her child."<sup>122</sup> The injured bicyclist argued that Ms. Jackson was responsible because her son was "driving the vehicle with 'reckless disregard for the safety of others'"<sup>123</sup> which constituted a willful or malicious act under section 51-2-3 of the Georgia Code. The court reasoned that the son was not willful or malicious in driving the car because there was "no evidence that the son was driving at an excessive speed or otherwise endangering others on the road."<sup>124</sup> The son in fact had swerved to avoid hitting the bicyclist who

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<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Jackson*, 278 S.E.2d at 329.

<sup>122</sup> *Id.* at 330.

<sup>123</sup> *Id.*

<sup>124</sup> *Id.* at 331. *Cf.* *Landers v. Medford*, 133 S.E.2d 403 (Ga. Ct. App. 1963) (where the petition alleged that a minor child was driving without a license at an excessive rate of speed on

was riding his bike all over the road.<sup>125</sup> And thus, the mother could not be held liable under Georgia's parental liability statute where there was no showing of wanton or willful behavior by the child.<sup>126</sup>

In the 1989 case, *MCI Telecommunications Corporation v. Bonnell*,<sup>127</sup> the Tennessee Court of Appeals addressed the proper application of Tennessee's parental liability statute. In this case, Andrew Bonnell, a minor, was using his home computer to procure MCI confidential authorization codes.<sup>128</sup> MCI became aware that sixteen year old Andrew had acquired at least seventy-eight confidential codes which allowed him to make long distance calls and charge them to MCI customers.<sup>129</sup> MCI filed suit against Andrew and his father, charging that Mr. Bonnell was liable under Tennessee's parental liability statute.<sup>130</sup>

MCI based its claim upon section 37-10-101 which provided for compensation from "the parents or guardian of the person of any minor under the age of eighteen (18) years, living with the parents or guardian of the person who shall maliciously or willfully cause personal injury to such person or destroy property."<sup>131</sup> The court of appeals however reasoned that while section 37-

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the wrong side of the road, it was sufficient to withstand the demurrer of the mother to the plaintiff's claim for statutory liability for the wilful and wanton acts of her child).

<sup>125</sup> *Jackson*, 378 S.E.2d at 331.

<sup>126</sup> *Id.*

<sup>127</sup> No. 88-286-II, 1989 Tenn. App. LEXIS 160 (Tenn. Ct. App. 1989).

<sup>128</sup> *Id.* at \*1-\*2.

<sup>129</sup> *Id.*

<sup>130</sup> *Id.* at \*3. Mr. Bonnell was charged under Tenn. Code Ann. section 37-10-101.

<sup>131</sup> *Id.* at \*10 (quoting TENN. CODE. ANN. § 37-10-101 (1984 and Supp. 1988)).

10-101 provided for liability, it must be read in conjunction with section 37-10-103 which provided that a parent could only be held liable where “the parent or guardian knows, or should know, of the child's tendency to commit wrongful acts which can be expected to cause injury to persons or property and where the parent or guardian has an opportunity to control the child but fails to exercise reasonable means to restrain the tortious conduct.”<sup>132</sup> Looking back to the legislative history and the preface to the acts, the court of appeals finds it relevant that “no recovery shall be had if the parent or guardian of the person shows due care and diligence in his care and supervision of such minor child.”<sup>133</sup> The court then traces the development of this provision from the 1957 Act through the 1981 public acts, chapter 161 and finds that “the legislature, from 1975 to the present, has considered Tenn. Code Ann. § 37-10-103 as relating back to Tenn. Code Ann. Section 37-10-101. Not one of the amendments...cited, in the caption or the body of the act, has mentioned imposing strict liability on the parents of a minor child for harm caused by the child.”<sup>134</sup> Thus Tennessee, of all the state statutes reviewed, employs the least dramatic change from the common law.<sup>135</sup>

#### **IV. Punishment versus Family Integrity– Policy**

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<sup>132</sup> *Id.* at \*11 (quoting TENN CODE ANN. § 37-10-103 (1984 and Supp. 1988)).

<sup>133</sup> *Bonnell*, 1989 Tenn. App. LEXIS at \*11 (quoting chapter 76 of the Public Acts of 1957).

<sup>134</sup> *Id.* at \*14.

<sup>135</sup> *Id.* at \*15.

Under the common law, a parent was not responsible for the tort of his child.<sup>136</sup> There are good reasons for this rule. As one court put it, “[a]ny other rule... would work the greatest hardship and injustice; for it would impose upon the parent liability regardless of the question of negligence on his part, for acts of his child with the responsibility of which he could not, in reason and common sense, be justly charged.”<sup>137</sup> The underlying policy here being that injustice results when a parent fulfills his parental duty and the child manages to commit some tort anyway.<sup>138</sup> Why then have legislatures turned away from this common sense approach?

The answer, as the beginning of this paper suggests, is that children are committing serious crimes with serious costs. Under the common law rule, a party is often left with a cause of action against a minor where there is no hope of recovery.<sup>139</sup> But the state legislatures are under constant pressure to balance the “delinquency” problem with the need for compensating victims.<sup>140</sup> In fact, every state in the Union, with the exception of New Hampshire, imposes some degree of parental liability by statute.<sup>141</sup> Georgia’s approach is to give preference to the idea of addressing the delinquency issue. The Georgia parental liability statute states “[t]he intent of the General

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<sup>136</sup> See *Tift v. Tift*, 4 Denio 175 (N.Y. Sup. Ct. 1847).

<sup>137</sup> *Chastain v. Johns*, 48 S.E. 343 (Ga. 1904).

<sup>138</sup> See *Turner*, 308 So. 2d at 278-79 (Sanders, C.J., dissenting); *Parker*, 60 So. at 153

<sup>139</sup> *General Ins. Co. v. Faulkner*, 130 S.E.2d 645 (N.C. 1963).

<sup>140</sup> See GA. CODE ANN. § 51-2-3 (c) (2004) (specifically stating that the act was meant to address juvenile delinquency).

<sup>141</sup> See L. Sue Haysan, *The Civil Liability of Soldiers for the Acts of Their Minor Children*, 115 MIL. L. REV. 179, 185 (1987) (note 23 gives a laundry list of state statutes with relevant information).

Assembly in passing this Code section is to provide for the public welfare and aid in the control of juvenile delinquency, not to provide restorative compensation to victims of injurious or tortious conduct by children.”<sup>142</sup>

But how can this position be justified where the parent has done his or her best to manage a child? The Supreme Court of South Carolina explained that “parental responsibility acts were adopted as an aid in the control of juvenile delinquency.”<sup>143</sup> The court goes on to add that as far as being compensatory, to make the person whole, “[t]he limitation of amount of liability fails to serve any of the general compensatory objectives of tort law.”<sup>144</sup> Accordingly, the court rationalized that “parental indifference and failure to supervise the activities of children are the major causes of juvenile delinquency; that parental liability for harm done by children will stimulate attention and supervision; and that the total effect will be a reduction in the antisocial behavior of children.”<sup>145</sup> This reasoning seems both straightforward and logical. According to this opinion, compensation is not really an issue, rather the parent’s ineptness in supervising his or her child. The legislature, according to this opinion, wanted to punish the parents who allow their children to commit delinquent acts.

There are two flaws with this opinion and this approach. First, there is nothing to suggest that these statutes have had an effect in reducing children’s anti-social behavior. According to the Office of Juvenile Justice and Delinquency, the rates of violent crime actually went up during the

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<sup>142</sup> *Id.*

<sup>143</sup> *Standard v. Shine*, 295 S.E.2d 786 (S.C. 1982).

<sup>144</sup> *Id.*

<sup>145</sup> *Id.*

nineteen eighties and then level off again the late nineties.<sup>146</sup> Additionally, crimes such as burglary, did not see a major decline until the late nineteen nineties.<sup>147</sup> The number of children committing arson sharply increased in the nineteen eighties and did not level off until the late nineteen nineties.<sup>148</sup> The number of children committing simple assaults increased one hundred fifty percent between nineteen eighty and nineteen ninety-nine.<sup>149</sup>

The only effect these statutes seem to have had is to compensate persons for injuries suffered. Yet as discussed above, this is the exact opposite of what many legislatures have intended. The logic of claiming statutes do not compensate has been abandoned in many jurisdictions and cannot be supported in jurisdictions where there is no limitation on the amount of recovery that may be obtained from the parent.<sup>150</sup> In spite of this, Florida's court of appeals opined that Florida statutes section 741.24 is only intended to "aid in reducing juvenile delinquency by imposing liability upon parents who control minors"<sup>151</sup> Louisiana at least has an honest approach and holds the parent vicariously liable for the torts of their children.<sup>152</sup> Louisiana

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<sup>146</sup> Howard N. Snyder, *Juvenile Offenders and Victims: National Report Series*, Office of Juvenile Justice and Delinquency Prevention, Dec. 2001, at 13.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> *See* MISS. CODE ANN. § 93-13-2 (3) (2004) (stating that the purpose of the act is to allow recovery from parents in situations where they would not otherwise have to pay). As mentioned earlier in this paper, Florida and Louisiana have no limits on the liability of parents.

<sup>151</sup> *Stang*, 415 So. 2d at 124.

<sup>152</sup> *See* *Schultze v. Perry*, 427 So. 2d 467 (La. Ct. App. 1983).

does not attempt to hide that the intent of its statute is to compensate— an honest approach that other states should consider when allowing for unlimited recoveries from parents.

As states increase the amounts that can be recovered from a parent, a conflict arises between compensating victims and placing vicarious liability on parents. The torts being committed by children are costly.<sup>153</sup> These costs, imputed to the parents, have the potential to bankrupt the family. Parents are left asking themselves what can be done to protect their family and their assets. Unfortunately for parents facing this situation, the courts have generally given short shrift to family interest and have been more concerned with imposing liability.

Florida offers a typical example of the choices offered to the parent when faced with the dilemma of having a problem child.<sup>154</sup> In *Canida v. Canida*, the Florida court of appeals stated that “the statutes are intended to apply only to parents who have the actual ability to control the child, i.e., the parent with whom the child resides at the time the child commits the offense.”<sup>155</sup> Therefore, a parent seems to have two options to limit liability under a typical parental liability statute. First, the parents can divorce and fight over who will get stuck with the child.<sup>156</sup> A second

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<sup>153</sup> *Teens Face Arson Case Judge Today*, MONTGOMERY ADVERTISER, Oct. 9, 2002, at C1; Teen to Get Bill for \$10M for Wildfire, ASSOCIATED PRESS, Oct. 11, 2004, available at <http://abcnews.go.com/Politics/wireStory?id=157091> (last visited, Oct. 30, 2004).

<sup>154</sup> *See Canida v. Canida*, 751 So. 2d 647 (Fla. Dist. Ct. App. 1999).

<sup>155</sup> *Id.* at 649.

<sup>156</sup> *Id.* The issue ultimately is one of control-- who has control of the child.

option is for the parents to stay together, but give up their child to the state.<sup>157</sup> Neither option promotes family values or preservation of the family unit.

If a family decides to give up the child to the state, the parents cannot allow the child ever to visit again until the child reaches the age of majority or has been emancipated by the state.<sup>158</sup> In *Potomac Insurance Company v. Torres*, the supreme court of New Mexico held the parents liable for the act of their child, even though the child was a ward of the state.<sup>159</sup> This court reasoned that “[e]ven though Benjamin Torres may have technically been in the control of the state, he actually resided with his parents and they were afforded the opportunity to control him. We think that he was "living with the parents" within the contemplation of the statute.”<sup>160</sup> Parents should not ever have to make a decision to banish one of their children from their lives.

## V. Conclusion

The states will, without doubt, continue to increase the amount of compensation an injured party can recover under parental liability statutes. This compensation should, however, be balanced against the interests of keeping families together. Parents will not be in a better position to take care of the needs of a troubled child when the parents themselves have lost everything and

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<sup>157</sup> While not mentioned in the case itself, it is the natural outgrowth of the entire control issue.

<sup>158</sup> See *Potomac Ins. Co. v. Torres*, 401 P.2d 308 (N.M. 1965).

<sup>159</sup> *Id.* at 309.

<sup>160</sup> *Id.*

are literally out in the streets because of a huge judgement that has been rendered against them. But since the trend is towards unlimited compensation, the states should at least look to Tennessee's parental liability statute<sup>161</sup> as a model for holding parents liable. At the very least, parents who are doing every possible thing to control their troubled child should not be liable when a child manages to harm some person. Rather, only those parents who know of the child's propensity and do nothing to control the child should be liable for the acts of the child. This is a sound policy that encourages parents to take responsibility for a child and does less to encourage the break-up of an American family.

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<sup>161</sup> TENN. CODE ANN. § 37-10-103 (2004).