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OUT OF CONTROL? THE USES AND ABUSES OF PARENTAL LIABILITY LAWS TO CONTROL JUVENILE DELINQUENCY IN THE UNITED STATES

Linda A. Chapin*

I. INTRODUCTION

How do we as a society control the antisocial and criminal acts of children? Particularly, how do we perceive the role of the *parent* in this effort? The primary right of the parent to the custody and control of his or her child, and the attendant responsibility of the parent for his or her child, is a well-accepted principle of U.S. law.[1] However, when a child commits acts of juvenile delinquency,[2] the point at which the larger society should intervene in the parent-child relationship, and the nature of the intervention, is not clear.

At different times in the recent history of the United States, different approaches to the problem of juvenile delinquency, and different attitudes about the role of the parent in the child's delinquency, have been popular.

At the turn of the 20th century, the reform movement advocated removing children from their parents' custody and

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1. *See, e.g.,* Pierce v. Society of Sisters, 268 U.S. 510 (1925).

2. For the purposes of this article, the term "juvenile delinquency" is given its broader definition to include not only acts committed which would have been punishable as crimes if committed by an adult, but also to include acts which would not have been punishable if committed by an adult, such as truancy and curfew violations.

substituting the juvenile court as *parens patriae*.[3] By the middle of the 20th century, came the recognition that the juvenile court was primarily punishing children, not reforming them.[4] Also at that time, parental liability laws began to be adopted in many states, which greatly expanded the common law tort and criminal liability of parents for the juvenile delinquent acts of their children.[5]

These laws, it is argued, were adopted to control juvenile delinquency by making parents responsible for their children's actions. A review of the cases, both tort and criminal, reveals an explicit or implicit rationale for these parental liability laws: punish or threaten to punish the parent for the acts of his or her child, and that parent will exercise better control over the child, reducing or eliminating acts of juvenile delinquency by that child.[6]

Parental responsibility for juvenile delinquency was being emphasized by the enactment of parental liability laws by many states in the 1950's and 1960's.[7] By the late 1960's, during the "war on poverty" initiated by President Johnson's administration,[8] there was also a focus on the social causes of delinquency. Although the importance of the family environment and the role of the parent in raising the child was acknowledged, the role of social factors, such as poverty, urban slums, and lack of access to resources such as playgrounds, education and employment opportunities, were emphasized.[9] Defining the problem of juvenile delinquency in terms of social factors suggested solutions requiring sweeping social reform through government intervention and resources.[10]

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3. *See* discussion *infra* Part II. "'Parens patriae,' literally 'parent of the country,' refers traditionally to role of state as sovereign and guardian of persons under legal disability, such as juveniles or the insane .... It is the principle that the state must care for those who cannot take care of themselves, such as minors who lack proper care and custody from their parents." BLACK'S LAW DICTIONARY 1114 (6th ed. 1990) (citations omitted).

4. *See* discussion *infra* Part II.

5. *See* discussion *infra* Part III.

6. *See* discussion *infra* Part III.

7. *See* discussion *infra* Part III.

8. *See generally* DAVID ZAREFSKY, PRESIDENT JOHNSON'S WAR ON POVERTY: RHETORIC AND HISTORY (1986).

9. *See* PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 55-89 (1967) [hereinafter PRESIDENT'S COMM'N REPORT].

10. *See id.* at 66-77, 293-94.

If juvenile delinquency deeply disturbed us as a society in the 1960's, it horrifies us in the 1990's, with evidence that in the last ten years juvenile crime has not only increased, but become more violent.[11] Thus, at the threshold of the 21st century, the causes of juvenile delinquency and the role of the parent are again being scrutinized. Now, big government is out, downsizing is in, and a Democratic president, as well as a Republican-controlled Congress, has supported substantial reductions in the federal welfare system, which provides benefits to poor parents and their children.[12] The leaders of both parties have emphasized "family values" and the importance of parents in the prevention of juvenile antisocial behavior and criminal acts.[13]

> The most effective way to prevent crime is to assure all citizens full opportunity to participate in the benefits and responsibilities of society. Especially in inner cities, achievement of this goal will require extensive overhauling and strengthening of the social institutions influential in making young people strong members of the community—schools, employment, the family, religious institutions, housing, welfare, and others. Careful planning and evaluation and enormous increases in money and personnel are needed to expand existing programs of promise and to develop additional approaches.

Id. at 293.

The President's Commission Report, written at approximately the time of the Supreme Court's decision in *In Re Gault*, 387 U.S. 1 (1967), also criticized the lack of procedural due process in the juvenile justice system, and recommended procedural safeguards for juveniles such as restricted prehearing detentions, notice, and representation by counsel. *See* PRESIDENT'S COMM'N REPORT, *supra* note 9, at 85-87, 294.

11. *See* Dan Coats, *Coats Says Federal Government Incomplete on Juvenile Crime*, Congressional Press Releases, FED. DOCUMENT CLEARING HOUSE, July 15, 1996; Neal R. Peirce, *Juvenile Crime Dip: Can We Build on It?*, NATION'S CITIES WKLY., Sept. 16, 1996, at 4.

12. *See* Gene Gibbons, *Clinton Highlights Welfare Reform as Campaign Trip Starts*, REUTERS NORTH AMERICAN WIRE, Sept. 10, 1996; Virginia Ellis, Faye Fiore & Mark Gladstone, *Reforms to Allow State to Make Cuts; Impact: Welfare Benefits Would Be Reduced for Poor Parents and Children*, L.A. TIMES, Aug. 2, 1996, at A1 (Home Edition).

13. *See, supra* note 12; *Remarks Via Satellite by the Presumptive Republican Nominee for President Robert J. Dole*, FEDERAL NEWS SERVICE, July 16, 1996, *available in* LEXIS, News Library, Fednew file. In his remarks to the National Governor's Association at their national conference, former senator Dole stated: "And we know where the explanation [for violent teenage crime] starts: The failures of families have left a moral and spiritual vacuum at the core of children's lives. A moral compass is always a gift of a caring adult, and families transmit values that can defeat violence. In the long run, the best anticrime program is the renewal of family life in America." *Id. See generally* Michael Barone, *The Year of the Great Parental Pitch*, U.S. NEWS AND WORLD REP., Sept. 9, 1996, at 7.

Should we as a society realistically depend primarily upon parents to stem the rising tide of juvenile delinquency in the United States? The rationale behind the parental liability laws—punishing the parents to reduce acts of juvenile delinquency by their children—must be based upon a series of interconnected assumptions. First, that a child's behavior is primarily due to the parents' actions or inactions and not to other factors; adequate parenting results in a well-behaved and law-abiding child, while poor parenting results in a juvenile delinquent. Thus, parental action or inaction is perceived as a primary cause, if not *the* cause, of juvenile delinquency.

Second, there is presumed to be a universal model of adequate parenting which is generally applicable, regardless of other factors, such as race, ethnicity, culture, social class, economic status, or other personal or socio-economic factors. Thus, all parents are presumed to know what adequate parenting is, and to have both the ability and the resources to adequately parent; if they are not, then it follows that they must be intentionally or negligently avoiding doing what they know they should do, and can do. Either civil or criminal "punishment" is therefore justified as a means of reforming the parent, to reform the child. The punishment, or threat of punishment, is assumed to cause the parent to adopt the "good" parenting practices which will then result in a reduction or elimination of juvenile delinquency in the child.

Have these assumptions been borne out in the uses of parental liability legislation in the last thirty or forty years in the United States, since these laws were widely adopted in most states? There is almost no information on whether parental liability laws have actually resulted in a reduction in juvenile delinquency; the little (and mainly anecdotal) information available suggests that they have not.[14]

Although the enactment of the parental liability laws shows a willingness by society to blame parents for juvenile delinquency, there appears to be, at the same time, a reluctance to actually punish parents for their parenting, unless the parent has actively encouraged or solicited the child's delinquent act. A discussion of the uses of one criminal parental liability law in Los Angeles, California, is offered as an

14. *See* discussion *infra* Part III.

example of the tension between society's desire to blame parents for the juvenile delinquency of their children, and society's reluctance to actually punish them.[15] Tacitly acknowledging the difficulty of convicting parents for a failure to adequately supervise and control children involved in juvenile gang activity, the city attorney's office has instead pursued a policy of referring parents to parenting classes through a statutorily approved diversion program, with the threat of criminal prosecution if they do not attend.[16] Under the City of Los Angeles approach, rather than being perceived as malicious or lazy, parents are perceived as merely untrained. Less punitive than fines or incarceration, mandatory parenting classes are a means of holding parents accountable for their children's acts, while conceding that their failure in parenting may not be intentional, or even negligent. Unfortunately, the Los Angeles City Attorney's office has apparently not attempted any assessment of the effectiveness of the parenting classes it is so assiduously promoting.[17]

Turning to the theories and research on the causes of juvenile delinquency, this article argues that a primary focus on parental responsibility for juvenile delinquency is ill advised; neither theoretical models nor available empirical research suggest that parental action or inaction is the primary cause of juvenile delinquency.[18] In certain situations, such as juvenile gang involvement by a child, parental action or inaction appears to be eclipsed by other factors as the primary cause of the child's delinquent acts.[19] Although there is some evidence that parenting skills can be improved by parenting classes,[20] and that the delinquent acts of children whose parents have taken parenting classes may decrease in some instances,[21] this article concludes that more empirical testing of the uses of parenting classes should be conducted before parenting classes are widely adopted as a potential means of reducing juvenile delinquency.

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15. *See* discussion *infra* Part IV.
16. *See* discussion *infra* Part IV.
17. *See* discussion *infra* Part IV.
18. *See* discussion *infra* Part V.
19. *See* discussion *infra* Part V.
20. *See* discussion *infra* Part V.
21. *See* discussion *infra* Part V.

Although discouraged by the failure of the juvenile justice system established by the early 20th century reform movement and disillusioned about the possibility of government structured social change as envisioned in the 1960's, in the 1990's we should not ignore the multiplicity of factors which may contribute to juvenile delinquency and focus myopically on parental responsibility. Offering a tempting target, parents are not the "problem" and neither parental punishment nor parental training through parenting classes is "the solution" to the juvenile delinquency conundrum in the United States. Instead, we must continue to pursue a multiplicity of solutions to this complex social problem; parental liability laws should be acknowledged as only a partial solution, not effective when children, for a variety of reasons, may be beyond their parents' control.

Part II of this article briefly discusses the failure of the reformer's vision of the juvenile court system as a substitute "good" parent for delinquent children. Part III, explores the statutory expansion of both tort and criminal parental liability laws, and concludes that the rationale behind the mid-20th century increase in the adoption of these laws has been the goal of controlling juvenile delinquency by punishing the parent, either with civil damages or criminal penalties. Further, the lack of any reliable information showing that these laws have in fact resulted in a reduction in juvenile delinquency is emphasized. Part IV examines the Los Angeles, California practice of referring parents to parenting classes as an alternative to criminal prosecution to explore whether parenting classes can be an effective means of controlling juvenile delinquency, even when children are involved in juvenile gang activity and appear to be beyond their parents' control. Finally, Part V reviews the theories and research on the causes of juvenile delinquency. Specifically, the role of parents in causing juvenile delinquency is reviewed and the conclusion is reached that there is no consensus among the experts on the causes of delinquency or the role that parents play in it.

Although some evidence exists that parenting classes may be useful in some cases to reduce juvenile delinquency, parent training is not an all purpose tool for its control. Juvenile delinquency is a complex problem for which there are no easy solutions: Punishing or training parents is not an effec-

tive solution when bad parenting is not a significant cause of the child's delinquency.

II. The Failure of the Juvenile Court as "Parens Patriae"

The very concept of "juvenile delinquency" was unknown at common law. Children under seven were presumed incapable of forming criminal intent and those over seven were, if convicted of a crime, punished as adults.[22]

The first "juvenile court" was established in Illinois in 1899.[23] It was established based on the premise that, where the parents had failed in their duty to supervise and train their child, the state should assume that role as *parens patriae*.[24] The vision was that the judge, as a substitute wise and caring parent, could provide the guidance the child had lacked because of inadequate parenting.[25]

Rather than punishment (for either the parent or the child), the goal of the juvenile court system was reform.[26] The child was perceived as essentially good, and in need of proper care and guidance. With such care and guidance, the child would be reformed and the antisocial or criminal behavior would cease.[27] Since the child was no longer being punished for committing a crime, he or she was no longer to be stigmatized by the label "criminal". Acts which would have been crimes if the perpetrator had been convicted as an adult became acts of "juvenile delinquency".[28] The child was not prosecuted for commission of a crime, so the safeguards of procedural due process were deemed unnecessary.[29] The juvenile court proceedings determined whether the child was

22. *See In Re* Gault, 387 U.S. 1, 16 (1967); M.A. Bortner, Delinquency and Justice: An Age of Crisis, ch. 3 (1988). At common law, children could be liable for civil tort damages, but often had no property from which such damages could be paid if awarded. *See* W. Page Keeton et al., Prosser and Keeton on the Law of Torts § 123, at 913 (5th ed. 1984) [hereinafter Prosser on Torts (5th ed.)].

23. *See In Re* Gault, 387 U.S. at 14.

24. *See id.* at 16.

25. *See id.* at 26.

26. *See* M.A. Bortner, *supra* note 22, at 47.

27. *See In Re* Gault, 387 U.S. at 15; Gilbert Geis & Arnold Binder, *Sins of Their Children: Parental Responsibility for Juvenile Delinquency*, 5 Notre Dame J.L. Ethics & Pub. Pol'y 303 n.2 (1991).

28. *See In Re* Gault, 387 U.S. at 22-24.

29. *See id.* at 17; M.A. Bortner, *supra* note 22, at 44.

placed on probation while remaining in the custody of his parents (but under the supervision of a court probation officer), or removed from the parents' care and placed in a more "wholesome" environment.[30] Action by the court was theoretically designed to reform, not punish.[31]

Thus, at the inception of the juvenile court system in the United States, the structure of that system was based upon a belief that parenting affects a child's behavior, and that better parenting will reduce or eliminate juvenile delinquency. However, the system focused on substituting the state's agents (as *parens patriae*) for the child's parents, not on changing the behavior of the child's own parents as a means of eliminating juvenile delinquency in the child.

By the early 1960's all states had adopted a juvenile court system based on the Illinois model.[32] At that time, sixty years after the juvenile court movement began, it was clear that the early reformers' primary goal of rehabilitating delinquent children was not being achieved. Instead, although children were no longer being incarcerated with adults in adult prison facilities, their detention in "reform schools" and other facilities was conceded to be punitive, not rehabilitative, in effect.[33]

However, long before the recognition by the Supreme Court in *In Re Gault* that the juvenile court system throughout the United States was woefully failing in its goal of rehabilitation,[34] statutes in various states had begun to focus directly on the "parent factor" in juvenile delinquency, extending the limited common law parental liability for criminal law and tortious acts by children.[35] Thus, although the juvenile court system was focusing on the delinquent child, parental responsibility for juvenile delinquency was a growing concern of the U.S. legal system.

30. M.A. BORTNER, *supra* note 22, at 43-50.
31. *See id.*
32. *See In Re* Gault, 387 U.S. at 14 & n.14.
33. *See id.* at 27.
34. *See id.* at 22.
35. *See* discussion *infra* Part III.

III. Parental Liability Legislation in the United States: Does Punishing Parents Reduce Juvenile Delinquency?

Parental liability for the acts of minor children has taken two forms under state legislation: vicarious tort liability and criminal liability.[36] A review of the history of both tort and criminal parental liability in the United States suggests that as the disenchantment with the juvenile court system and its apparent inability to reduce juvenile delinquency grew in the 1950's and 1960's, states in increasing numbers began enacting parental liability legislation.[37] Although other rationales could be offered for both tort and criminal parental liability legislation, a review of selected cases supports the conclusion that these laws were enacted as a means of reducing antisocial and criminal behavior by juveniles.[38] However, as discussed below, there is little evidence that these laws are having the desired effect.[39]

A. *Parental Liability for Tortious Acts of Minor Children: An Effort to Reduce Juvenile Delinquency by the Threat of Civil Damages*

1. *Common Law Limitations on Parental Tort Liability*

At common law, a parent generally could not be held liable for civil damages for the tortious acts of his or her minor child.[40] Exceptions allowed liability, but usually only upon a showing of the *parent's* act or omission in certain circumstances, not merely because of the parent/child relationship.[41] For example, under general tort principles, a parent could be held liable if she or he directed, encouraged or ratified the child's conduct.[42] Further, a parent could be held vicariously liable[43] if the child acted as his or her "agent" or

36. *See* discussion *infra* Parts III.A and III.B.
37. *See* discussion *infra* Parts III.A.2 and III.B.2.
38. *See* discussion *infra* Part III.A.3 and B.3.
39. *See* discussion *infra* Part III.B.4 and B.6.
40. *See* Prosser on Torts (5th ed.), *supra* note 22 § 123, at 913.
41. *See id.* at 913-14.
42. *See id.* at 914.
43. *See* Black's Law Dictionary 1566 (6th Ed. 1990): "Vicarious liability. The imposition of liability on one person for the actionable conduct of another, based solely on a relationship between the two persons. Indirect or imputed

"employee", and within the scope of such agency or employment.[44]

Liability could be based on the negligence of the *parent* her/himself. For example, the parent could be liable "like anyone else" if the parent negligently entrusted a dangerous instrumentality to a child,[45] or entrusted a thing to a child which was dangerous because of the particular "handicaps" or "propensity" of that specific child.[46]

In addition, the parent had a special duty because of the parent/child relationship in respect to the tortious acts of his or her own child.[47] The parent had a duty at common law to reasonably control the conduct of his or her child for the protection of others.[48] However, the cases appear to limit liability to situations where the parent not only had notice of a particular "dangerous tendency or proclivity" on the part of his or her child, which in fact caused the injury, but also the opportunity to prevent the injury by exercising reasonable control over the child.[49]

Thus, where there was no foreseeability of the specific tortious conduct which occurred because the parent had no knowledge that the child had previously shown "tendencies" toward such conduct, or where the parent had notice of such "tendencies" but the injury occurred despite his or her exercise of reasonable control over the child, then the parent was not liable at common law.[50]

The common law stopped short of holding a parent vicariously liable, in general, for the acts of his or her child, merely because of the parent/child relationship. As the court stated

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legal responsibility for acts of another, for example, the liability of an employer for the acts of an employee, or, a principle for torts and contracts of an agent."

44. *See* PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 914.

45. *Id.*

46. *Id.* For example, a gun is a "dangerous instrumentality". *See id.* Matches or an automobile are given as examples of things which are not inherently dangerous, but which can be in the hands of a child. *See id.*

47. *See id.*

48. *See id.* at 914-15.

49. *See id. See, e.g.*, Emogene C. Wilhelm, Comment, *Vicarious Parental Liability in Connecticut: Is It Effective?*, 7 BRIDGEPORT L. REV. 99, 106-07 (1986) and cases cited therein. If, for example, the parent, knowing of the child's propensities for certain tortious conduct, *did* in fact make reasonable, good faith efforts to control the child, he or she would not be liable for the child's tortious act. *See* Wilhelm, *supra* at 107 n.47, *citing* Linder v. Bidner, 270 N.Y.S.2d 427 (1966).

50. PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 915.

in *Linder v. Bidner*, "there is no general responsibility for the rearing of incorrigible children."[51]

2. *Statutory Extension of Parental Vicarious Tort Liability for the Acts of Minor Children*

However, the limited common law liability of parents for their children's tortious acts has been extended by statute in almost all states.[52] The first U.S. jurisdictions to adopt some form of tort parental liability were states (Hawaii and Louisiana) with statutory systems based on civil law, not common law.[53] Unlike common law, civil law has traditionally allowed parental vicarious liability for the tortious acts of minors.[54]

Other jurisdictions did *not* quickly follow suit. It was not until 1951 that another state, Nebraska, enacted a parental tort liability statute.[55] From 1951 through the 1960's, the number of states which enacted parental tort liability statutes increased dramatically.[56] At least one author has suggested that these statutes were enacted as a direct result of the increase in juvenile delinquency throughout the United States during this period, in an effort to curb it.[57] By the late 1980's, all states but New Hampshire had enacted some form of parental tort liability statute.[58]

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51. *Linder,* 270 N.Y.S.2d at 430. In the *Linder* case, the court found that the complaint stated a cause of action against the parents where it alleged they were aware of their son's habit of "mauling, pummeling, assaulting and mistreating smaller children," and further alleged that the parents did not exercise reasonable control over their son to prevent such conduct, where they had the opportunity to exercise such control. *Id.*

52. PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 913 (footnote omitted); L. Wayne Scott, *Liability of Parents for Conduct of Their Child under Section 33.01 of the Texas Family Code: Defining the Requisite Standards of "Culpability"*, 20 ST. MARY'S L.J. 69 at app. (1988).

53. Geis & Binder, *supra* note 27, at 307 nn.20-22, *citing* HAW. REV. STAT. § 577-3 (1988) and L.A. CIV. CODE ANN. art. 2318 (West 1979, Supp. 1990).

54. *See* PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 913.

55. Geis & Binder, *supra* note 27, at 310 & n.39.

56. *See* Scott, *supra* note 52, at app. According to the appendix in Scott's article, 33 states enacted parental tort liability statutes from 1951-1969. *See id.*

57. *See* Richard G. Kent, *Parental Liability for the Torts of Children*, 50 CONN. B.J. 452, 465 (1976), *cited in* Wilhelm, *supra* note 49, at 109.

58. *See* Scott, *supra* note 52, at app. (noting that 49 states had parental tort liability statutes as of 1987). The tort liability of parents for the tortious acts of their children has generally survived constitutional attack where it has been challenged. *See* PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 913. In *Corley v. Lewless*, 182 S.E.2d 766 (Ga. 1971), the court held that Georgia's vica-

Almost all of the statutory parental tort liability laws require more than mere negligence on the part of the *child* for the parent to be held liable.[59] Words such as "willful", "malicious", "delinquent", "intentional" and "reckless" have been used to describe the child's necessary state of mind.[60]

But in contrast to the common law approach, parental liability under these acts is almost always vicarious liability based *solely* on the parent/child relationship.[61] No intentional or negligent act or omission by the parent must be proven to establish liability.[62]

Although some of the earlier statutes placed no monetary limits on recovery,[63] according to surveys done in the late 1980's, all jurisdictions with statutory parental tort liability laws now place significant restrictions on the amount of recovery allowed.[64] As of 1988, according to one commentator, statutory limits ranged from $15,000 (Texas) to $250 (Vermont), with an average of $2,500.[65]

3. *The Rationale Behind Vicarious Parental Tort Liability Statutes: Reduction of Juvenile Delinquency*

The limits on recovery suggest that the legislative intent in enacting these parental liability statutes allowing tort recovery is not primarily to compensate the victims; if it were, there would be no reason to statutorily restrict the recovery

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rious parental tort liability statute was unconstitutional where parental liability for damages was unlimited in terms of the amount of recovery allowed. The legislature later amended the statute, providing for limited recovery (as most state statutes do). *See* Hayward v. Ramick, 285 S.E.2d 697, 698 (Ga. 1982).

59. *See* Scott, *supra* note 52, at app.

60. *See* PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 913; *see also* Scott, *supra* note 52, at app. Scott argues that in the Texas statute the words "willful" and "malicious" should be interpreted as meaning "grossly negligent", not "intentional". *See id.* at 78.

61. *See* discussion *infra* at Part III.A.1. At common law, a parent could be held vicariously liable in tort for the acts of his or her child, but the basis for vicarious liability was an employer/employee or principle/agent relationship, not the parent/child relationship.

62. PROSSER ON TORTS (5th ed.), *supra* note 22 § 123, at 913.

63. *See* Geis & Binder, *supra* note 27, at 311 & n.46.

64. *See* Geis & Binder, *supra* note 27, at 311 n.47, *citing* Scott, *supra* note 52, at app. (analyzing the information in Scott's appendix). More than half of the statutes allow recovery for both personal injury and property damage, while the rest allow recovery for property damage only. *See* Wilhelm, *supra* note 49, at 121-24, *cited in* Geis & Binder, *supra* note 27, at 310 n.41.

65. *See* Scott, *supra* note 52, at app.

which the common law has historically allowed victims of tortious acts.[66]

Although almost every jurisdiction has adopted parental tort liability statutes, there have not been many reported cases. A review of the rationale for the legislation, as discussed by the court in some of these cases, confirms that compensation of the victim is not the only, or even the primary, motivation behind the adoption of these statutes.[67] Instead, the rationale which is given in the cases for the enactment of these statutes is primarily the reduction of juvenile delinquency; it is presumed that the threat of civil damages will encourage parents to better supervise their children, and that better supervision of children will reduce juvenile tortious acts.[68]

For example, in *General Insurance Company of America v. Faulkner*,[69] the insurance company had sued the parents of an eleven year old boy as subrogee of their insured, a school.[70] The boy was alleged to have "maliciously and willfully" set fire to curtains in the school auditorium, resulting in damages of nearly $3,000, which the insurance company had paid to the school under the terms of the insurance policy.[71] The insurance company sought to recover $500 (the liability limit) from the parents, jointly and severally, under the state's parental tort liability statute.[72] Defendant parents had challenged the complaint on constitutional and other grounds, and the lower court had dismissed the action.[73]

On appeal, the Supreme Court of North Carolina found the statute was constitutional, and did not deprive the parents of their property without due process of law under the state constitution.[74] It further found that the complaint did not need to allege facts showing any act or omission by the

66. *See* Geis & Binder, *supra* note 27, at 311.

67. *See* discussion *infra* notes 69-89.

68. *See* discussion *infra* notes 69-89.

69. 130 S.E.2d 645 (N.C. 1963).

70. *Id* at 646-47.

71. *Id.* at 647.

72. *Id.*

73. *Id.*

74. *Id.* at 650. The parents did not effectively raise a federal constitutional issue, because they erroneously relied on the 5th Amendment and not the 14th Amendment for their constitutional claim; the court held that the 5th Amendment did not apply to limit state action. *See id.*

parents, since the state imposed vicarious liability upon them for the acts of their child.[75]

In its decision, the court mentioned the trend in the United States toward expanding the common law liability of parents, and discussed the rationale behind the vicarious parental liability statutes adopted in North Carolina and other states:

> [The North Carolina statute], and similar statutes, appear to have been adopted not out of consideration for providing a restorative compensation for the victims of injurious or tortious conduct of children, but as an aid in the control of juvenile delinquency . . . . [The North Carolina statute's] rationale apparently is that parental indifference and failure to supervise the activities of children is one of 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 the reduction in the anti-social behavior of children.[76]

In *Hayward v. Ramick*,[77] the Supreme Court of Georgia held that the vicarious parental liability statute adopted by Georgia in 1976[78] was constitutional, against a claim by the parents that the statute violated the substantive due process clauses of both the federal and state constitutions because it imposed vicarious liability upon them for the acts of their child. In that case, the complaint alleged that the appellant/defendants' sons had burglarized appellee/plaintiff's home, causing property damage. At trial, the jury had found in favor of plaintiff, awarding damages against the boys, and also against each parent under the parental liability statute.[79]

The court on appeal affirmed and found that the "express intent" of the statute was to aid in controlling delinquency,

75. *Id.*

76. General Ins. Co. v. Faulkner, 130 S.E.2d 645, 650 (N.C. 1963).

77. 285 S.E.2d 697 (Ga. 1982).

78. The 1976 version of the Georgia statute stated, in part: "[E]very parent . . . having in custody and control over a minor child or children under the age of 18 shall be liable in an amount not to exceed Five Hundred Dollars ($500.00) for the willful or malicious acts of said minor child or children resulting in damage to the property of another . . . ." *Id.* at 698, *citing* Georgia Parental Liability for Minor Children's Torts Act, GA. CODE ANN. §§ 105-13 (1976).

79. *See Hayward*, 285 S.E.2d 697.

not to compensate victims for the acts of children.[80] Applying a rational basis test, the court held that the statute was not unreasonable, arbitrary or capricious; that it was rationally related to a legitimate government purpose; and that it therefore did not violate substantive due process: "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 willfully or maliciously damage property) and this object [sic]."[81]

In a Connecticut case, *Watson v. Gradzik*,[82] which upheld the constitutionality of that state's vicarious parental tort liability statute, the court stated that the rationale behind the statute was both to control juvenile delinquency and to compensate victims of damages caused by minors.[83] In *Watson*, plaintiff had brought suit against the parents of a minor for wrongful conversion. The parents demurred on the ground that the vicarious parental liability statute was unconstitutional.[84]

The parents claimed that imposition of vicarious tort liability upon them interfered with their fundamental right to bear and raise children.[85] The court reasoned that because parents in Connecticut have the authority, by case law, to compel their children's obedience "in all matters,"[86] "it would not seem unreasonable to hold them responsible for exercising that authority".[87]

The court further found that the parents had not met their burden of proving that the statute was not reasonably related to the dual purposes of controlling juvenile delin-

80. *See id.* The statute under scrutiny was enacted in 1976. A prior vicarious parental liability statute had previously been held unconstitutional, in part because the Georgia court felt that if the statute was compensatory in nature (there were no liability limits), it violated substantive due process; that case hinted that if the recovery was limited and in the nature of a penalty, there would not be a constitutional problem. *See id., citing* Corley v. Lewless, 182 S.E.2d 766 (Ga. 1971). The court in *Hayward* suggested that the expression of legislative intent was to comply with standards developed in the *Corley* case. *See Hayward,* 285 S.E.2d at 697.

81. *Hayward,* 285 S.E.2d at 699.

82. 373 A.2d 191 (Conn. Super. Ct. 1977).

83. *See id.* at 193.

84. *Id.*

85. *See id.* at 192.

86. *Id., quoting* State v. Hughes, 209 A.2d 872, 879 (1965).

87. *Id.* at 192.

quency and compensating the victims of child tortfeasors.[88] Without discussion of the evidence which the parents might have offered to meet their burden of proof, the court commented that similar statutes had been held constitutional in many jurisdictions.[89] It quoted with approval from law review articles cited by courts of other states which argued that the use of vicarious parental liability statutes to compensate innocent victims of children's torts was fair and reasonable, either because the parents might be at least in part responsible for the child's act, or because, even if entirely without fault, it was more fair to have the parents bear the loss than an innocent tort victim.[90]

As to the second alleged purpose of the Connecticut statute—that of controlling juvenile delinquency—the court gave only its bare conclusion, without discussion or analysis, that the statute bore a rational relationship to a legitimate public purpose.[91] Interestingly, the court did not explore the available legislative history, which clearly indicated that a major factor in adopting the Connecticut statute was the reduction of juvenile delinquency.[92]

As these examples suggest, a significant, if not primary, reason for the vicarious parental tort liability statutes appears to be the reduction of juvenile delinquency by making

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88. *See* Watson v. Gradzik, 373 A.2d 191 (Conn. Super. Ct. 1977).

89. *See id.* at 192.

90. *See id.* at 193, *citing* General Ins. Co. v. Faulkner, *citing* Kelly v. Williams, 346 S.W.2d 434, 437-38 (Tex. Cir. App. 1961), *quoting* Burchard V. Martin, Comment, *Parent & Child—Civil Responsibility of Parents for the Torts of Children—Statutory Imposition of Strict Liability*, 3 VILL. L. REV. 529 (1958).

91. *See Watson v. Gradzik*, 373 A.2d at 193.

92. *See id.* at 193. Statements by the state senators in the hearings on Connecticut's vicarious liability statute before it was adopted in 1955 are revealing. One legislator stated: "I believe that such a bill will make the parents more alert and give a little bit more attention and a little bit more supervision in upbring [sic] their children." Wilhelm, *supra* note 49, at 111 n.68, *citing Liability of Parents for Damage by Children: Hearings on Cal. 545 Sub. for H.B. No. 71*, 1955 Sess. 978 (Conn. 1955).
Another said:

> I don't think there is such a thing as juvenile delinquency. I think there is only adult delinquency. It is appalling how parents completely neglect their children and the problem children that come in and are branded as juvenile delinquents . . . . This bill . . . is merely an attempt to get at this adult delinquency. . . . I would like to approach juvenile delinquency by putting the finger where it belongs and that is on the parents . . . who should be responsible.

Id.

parents responsible for their children's acts, not the compensation of the victims, nor the punishment of the parents.

4. *Has Imposing Parental Tort Liability Resulted in a Reduction in Juvenile Delinquency?*

Interestingly, despite the consistent rationale for enacting and enforcing parental tort liability statutes as a means of reducing juvenile delinquency, there is little evidence that the enactment of such legislation has, in fact, resulted in the reduction of juvenile delinquency. Only one study has been found which even addresses this question; it suggests the enactment of parental liability statutes does not result in a reduction in juvenile delinquency.[93] This study has been criticized as being significantly flawed in its structure and analysis.[94] Certainly, the alternative rationale of requiring parents, as opposed to third party victims, to absorb the loss caused by the delinquent acts of children appears justifiable upon public policy grounds.[95] However, since most of the statutes do not provide for recovery based upon the damages proved, the victim may be achieving only a symbolic victory, unless the actual damages are within the restricted statutory limits.

Thus, the main purpose of parental tort liability statutes appears to be the reduction of juvenile delinquency. However, it is clear that under these statutes tort liability of a parent is not based on the parent's knowledge or action, but only on the existence of the parent-child relationship (where the child is in the custody of the parent). Liability is therefore imposed upon parents, essentially presuming that they have the ability to control their child and prevent the delinquent acts, but have failed to do so. This analysis implies that there is a universally applicable model of parental supervision and control which, if utilized by the parent, will result in a reduction or elimination of juvenile delinquent acts by the child. It further ignores the possibility that other factors

93. *See* Wilhelm, *supra* note 49, at 137-38. Actually, the "study" was of data available from the Federal Dept. of Health, Education & Welfare analyzed by Alice B. Freer in her Law review article *Parental Liability for Torts of Children*, 53 KY. L. J. 255, 264-65 (1965).

94. *See id.*

95. *See id.* at 114.

besides parental supervision and control may, in fact, be the most significant causes of the child's behavior.

What if the child is effectively beyond the parent's control, for whatever reason, even if living with that parent and legally in the parent's custody? As to vicarious tort parental liability, the answer may be that even if juvenile delinquency is not being controlled by imposing parental tort liability, holding the parent financially responsible at least partially compensates an innocent victim of the child's acts. The compensation of the victim does not, however, explain the imposition upon parents of criminal liability related to their children's delinquency. For criminal liability to be imposed, the parent's own intent and action or failure to act are critical; but the rationale of controlling juvenile liability by punishing the parent (this time with criminal sanctions) appears consistent with the tort liability statutes.

B. *Parental Liability for Status Offenses and "Criminal" Acts of Juvenile Delinquency: An Effort to Reduce Juvenile Delinquency by Criminal Punishment*

Statutory criminal liability in connection with a child's juvenile delinquency is only imposed upon parents where the *parent* is proved to have had the requisite criminal intent and to have "caused" the child's delinquent act.[96] Thus, the connection between the parent's poor parenting and the child's delinquent act must be established before the parent can be convicted under the criminal liability laws, unlike the vicarious tort liability statutes.

1. *Common Law Limited Criminal Liability for Parents*

At common law, parents were not responsible for the independent criminal acts of their children. Only if the children were found to have acted as "agents" for the parents (making the parents principals), could the parents be prosecuted.[97]

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96. *See* discussion *infra* Part III.B.2.

97. *See, e.g.*, Commonwealth v. Keenan, 25 N.E. 32 (Mass. 1890) (conviction of father reversed where evidence showed son did not sell liquor at his direction); Commonwealth v. Slavski, 140 N.E. 465 (Mass. 1923) (conviction of father affirmed where evidence showed son sold liquor in home "under control" of fa-

2. *Statutory Expansion of Parental Criminal Liability*

State statutory laws in many jurisdictions have expanded the criminal liability of parents for their children's acts. Unlike the parental tort liability statutes, where a parent is typically made vicariously liable for his or her child's intentional or reckless acts merely because of the parent/child relationship, the criminal statutes either on their face or by judicial interpretation typically require the element of *mens rea* (criminal intent)[98] or criminal negligence[99] by the parent, and further require that the parent's act or failure to act be a proximate cause[100] of the child's act.[101]

Although various states have enacted specific statutes making parents criminally liable where their children commit acts of juvenile delinquency while operating a vehicle, in possession of a firearm, or in other specific situations,[102] the discussion below is limited to the most common types of statutes or ordinances which impose criminal liability upon a parent in connection with the juvenile delinquency of his or her child.

The first two categories, truancy and curfew laws, generally impose criminal liability on a parent who knowingly allows his or her child to commit acts (staying out past an established curfew; not attending school) which would *not* be criminal if committed by an adult.[103] As to the child, truancy and curfew violations are generally termed "status offenses," because the child can be brought before the juvenile court and adjudged delinquent for these acts, whereas there would be no chargeable offense at all if the child were an adult; prosecution is based solely upon the child's "status" as a minor.[104]

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ther); State v. Leonard, 41 Vt. 585 (1869) (father convicted of burglary where children did acts at his direction).

98. *See generally* ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 826-40 (3rd ed. 1982).

99. *Id.* at 840-51.

100. *Id.* at 774-85.

101. *See, e.g.,* Seleina v. Seleina, 93 N.Y.S.2d 42 (N.Y. Dom. Rel. Ct. 1949) ("contributing" statute); McCollester V. City of Keene, 514 F. Supp. 1046 (N.H. 1981) (curfew); *In Re* Jeanette L., 523 A.2d 1048 (Md. Ct. Spec. App. 1987) (truancy).

102. *See generally* Eunice A. Eichelberger, Annotation, *Criminal Responsibility of Parent for Act of Child,* 12 A.L.R. 4TH 633-700 (1994).

103. *See infra* Part III.B.3-4.

104. *See* ARNOLD BINDER, GILBERT GEIS & DICKSON BRUCE, JUVENILE DELINQUENCY: HISTORICAL, CULTURAL, LEGAL PERSPECTIVES 9, 532-39 (1988).

The third category of laws discussed below, under which parental criminal liability can be incurred in connection with the juvenile delinquency of a child, are the so-called "contributing" statutes.[105] These are the laws, enacted in virtually every jurisdiction in the United States, which make adults (including parents) criminally liable for contributing to the delinquency of a minor.[106]

Finally, the recent trend toward broad local ordinances which impose criminal (and sometimes civil) liability upon parents for a variety of acts by their children, is discussed.[107] The analysis below of the criminal parental liability imposed under truancy laws, curfew ordinances, "contributing" statutes, and recently enacted local parental liability ordinances indicates that, like the tort liability statutes, a primary purpose of these laws has been to control juvenile delinquency by punishing, or threatening to punish, parents for the juvenile delinquency of their children.[108]

3. *Truancy Laws: Parental Liability for the Purpose of Controlling a Child's Truancy*

State compulsory school attendance laws, which typically include provisions that punish parents, guardians or others having custody and control of a child for that child's failure to attend school, had been enacted in at least some states by the 1920's,[109] and have generally been upheld as constitutional.[110]

The United States Supreme Court in *Pierce v. Society of Sisters*[111] found that an Oregon truancy statute requiring all children to attend *public* schools was unconstitutional, but the court confirmed the power of the state to require children to attend school, generally: "No question is raised concerning the power of the state reasonably to regulate all schools, to inspect, supervise and examine them, their teachers and

105. *See infra* Part III.B.5.
106. *See infra* Part III.B.5.
107. *See infra* Part III.B.6.
108. *See infra* Part III.B.3-5.
109. *See, e.g.*, State v. Bailey, 61 N.E. 730 (Ind. 1901); State v. Hoyt, 146 A. 170 (N.H. 1929); Parr v. State, 157 N.E. 555 (Juv. & Dom. Rel. Ct. Ohio 1927); State v. Williams, 228 N.W. 470 (S.D. 1929).
110. *See, e.g.*, People v. Turner, 263 P.2d 685 (Cal. 1953), *appeal dismissed*, 347 U.S. 972 (1953); State v. Hoyt, 146 A. 170 (N.H. 1929); Stephens v. Bongart, 189 A. 131 (N.J. 1937); *Williams*, 228 N.W. 470; *Parr*, 157 N.E. 555.
111. 268 U.S. 510 (1925).

pupils; *to require that all children of proper age attend some school* . . . ."[112]

Emphasizing the importance of the parent's role in directing the child's education, the Supreme Court in *Pierce* stated: "The child is not the mere creature of the state: those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[113] Since truancy statutes have uniformly been upheld as constitutional where the state provided for some alternative to public schooling, the courts have typically summarily disposed of any constitutional attacks.[114]

The wording of the state statutes typically only makes the parent or guardian responsible where the child is under his or her "custody" and/or "control."[115] This makes sense, since criminally liability can only be imposed where the parent's actions (or failure to act) are found to have been a proximate cause of the child's delinquent act, which could not be the case if the child was not found to be "under" that parent's custody and control. In fact, most of the reported cases appear to be cases where the child's truancy was not just passively tolerated, but was actively encouraged, by the parent, who was found to have kept the child home from school, either for religious reasons,[116] or because the parent claimed

112. *Id.* at 534 (emphasis added), *quoted with approval in* People v. Turner, 263 P.2d 685, 687 (Cal. 1953), *appeal dismissed*, 347 U.S. 972 (1953).

113. *Id.* at 535, *quoted with approval in* State v. Williams, 228 N.W. 470, 471 (S.D. 1929).

114. *See, e.g.,* State v. Bailey, 61 N.E. 730 (Ind. 1901); Stephens v. Bongart, 189 A. 131 (N.J. 1937); *Williams*, 228 N.W. 470.

115. *See, e.g., Williams*, 228 N.W. 470 (quoting the North Dakota truancy statute as stating: "Every person having under his control a child of the age of eight years and not exceeding the age of seventeen years, shall annually cause such child to regularly attend some . . . school . . . ."); *Bongart*, 189 A. 131 (quoting the New Jersey truancy statute as stating: "Every parent, guardian or other person having custody and control of a child between the ages of seven and sixteen years shall cause such child regularly to attend the public schools . . . or to attend a day school . . . or to receive equivalent instruction elsewhere that at school . . . .").

116. *See, e.g., cases cited in* Eichelberger, *supra* note 102, at 686-90. In *Wisconsin v. Yoder*, 406 U.S. 205 (1972), the Supreme Court held that Amish parents were not required to send their children to school until 16 years of age where to do so conflicted with the First Amendment free exercise of religion clause.

to be schooling the child at home (often because of religious convictions).[117]

In the reported cases which have either considered the constitutionality of truancy statutes which impose parental criminal liability for the child's truancy, or which have applied such statutes to prosecute parents, the courts generally do not discuss the legislative rationale behind the parental liability provision.[118] However, the general emphasis given in the cases to the parent's duty to educate her or his child, and to the state's power to compel such education, leads inevitably to the conclusion that the rationale behind these laws imposing criminal liability upon a parent for truancy by his or her child is not retributive. The rationale is to deter truancy by punishing (or threatening to punish) a parent who does not *make* his or her child go to school.

One case which does explicitly address the rationale behind the criminal parental liability section of a truancy statute is *People v. Turner*.[119] In that case, defendants had been convicted for failing to send their three children to school.[120] They appealed, claiming that the statute unconstitutionally deprived them of the their right "to how and where their children may be educated."[121] The court held that the statute was constitutional, and that the state acted within its powers in regulating private schooling as an alternative to public schooling, commenting that its review of the cases in other states did not discover any case where a compulsory attendance statute was held unconstitutional for failing to recognize home instruction as an alternative to attendance in the public schools.[122]

In *Turner*, home instruction was allowed under the statute, but the parents had not met the statutory requirements for home instruction; in particular, that the private tutor have a state teaching certificate.[123] The court held that such

117. *See, e.g.*, *Bongart*, 189 A. 131; People v. Turner, 263 P.2d 685 (Cal. 1953), *appeal dismissed*, 347 U.S. 972 (1953); *see also* Eichelberger *supra* note 102, at 688, 690-91, 693-95.

118. *See, e.g.*, State v. Bailey, 61 N.E. 730 (Ind. 1901); State v. Hoyt, 146 A. 170 (N.H. 1929); Parr v. State, 157 N.E. 555 (Ohio 1927); *Williams*, 228 N.W. 470.

119. 263 P.2d 685 (Cal. 1953), *appeal dismissed*, 347 U.S. 972 (1953).

120. *Id.*

121. *Id.* at 687.

122. *See id.* at 688.

123. *See id.*

statutory requirements were reasonable.[124] Discussing the rationale for the truancy statute, the court stated: "While the ultimate object of the statute is the education of the child, *means to assure the attainment of that end* may be adopted by the state, and may be enforced by the imposition of penalties for violating the regulations made."[125]

Only one reported case has been found where the parent claimed that she did not have "control" over the child. In that case, *In Re Jeannette L.*,[126] the Maryland Court of Special Appeals discussed the rationale behind the parental liability provision of the state's compulsory school attendance statute in reviewing the conviction in the juvenile court of two mothers accused of causing their children's truancy.[127]

In its statement of facts, the appellate court stated that one of the appellants had testified "that the reason for the daughters' nonattendance at school were her state of health, lack of cooperation from her children, and her inability to control their conduct."[128] In addition, that appellant had claimed her daughters were often sick, and that she had no transportation and so could not pick them up early from school.[129]

The appellant mothers had been convicted after jury trials, which they had requested.[130] Their appeal was based on several grounds, including the unconstitutionality of the Maryland truancy law, and the insufficiency of the evidence.[131] Holding that the statute was not unconstitutionally vague, the court specifically held that the statute did not attempt to impose strict liability on parents for their children's truancy:

> The statute does not subject a parent to prosecution for the actions of his or her children, but it does sanction prosecution for the parent's own acts. Before a person may be found guilty of violating [the truancy statute], the court must find: 1) the person had control over the child

124. *See id.* at 688-89.

125. People v. Turner, 263 P.2d 685, 689 (Cal. 1953) (emphasis added), *appeal dismissed*, 347 U.S. 972 (1953).

126. 523 A.2d 1048 (Md. 1987).

127. *Id.*

128. *Id.* at 1050.

129. *See id.*

130. *Id.*

131. *See id.* at 1050.

and 2) failed to see that the child attended school regularly.

> The statute imposes an affirmative duty on persons who have control over a child . . . . That duty is to assure that the child attends school regularly. Failure to perform that duty is a violation of the statute. Passive acquiescence in the child's nonattendance of school is no defense.[132]

The court upheld the mothers' convictions under the Maryland truancy law: the jury at trial apparently had not believed the one defendant's claim that her children were beyond her control.[133]

However, it is not difficult to imagine a situation where a teenager, still a minor and in the legal custody of his or her parent, is in fact beyond the control of the parent, although the parent knows or suspects the child is skipping school. In that case, one might ask, what actions does the parent have to take to avoid "passive acquiescence" in the truancy which might subject that parent to criminal liability?

For example, if the parent's child is a sixteen year old who habitually disobeys the parent and may even be physically abusive to the parent, what acts could the parent do to show he or she has attempted to exercise control over the child and failed?[134] What if, as one of the mothers in *In Re Jeanette L.* claimed, the parent does not have adequate transportation to give her flexibility in taking or picking up a sick child from school, perhaps for economic reasons? Similar questions regarding the usefulness of parental liability laws in controlling juvenile acts may arise regarding the criminal liability of a parent for the curfew violations by his or her child, as discussed below.

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132. *In Re* Jeannette L., 523 A.2d at 1055.

133. *See id.* at 1051.

134. *See, e.g.,* Ann Landers, *Some Kids Just Can't Be Controlled,* L.A. TIMES, Oct. 9, 1996, at E5R, where a parent wrote in a letter to the columnist:

> It may seem unbelievable, Ann, but some children simply cannot be controlled. We had a daughter whom we sent off to school in the morning, but she never got there. Instead, she joined her boyfriend . . . . I cannot tell you how many people we turned to for help with this problem. Finally, two kind, understanding school counselors told us there was nothing we could do. What good would it have done to put us into jail? The boyfriend's mother had the same problem. Her son would have liked nothing better than to see her locked up because of his truancy.

Id.

4. *Curfew Laws: Parental Liability for the Purpose of Controlling a Child's Curfew Violations*

Curfew laws typically provide that it is unlawful for certain persons (often limited to minors, or minors of specific ages) to be in certain places (for example, the public streets and public buildings) at night, without being accompanied by a parent, guardian or other responsible adult, or without a reasonable excuse.[135] These laws are typically enacted by municipalities as local ordinances and not by the state as statutes.[136] Curfews imposed upon juveniles gained popularity in the United States beginning in the late nineteenth century: by the late 1950's about 48 cities with populations over 100,000 were found not only to have such ordinances, but also to be enforcing them.[137]

Most curfew ordinances impose parental responsibility for the child's compliance with the curfew.[138] There appear to be only a handful of reported cases dealing with criminal parental liability imposed under curfew ordinances.[139] As in most of the decisions in the truancy cases, the courts scrutinizing parental liability under the curfew laws do not discuss the rationale for punishing the parents of minors violating curfews, except indirectly in the discussion of the rationale for the curfew laws, generally.

For example, in *People v. Walton*,[140] the district attorney appealed the dismissal of a complaint against a father charged with having allowed his sixteen year old son to violate the curfew ordinances.[141] The lower court had dismissed the complaint, finding that the curfew ordinances in question

135. *See, e.g.*, People v. Walton, 161 P.2d 498 (Cal. 1945); Eastlake v. Ruggiero, 22 N.E.2d 126 (Ct. App. Ohio 1966). However, at least one city in Orange County, California, has enacted curfew ordinances which restrict children's movements during the *daytime*. *See* Cathy Werblin, *Seal Beach Daytime Curfew Approved*, L.A. TIMES, Oct. 1, 1996, at B5A.

136. *Ruggiero*, 220 N.E.2d 126.

137. *See id.* at 127-28. Nine jurisdictions apparently had curfew ordinances, but were not enforcing them. *See id.*

138. *See id.* at 128.

139. *See, e.g.*, McCollester v. City of Keene, N.H., 514 F. Supp. 1046 (N.H. 1981); People v. Walton, 161 P.2d 498 (Cal. App. Dep't Super. Ct. 1945); *Ruggiero*, 220 N.E.2d 126.

140. 161 P.2d 498 (Cal. App. Dep't Super. Ct. 1945).

141. *See id.* at 499-500.

violated both the state and federal constitutions and were void.[142]

On appeal, the court in *Walton* found that the defendant father only had standing to attack the provisions of the ordinances which imposed criminal liability upon a *parent* who allowed or permitted her or his minor child to violate the curfew law. Considering those provisions only, the court held that they were constitutional. The court stated: "[I]t is well settled that minors constitute a class founded upon a natural and intrinsic distinction from adults; that legislation peculiarly applicable to them is necessary for their proper protection and when induced by rational considerations looking to that end its validity may not be challenged."[143]

The court offered no additional rationale for the imposition upon a parent of criminal liability for the curfew violation by his or her child: it can be inferred that the court considered such punishment not as retributive, but as part of a rational scheme by the legislature for the "proper protection" of minors.[144] Thus, the reason parents are punished appears to be to encourage them to control or supervise their children adequately, so that curfew violations will not occur.

In another case, *City of Eastlake v. Ruggiero*,[145] a curfew ordinance which contained a provision imposing criminal parental liability was challenged upon constitutional grounds "because it is unduly restrictive of personal freedoms."[146] In holding the ordinance constitutional, the court stated:

> We feel that curfew ordinances for minors are justified as necessary police regulations to control the presence of juveniles in public places at nighttime with the attendant risk of mischief, and that such ordinances promote the safety and good order of the community by reducing the incidence of juvenile criminal activity.[147]

In *Eastlake*, as in *Walton*, the court's opinion did not articulate a distinct rationale for the criminal *parental liability* portion of the curfew ordinance; the rationale given for the curfew ordinance in its entirety (including the parental liabil-

142. *See id.* at 499.
143. *Id.* at 501.
144. *See id.*
145. 220 N.E.2d 126 (Ohio 1966).
146. *Id.* at 127.
147. *Id.* at 128.

ity provision) was to prevent juvenile "mischief" and juvenile criminal activity at night.[148] The parental liability provision in this curfew ordinance supports the rationale of preventing juvenile "mischief" only if the assumption is made that appropriate parental control of a child will stop the curfew violations by that child. In upholding the constitutionality of the parental liability provision in the curfew ordinance, the court in *Eastlake* must have made this assumption, although its opinion does not articulate it.

Finally, in *McCollester v. City of Keene*,[149] a case which held a curfew ordinance to be an unconstitutional restriction of the liberty interest of minors,[150] the court discussed the legislative intent behind the enactment of the ordinance:

> Although antisocial activity was the purpose of adopting the ordinance stated in the preamble [of the ordinance]. . . , there are indications in the record that the safety and general welfare of vulnerable, impressionable minors was an unstated purpose in the minds of several of the legislators when the ordinance was being considered.[151]

In *McCollester*, the rationale behind the provision providing for parental criminal liability was not specifically addressed by the adopting legislators, either in their written preamble to the ordinance itself or in their affidavits submitted to the trial court.[152] Presumably then, the reason for imposing criminal liability upon a parent for his or her child's curfew violation was the same reason given for adoption of the curfew ordinance generally: preventing antisocial activity and protecting minors.

Thus, the parental liability provisions of the curfew laws, like those provisions of the truancy laws, appear to have been enacted for the purpose of reducing juvenile delinquency by punishing, or threatening to punish, parents who do not effectively control their children. This rationale in turn presumes that parents generally will have the ability and means to control their children, particularly adolescent children, who otherwise might violate the curfew.

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148. *Id.*

149. 514 F. Supp. 1046 (N.H. 1981).

150. *See id.* at 1053.

151. *Id.* at 1050, referring to certain affidavits attached to the defendant's opposition to plaintiffs' motion for summary judgment.

152. *See McCollester*, 514 F. Supp. 1046.

5. *Contributing Statutes: Parental Liability for the Purpose of Controlling Other Acts of Juvenile Delinquency*

The first state to enact a statute which in general terms made it a crime to contribute to the delinquency of a minor was Colorado, in 1903.[153] Other states soon followed suit.[154] By 1961, one author claimed 48 states had "contributing" statutes.[155] In 1983, another author claimed 42 states had "contributing" statutes.[156]

In contrast to the truancy and curfew laws, so-called "contributing" statutes do not limit the class of persons who can be charged and convicted to the parent, guardian of a minor child, or other person having custody and control of the child; any adult is subject to the law. In fact, to the layperson the phrase "contributing to the delinquency of a minor" is most likely to suggest an adult enticing an unrelated minor into committing illegal acts (sex, use of drugs, use of alcohol, stealing, etc.), not deficient parenting.

In the few cases where parents have actually been prosecuted for contributing to the delinquency of a minor, and the case has been reported, the courts have not addressed the relationship between parenting and the child's delinquency in any detailed way.[157] However, these cases do suggest that the main purpose of the contributing statutes is the reduction of juvenile delinquency.[158] Punishing parents and others is thus presumed to have a deterrent affect on the actions of those persons, where they have "caused" the child's delinquency, or, in some statutes, the child's "tendency" to become delinquent.

153. *See* James A. Kenny & James V. Kenny, *Shall We Punish the Parents?*, 47 A.B.A. J. 804, 805 (Aug. 1961).

154. *See, e.g.*, Mill v. Brown, 88 P. 609 (Utah 1907) (holding part of Utah contributing statute unconstitutional which based parental liability on juvenile offender status of the child without more); People v. De Leon, 170 P. 173 (Cal. Dist. Ct. App. 1918), *reh'g denied*, Jan. 31, 1918 (upholding conviction under contributing statute of nonparent cafe manager for serving liquor to a minor).

155. *See* Kenny & Kenny, *supra* note 153, at 805.

156. *See* Geis & Binder, *supra* note 27, *citing* Peter D. Garlock, *Contributing to the Delinquency of Minors*, 1 ENCYCLOPEDIA OF CRIME & JUSTICE 240 (S. Kadish, ed. 1983).

157. *See* discussion *infra* notes 159-70.

158. *See* discussion *infra* notes 159-70.

For example, in *State v. Gans*,[159] defendants were the adoptive parents of a minor daughter, age eleven. They had transported her from Ohio to West Virginia, and there consented to her marriage, and consented to her misrepresentation of her age in securing a marriage license.[160] After a jury trial, they had been found guilty of contributing to the delinquency of their daughter, and appealed.[161] On appeal, the court conceded that the daughter had not been adjudicated a delinquent child: however, under the Ohio statute, a person could be prosecuted for acting "in a way tending to cause delinquency."[162]

After admitting that the validity of the child's marriage was not at issue, the court proceeded with a lengthy discussion of the public policy considerations in Ohio against marriages by minor females under sixteen years of age.[163] It then hypothesized that because of her responsibilities as a homemaker and wife, the girl might not attend school as required by Ohio's compulsory attendance law.[164] It then concluded that the jury could, on the basis of the evidence before it, conclude that the parents' acts in facilitating their daughter's marriage would tend to cause her to become a delinquent.[165]

Regarding the rationale behind the contributing statute, particularly the clause allowing the prosecution of persons for contributing to the delinquency of a child who had not been found to be delinquent, the court stated:

> It is apparent that the purpose of that clause is to prevent a delinquency before it occurs rather than to await such delinquency and then punish the adult offender. The purpose of the clause is to avoid the undesirable result which might arise if an adult is permitted to pursue a course of conduct which tends to cause a child to become a delinquent. It is the old theory of preventative medicine. A disease is much easier to prevent than to cure.[166]

One reported contributing case at the trial court level offers some interesting insights into the reasoning of a trial

159. 151 N.E.2d 709 (Ohio 1958).
160. *See id* at 711.
161. *See id.*
162. *See id.*
163. *See id.* at 711-13.
164. *See id.* at 713-14.
165. *See* State v. Gans, 151 N.E.2d at 714.
166. *Id.* at 710.

judge regarding the purposes of a specific contributing statute as applied to a parent, and the general connection between parenting and juvenile delinquency. In *Seleina v. Seleina*,[167] a 1949 New York case where the trial decision was reported, a mother had alleged that her husband had contributed to the delinquency of their eleven year old minor daughter by encouraging the daughter to disobey the mother. The trial court found that the daughter was delinquent, in that she had become aggressive, showed disrespect for her mother and other adults, had stayed away from her home for one and a half days, and had stolen money on several occasions.[168] The court in its opinion, discussed the judge's personal opinion regarding the causes of juvenile delinquency:

> I am grateful that these [delinquent] children are not regarded as criminals. They are just offenders who are to be helped to become decent human beings. I have yet to find, except in very rare instances, that children had become delinquent because of any reason other than neglect either by the schools, by the churches, by the community, or as in most instances, by the parents . . . . Punishment does act as a deterrent. As to that there can be no doubt . . . . In this instance I think the man [the convicted father] ought to be removed from the community for some time. Possibly such confinement might help him to realize his own conduct and what he has done to his own child, and in that way make a better man out of him and a good father to his children.[169]

Recently, particularly at the local level, laws have been adopted which reflect the rationale of the trial judge in the 1949 *Seleina* case: if parents are punished, or threatened with punishment, they will become "good" parents to avoid such punishment. "Good" parents exercise appropriate "control" over their children, and such children do not commit acts of juvenile delinquency. Although often not reported in the case law, recent articles in the popular press and a notorious California case suggest that criminal parental liability laws have recently had a surge of popularity as a "new" response to the juvenile delinquency problem.[170]

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167. 93 N.Y.S.2d 42 (1949).
168. *See id.* at 44.
169. *Id.* at 44-45.
170. *See* discussion *infra* Part III.B.6. and Part IV.

6. *A Trend?: Local "Parental Responsibility" Statutes in the 1990s*

Local ordinances to create parental responsibility are not new: parental liability clauses in curfew ordinances have been typically included in such local laws since the 1950's in the United States.[171] However, on occasion, local communities have enacted broader parental liability ordinances, usually imposing criminal liability for a variety of acts by children.

Only one appellate case, decided in 1976, has analyzed such a broad, local parental liability ordinance. In that case, *Doe v. City of Trenton*,[172] the court held that the ordinance in question was unconstitutional, violating the 14th Amendment due process clause.[173] The court's analysis suggests that such ordinances may be held unconstitutional if they attempt to impose what is in essence *vicarious criminal* liability upon parents for their children's acts.[174]

The New Jersey city ordinance under consideration in the *Trenton* case contained a legal presumption that the parent was responsible for the child's delinquency where his or her child was twice in one year "adjudged guilty of acts defined as violations of the public peace."[175] These acts included "adjudications for delinquency and of the status of being a juvenile delinquent in need of supervision."[176] Thus, under this ordinance, the prosecution did not have to prove the parent's *mens rea* or the causation element usually required for a criminal conviction of a parent in connection with the juvenile delinquency of his or her child.

The *Trenton* court, in its constitutional analysis of the evidentiary presumption, questioned the link between parenting and juvenile delinquency which has been so readily accepted as "rational," without comment or scrutiny, by most other courts analyzing either tort or criminal parental liability statutes.[177]

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171. *See* discussion *supra* Part III.B.4.
172. 362 A.2d 1200 (N.J. Super. Ct. App. Div. 1976).
173. *Id.*
174. *Id.*
175. *Id.* at 1202.
176. *Id.*
177. *See* cases discussed *supra* Parts III.A and B. Although courts in both the civil and criminal cases have tested the constitutional soundness of parental liability statutes using the rational basis test, that test differs in its applica-

In *Trenton*, the court commented that "[t]he roots of juvenile misconduct are complex and imperfectly understood."[178] The court ultimately concluded that it was *not* "more likely than not" that the child's second adjudication for a breach of the public peace was "the result of parental action or inaction."[179] The court discussed the relationship between the actions of parents and juvenile delinquency as follows:

> If there is a consensus at all in the field, it is on the proposition that children growing up in urban poverty areas are those most likely to be identified as juvenile delinquents. The City of Trenton provides us with nothing which would support a finding that parental influence is an overriding cause of juvenile misconduct. . . .By contrast, plaintiff and *amicus* Public Advocate provide a representative sampling of prevailing expert opinion, research and analysis tending to support the conclusion that parental actions are but a single factor in the interaction of forces producing juvenile misconduct.[180]

Despite the concerns expressed more than twenty years ago by the court in the *Trenton* case regarding the efficacy of using parental liability statutes to control juvenile delinquency, local governments in the 1990s have turned to such laws, in various forms, in an attempt to control what is perceived as an epidemic of juvenile crime and violence.[181]

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tion, depending on the case setting. Thus, the court's analysis of whether a legitimate legislative end (controlling juvenile delinquency) is achieved through a rational means (punishing parents) will differ depending upon whether the law in question imposes tort damages or criminal penalties. In the *Trenton* case, it is not surprising that the legislative means would be most carefully scrutinized by the court, since the effect of the evidentiary presumptions created by the parental liability statute in that case was to shift the burden of proof on the critical elements of *mens rea* and causation to the defendant in a criminal prosecution. *See Trenton,* 362 A.2d 1200.

178. *Trenton*, 362 A.2d at 1203.

179. *Id.*

180. *Id.* (citations omitted). The court refers to an analysis of the factors affecting juvenile delinquency in Penelope D. Clute, Comment, *Parental Responsibility Ordinances-Is Criminalizing Parents When Children Commit Unlawful Acts a Solution to Juvenile Delinquency?*, 19 WAYNE L. REV. 1551 (1973), and also mentions that one author had found that the delinquency rate did not change after similar criminal parental liability statutes had been enacted, *citing* SOL RUBIN, CRIME AND JUVENILE DELINQUENCY 22 (1970).

181. *See* Barry Siegel, *Town Tries to Police the Parents*, L. A. TIMES, Apr. 21, 1996, at A1 (parental responsibility ordinance adopted in St. Clair Shores, Michigan in 1994 which provided for both civil damages and criminal penalties including fine or imprisonment); Chuck Haga, *Farmington May Fine Parents for Kids' Misbehavior*, STAR TRIB., June 22, 1996 at A1 (proposed parental crim-

There are no appellate cases which "test" the constitutionality of these recent ordinances. Articles in the popular press suggest that convictions under such statutes are rare, and that they are used as a threat to encourage parents to control their children.[182]

Even if such ordinances survive constitutional attack because they require, unlike the law under scrutiny in the *Trenton* case, that the parent have both knowledge of the child's behavior (*mens rea)* and the ability to control the child's behavior (causation), the uses of such ordinances to effectively control juvenile delinquency is still questionable. As with the tort liability statutes, a troubling question arises when the child is an older adolescent: to what extent is a parent expected to "control" an unruly teenager? What actions by the parent are sufficient to show reasonable attempts to control a child? And, if such reasonable attempts fail, should the parent still be punished?

For example, what if a father is smaller than his sixteen year old son, who he knows has committed a series of local house burglaries and other delinquent acts? If he confronts the son regarding his actions, and is physically assaulted by him, is he required to continue efforts to "control" his child?[183]

Given the difficulty of obtaining a criminal conviction against a parent because of the requirements of *mens rea* and causation, and the reluctance to pursue convictions resulting in fines or imprisonment, even if such elements can be proved, there appear to be substantial limitations to the usefulness of criminal parental liability statutes in the control of juvenile delinquency. In fact, other than anecdotal evi-

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inal liability ordinance being considered by the city council in Farmington, Minnesota); John Leo, *Punished for the Sins of the Children*, 118 U.S. NEWS & WORLD REPORT 18, June 12, 1995, (ordinance in Silverton, Oregon and proposed Oregon statute which included mandatory parenting classes as well as fines in possible sanctions); *Parents are Charged after Crime by Kids*, CHI. TRIB., Feb. 6, 1990 at 3 (Grand Rapids, Michigan enforcing 20 year old criminal parental liability ordinance for the first time in 15 years; the law allows prosecution of parents for failing to exercise "sufficient or reasonable control" over their children).

182. *See, e.g.*, Claire Safran, *Is It a Crime to be a Bad Parent? Holding Parents Responsible for Their Children's Delinquency & Crimes*, WOMAN'S DAY, May 1, 1990, at 64.

183. *See, e.g.*, Siegel, *supra* note 183, at A1.

dence,[184] there is no study which has been discovered which has even attempted the perhaps impossible task of assessing whether such criminal statutes do, in fact, result in a change in the parent's behavior which in turn results in a reduction in delinquent acts by his or her child.

Lacking empirical validation of their efficacy, the adoption of criminal parental liability laws at the state or local level appears based entirely on folk wisdom that parents *should* be "in control" of their children at all times.

If parents are not "in control," some recent ordinances provide a less harsh alternative to parental punishment by fine or incarceration.[185] If parents are not in control of their children, then they can be coercively *taught* parenting skills, so they will become in control (and presumably then can be punished by harsher means if the children continue their delinquent behavior).[186]

At the state level, a criminal statute in California has been recently used by The City Attorney's Office of Los Angeles to "encourage" parents to attend parenting classes as a means of reducing juvenile delinquency.[187] Unlike various recent local ordinances, that statute has been analyzed in detail in a California case which finally held that the statute was constitutional.[188]

IV. Parenting Classes: Mandatory Parent Skills Training as a New Solution to the Juvenile Delinquency Problem

The use of parental liability statutes as a means of controlling juvenile delinquency has taken an new turn in California, with an amendment to the contributing statute, Penal Code § 272, ("§ 272") effective in 1988. That amendment ad-

184. *See* Judge Paul W. Alexander, *What's This About Punishing Parents*, 12 FED. PROBATION 23 (1948), which has been cited by many authors as an empirical research study of the efficacy of parental liability laws (Alexander concluded that although sometimes effective, these laws usually did not work to reduce juvenile delinquency). In fact, Alexander, a judge in the Toledo, Ohio, juvenile court, did no more than give his opinion about the effectiveness of these laws based on an informal review of the decisions in his court. No attempt at accepted social science methodology was made (or intended).

185. *See* discussion *infra* Part IV.

186. *See* discussion *infra* Part IV.

187. CAL. PENAL CODE § 272 (Deering Supp. 1996).

188. Williams v. Garcetti, 853 P.2d 507 (Cal. 1993), *superseding* Williams v. Reiner, 2 Cal. Rptr. 2d 472 (Ct. App. 1991).

ded the following language to the statute: "For the purpose of this section, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child."[189]

Before the 1988 amendment, the California statute contained more general wording, typical of many contributing statutes, which provided for punishment of any adult who contributed to the delinquency of a minor.[190] Under that previous version of § 272, a parent, like any other adult, could theoretically be prosecuted for contributing to the delinquency of a minor. However, one author concluded that the California contributing statute was not being used consistently to "correct parental inadequacies" in an effort to reduce juvenile delinquency, but instead was being used simply to punish adults for their misconduct in contributing to the delinquency of minors.[191]

Consequently, the 1988 amendment to § 272 clearly targeted parents: it was added at the behest of prosecutorial agencies in the City and County of Los Angeles for the express purpose of deterring juvenile delinquency, particularly juvenile gang activity, by affecting parental actions perceived to cause such delinquency.[192]

The amendment to § 272 was challenged by a taxpayer's suit, alleging that its enforcement as amended constituted a waste of public funds since the amended statute was uncon-

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189. CAL. PENAL CODE § 272 (Deering Supp. 1996).

190. *See* CAL. PENAL CODE § 272 (Deering 1985).

191. *See* Raymond J. Vincent, *Expanding the Neglected Role of the Parent in the Juvenile Court*, 4 PEPP. L. REV. 523, 531 (1977). In reviewing the 1961 amendment to Section 272, which placed jurisdiction of adults accused of contributing to the delinquency of a minor in the juvenile court, Vincent (at the time, a sitting judge in the California trial court) concluded that the main purpose of Section 272 was not "rectification of parental inadequacies," but punishment of the adult offender, whether a parent or unrelated adult, for his or her misconduct. *Id.* Vincent commented that "[a review of the cases decided under Section 272] fails to disclose any consistent use of the contributing law as a tool for correcting parental inadequacies in conjunction with juvenile delinquency proceedings." *Id.* at 532. Judge Vincent suggested that the courts in California were not using the contributing statute as a means of coercing changes in parental conduct "most likely due to a combination of the absence of any valid indication that this method has been used effectively elsewhere and the overwhelming weight of respected professional opinion in opposition to it." *Id.* at 532.

192. *See* discussion *infra* Part IV.

stitutionally vague and overbroad on its face, and was also an unconstitutional interference with the right to privacy under both the federal and state constitutions.[193]

The California Supreme Court, in a unanimous decision, reversed the decision by the appellate court, which had found the statute as amended void for vagueness: the California Supreme Court held that the amendment was neither unconstitutionally vague[194] nor overbroad,[195] and did not interfere with the parents' constitutional right to raise their children, to educate their children, and to privacy in family life.[196] The

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193. Williams v. Garcetti, 853 P.2d 507 (Cal. 1993), *superseding* Williams v. Reiner, 2 Cal. Rptr. 2d 472 (Ct. App. 1991).

194. On the issue whether the wording of the statute was unconstitutionally vague, the court concluded that the statute must be definite enough to provide a standard of conduct for persons who might be prosecuted, and must also provide "a standard for police enforcement and for ascertainment of guilt." *Id.* at 509. The court asked whether a parent of ordinary intelligence would understand the duty to "supervise" and "control" his or her children. *See id.* Analogizing to the California parental tort liability statute, the court concluded that the legislature must have acted "with full knowledge" of the existing tort law, and must have intended to incorporate into the penal code section the standard of *reasonable* supervision and control contained in the tort cases. *See id.* at 512.

The court went on to find that it was "impossible" to provide "a comprehensive statutory definition of reasonable supervision and control," but found that this was unnecessary. *See id.* at 513. The court found that the concept of "reasonable" supervision and control was specific enough, particularly in light of the "heightened standard" of duty which the court held was necessarily required by this criminal statute: the parent's act or failure to act had to be at least criminally negligent. *Id.* at 513. The court pointed out that criminal negligence was more than mere civil negligence, requiring an act or omission which was "aggravated, culpable, gross or reckless." *Id.* The court confirmed that parents who intentionally failed to perform their duty of supervision and control would also be liable under Section 272. *See id.* at 514.

Referring again by analogy to the parental tort liability statute in California, the court further found that "a parent who makes reasonable efforts to control a child but is not actually able to do so does not breach the duty of control [under Penal Code section 272 as amended]." *Id.* at 514.

By thus incorporating into the statute definitions and requirements found in other state criminal and tort statutes, the California Supreme Court was able to find that the amendment to Penal Code section 272 was not unconstitutionally vague on its face in the notice it gave to parents who might be prosecuted. Similar reasoning by the court supported its finding that the statute was also not constitutionally void for vagueness on the ground that there was a danger of arbitrary or discriminatory enforcement. *See id.* at 516.

195. *See Garcetti*, 853 P.2d at 516. After commenting that "a facial overbreadth challenge is difficult to sustain," *id.* at 516, the court concluded, without an in-depth discussion, that the statute was not overbroad. *See id.* at 517.

196. *Id.*

court thus held that Penal Code § 272 as amended was constitutional.[197]

The California Supreme Court decision did not discuss in detail the rationale behind the amendment to the statute.[198] The court did mention briefly that the amendment was enacted as part of the Street Terrorism Prevention Act, aimed at reducing the activity of juvenile gangs in the City of Los Angeles, and stated that it "appear[s] intended to enlist parents as active participants in the effort to eradicate such gangs."[199]

The court never engaged in an analysis of whether parents generally were a major cause of their children's involvement in such gangs. Commenting on the lower appellate court's concern about the causal link between parental behavior and juvenile delinquency, the court admitted that the causal element required for a criminal conviction under the criminal negligence standard might be difficult to establish:

> [T]he causation element of section 272 could be more difficult to apply when the question is whether a parent's failure to supervise or control a child caused the child to become delinquent than when the parent's potentially culpable conduct is of a more direct nature—for example, when the parent is an accomplice of the minor in the commission of the crime.[200]

The court concluded, however, that "the same causal question" had not proven "unduly troublesome" under the California parental tort liability statute,[201] and suggested that the "opportunity for parental diversion" under the statute "suggests that as a practical matter a parent will face criminal penalties under § 272 for failure to supervise only in

197. *See id* at 517.

198. *See id.* at 514-15. The plaintiff-appellant taxpayers had claimed that the statute set forth a new standard, making parents vicariously liable for the acts of their children; the defendants (the Los Angeles County District Attorney and the Los Angeles City Attorney) alternatively claimed that the amendment to the statute merely clarified the existing duty of parents under section 272 before it was amended. *See id.* The California Supreme Court felt it was unnecessary to resolve this issue in addressing the constitutional claims before the court, stating that the analysis would be the same, regardless of whether the amendment added to, or merely clarified, the prior statutory wording. *See id.* at 512-13.

199. Williams v. Garcetti, 853 P.2d 507, 510 (Cal. 1993), *superseding* Williams v. Reiner, 2 Cal. Rptr. 2d 472 (Ct. App. 1991).

200. *Id.* at 515.

201. *See id.*

those cases in which the parent's culpability is great and the causal connection correspondingly clear."[202]

The diversion program in question was only briefly referenced by the California Supreme Court in its opinion, which without further comment or analysis stated that the legislature had adopted a parent diversion program which "under special circumstances" allowed the probation department to recommend that parents (or guardians) charged under § 272 could be diverted to "an education, treatment or rehabilitation program;" after successful completion, the criminal charges would be dismissed.[203]

Although barely touched upon in the California Supreme Court opinion, a review of the lower court appellate opinion in the *Williams* case and contemporaneous popular media reports suggests that the real purpose behind the amendment to § 272 was to force the parents of children involved in juvenile gangs into parenting classes as part of an aggressive multifaceted anti-juvenile gang program initiated by the City and County of Los Angeles.[204]

The lower court first placed the parental liability provisions of § 272 in context, as only one part of a comprehensive statutory scheme designed to reduce "criminal street gang activity," which consisted primarily of the Street Terrorism Enforcement and Prevention Act (the STEP Act).[205] The court pointed out that parental criminal liability under § 272 was not, like the provisions of the STEP Act, specifically targeted at controlling juvenile criminal street gang activity.[206]

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202. *Id.*

203. *See id.* at 508, *citing* CAL. PENAL CODE § 1001.70-75. CAL. PENAL CODE § 1001.74 states, in pertinent part: "[I]f the divertee has performed satisfactorily during the period of diversion, the criminal charges shall be dismissed." *See also* CAL. PENAL CODE § 272 (Deering Supp. 1996).

204. Williams v. Reiner, 2 Cal. Rptr. 2d 472 (Ct. App. 1991), *superseded by* Williams v. Garcetti, 853 P.2d 507 (Cal. 1993).

205. *See Reiner*, 2 Cal. Rptr. 2d at 474. The STEP Act made participation in a street gang and its criminal activities punishable as a misdemeanor or felony; created new sentencing enhancements for felonies committed in conjunction with street gang activities; and declared buildings or places used by street gangs for the purpose of gang activity or crimes to be nuisances. *See id. citing* CAL. PENAL CODE §186.22 (a) and (b); §186.22a (a) (Deering 1988 and Supp. 1997).

206. *See Reiner*, 2 Cal. Rptr. 2d at 474, *quoting* CAL. PENAL CODE § 272. The court quoted the entire penal code section, apparently to emphasize that it was a typical contributing statute, making it a crime for any adult to contribute to the delinquency (or dependency) of a minor child. Only the last sentence of the

The court found there was no legislative history available to show the intent of the legislature in enacting the amendment to § 272.[207] Although ultimately finding that her testimony was not admissible as an indication of legislative intent,[208] the court quoted from the declaration of an aide of the state senator who had sponsored the bill which included the STEP Act and the amendment to § 272.[209]

The aide to the state senator stated that the language for the bill had actually been drafted by the Los Angeles City Attorney's Office and the Los Angeles County District Attorney's Office.[210] Her opinion was that these sponsoring prosecutorial agencies' primary objective in amending § 272 was to use the initiation of criminal prosecutions against parents as a means of diverting those parents into parenting classes, not as a means of obtaining criminal convictions against them.[211]

The city attorney's office had submitted to the court his guidelines (the City Attorney Parenting Program Procedures (CAPP)) for implementing the parental diversion program.[212] The processing procedure for possible § 272 violations under

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penal code section, added by the amendment, focused on parental supervision and control. *See* CAL. PENAL CODE § 272 (Deering Supp. 1996).

207. *See Reiner*, 2 Cal. Rptr. 2d at 478. The court reported that defendants had submitted a declaration that they had paid a private research firm to conduct a legislative history search on the amendment, and that the search had not found any committee discussions or legislative hearings on the amendment preserved by either tape or transcription. The court concluded that other documents presented by the defendants regarding the legislative history of the amendment "also failed to reveal any contemporaneous discussion of the parental responsibility amendment." *Id.*

208. *See id.* at 482.

209. *See id.* at 477-78.

210. *See* Williams v. Reiner, 2 Cal. Rptr. 2d 472, 477 (Ct. App. 1991), *superseded by* Williams v. Garcetti, 853 P.2d 507 (Cal. 1993).

211. *See id.* The legislative aide to Senator Robbins, Terri Burns, stated that the language of the bill (including the STEP Act, § 272 and the diversion program) had come from the L.A. County District Attorney's Office and the L.A. City Attorney's office. *See id.* She stated: "Combined with the diversion program, it was our intent that a larger number of prosecutions be initiated against parents who were in violation of . . . § 272 by omitting their legal responsibilities, yet normally providing education and treatment opportunities for these individuals." *Id.*

212. *See id.* at 478. Those guidelines provided that a parent would only be prosecuted if "he/she knew or should have known that his/her conduct was likely to result in delinquency and he/she had some ability to control the child." *See id.* Thus, the city attorney claimed to be requiring the elements of *mens rea* and causation which the California Supreme Court would eventually find the amended Section 272 required. *See* discussion *supra* note 194.

the city attorney's CAPP program suggests that agencies use § 272 primarily as a means of getting parents into parenting programs, not as a means of criminally prosecuting them. First, the city attorney's office initially reviews the documents submitted by any referring agency recommending prosecution of a parent under § 272.[213] The next step is the referral of the documentation to an administrator of the parenting program for an office hearing with the parent(s).[214] In that meeting, the parent is offered a chance to avoid possible criminal prosecution by enrolling in a parent training/counseling program chosen by the administrator.[215] Step three is the prosecution of parents failing to participate in the parenting program.[216]

The use of amended § 272 by the Los Angeles City Attorney's Office, both before and after the California Supreme Court decision in the *Williams* case, confirms that a new rationale for parental liability statutes is being tested in California: if lack of adequate parental control and supervision is a primary cause of juvenile delinquency (and particularly participation in juvenile gangs engaging in criminal behavior), then perhaps parent training, not parent punishment, will provide the much desired deterrent effect.

At the time the *Williams* case was appealed, there was a notorious case which had received much publicity in the popular media, both locally and nationally. In that case, Gloria Williams, a single, African American mother residing with her children in a gang-infested neighborhood in South Los Angeles, was charged with violating § 272 after her teenage son was accused of participating in a vicious rape of a young girl by members of a juvenile street gang.[217] When it was determined that she had attended parenting classes before she was arrested, the charges against Ms. Williams were dropped.[218]

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213. *See id.* at 479.

214. *See id.*

215. *See id.*

216. *See* Williams v. Reiner, 2 Cal. Rptr. 2d 472, 479 (Ct. App. 1991), *superseded by* Williams v. Garcetti, 853 P.2d 507 (Cal. 1993).

217. *See* Ginger Thompson, *Gang Member's Mother Denies Failure Charge*, L.A. TIMES, May 20, 1989, Metro at 1; Phillip Carrizosa, *Prosecutions of Gang Members' Parents Allowed*, L.A. DAILY J., July 2, 1993, at 1.

218. *See Reiner*, 2 Cal. Rptr. 2d at 476-77.

Her case was apparently an impetus for the taxpayer's suit in *Williams*, although the fact she had the same name as the named plaintiff in that case appears coincidental.[219] The plaintiffs in the *Williams* case raised the Gloria Williams incident in their argument before the lower appellate court[220] as referenced in that court's opinion; the California Supreme Court opinion does not refer to the Gloria Williams matter at all.[221] The plaintiffs used Gloria Williams as an example of the "pernicious reach" of the statute, claiming that the only evidence of Ms. Williams encouragement of her son's gang activities, as reported in two articles in the L.A. Times newspaper, were pictures of her and her children using street gang signs.[222] Plaintiffs claimed that the defendant prosecutors intended to enforce § 272 against the parents of children belonging to juvenile gangs "even though many of the factors which may lead children to associate with gang members are beyond the parents' control."[223]

The prosecution of Gloria Williams resulted in a flurry of press and television coverage of the parental liability statute, as amended. Defendant Ira Reiner, District Attorney for the County of Los Angeles, as quoted by plaintiffs in their moving papers, had stated in a television interview: "These . . . gangs are made up of nothing but just a pack of killers . . . . Each and every one of them is a sociopathic killer. The Crips and the Bloods are nothing but killers . . . . Frankly, I think it is a very good policy to hold these kinds of parents accountable."[224]

Exactly what are "these kinds of parents?" Other popular press reports of reactions to the Gloria Williams incident suggests that "these parents" are perceived more as unskilled "trainable" parents, than as lazy or malicious parents.[225] If this is the case, does parent skills training offer a possible way of reducing juvenile delinquency when children appear

219. *See id.* at 472.

220. *See id.* at 475.

221. *See* Williams v. Garcetti, 853 P.2d 507 (Cal. 1993).

222. *See* Williams v. Reiner, 2 Cal. Rptr. 2d 472, 476 (Ct. App. 1991), *superseded by* Williams v. Garcetti, 853 P.2d 507 (Cal. 1993).

223. *Id.*

224. *Id., quoting from plaintiff's moving papers, citing 'Crossfire'* (television broadcast, May 9, 1989).

225. *See, e.g.,* Gloria Molina, *Law On Parental Responsibility,* L.A. TIMES, July 11, 1989, Metro, pt.2 at 6.

to be beyond the control of their parents? Unfortunately, the Los Angeles City Attorney's Office has not published any assessment of its training program: it is impossible to conclude whether that program has been effective or not. Information from the popular press indicates that although very few parents have actually been prosecuted under § 272 in Los Angeles, by mid-1993 over a thousand parents had been referred to parenting classes, and over 600 had actually completed the classes, to avoid prosecution.[226]

Since there is no direct information from the Los Angeles City Attorney's program about its effectiveness, how can we consider applying substantial public resources to maintaining the program, and forcing parents to participate in it? Do the theories and research on the causes of juvenile delinquency offer some insights into the efficacy of parental punishment or parental training as a means of reducing juvenile delinquency?

V. Theories and Research in Support of Parental Liability for Juvenile Delinquency: No Easy Solutions

A review of the parental liability laws in the United States, whether civil or criminal in nature, and of both the official and popular reasoning which supports these laws, presents a consistent theme: juvenile delinquency will be reduced if parents are threatened with civil or criminal penalties for their children's delinquent acts.[227] Sometimes expressed, more often unstated but clearly implied, is the conviction that parents generally have the ability to prevent delinquent behavior in their children by appropriate supervision and control of the child.[228] Thus, the parent is presumed to be a significant, if not exclusive, causal agent in the delinquency of his or her child.

Further, the case decisions, the legislative history, and the popular press, in presenting a rationale for punishing parents for the delinquent acts of their children, often either explicitly or implicitly suggest that the lack of supervision and control of children is due primarily to negligence or laziness on the part of the parents. The parents know what to do

226. *See* Carrizosa, *supra* note 217.
227. *See* discussion *supra* Part III.
228. *See* discussion *supra* Part III.

and when to do it, but are at some level "choosing" not to.[229] Thus, the threat of either civil or criminal liability is perceived as the added incentive needed for the parent to do what the parent knows she or he should do, and can do.[230]

The adoption of the amendment to § 272 in California in 1988, and its present use by the City Attorney's Office in Los Angeles, suggests a different rationale for these laws: parents are not choosing to be "bad" parents, they simply are not properly trained to be "good" parents.[231] This new rationale for parental liability laws has resulted in the Los Angeles City Attorney's Office embracing parenting classes as at least part of the solution to the juvenile delinquency problem.[232]

Notably lacking in the case law, legislative history, or popular press discussion of parental liability laws is a critical analysis of the premises upon which they are based.[233] Since the constitutionality of these laws has generally been tested under a rational basis analysis, courts have tended to approve the legislative decision to make parents criminally or civilly liable for their children's delinquent acts without much discussion of the underlying legislative reasoning. Of course, the criminal statutes generally require that the elements of *mens rea* and criminal causation be proved as to the *parent*, but the cases do not appear to seriously question that causation can be proved.[234]

A review of the scholarly discourse and research in the interdisciplinary area of juvenile justice provides additional useful insights into the legitimacy of the legal focus on parental liability. Certainly the definition of the problem of juvenile delinquency necessarily defines the solutions, legal and otherwise, which are proposed and implemented.[235]

Below are summarized some of the most widely accepted theories about the causes of juvenile delinquency which have been developed in the scholarly literature.[236] The role of the parent in such theories, if any, is discussed.[237] Following the

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229. *See* discussion *supra* Part III.
230. *See* discussion *supra* Part III.
231. *See* discussion *supra* Part IV.
232. *See* discussion *supra* Part IV.
233. *See* discussion *supra* Part III.
234. *See* discussion *supra* Parts III, IV.
235. *See* M.A. BORTNER, *supra* note 22, at 205.
236. *See* discussion *infra* Part V.A.
237. *See* discussion *infra* Part V.A.

discussion of theory is a review of recent empirical research which might provide some insights to the questions: (1) Does "bad" parenting cause juvenile delinquency?; (2) If so, can "bad" parenting be corrected by parenting classes?; and, finally, (3) If "good" parenting can be taught, does a change in the parent's parenting skills in fact reduce juvenile delinquency in that parent's child, as the Los Angeles approach presumes?[238]

A. *Theories of the Causes of Juvenile Delinquency: The Role of the Parent*

Juvenile delinquency and its causes has been the subject of scholarly comment and research in a number of disciplines, including anthropology, criminology, law, psychology, psychiatry, sociology and social work.[239] Not surprisingly, given the variety of perspectives across these disciplines and the multiplicity of factors which might affect all types of human behavior, including juvenile delinquency, no consensus has developed regarding the causes of juvenile delinquency.[240]

The "bad parents cause juvenile delinquency" theory has enjoyed a great deal of popularity in the 20th century United States, first, in the development of the juvenile justice system,[241] and second, in the development of a statutory scheme in most states for both criminal and tort liability of parents for the juvenile delinquency of their children.[242]

Despite this popularity among laypeople, lawyers and legislators, most theories about the causes of juvenile delinquency do *not* focus primarily on parenting skills; in fact, many respected current theories ignore or minimize the importance of parenting skills in the causation of juvenile delinquency. The current most popular theories, drawn from a number of disciplines, are discussed briefly below, emphasizing the role that parenting plays in each theory.

1. *Biological Theories*

Now discredited, in the late 19th and early 20th centuries there were several respected proponents of the theory

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238. *See* discussion *infra* Part V.B.
239. *See* Geis & Binder, *supra* note 104, at 83-197.
240. *See id.*
241. *See* discussion *supra* Part II.
242. *See* discussion *supra* Part III.

that juvenile delinquency was primarily caused by biological factors, and that criminals could be recognized because of their distinct physiological characteristics.[243]

Recently, biological theories have become popular again.[244] Medical research in the areas of brain tumors and other disorders, hormonal imbalances and other abnormalities of the endocrine system, hyperkinesis, chromosomal abnormalities, birth defects, nutritional deficiencies and learning disabilities, have all generated hypotheses that there may be a link between biological factors and deviant behavior, including juvenile delinquency.[245]

However, it has been suggested that this is due not only to technological advances, but also for political and social reasons.[246] If biological factors primarily cause deviant criminal behavior such as juvenile delinquency, then the solutions will be medical or other therapeutic interventions aimed at the individual.[247] It has been suggested such medical solutions to the problem of juvenile delinquency are politically motivated:

> [B]iological theories deflect attention away from the role of society and social relations in generating human behavior, including nonconformity and crime . . . . Essentially, if the public believes that nonconformity is "preordained" by biology or inevitable due to biological factors it may result in . . . a denial or abdication of social responsibility for producing such behavior.[248]

Parenting is not a focus of the biological theories at all (although parents are, as a potential source of inherited characteristics). However, if the problem of juvenile delinquency were defined as bad parenting, the same criticism could be

243. *See* M.A. BORTNER, *supra* note 22, at 206. The biological determinists included Cesare Lombroso, Ernest Hooten, and William Sheldon. *See id.* at 207. Sheldon, for example, proposed that certain physiques corresponded to certain temperaments, based on his study of 200 delinquent boys, who he concluded were predominantly mesomorphic, with muscular bodies and heavy bones, among other physical characteristics. *See id.* Sheldon's work has been criticized for failing to recognize the socio-ecological context of physical characteristics: behavior may be influenced by the stereotypes society gives to certain body types; a big, strong boy may be perceived as a bully, for example. *See id.*

244. *See id.* at 208.

245. *See id.*

246. *See id.*

247. *See id.*

248. *Id.* at 209.

leveled: both biological theories and "bad parent" theories direct attention toward changing the individual and his family, and important socio-economic forces which may be related to juvenile delinquency may then be ignored.

2. *Strain (Anomie) Theories*

Strain theories, sometimes called "anomie" theories, presume that people generally are socialized into the majority society, and therefore want to achieve the goals championed by that society.[249] However, when a person cannot achieve such goals by means approved by the society, strain theories hypothesize that a person will attempt to achieve those goals by resorting to deviant behavior.[250] Thus, for example, the juvenile delinquent who steals a car is presumed to subscribe to an accepted goal of the majority society: success measured by material wealth. Unable to obtain this goal through means accepted by the larger society as "legitimate," for example by obtaining a job and buying the car, the delinquent will violate the moral standards of society (which she or he accepts) to obtain the desired goal by the deviant behavior of stealing the car.

The focus of strain theories is thus the tension which develops when a child who has adopted the aspirations of the majority society does not have the ability or access, within his or her immediate environment, of achieving those aspirations in ways the society approves as legitimate.[251] The supervision and control of the parent, or other parenting skills, are not perceived by this theory as a primary cause of juvenile delinquency; instead, socio-ecological factors are perceived as most important.

Strain theories have been criticized because they suggest that juvenile delinquency is restricted to the "lower class," because they suggest that delinquency is a permanent attribute of a person, and because they suggest that by adopting goals and values which are approved by the majority society, a child is more likely to become delinquent.[252]

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249. *See* TRAVIS HIRSCHI, CAUSES OF DELINQUENCY 5 (1969).
250. *See id.*
251. *See id.* at 5.
252. *See id.* at 9-10.

3. *Cultural Deviance and Differential Association Theories*

Whereas strain theories presume that the juvenile delinquent is a child frustrated in his or her achievement of the goals of the majority culture by legitimate means,[253] cultural deviance and differential association theories presume that the child has never adopted the values and goals of the majority culture at all.[254] Instead, it is presumed that the juvenile delinquent has adopted values and goals of a subculture (for example, an urban juvenile gang), which approve of and encourage the juvenile delinquent acts.[255] It is presumed that the child is socialized into this alternative "deviant" culture and learns delinquency from socializing within the deviant group.[256] According to this theory, parents "cause" juvenile delinquency if they are part of the "deviant" subculture themselves and thus instrumental in the child's acculturation into that deviant culture.[257]

This theory lends support to the popular idea that "bad" parents cause delinquency in their children. However, it does not support the wisdom of Los Angeles County's use of parenting classes, since according to this theory parents are not merely ignorant, they are in fact intentionally encouraging the acts of delinquency in their children by the values which they hold themselves. Furthermore, if the parents are not part of the deviant subculture, these theories would suggest that changes in parental control and supervision will not matter, unless such changes can detach the child from the subculture whose values he has adopted.

Although heavily criticized, cultural deviance theories have remained a very popular perspective on juvenile delinquency theory and research.[258]

4. *Control Theories*

According to control theories, juvenile delinquency occurs when the child's bonds to conventional society are "weak or

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253. *See* discussion *supra* Part V.A.2.
254. *See* HIRSCHI, *supra* note 249, at 11-12.
255. *See id.* at 11-12.
256. *See id.*
257. *See id.*
258. *See id.* at 13 (footnotes omitted).

broken."[259] According to Travis Hirschi, one of the most respected proponents of control theory, there are four important elements of this bond to conventional society: attachment,[260] commitment,[261] involvement,[262] and belief.[263]

The first element, attachment, refers to the child's affection for, and attachment to, various persons and institutions within society.[264] The terms "indirect control" or "internal control" refer to the same element.[265] Different control theorists have answered the question: "bond to whom?" in various ways.[266] Hirschi, in his pioneering work, emphasizes the child's attachment to parents,[267] to the school and teachers,[268] and to peers.[269]

The second element, commitment, Hirschi defines as follows: "Few would deny that men on occasion obey the rules simply from fear of the consequences. This rational component in conformity we label commitment."[270]

The third element, involvement, reflects the idea that substantial time and energy directed toward "conventional" activities (schooling, work, hobbies) leaves little time for delinquent acts.[271]

The fourth element of control theories, belief, particularly distinguishes control theory from deviant culture theories: "The person is assumed to have been socialized (perhaps imperfectly) into the group whose rules he is violating .... [W]e not only assume the deviant *has* believed the rules, we assume he believes the rules even as he violates them."[272]

Parents, then, are presumed to heavily influence whether their children commit acts of juvenile delinquency: "It is in control theory [as compared to other theories of juvenile delinquency], then, that attachment to parents becomes

259. *See id.* at 16.
260. *See* HIRSCHI, *supra* note 249, at 16.
261. *See id.* at 20.
262. *See id.* at 21.
263. *See id.* at 23.
264. *See id.* at 19.
265. *See id.* (footnotes omitted), referring to terms used by another control theorist, F. Ivan Nye, in his research and writings.
266. *See* HIRSCHI, *supra* note 249, at 19.
267. *See id.* at 85.
268. *See id.* at 120.
269. *See id.* at 134-61.
270. *Id.* at 20.
271. *Id.*
272. *See* HIRSCHI, *supra* note 249, at 23.

a central variable, and many of the variations in explanations of this relation may be found within the control theory tradition."[273]

Control theories have been criticized for emphasizing official definitions of delinquency and official statistics (for example, police records), for uncritically accepting a scientific model, for a traditional correctional focus that emphasizes adjusting the juvenile to the larger society, for ignoring the role of the juvenile court in defining and perpetuating delinquency, and finally for ignoring the importance of overall socio-economic factors which might affect delinquency.[274]

B. *Parenting and Juvenile Delinquency: Current Empirical Studies*

1. *Does Poor Parenting Cause Juvenile Delinquency?*

Because control theories, of all the currently popular theories regarding the causes of juvenile delinquency, focus most directly upon the role of the parents, and support a scientific model, it is not surprising that much of the empirical research on parenting and juvenile delinquency is grounded in a control theory approach. The results of current empirical research suggest that a parent's actions may affect whether a child commits juvenile delinquent acts, but such research is far from conclusive, or consistent.

For example, Harriet Wilson, in a 1980 study conducted in Great Britain, explored whether the amount of supervision of children by their parents was related to the amount of juvenile delinquent acts by the children.[275] Her study analyzed children in urban and suburban environments.[276] Concluding that juvenile delinquency was in fact related to lack of parental supervision, Wilson cautioned against a conclusion that parents therefore caused the delinquency.[277] She concluded that the lack of supervision by parents was caused by "severe social handicap:" those parents in the poorest and

273. *Id.* at 86.

274. *See* M.A. BORTNER, *supra* note 22, at 229.

275. *See* Harriet Wilson, *Parental Supervision: A Neglected Aspect of Delinquency*, 20 BRIT. J. OF CRIMINOLOGY 203 (1980).

276. *See id.* at 204.

277. *See id.* at 233-34.

most crime-infested areas, and with the most limited resources, were the ones providing the least supervision.[278]

Another study by Phyllis Gray-Ray and Melvin C. Ray in 1990 used a control theory model to test the relationship between parenting and juvenile delinquency in a sample of African American delinquent children.[279] They concluded that the traditional control theory model did not entirely apply: "direct control" of children by their parents in the form of structure and supervision did *not* correlate with lower juvenile delinquency (the theory predicted it would), although parental rejection of children did correlate with increased juvenile delinquency (as the theory had predicted).[280] The authors hypothesized that differences between the family structure in African American families and majority culture white families might cause the difference in results obtained by these authors.[281]

Ruth Seydlitz, in a 1993 article, states that a "major problem in the field of delinquency is the low explanatory power of the theories."[282] She criticizes control theories for being too simplistic, and often ignoring the affects upon delinquency of significant variables such as gender of the child, age of the child, and type of delinquency.[283] She concludes that "the social control theories . . . and power-control theory—cannot account for the complexity in the relationship between parents and delinquency."[284] She suggests that more research is needed and that current control theories and other theories may need to be revised to take into account the complexity of the relationships as reflected in her study.[285]

Thus, even among those researchers accepting a theory of delinquency which posits that parenting has a relationship to whether a child commits delinquent acts, there is not a consensus that empirical research unreservedly "proves" this

278. *See id.*

279. *See* Phyllis Gray-Ray & Melvin C. Ray, *Juvenile Delinquency in the Black Community*, 22(1) YOUTH & SOC'Y 67 (1990).

280. *See id.* at 78-81.

281. *See id.*

282. Ruth Seydlitz, *Complexity in the Relationships Among Direct and Indirect Parental Controls and Delinquency*, 24(3) YOUTH & SOC'Y 243 (1993).

283. *See id.* at 244.

284. *Id.*

285. *See id.* at 268.

key rationale for the parental liability laws in the United States. Most current researchers concede that the relationship between the family and juvenile delinquency is complex, and that a "bad" parent is not the sole cause of a "bad" child.

2. *Will Parenting Classes Decrease Juvenile Delinquency?*

Nonetheless, some empirical support for parenting classes as a solution to juvenile delinquency does exist. A 1988 article by Mark W. Fraser, J. David Hawkins and Matthew O. Howard has summarized prior research in this area and concluded that consistent child-rearing practices can be taught in parenting classes, and that such consistent child-rearing practices do in fact increase the attachment of the child to the parent, and decrease juvenile delinquent acts by the child.[286]

At present, a longitudinal study is being conducted by Jerry Patterson of the Oregon Social Learning Center, under a grant from the National Institute of Mental Health.[287] Patterson has claimed that "simple parenting skills" which can be taught, can overcome other factors which may affect delinquency, such as poverty or bad schools.[288]

VI. CONCLUSION

Parental liability laws in the United States first became popular in the 1950's and 1960's, and they continue to be enforced today against parents as a means of controlling juvenile delinquency. Under the tort parental liability statutes, parents are vicariously liable for civil damages in tort for the delinquent acts of their children. Although neither parental knowledge nor action is required for such vicarious liability based solely on the parent/child relationship, the premise behind the tort legislation seems to be that parents should know how to control their children, should have the ability to do so, and should therefore be held responsible if the child commits delinquent acts which cause injury to innocent third parties and/or damage to property.

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286. *See* Mark W. Fraser, J. David Hawkins & Matthew O. Howard, *Parent Training for Delinquency Prevention*, *in* FAMILY PERSPECTIVES IN CHILD AND YOUTH SERVICES 93 (1988).

287. *See* Vince Bielski, *Bad to the Bone?*, CALIFORNIA LAW., Oct. 1993 at 73.

288. *See id.* at 76.

Under the criminal parental liability laws, the elements of both criminal intent and criminal causation on the part of the *parent* must be proved in order to convict him or her in connection with the truancy, curfew violations, or other delinquent acts by his or her child. Thus, for criminal liability to attach, the prosecuting agency must show that the parent did indeed have actual control over the minor child, which he or she failed to adequately exercise. In many instances this may, in fact, be the case. But what if the child is in fact realistically beyond the parent's control? In that event, the Los Angeles City Attorney's Office has suggested an easy solution: train the parent to be an effective parent, and the child will then be under the parent's effective control, and the child's acts of delinquency will cease.

Some empirical research suggests that, in some cases, parents can be trained to be more effective parents, and learn to better supervise and control their children. In those cases, parent training (if adequate) may in fact result in the reduction of juvenile delinquency. However, what if the act of juvenile delinquency which is the basis of the parent's prosecution is due primarily to other factors, and not to the parent's faulty supervision and control? Then neither parent training nor parent punishment will help. Although the sweeping social reform suggested in the 1960's has been rejected as unworkable and perhaps naive, the severe social problems which the reformers sought to address: poverty, inner city slums, lack of educational, recreational, and job opportunities for many youth, and other problems of our complex urban society, have not disappeared. When children are beyond their parent's control, then parental liability legislation will not reduce juvenile delinquency. Thus, the parental liability laws in the United States provide only a limited solution to the multifaceted problem of juvenile delinquency, and that solution has not been shown to be particularly effective.