

PARENTAL ACCOUNTABILITY FOR CHILDREN IN FLORIDA:
EXAMINING THE OXYMORON OF PARENTAL LIABILITY

by

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ABSTRACT

This thesis examines the concept of parental liability and the effect it has in deterring juvenile delinquency, with an emphasis on Florida Law. It will also consider the concept's ability to properly compensate victims of juvenile offenses. The thesis focuses on the circumstances in which a parent or guardian may be liable for the actions of a child and how liability insurance law plays a key role in compensating innocent victims. It discusses Florida's public policy of seeking justice by holding parents responsible and the problems that it faces by doing so. The thesis further examines what issues arise when parents are found vicariously liable for their negligence or contribution to a child's offense, but are not covered by liability insurance coverage or the insurers deny coverage.

DEDICATION

~To~

My Mom

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There are many people that have, in one way or another, contributed to my writing of this thesis: first and foremost my mother, Giuseppina Moriconi-Ruta, who has instilled the passion of learning and higher education in to me; Walter Specoli, my father, who has been there to listen and advise me during life's difficult moments; Enrico Ruta, my stepfather, who has helped me develop the work ethic necessary to pursue and achieve my goals; Valentina Specoli-Rodriguez, my sister, growing up together has taught me many invaluable life lessons; Jonathan Rodriguez, my brother in law, who has always advocated the concept that when life knocks you down, you need get back up and try harder; and Gia Angeline Rodriguez, my niece, who has shown me that through courage and perseverance I can achieve anything.

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CHAPTER I: INTRODUCTION

Renowned American author Robert Fulghum once stated:

“Don't worry that children never listen to you; worry that they are always watching you.”¹

There are popular quotes which should echo in parents' minds; “With great power comes great responsibility” is an often overused, but essential concept that needs to be analyzed and understood by parents. Unfortunately, there are many cases where this simple concept is mistakenly overlooked. As people, who among us possesses more power over an individual than a parent over his or her child? In this thesis ‘parent’ refers to any guardian of a child, whether an aunt, uncle, sibling, grandparent or any other court appointed individual.

We all love our children. They are miniature sculptures of their parents and should represent everything good about society. Many parents work relentlessly to ensure brighter futures for their children, yet rarely do parents really ask themselves “What kind of example am I setting for my kids?”

Juvenile delinquency rates and crimes are always at the forefront of community issues that need to be addressed. Whether the juvenile crime rate rises or drops, society's focus should not be on where the rate stands, it should be on why it exists. Society may want to reconsider the mindset that juvenile crimes simply happen and analyze the common assumption that these occurrences are part of the typical ‘growing pains’ that are involved in any child's maturing process.

Criminal acts committed by children should not be considered growing pains. It seems that society may have come to accept that the simple motto ‘kids will be kids’ has evolved into more

¹ GoodReads Inc. (2011). Robert Fulghum Quotes. Retrieved April 13, 2011, from GoodReads.com: http://www.goodreads.com/author/quotes/19630.Robert_Fulghum

than just petty acts of rebellion against parents, but also for acts which clearly violate the law. Whether a child commits petty theft or murder, society should reanalyze justifying such offenses that a child “could not understand the significance of his or her actions.” It is important that parents instill values of what is, and is not, acceptable for their child. Figures one (1) and two (2) in Appendix A show relevant data collected by the Office of Juvenile Justice and Delinquency Prevention regarding the arrest and property damage rates of juvenile delinquents from 1980 to 2008.² This data demonstrates society’s juvenile delinquency problem and, as such, these delinquency rates should be taken into consideration when society decides to take action to deter delinquent actions.

Unfortunately, solving the problems of delinquency may require more than the traditional form of punishing the child as a means of deterrence. It might also be necessary to impose liability onto the parents or guardians. Far too many courts, as well as family and youth services agencies, have either undervalued or ignored the role parents play in their children’s severe misbehavior and what can and should be done about it.³ Imposing parental liability may be a useful method used to decrease juvenile delinquency, while also addressing society’s moral duty to compensate innocent victims.

Parental Liability Origin: A Dark Moment in History

“I have a goal to destroy as much as possible, and I must not be sidetracked by my feelings of sympathy, mercy or any of that,” Eric Harris wrote in one of his journal entries, six months prior

² Puzzanchera, C. (2008). Juvenile Arrests 2008. Juvenile Justice Bulletin, at 6-7.

³ Davidson, H. (Winter 1995-1996). No Consequences - Re-examining Parental Responsibility Laws. Stanford Law and Policy Review, Rev. 23., at 23.

to the incident at Columbine High School in Littleton Colorado on April 20, 1999.⁴ For those of us who remember this tragedy, those words alone send shivers down our spines. Two juvenile assailants took fifteen innocent lives. Why did it happen? Was it foreseeable? Could it have been prevented? Although Columbine was the deadliest criminal activity committed by juveniles in America, it was not the only instance of children embarking on killing sprees. In October 1997, in Pearl, Mississippi a sixteen year-old boy killed his mother through brutal stabbings and went on to shoot nine of his classmates, killing two of them.⁵ In West Paducah, Kentucky, during a morning church prayer session eight students were shot, three of them killed, by a fourteen year-old boy who was later tried and received a life sentence.⁶ On May 21, 1998, in Springfield, Oregon, a fifteen year-old shot twenty students (killing two) at his high school. That same fifteen year-old murderer had already killed both of his parents on the morning of his rampage.⁷ On March 24, 1998 in Jonesboro, Arkansas two teenage boys, age eleven and thirteen, staged a false fire alarm at their middle school and then started shooting at the exiting crowd. They killed four female students and a teacher.⁸ Events like these are the reason why society cannot overlook the tragedy that may occur when children have problems which are ignored. These situations occur when parents are not involved in the lives of their children and fail to supervise them. Following the Columbine tragedy, President Clinton addressed the public:

⁴ Johnson, K. (2006, July 7). Journals Reveal Ruminations of Teenage Columbine Killers. *The New York Times*, at 14.

⁵ Belkin, L. (1999). Parents Blaming Parents. *The New York Times*, at 61.

⁶ *Id.* at 61.

⁷ Barron, J., & Sink, M. (1999). Chronology: Other Shootings Involving Students. *The New York Times*, at A17.

⁸ *Id.* at A17.

I want to begin by saying that Hillary and I are profoundly shocked and saddened by the tragedy today in Littleton, where two students opened fire on their classmates before apparently turning their guns on themselves...

I think that Patricia Holloway would not mind if I said that amidst all of the turmoil and grief that she and others are experiencing, she said to me just a moment ago that perhaps now America would wake up to the dimensions of this challenge if it could happen in a place like Littleton and we could prevent anything like this from happening again. We pray that she is right.

We don't know yet all the hows or whys of this tragedy. Perhaps we may never fully understand it. St. Paul reminds us that we all see things in this life through a glass darkly, that we only partly understand what is happening.

We do know that we must do more to reach out to our children and teach them to express their anger and to resolve their conflicts with words, not weapons. And we do know we have to do more to recognize the early warning signs that are sent before children act violently.⁹

Several parents of the fifteen victims who died took legal action against the parents of the two assailants, Eric Harris and Dylan Klebold. They sought damages of \$250 million based on claims of failure of supervision and lack of preventive measures taken by the parents.¹⁰

Colorado statutes limit monetary damages against parents who are found civilly liable for the acts of their children to \$5,000.¹¹ The plaintiffs planned to sue under a related statute that extended the limit on monetary relief for negligence and wrongful death to \$250,000 unless the court finds justification by clear and convincing evidence to extend the limit to \$500,000.¹² The

⁹ Colorado School Shooting: All Four Students at Swedish Medical Center Awake, Coherent. (1999, April 21). CNN Live Event/Special . United States: CNN television broadcast.

¹⁰ Belkin, *supra* note 5, at 61. After the initial filing of the lawsuit Geoffrey Fieger was alerted to the fact that Colorado prohibits plaintiffs from putting an expected dollar figure on their recovery amount, and the lawsuit had to be re-filed. Fieger claimed that the error was a mistake although some suggest that it was done as gamesmanship and that Fieger was attempting to influence prospective jurors.

¹¹ Colo. Rev. Stat. Ann. 13-21-107 (Lexis 2010).

¹² Colo. Rev. Stat. Ann. 13-21-102.5 (Lexis 2010). The statute reads, in relevant part:

(1) The general assembly finds, determines, and declares that awards in civil actions for noneconomic losses or injuries often unduly burden the economic, commercial, and personal welfare of persons in this state; therefore, for the protection of the public peace, health, and welfare, the general assembly enacts this section placing monetary limitations on such damages for noneconomic losses or injuries.

(2) As used in this section:

plaintiffs argued that the damage limits of the aforementioned statutes were unconstitutional.¹³

In their answer, both defendants claimed to have been unaware of their children's activities. In support of defendant parent's denial during trial, there was a videotape submitted into evidence of Dylan Klebold staring into the camera and stating, "[L]et me tell you this much, [the defendants] have no clue... [D]on't blame them and arrest them for what we did."¹⁴ The plaintiffs argued that it would have been nearly impossible for the defendants not to have known of their sons' year-long building and exploding of bombs.

The case was settled out of court. Although the aforementioned Colorado Statutes are still valid today, as of 2009 the plaintiffs have successfully recovered over \$2 million of insurance money from the Klebold and Harris families.¹⁵ In total, the parents of the killers, the sheriff's office, and the gun supplier have paid out over \$4 million in settlement money. This settlement was divided among dozens of individual litigants.¹⁶ This seems to be a reasonable settlement, since

(a) "Derivative noneconomic losses or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury.

(b) "Noneconomic loss or injury" means nonpecuniary harm for which damages are recoverable by the person suffering the direct or primary loss or injury, including pain and suffering, inconvenience, emotional stress, and impairment of the quality of life. "Noneconomic loss or injury" includes a damage recovery for nonpecuniary harm for actions brought under section 13-21-201 or 13-21-202.

(3) (a) In any civil actions in which damages for noneconomic loss or injury may be awarded, the total of such damages shall not exceed the sum of two hundred fifty thousand dollars, unless the court finds justification by clear and convincing evidence therefore. In no case shall the amount of such damages exceed five hundred thousand dollars.

(b) In any civil action, no damages for derivative noneconomic loss or injury may be awarded unless the court finds justification by clear and convincing evidence therefore. In no case shall the amount of such damages exceed two hundred fifty thousand dollars.

¹³ Ebenstein, E. P. (2000). Criminal and Civil Parental Liability Statutes: Would they have saved the 15 who died at Columbine, at 24-25. *Cardozo Women's Law Journal*.

¹⁴ Janofsky, M. (1999). Columbine Killers, on Tape, Thanked 2 for Gun. *The New York Times*, at A1.

¹⁵ Edwards, L. L., Edwards, J. S., & Wells, P. K. (2009). *Tort Law for Legal Assistants*, 4th ed., at 443. Clifton Park: Delmar.

¹⁶ What happened after Columbine. (2005, March 3). Retrieved May 30, 2011, from usnews.com: <http://www.usnews.com/usnews/news/articles/050404/4redlake.b.htm>.

neither the Klebold nor the Harris families had assets of \$250 million.¹⁷ Both families are middle-class working families with ‘shallow pockets’ (few monetary assets).

Although not precedent in the United States, an incident which occurred on October of 1997 in Japan involved a fourteen year old boy and had a similar fact pattern as the tragedy at Columbine. In Japan, the juvenile murderer beheaded Jun Hase, eleven (leaving his head impaled on the school gate with a sinister note in his mouth), killed a ten year old girl through bludgeoning, and severely injured a nine year old girl by multiple stabbings. The parents of the murderer were ordered to pay nearly \$2 million to the families of the victims; \$952,000 to the family of the beheaded boy, \$761,000 to the family of the bludgeoned girl, and \$190,000 to the family of the stabbed girl. The juvenile murderer’s name was withheld under Japanese law due to his minor status. While not binding in any matter to the Columbine case, it is interesting to analyze how a country with a much lower crime rate has handled a similar case.¹⁸

In cases like Columbine, in other jurisdictions, courts have generally held that mere parenthood does not make an individual liable for the acts of a child.¹⁹ Courts look for the existence of a master and servant relationship or at least actions that were done within the scope of the parent’s business.²⁰ Parental liability may exist if a court finds that a juvenile committed a tort under the parent’s direction, with the consent of the parent, or if there is a subsequent ratification of the

¹⁷ Ebenstein, E. P., *supra* note 13, at 25.

¹⁸ Killer's Parent Agree to Pay Kobe Families. (January 21, 2000). The New York Times, at A12.

¹⁹ Parents' liability for injury or damage intentionally inflicted by minor children. (2011). In American Law Reports 3d. (pp. 974-1030, Vol.54). Rochester, New York: The Lawyers Co-Operative Publishing Co.; Supporting case law in Florida includes *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955).

²⁰ *Id.* at 977. Supporting case law in Florida includes *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955).

juveniles' action by the parent.²¹ Parents may also be liable in cases where their negligence made it possible for the child to cause the injury of another.²² Many courts have developed a concept that there is a certain 'power of control' that a parent has over a child, and a failure to exercise that power could lead to parental liability.²³ Furthermore, if it is determined by a court that a parent had knowledge of the child's vicious or destructive tendencies and he or she failed to exercise some reasonable measures to control the child, the parent may also be liable. To protect parents from excessive liability, exceptions have been made in cases where the parent did have knowledge of the vicious tendencies of their child but made an attempt to exercise some form of control and discipline over the child through reasonable measures.²⁴ There seems to be no clear cut answer to what constitutes 'reasonable measures' of control and discipline. This requirement has been broadly defined throughout case law and is subject to different analysis based on a case by case scenario.

Applicable Legal Doctrine and Terms

To develop a deeper and more thorough understanding of parental liability, the important legal doctrine and relevant terminology includes the doctrine of respondeat superior, direct/legal liability, and vicarious liability.

To hold parents liable, courts may refer to the doctrine of respondeat superior (in Latin "let the superior make answer") which holds "an employer or principal liable for the employee's or

²¹ *Id.* at 977. Supporting case law in Florida includes *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955).

²² *Id.* at 990. Supporting case law in Florida includes *Seabrook v. Taylor*, 199 So. 2d 315 (Fla. 4th DCA 1967).

²³ *Id.* at 978; Supporting case law in Florida includes *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955) and *Spector v. Neer*, 262 So.2d 689 (Fla. 3d DCA 1972).

²⁴ *Id.* at 978; Supporting case law in Florida includes *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955) and *Spector v. Neer*, 262 So.2d 689 (Fla. 3d DCA 1972).

agent's wrongful acts committed within the scope of the employment or agency."²⁵ This doctrine is often applied to other special relationships such as parent-child, if the child is acting through the parent's instruction or the parent ratifies the actions of the child. Also applicable to this subject matter is direct/legal liability, which is defined as "the quality of state of being legally obligated or accountable; legal responsibility to another or to society, enforceable by civil remedy or criminal punishment."²⁶ To give an example, one may be directly/legally liable for an action or tort if he takes an active part in, contributed to, or authorized the commission of a crime.²⁷ Lastly, vicarious liability is defined as "liability that a supervisory party (such as an employer) bears for the actionable conduct of a subordinate or associate (such as an employee) based on the relationship between the two parties."²⁸ A party may be 'vicariously liable' for an action if there is a delegation of authority to another and the person, who the party delegate's his authority to, commits a tort.²⁹ Vicarious liability is often found when the defendant holds a special relationship with the tortfeasor. Such a 'special relationship' may include, but is not limited to, a parent-child and employer-employee relationship.³⁰

It is important to carefully analyze the difference between direct/legal liability and vicarious liability since they may seem to overlap in certain situations. For example, if a trucking company hires an employee with a record of drunk driving and who one day is detected by management as having the distinct odor of alcohol. The employer(s) may be held

²⁵ Garner, B. A. (2009). Black's Law Dictionary 9th Edition. West.

²⁶ *Id.*

²⁷ Barron's Educational Series, Inc. (2011). Business Definition of Direct Liability. Retrieved April 17, 2011, from AllBusiness.com: <http://www.allbusiness.com/glossaries/direct-liability/4960088-1.html>.

²⁸ Garner, B. A., *supra* note 25.

²⁹ Edwards, L. L., Edwards, J. S., & Wells, P. K., *supra* note 15, at 430-31.

³⁰ *Id.* at 431.

directly/legally liable for negligence if the employee's driving causes injury; this is not vicarious liability on the employer(s) behalf because he is liable for his own negligence in hiring that employee or allowing the employee to drive after becoming aware that he had been drinking.³¹

The Parental Conundrum

A 'reasonable measure of discipline' is a difficult standard to define and presents a conundrum. The problem parents face while raising children is how much parental discipline is required. The key questions that should be asked immediately after a child misbehaves are "why has the child acted in this fashion? [Followed by] do issues exist within the home that might have driven the child to act the way he did?" Some parents discipline their children by implementing non-violent punishments, which at times may be argued as ineffective. Others rely on more direct and forceful methods of physical discipline.

Respected family expert and author of *The Nurturing Program*, Dr. Stephen Bavolek stated:

[C]ontemporary social scientists agree that the continued maltreatment of children today is primarily the result of poorly trained adults who, in their roles as parents and caretakers, attempt to instill discipline and educate children within the context of the violence they themselves experienced as children.³²

Many have come to understand this as a 'cycle of violence' that continues from generation to generation when there is abuse and neglect within a family unit.³³ Many children who have been exposed to these abusive lifestyles are likely to continue implementing such methods into adulthood.

³¹ Garner, B. A., *supra* note 25.

³² Bavolek, S. J. (2000). *The Nurturing Parenting Programs*, at 1. *Juvenile Justice Bulletin*.

³³ *Id.* at 1.

Analyzing the Problem

This leads us to the question... Will there ever be a solution as to how we should handle juvenile delinquency and who, if anyone, should be held accountable? In asking these questions we may find a possible answer to the first question by focusing on the second question addressing accountability. The focus of juvenile courts is to ‘rehabilitate’ the delinquents, but what does this mean? There are different definitions for exactly what rehabilitation means. First, there is the general layperson understanding of the term: “to restore to a former state (as of good repair or solvency); to restore (as a convicted criminal defendant) to a useful and constructive place in society through therapy, job training, and other counseling.”³⁴ Then there is the legal definition: “the process of seeking to improve a criminal’s character and outlook so that he or she can function in society without committing other crimes. It is a traditional theory of criminal punishment, along with deterrence and retribution.”³⁵

What can be inferred from these interpretations? As we break down the different definitions of rehabilitation we notice that the layperson’s definition includes the keyword ‘restore’. A layperson may come to the conclusion, using the common definition, that juvenile courts treat delinquents as ‘broken’ children. If so, they may question, who is responsible for these ‘broken’ children? In examining the legal definition the context is slightly different, in that it mentions a ‘process of improving a criminal’s behavior’ instead of ‘restoring to a former state.’

³⁴ Rehabilitate. (2011). Retrieved February 21, 2011, from Dictionary.com: <http://dictionary.reference.com/browse/rehabilitate>.

³⁵ Garner, B. A., *supra* note 25.

This problem has no clear cut answer to the question of cause and effect. Therefore, the only way that an answer may be found is to find some common elements in juvenile cases. One can soon realize that one common element in every case, which interacts between the child and society, is the parent. This is a reasonable inference because, in many cases, parents tend to convey their own understanding and beliefs about society to their children.

If parents are to be held responsible for the actions of their children, another problem often arises. Under the Eleventh Amendment of the United States Constitution, “[No State shall]... deprive any person of life, liberty, or property, without due process of law.”³⁶ It is important to understand that the Juvenile Courts are focused on the child, not the parent. In cases where juvenile courts order restitution against the parents, there is often a failure to notify them of the pending charges and provide them with an opportunity to defend themselves against the allegations. A due process issue exists because, in a juvenile court proceeding there is no separate case implemented against the parent. The decision to hold the parents liable is part of an order for joint restitution or community service obligation in the child’s case, not the parents. In Florida there are rules that govern the rights of parents facing restitution or community service orders in their child’s court case. Section 8.030 (b) of the Florida Rules of Juvenile Procedure states that “In any delinquency proceeding in which the state is seeking payment of restitution or the performance of community service work by the child’s parents or legal guardians, a separate petition alleging the parents’... responsibility shall be filed and served on the parent or legal guardians of the child.”³⁷ This petition does not create a new case in itself, but includes the

³⁶ U.S. Const. Amend. XIV, §1.

³⁷ Fla. R. Juv. P. 8.030 (b).

parents in the child's proceeding. The petition is entitled "Petition for Parental Sanctions" and it shall alleged all relevant facts and show "...the appropriateness of the requested sanction against the child's parents or legal guardians."³⁸ It also has to be signed by the state attorney or assistant state attorney under oath.³⁹ This rule was established to insure due process when parents are ordered to pay restitution and/or perform community service in their child's case.

By definition, the most basic rights of due process require that all parties involved in a court proceeding be given notice and an opportunity to be heard.⁴⁰ When parents face liability lawsuits in a civil courts (typically in a county or circuit court depending on the amount of damages) due process issues are not as prevalent if the parents are named as parties to the suit and served notice of the proceedings against them.

³⁸ Fla. R. Juv. P. 8.031 (a).

³⁹ Fla. R. Juv. P. 8.031 (b).

⁴⁰ Garner, B. A., *supra* note 25.

CHAPTER II: HISTORY OF JUVENILE COURTS

It may be inferred that parents, as imperfect beings, have made mistakes in properly instilling values and ethics into their children. Just as parents experience difficulty with children, juvenile courts have struggled with how to deal with these young offenders. Beginning in the 18th century, juveniles as young as seven could stand trial in criminal court, and if found guilty, could be sentenced to prison or even death.⁴¹ As such, a 14 year old stealing a valuable was as unacceptable, in the eyes of society, as a 40 year old man doing the same thing. During colonial times in the United States, courts treated children in a very basic fashion. Under common law principles, state legislatures supplanted the common-law defense of “infancy” with a statutory scheme specifying exactly when a juvenile was capable of committing a crime under which he or she should have been treated as an adult. Traditionally any child under the age of seven was presumed to be incapable of forming ‘criminal intent’, which meant that any child younger than seven who violated the law was exempt from prosecution and punishment.⁴² In Florida, children between the ages of seven and fourteen were treated under a “progressively decreasing rebuttable presumption of incapacity to commit a crime,” *see Morris v. State*,⁴³ until approximately the late 1970s and early 1980s. *Morris* decided that the legislature supplanted the aforementioned presumption “by enacting Chapter 39, Florida Statutes (1979)... with a comprehensive statutory

⁴¹ Snyder, H. N., & Sickmund, M. (2006). *Juvenile Offenders and Victims: 2006 National Report*, at 94. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

⁴² *Id.* at 94.

⁴³ *Morris v. State*, 456 So.2d 925, 926 (Fla. 4th DCA 1984).

scheme for determining when a juvenile may be deemed capable of committing an offense for purposes of being treated as an adult.”⁴⁴

As the United States progressed into the 19th century it established separate juvenile courts. This movement changed the perception of children from one of miniature adults to one of persons with less than fully developed moral and cognitive capacities.⁴⁵ Illinois passed the Juvenile Court Act of 1899, which established the first U.S. juvenile court in Cook County, Illinois.⁴⁶

The primary rationale behind the juvenile court at the time of its creation was the British doctrine of *parens patriae* (the state as parent) establishing the right of the state to intervene in the lives of children in a manner different from the way it intervenes in the lives of adults.⁴⁷ This doctrine stated that, because children did not have full legal capacity, the state had the inherent power and responsibility to provide protection for the children whose parents were not providing appropriate care or supervision.⁴⁸ The key element was the focus on the welfare of the child.

This reach into the lives of children by the state was seen as a court’s benevolent intervention.⁴⁹

It took the courts in the United States nearly two centuries to realize that under common law there was a problem in how they treated juvenile offenders and, by 1945, juvenile court legislation was enacted in all fifty states.⁵⁰ Since then, Juvenile Courts have attempted to become more focused on ‘rehabilitating’ juvenile offenders, rather than punishing them. It is also important to note that the standard of evidence to find a juvenile guilty of an offense is

⁴⁴ *Id.* at 926.

⁴⁵ Snyder, H. N., & Sickmund, M., *supra* note 39, at 94.

⁴⁶ *Id.* at 94.

⁴⁷ *Id.* at 94.

⁴⁸ *Id.* at 94.

⁴⁹ *Id.* at 94.

⁵⁰ Rose, G. B. (1997). *Florida Juvenile Law and Practice*. 5th ed., at 17. Tallahassee: The Florida Bar.

beyond a reasonable doubt.⁵¹ Although U.S. courts have attempted to make the transition to rehabilitative methods of discipline, the past three decades have shown a growing regression toward punitive methods. Juvenile courts seem to have become more willing to transfer jurisdiction of juveniles who commit serious crimes to the adult courts. This regression is partly demonstrated by the increasing number of juveniles tried as adults. In recent years many states have modified statutes in order to expand the options available to try juveniles as adults, which have resulted in a nationwide increase in the number of juveniles transferred to adult courts.⁵² Florida expanded its ability to try juveniles as adults through the following four mechanisms: (1) voluntary waiver; (2) involuntary waiver; (3) grand jury indictment; and (4) direct file.⁵³ In 2003 the State Attorney published the following statement when addressing this growing trend:

“It should be done more often and earlier.”⁵⁴

When addressing the same issue, the Office of the Public Defender’s state the following:

“It is throwing them away. It is the state, through the court, disavowing any intent, or desire, to rehabilitate a child, or young person.”⁵⁵

In Florida, a possible explanation for the increase in the juvenile transfer rate during the 1980s may have been caused by the change of administration in the department of Health and Rehabilitative Services (HRS). HRS later split into the Department of Children and Families and the Department of Juvenile Justice in the 1990s. Following this change in administration many

⁵¹ *In re Winship*, 397 U.S. 358, 90 S.Ct. 1068 (1970).

⁵² Office of the State Courts Administrator. (2003). Florida's Juvenile Delinquency Court Assessment, at 39-40. Tallahassee.

⁵³ *Id.* at 40.

⁵⁴ *Id.* at 39.

⁵⁵ *Id.* at 39.

state schools, which housed hundreds of juveniles that were part of commitment programs, were closed. This allowed many violent juveniles to be released back into the community. Once these misbehaving juveniles were reintroduced into the court system for their continuing misbehavior the courts were left with few options outside of adult system transfers. The state simply did not have enough housing available for all the delinquents. A reason for shutting down some of Florida's state schools during the 1980s was the overcrowding and poor living conditions which juveniles were allegedly exposed to. There were multiple lawsuits filed by various children's rights groups, one of which was *Bobby v Chiles, et al.*⁵⁶ While some state schools were subject to consent decrees that required them to improve their living conditions, as was the case in *Bobby*, others were simply shut down.

Once a juvenile is transferred and sentenced in adult court, regardless of what type of transfer occurs, they will be prosecuted in adult court for all subsequent offenses. This concept is known as "Once an Adult/Always an Adult," which, as of 2003, thirty other states also exercised.⁵⁷ If a juvenile is found guilty in adult court, depending on the offense(s) and the particular method of transfer, the court may either sentence the juvenile as an adult or may impose juvenile sanctions, but not both in Florida.⁵⁸

The theoretical focus of juvenile court has always been on the actual offenders themselves and not the offense(s), and on rehabilitation and not punishment.⁵⁹ One part of the concept of how the juvenile system differs from the adult system has been to change, among other things, the

⁵⁶ *Bobby v Chiles, et al.*, 907 F.Supp. 368 (N.D. Fla. 1995).

⁵⁷ Office of the State Courts Administrator. (2003). Florida's Juvenile Delinquency Court Assessment, at 40. Tallahassee.

⁵⁸ Fla. Stat. §985.19.; Amended in 2007, was formally numbered Fla. Stat. §985.223.

⁵⁹ Snyder, H. N., & Sickmund, M., *supra* note 39, at 94.

word ‘sentencing’ to ‘disposition.’ Florida’s juvenile court dispositions were created to be more remedial in contrast to adult sentencing, which focuses on punishment.⁶⁰ Although during the last three decades there is evidence of a regressive movement away from the theoretical rehabilitative procedures of the juvenile justice system to more punitive measures, the number of juveniles transferred to adult courts in Florida has been steadily declining since 1995.⁶¹ Figure three (3) in Appendix B reflects data collected by the U.S. Department of Justice regarding delinquency case transfer rates to adult jurisdictions from 1985-2002. Notice the steady increase from 1985-1995, followed by a decline which occurred after the peak year (1995-2002):⁶²

The Department of Juvenile Justice suggests that a possible reason for the decline in the transfer rate after 1995 is that the “enhancements in deep-end capacity and treatment effectiveness have not escaped the attention of prosecutors responsible for direct filings. High-risk and maximum-risk juvenile correctional facilities have become a viable alternative to adult criminal sanctions.”⁶³ The movement toward rehabilitative measures is the reflection of a ‘progressive evolution’ from the common law, although juveniles were able to assert the defense of incapacity by reason of infancy.⁶⁴ Even though this new form of ‘juvenile justice’ is a better fit for our ever-changing society than its predecessor under common law, it is still far from perfect. In a 2011 interview with Judge Daniel P. Dawson, an Osceola County Unified Family Court Judge for the Ninth Judicial Circuit Court who has twenty years of judicial experience and a prior

⁶⁰ Criminal Proceedings Against Minors. (2010) In Florida Jurisprudence Second Edition (pp688-89. , Vol. 25, §448). Danvers, MA: Thomson Reuters/West; Also see Burgess, 16 Florida Practice: Sentencing §9:1 (2009-2010 ed.).

⁶¹ Office of the State Courts Administrator, *supra* note 48, at 41.

⁶² Snyder, H. N., & Sickmund, M., *supra* note 39, at 186.

⁶³ Office of the State Courts Administrator, *supra* note 48, at 41.

⁶⁴ Criminal Proceedings Against Minors, *supra* note 41 at 688-89, Vol. 25, §448.; Also see Burgess, 16 Florida Practice: Sentencing §9:1 (2009-2010 ed.).

eleven years of experience with the assistant state attorney office specializing in juvenile justice, there was discussion as to the effectiveness of the juvenile court system. Commitment programs that are implemented through the juvenile court system are somewhat effective in rehabilitating first time offenders, but do not appear to be as effective in addressing the needs of repeat offenders or career criminals. Judge Dawson expressed that schools, family, and other environmental factors may contribute more to the rehabilitation of juveniles than six or twelve month programs that control or detain the children for only those short periods of time. Thus, there are theories which suggest that, for juveniles who show progress in their rehabilitation, more of the court's focus should be on involving children in community service/commitment programs and less on placing them in state schools.

Parental Accountability

Louisiana was one of the first states to enact a statute that made parents answerable to damages for the acts of their minor and un-emancipated children.⁶⁵ During the developmental years of parental liability, many jurisdictions held parents liable for only a limited (and typically nominal) monetary amount. These caps on recovery were irrespective to the extent of actual damages incurred by the victim. These amounts usually ranged between \$250 and \$500. It is reasonable to infer from these small penalties that their existence served to punish parents for the misbehavior of their children, rather than to compensate the victims.⁶⁶ Over time these limits have increased in an attempt to adequately compensate victims. Unfortunately, even though the

⁶⁵ Validity and construction of statutes making parents liable for tort committed by their minor children. (2011). In American Law Report 3d (pp. 615, Vol. 8). Rochester, New York: The Lawyers Co-operative Publishing Company; Supporting case law includes *Marionneaux v. Brugier*, 35 La. Ann. 13 (1883).

⁶⁶ Validity and construction of statutes making parents liable for tort committed by their minor children, *Id.* at 615.

system has been tweaked by legislatures, there are cases where severely injured individuals cannot recover adequate damages.

Some states have codified parental liability. Since statutes imposing strict liability on parents for the acts of their children is in derogation of common law, these statutes must be strictly construed. There is authority outside of Florida which supports the concept that public policy throughout the United States may reinforce the understanding that parents are not liable unless a child acted willfully, wantonly, or through some sort of gross negligence.⁶⁷ Some states limit recovery further by focusing only on situations where the child acted with malicious intent.⁶⁸ Malice can be defined as “[I]ntent, without justification or excuse, to commit a wrongful act... [Or acting with a] reckless disregard of the law or of a person's legal rights.”⁶⁹ Where liability statutes exist and recovery is available, there exists case law outside of Florida that has determined that liability may be imposed against the parents regardless of their knowledge of the child’s action(s) or of any neglect of the parental authority.⁷⁰ At the same time, some courts have denied recovery against the parents where a minor is deemed of such “tender years” that the concept of negligence would seem unfit.⁷¹ The “tender years” concept has been subject to criticism, as some courts have decided that parents of even a very young child may be vicariously liable for the damages suffered by a victim(s) due to the child’s actions.⁷²

⁶⁷ *Crum v. Groce*, 192 Colo. 185, 556 P.2d 1223 (1976); *Lutteman v. Martin*, 20 Conn. Supp. 371, 135 A.2d 600 (C.P. 1957); *Travelers Indem. Co. v. Brooks*, 60 Ohio App. 2d 37, 14 Ohio Op. 3d 19, 395 N.E.2d 494 (6th Dist. Lucas County 1977).

⁶⁸ *Id.*

⁶⁹ Garner, B. A., *supra* note 25.

⁷⁰ *Kelly v. Williams*, 346 S.W.2d 434 (Tex. Civ. App. Dallas 1961).

⁷¹ *Connors v. Pantano*, 165 Neb. 515, 86 N.W.2d 367 (1957).

⁷² *Turner v. Bucher*, 308 So.2d 270 (La. 1975).

Status Offenders

Children who start out as status offenders may become delinquents in the future. Actions taken early by the parents working with these children may affect future liability. Not all wrongful actions constitute the label 'Juvenile Delinquent'. The status offender title is for children that are considered out of their parent's control.⁷³ A status offense is a term that comes from the concept that if not for the status of the individual, the commission of the act would not constitute an unlawful violation of any state ordinance or statute.⁷⁴ Smoking, alcohol possession, curfew, and gun possession are some of the violations that can label a child as a status offender.⁷⁵ These status violations do not apply to adults since adults may smoke, consume alcohol, are not subject to curfews, and may possess a gun under certain conditions that vary from state to state. The distinguishing factor between a status offender and a delinquent is that the status offender has not committed an act that would be a crime if committed by an adult; a delinquent youth has committed such an act or violation of the law.⁷⁶ Many states do not consider 'status' misbehavior to be violations against the law, instead they view these behaviors as indicators that the child is in need of supervision. Therefore, they handle status offense matters more like dependency cases than delinquency cases, responding to behaviors by providing social services.⁷⁷ Florida law for status offenders is located under Chapter 984 of the Florida Statutes and, more specifically, under section 984.11 there are services available for families that are in

⁷³ Merriam-Webster Inc. (2011). Status Offender. Retrieved March 7, 2011, from Dictionary.com: <http://dictionary.reference.com/browse/status+offender>.

⁷⁴ Snyder, H. N., & Sickmund, M., *supra* note 39, at 106.

⁷⁵ Rubin, H. T. (2011). Juvenile Status Offenders - Historical Antecedents, The Breadth Of Proscribed Behaviors, Separation of Noncriminal Conduct From Delinquent Conduct, Constraints On Judicial Powers. Retrieved March 9, 2011, from <http://law.jrank.org/pages/1543/Juvenile-Status-Offenders.html>.

⁷⁶ *Id.*

⁷⁷ Snyder, H. N., & Sickmund, M., *supra* note 39, at 106.

need of such assistance. These services include, but are not limited to: homemaker or parent aide services; intensive crisis counseling; parent training; individual, group or family counseling; community mental health services; prevention and diversion services; services provided by voluntary or community agencies; runaway center services; housekeeper services; special educational, tutorial or remedial services; vocational, job training or employment services; recreational services; and assessments.⁷⁸ Under section 981.11 (3), Florida Statutes (2011), parents are responsible for contributing to the costs of the child or family services and treatment to the extent of their ability to pay.⁷⁹

In recent years status offenders have received more public attention as society attempts to rehabilitate children at a younger age to avoid a progression towards delinquency status. Unfortunately, these statutes are not always enforced by the courts due to the large volume of “[S]erious and violent juvenile crimes, coupled with the huge volume of child abuse cases coming before the courts... [resulting in a] declining interest within the juvenile justice system of pursuing status offender proceedings.”⁸⁰ A reason for this declining interest is the frustration felt by many judges and police enforcement officials by reform measures that have made it more difficult for courts to send status offenders, particularly runaways, to secure placement settings. This has resulted in many courts shunning the exercise of status offender jurisdiction altogether.⁸¹

⁷⁸ Fla. Stat. §984.11 (2) (2011).

⁷⁹ Fla. Stat. §984.11 (3) (2011).

⁸⁰ Davidson, H., *supra* note 3, at 25.

⁸¹ *Id.* at 26.

Status offense statutes have generally given courts authoritative jurisdiction over young individuals. Some jurisdictions label these young offenders as “children in need of services” (CHINS) or “persons in need of supervision” (PINS). Historically courts have viewed these assignments in a delinquency prevention approach, since early misbehavior usually predicts future involvement in delinquent activity.⁸² This prevention strategy is generally unsuccessful since it fails to provide courts with explicit legal authority to order parents to comply with court orders involving the parents’ behavior that may affect their children. Thus, many state legislatures have turned these traditional ‘child-as-wrongdoer’ concepts into a “Families in Need of Services” (FINS) or similar type of family unit related judicial action. In Florida the FINS statute is designed to emphasize parental responsibility, with the court advising parents that they are responsible for contributing to the costs of services provided by the government, such as family mediation, and the court may require the families to pay certain fines and fees related to the services.⁸³

⁸² *Id.* at 25, 26.

⁸³ *Id.* at 26.

CHAPTER III: FLORIDA STATUTES

Since delinquency cases alone have often failed in the rehabilitation of children, several states have implemented “Parental Civil Liability” (PCL) statutes to rehabilitate, deter and punish juveniles. These statutes also exist to compensate victims. Many PCL laws date back to the 1950’s or 1960’s but the first was enacted in 1846 by the Hawaii Legislature and is one of the broadest since as it has no limits on financial recovery, stipulates parental liability for both negligent and intentional damages caused by minor children, and covers personal injuries as well as property loss related expenses.⁸⁴ These types of statutes are necessary because young children cannot be sued in their individual capacities because of their inability to form intent, lack of competency to stand trial and lack of personal assets. Also as mentioned earlier, under common law a victim’s recovery against the parents of a delinquent was barred, unless parental action or inaction could be directly tied to the child’s act (establishing direct/vicarious liability).⁸⁵

In Florida the legislative intent for Chapter 985 of the Florida Statutes which deals with juvenile justice includes “[The] protection of society, by providing for a comprehensive standardized assessment of the child’s needs so that the most appropriate control, discipline, punishment, and treatment can be administered consistent with the seriousness of the act committed, the community’s long-term need for public safety, [etc.]... while also providing [whenever possible] restitution to the victim of the offense.”⁸⁶ In line with this last objective, legislatures have established that parents may be vicariously liable for the torts of their children. A court that has jurisdiction over an adjudicated delinquent may “Order the child’s parent or guardian, together

⁸⁴ *Id.* at 26.

⁸⁵ *Id.* at 26.

⁸⁶ Fla. Stat. Ann. §985.01 (1)(c), 577 (2011).

with the child, to render community service...” if the court finds that “[T]he parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.”⁸⁷ This rationale follows the current public policy that parents have a responsibility to convey accepted values and morals to their children, along with the interests of the community. Section 985.513, Florida Statutes (2011) establishes that the court may “Order the parent or guardian to make restitution... for any damage or loss caused by the child’s offense... [and may] require the child’s parent or legal guardian to be responsible for any restitution ordered against the child.”⁸⁸ The court also has the ability to “[R]etain jurisdiction over the child and the child’s parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.”⁸⁹ An earlier version of this statute, under section 39.11 of the Florida Statutes (1987), limited restitution orders against parents to \$2,500. This limit on restitution was removed in 1987 and the section was repealed in 1990. Currently, the amount of restitution that can be ordered against a parent must be of “[A] reasonable amount... to be determined by the court. When restitution is ordered... the amount of restitution may not exceed an amount the child and parent or guardian could reasonably be expected to pay or make.”⁹⁰

Following current public policy which advocates parental accountability, civil courts may also hold parents liable for the “[W]illful destruction or theft of property by [their] minor [child].”⁹¹

Under section 741.24 (1), Florida Statutes (2011) “Any municipal corporation, county, school

⁸⁷ Fla. Stat. §985.513 (1)(a) (2011).

⁸⁸ Fla. Stat. §985.513 (1)(b) (2011).

⁸⁹ Fla. Stat. §985.437 (5) (2011).

⁹⁰ Fla. Stat. §985.437 (2) (2011).

⁹¹ Fla. Stat. §741.24 (2011).

district or department of Florida; any person, partnership, corporation, or association; or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages... from the parents of any minor... living with the parents, who maliciously or willfully destroys or steals property... belonging to such [person or entity].”⁹² Recovery under this section is “[L]imited to the actual damages in addition to taxable court costs.”⁹³

Lastly, section 768.81, Florida Statutes (2011) permits recovery for torts as a result of negligence under the comparative fault doctrine. It defines a negligence lawsuit as “[A] civil action for damages based upon a theory of negligence, strict liability, [etc.]... The substance of an action, not conclusory terms used by a party, determines whether an action is a negligence action.”⁹⁴

Lawsuits based on this statute can be used as a method of recovery against parents, by victims of delinquency, for their vicarious liability.

Florida statutes help clarify how far parental liability may extend in regard to the public policy which western society has developed over the past century. Parent(s) may be held strictly liable for the actions of their children if, among other exceptions, they encourage the commission of tortious conduct or accept benefits from such acts. To explain further, the encouragement of a tortious acts does not have to be based on actual instructions given to a child to commit an act, but may be caused by the parent’s lack of response to the known continual harmful habits of the child. Similarly, a parent who negligently entrusts a dangerous object to a child or who fails to protect others from the dangerous tendencies of the child will also be held vicariously liable.⁹⁵

⁹² Fla. Stat. §741.24 (1) (2011).

⁹³ Fla. Stat. §741.24 (2) (2011).

⁹⁴ Fla. Stat. §768.81 (1)(c) (2011).

⁹⁵ Edwards, L. L., Edwards, J. S., & Wells, P. K., *supra* note 15, at 430-31.

Clearly, it would be improper to find that parents are always at fault, but current public policy is in the opinion that parents have a responsibility to their community to monitor and control their children. If a child is clearly defiant and consistently demonstrates that they will not behave in a certain civilized and law abiding fashion, it is left to the parent to take the necessary action(s) in an effort to control and change the child's misbehavior. Public policy seems to be in the opinion, whether through court intervention or private counseling, parents must do everything reasonable and within their power to rehabilitate their children.

CHAPTER IV: FLORIDA CASE LAW

Landmark Case Advocating Civil Liability

Under common law parents could not be held accountable for the actions of their children, but in 1955 the Supreme Court of Florida created some exceptions to the common law concept of non-accountability when it decided *Gissen v. Goodwill*.⁹⁶

As stated above, for nearly two centuries parents in Florida enjoyed the safe haven of non-accountability for the actions of children. *Gissen* involved Geraldine Goodwill, the minor child of Albert and Mrs. Albert Goodwill, and Julius Gissen, appellant. Mr. Gissen was employed as a clerk at the Gaylord Hotel in the City of Miami Beach, Florida. Appellees were residing as business invitees at the Gaylord Hotel. The complaint filed in this case alleged that during the Goodwill's stay at the Gaylord Hotel, Geraldine, 8 years old at the time of the incident, "did willfully, deliberately, intentionally and maliciously [swing a door] with such great force and violence against the plaintiff so that the middle finger on plaintiff's left hand was caught in the door and a portion of the said finger was caused to be instantaneously severed and fell to the floor."⁹⁷ The complaint further alleged that Mr. and Mrs. Goodwill were responsible for their child's act due to a lack of "paternal discipline and neglect in the exercise of needful paternal influence and authority... [Mr. and Mrs. Goodwill negligently failed] to restrain the child, Geraldine Goodwill, whom they knew to have dangerous tendencies and propensities of a mischievous and wanton disposition; said parents had full knowledge of previous particular acts committed by their daughter about the hotel premises... and that the defendant Geraldine

⁹⁶ *Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955).

⁹⁷ *Id.* at 702.

Goodwill did commit other wanton, willful and intentional acts of a similar nature to the act committed against the plaintiff...” Mr. and Mrs. Goodwill “...nevertheless, continually failed to exercise any restraint whatsoever over the child’s reckless and mischievous conduct, thereby sanctioning, ratifying and consenting to the wrongful act committed by [the minor] against the plaintiff herein.”⁹⁸

On appeal the court affirmed the previous trial court decision rendering judgment against appellant because the court determined that Mr. Gissen failed to state a cause of actionable negligence against Mr. and Mrs. Goodwill. The court went on to establish that there are exceptions where liability on parents does exist, but they are limited to the following: “1. [The parent] intrusts his [or her] child with an instrumentality which, because of the lack of age, judgment, or experience of the child, may become a source of danger to others. [This exception was later applied in *Gilbert v. Merritt*, where parents were found liable for entrusting a two year old child with an electric motorized vehicle.⁹⁹] 2. Where a child, in the commission of a tortious act, is occupying the relationship of a servant or agent of its parents. 3. Where the parent knows of his child’s wrongdoing and consents to it, directs or sanctions it. 4. Where [the parent] fails to exercise parental control over his minor child, although he knows or in the exercise of due care should have known that injury to another is a probable consequence.”¹⁰⁰ Although there was no liability here, in dicta the court recognized the already established legal concept that a parent is not liable for the torts of his or her minor child because “of the mere fact of his paternity.”¹⁰¹

⁹⁸ *Id.* at 702.

⁹⁹ *Gilbert v. Merritt*, 901 So.2d 334, (Fla. 4th DCA, 2005).

¹⁰⁰ *Gissen v. Goodwill*, 80 So.2d 701, 703 (Fla. 1955).

¹⁰¹ *Id.* at 703.

The court reasoned that in order to hold parents vicariously liable for the tortuous acts of their children (in reference to negligence) the parents must have failed to exercise parental restraint in other former instances involving acts similar in nature to the act which the lawsuit is based upon. If the parent had no prior knowledge of the child's ability, propensity or habit of committing similar acts, the parent is not liable.

When Should a Jury Decide or Court Intervene In Civil Matters

Pertaining to the issue of when parental negligence is an issue that a jury should decide upon, in the 1967 case *Seabrook v. Taylor*, the Fourth District Court of Appeals in Florida decided that when evidence of negligence exists, the ultimate decision as to whether parents are civilly liable should be left in the hands of the finder of fact which in many civil cases is a jury and not a judge.¹⁰² The court did this by affirming a lower court's decision denying the defendant parents' motion for judgment notwithstanding the verdict, or, in the alternative, new trial, because it found that the evidence presented during trial was sufficient to allow the issue of the defendant parents' neglect to be presented to the jury. This case involved defendants John and Girlean Seabrook, parents of minor child Seefus Seabrook (who was 14 years old at the time of the incident), and plaintiff father Willie Taylor and his children Robert and Van C. Taylor, 15 and 12 respectively. A civil suit was brought to recover for damages for personal injuries due to pistol wounds inflicted upon the minor Taylors by the defendant's minor child, Seefus Seabrook, and the consequential damages suffered by Willie Taylor. The incident occurred after a basketball game that ended with a dispute between the Taylors and Seefus due to alleged fouling and 'rough play' by the Taylors. After the game Seefus went home, taking the basketball (which he owned)

¹⁰² *Seabrook v. Taylor*, 199 So. 2d 315 (Fla. 4th DCA 1967).

with him. The Taylors followed. There was evidence presented that Seefus went into the house and came out with a pistol which he displayed to Robert Taylor. At first Seefus was persuaded by another boy, who was present but not involved in the dispute, to put the gun back into the house. After putting the pistol back in the house, Seefus returned outside and the dispute continued. Shortly thereafter, Seefus reentered in to the house, grab the pistol again and returned outside. He then began shooting at the Taylors. Twice he pulled the trigger, but received only a misfire. Upon subsequent efforts, he fired several more times inflicting a slight wound on Robert and striking Van in the stomach, which was a more serious injury.

The defendants did not appeal the portion of the original judgment against Seefus Seabrook, since there was ample evidence to sustain a finding of liability on his part due to his negligence and intentional misconduct. The question put before the appellate court was whether or not the evidence supported a finding of liability on the parents of Seefus for the injuries resulting from their son's actions.

Relying on the dicta from *Gissen*, which in part acknowledged the common law principle that a parent is not liable for the tort of his minor child because of the mere fact of his paternity, the *Seebrook* appellate court examined the exceptions that can create liability. More specifically, the court looked at the exceptions where a parent may be liable if he "(1)... intrusts his child with an instrumentality which, because of the lack of age, judgment, or experience of the child, may become a source of danger to others; (2) where a child, in the commission of a tortious act, is occupying the relationship of a servant or agent of its parents; (3) where the parent knows of his child's wrongdoing and consents to it, directs or sanctions it; [and lastly] (4) where [the parent]

fails to exercise parental control over his minor child, although he knows or in the exercise of due care should have known that injury to another is a probably consequence.”¹⁰³ The *Seebrook* court rationalized that if they were to rely only on the exceptions of liability created by the *Gissen* court, it would have to reverse the judgment against the parents of Seefus since there was not sufficient evidence presented to the jury from which any of these particular instances of liability would fall. However, the district court also determined that “[T]he *Gissen* case does not hold specifically that those exceptions enumerated therein are exclusive. In all cases the question of liability is to be determined on the broad basis of whether or not the parent has been guilty of negligence, that is, a failure to exercise due care in the circumstances.”¹⁰⁴ In this case, the court upheld the trial courts’ decision which allowed the case to be submitted to the jury on the basis of negligence from the defendant’s failure to secure the pistol in a safe location within the house (the loaded pistol was left inside an unlocked closet in a room which was accessible to Seefus at all times and whose location was known by Seefus). The court also took notice of dicta in *Gissen* where the Supreme Court cited *Ellis v. D’Angelo*, an appellate decision in California, and stated “[T]hat a parent may become liable for an injury caused by the child, where the parent’s negligence made it possible for the child to cause the injury complained of, and probable that it would do so.”¹⁰⁵

Actionable Negligence

The common law concept that parents or guardians are not liable simply because of the mere fact of parenthood is still the general rule in any case in Florida unless a plaintiff alleges that

¹⁰³ *Id.* at 317.

¹⁰⁴ *Id.* at 317.

¹⁰⁵ *Ellis v. D’Angelo*, 116 Cal.App.2d 310, 317 (Cal. 1st DCA, 2d Div. 1953).

defendants were culpable of some “actionable negligence” as directed by law under *Gissen or Seabrook*. A case that exemplified the crucial aspect of stating actionable negligence is *Spector v. Neer*, where the Third District Court of Appeals heard a matter alleging parental liability for property damage caused by a minor.¹⁰⁶ Plaintiffs Julius Spector, Louis Spector and Elmore Spector, d/b/a Spector & Sons, (owners of the lot and dwelling house damaged in this case) sued defendants, Harold and Rita Neer, along with their insurance company Lititz Mutual Insurance Company. They alleged negligence against the Neers for allowing their child to be entrusted with matches, which resulted in damage by fire to the dwelling of said parents. The defendants in this matter filed a motion to dismiss the plaintiffs’ amended complaint with leave to amend. Plaintiffs did not file a second amended complaint and stood on their original amended complaint. An order dismissing the case against the plaintiffs was entered.

In *Spector* the exceptions created in *Gissen* rendering parents liable, if certain conditions are found to exist, were not “sufficiently stated” as a cause for action. There was no allegation in the complaint that Hurley Neer, the minor child, had a habit of doing the particular type of wrongful act which resulted in the injuries, nor did the complaint state that Hurley ever set fire to anything before. There was no connection between the alleged failure of parental control and the resultant injuries made in the complaint. To further explain the complaint did not charge actionable negligence on the part of the defendant parents. In this case the court did not render a decision since the failure of the amended complaint to state a cause of action under the *Gissen* exceptions rendered the point moot.

¹⁰⁶ *Spector v. Neer*, 262 So.2d 689 (Fla. 3d DCA 1972).

A related case that further discusses what constitutes actionable negligence under *Gissen* is *Snow v. Nelson*.¹⁰⁷ In *Snow* the Florida Supreme Court heard a case which involved reviewing a decision made by the Third District Court of Appeals which had affirmed a trial court's order directing a verdict in favor of defendant parents. The trial court found that the defendants were not liable for a tortious injury their child inflicted onto the plaintiff's child.

The *Snow* lawsuit was based on an incident that occurred when defendant's child seriously injured plaintiff's child while involved in play. Plaintiffs filed suit claiming vicarious liability and direct negligence against defendant parents, due to their alleged knowledge of the tortfeasor child's propensity to be rough with smaller children. During the trial phase the defendant parents motioned for a directed verdict. The court reserved its ruling on this motion until the closing of the evidence and the jury's retirement. After the jury retired, the court granted the defendant's motion for a directed verdict. It is interesting to note that the jury did return with a verdict finding the defendant parents comparatively seventy-five percent at fault, with total damages estimated to approximately \$135,000. Unfortunately for the plaintiffs, the jury's verdict was not applied because of the court's directed verdict in favor of the defendants.

The Supreme Court noted the basic legal principle that parents are not liable due to the mere fact of paternity. They re-stated the established exceptions mentioned in *Gissen* and reasoned that this case concerned exception four, that the parents may be liable if they "[Fail] to exercise control over the minor child although the parent knows or with due care should know that injury to another is possible."¹⁰⁸ The Supreme Court decided that in this case, like *Gissen*, the plaintiffs

¹⁰⁷ *Snow v. Nelson*, 475 So.2d 225 (Fla. 1985).

¹⁰⁸ *Id.* at 226.

failed to allege that the defendant child had previously engaged in the particular act which caused the injury to plaintiffs' child. Appellants (plaintiffs) urged that this narrow application of exception four not be followed, since it creates an injustice. After deliberations the Supreme Court disagreed with appellants and decided that it would not recede from *Gissen*.

In his concurring opinion, Justice Raymond Ehrlich (with Justice Shaw concurring) disagreed “[W]ith *Gissen*’s excessively narrow construction of the fourth exception: the parent’s failure to exercise control over a minor child where the parent has actual or constructive knowledge of the child’s propensity for causing injury.”¹⁰⁹ Justice Ehrlich stated that he “[W]ould hope that, where *Gissen* before us today, we would construe that exception to the general rule of parental non-liability to encompass *Gissen*’s facts. Where parents have actual or constructive notice of their offspring’s propensity to commit a general class of malicious acts, the child’s creativity in developing new ways to bring about injury should not absolve parents from the duty to attend to and discipline the child. Breach of that duty should give rise to liability.”¹¹⁰ Justice Ehrlich agreed with the majority that the facts in *Snow* do differ from those in *Gissen* because, in *Snow*, the children were playing together at the time of the injury. He noted that the basic nature of play involves the possibility of injury and concluded that “[W]e cannot read *Gissen* so broadly to require parents to deny children normal-albeit rough and potentially dangerous-play.”¹¹¹

Florida Parental Liability Statute Constitutionality

Florida’s parental liability statutes have been subject to scrutiny on multiple occasions, one such instance occurred in the 1981 *Stang v. Waller* case where the 4th DCA was asked to determine

¹⁰⁹ *Id.* at 227.

¹¹⁰ *Id.* at 227.

¹¹¹ *Id.* at 227.

the constitutionality of section 741.24, Florida Statutes (1981).¹¹² A trial court in Florida had previously ruled this statute, imposing strict vicarious liability on parents when their minor children maliciously or willfully destroyed or stolen property valued up to \$2,500.00, was unconstitutional. In this case the trial court was persuaded by arguments relying on Georgia opinions that the statute was unreasonable, arbitrary, and capricious.¹¹³

Interestingly, shortly after the trial decision in *Stang*, the Supreme Court of Georgia reconsidered its rational in *Corley* and found a similar statute in Georgia constitutional in *Hayward v. Ramick*:

Corley... stands alone among a number of opinions dealing with the constitutionality of parental responsibility statutes in various jurisdictions. The other statutes have uniformly been upheld. *See, Vanthournout v. Burge*, 69 Ill.App.3d 193, 25 Ill.Dec.685, 387 N.E.2d 341 (1979) and cases cited therein. Some courts have accepted the distinction this court found in our previous statute, *Rudnay v. Corbett*, 53 Ohio App.2d 311, 374 N.E.2d 171, and others have not. *In re Sorrell*, 20 Md.App. 179, 315 A.2d 110, 115 (1974). While we do not reaffirm *Corley*, we do hold that the legislature has met the objections to *Corley* in the new statute with which we now deal. [1] Setting aside the history of our statute and prior decisions for the moment, we will undertake to analyze Code Ann. 105-113 under the recognized due process approach. Substantive due process requires that the statute not be unreasonable, arbitrary or capricious, and that the means have a real and substantial relation to the object sought to be obtained. *Nebbia v. New York*, 291 U.S. 502, 525, 54 S. Ct. 505, 510-511, 78 L. Ed. 940 (1933). The law must rationally relate to a legitimate end of government. Nowak, et al., *Constitutional Law*, p. 410 (1978). No basis has been put forward for any higher scrutiny and we find none. We hold that this statute, intended to aid in reducing juvenile delinquency by imposing liability upon parents who control minors is

¹¹² *Stang v. Waller*, 415 So.2d 123 (Fla. 4th DCA 1982); Fla. Stat. 741.24 (1981) Civil action against parents; willful destruction or theft of property by minor. (1) Any municipal corporation, county, school district, or department of Florida; any person, partnership, corporation, or association; or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate action at law in an amount not to exceed \$ 2,500, in a court of competent jurisdiction, from the parents of any minor under the age of 18 years, living with the parents, who shall maliciously or willfully destroy or steal property, real, personal, or mixed, belonging to such municipal corporation, county, school district, department of the state, person, partnership, corporation, association, or religious organization. (2) The recovery shall be limited to the actual damages in an amount not to exceed \$ 2,500, in addition to taxable court costs.

¹¹³ *Corley v. Lewless*, 227 Ga. 745, 182 S.E.2d 766 (1971); the dissent in *Board of Education of Piscataway Township v. Caffiero*, 173 N.J. Super. 204, 413 A.2d 981 (New Jersey 1980), aff'd 86 N.J. 308, 431 A.2d 799 (1981); and an Article in June 1972 Notre Dame Lawyer, P. 1321.

neither unreasonable arbitrary nor capricious. We further hold that the state has a legitimate interest in the subject (controlling juvenile delinquency), and that there is a rational relationship between the means used (imposing of liability upon parents of children who wilfully or maliciously damage property) and this object. Furthermore, the General Assembly has enacted legislation incorporating those distinguishing features pointed to in *Corley*, supra, and thereby overcame any objections which *Corley* found to exist in the former statute. The statute violates neither due process nor *Corley*.¹¹⁴

After considering the aforementioned Georgia case, *Stang* reversed the trial court's decision and deemed that this statute did not violate substantive due process because it was not unreasonable, arbitrary, nor capricious and its means had a real and substantial relation to the object sought to be obtained by the State. The *Stang* court reasoned that the legislative intent for these types of statutes is to assist in controlling juvenile delinquency. They considered dicta in *Hayward* which stated that "The state has a legitimate interest in subject [controlling juvenile delinquency], and 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."¹¹⁵

A Parent's "Good Faith Effort"

Parents or guardians can avoid strict liability for the actions of children if they can demonstrate that they took specific actions in good faith in an effort to deter the child's misconduct. This burden is further increased if the child is already an adjudicated delinquent. If the child is, the parent or guardian is assumed to already be aware of the dangerous capabilities of the youth and will have to prove their efforts were beyond those of the average parent. The "good faith effort" burden of proof was the subject of discussion in the 1990 case *M.D. v. State of Florida*.¹¹⁶ In *M.D.* the Second District Court of Appeals held that parents of children adjudicated delinquents

¹¹⁴ *Hayward v. Ramick*, 248 Ga. 841, 843, 285 S.E.2d 697, 698, 699 (1982).

¹¹⁵ *Id.* at 285 S.E.2d 697, 699 (1982).

¹¹⁶ *M.D. v. State*, 561 So. 2d 1259 (Fla. 2d DCA 1990).

have a responsibility to undertake “...extraordinary efforts, over and above the efforts of average parents, in an attempt to prevent [their children’s] delinquent acts.”¹¹⁷ In the aforementioned case, appellants, the parents of a delinquent child who stole and destroyed the victim’s vehicle after he escaped from his home in the middle of the night, appealed an order from the trial court requiring them to pay \$2,500 as restitution, pursuant to section 39.11(1)(f), Florida Statutes (1987). In an odd sequence of events, just hours before the theft and destruction of the vehicle on October 1, 1988, the aforementioned statute was amended to eliminate the \$2,500 limit on parental liability and is now cited as section 741.24, Florida Statutes (2011). In this case, Appellants argued that the statute as amended was inapplicable because the child was nineteen years old on the date of the civil action filing and thus any civil action was brought after the child’s majority. The appellate court interpreted section 741.24, Florida Statutes (2011) as placing liability upon parents if the conditions of the statute existed at the time of the delinquent’s act. In *M.D.*, at the time of the vehicle theft the child was under the age of eighteen and living at home with his parents, thus under the aforementioned statute the parents were liable at the time of the act and would remain liable. During this decision the appellate court took into account the legislature’s announced policy “...to impose liability upon parents for their child’s willful or malicious acts of theft or destruction” in the attempt to lower the delinquency rate by forcing parents to pay closer attention to their children.¹¹⁸ The appellate court agreed with the trial courts’ determination that “[i]n cases which implicate the strict liability of section 741.24...

¹¹⁷ *Id.* at 1260.

¹¹⁸ *Id.* at 1261.

the parents have the burden to prove a degree of effort which is over and above the efforts involved in average parenting.”¹¹⁹

To further clarify what efforts are sufficient to eliminate a parent or guardian’s strict liability under a Florida statute, another case to examine is *A.S. v. State of Florida*.¹²⁰ In this case the child was not adjudicated delinquent and as such the parent did not have to prove “extraordinary efforts” as stated in *M.D.* In *A.S.* the parents had to simply prove that they made some effort to deter the child’s actions. The Fourth District Court of Appeal in Florida reviewed *A.S.* which involved appellant *A.S.*, a child, and appellee, the State of Florida. In this case *A.S.* was convicted of aggravated battery and restitution was ordered in the amount of \$4,986.60; \$2,500 which was to be paid by *A.S.*’s mother. The decision was in accordance to section 39.054(1)(f), Florida Statutes (1991).¹²¹

The incident in this case occurred when *A.S.* was involved in a schoolyard fight in which the victim suffered a broken nose. The trial court held that there was ample testimony to the affect that *A.S.* was the aggressor in the fight, which the appellate court affirmed. The court did note that “[W]hile appellant filed a notice of appeal, his mother did not join in the notice nor seek to be added later. The only issue raised with regard to the restitution order [dealt] with the mother being ordered to bear responsibility for \$2,500... [the state] made no argument on appeal that the

¹¹⁹ *Id.* at 1261.

¹²⁰ *A.S. v. State of Florida*, 627 So.2d 1265 (Fla. 4th DCA 1993).

¹²¹ Fla. Stat. §39.054(1)(f) states that “[I]n the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the child’s release from commitment, [the court shall have the power to] order the child or parent to make restitution in money or in kind for any damage or loss caused by the child’s offense in a reasonable amount or manner to be deter-mined by the court... The liability of a parent under this paragraph shall not exceed \$ 2,500 for any one criminal episode. A finding by the court, after a hearing, that the parent has made diligent good faith efforts to prevent the child from engaging in delinquent acts shall absolve the parent of liability for restitution under this paragraph.”

absence of the mother from the appeal papers [created] a question as to the standing of the child to argue the precise issue. [The court] therefore express[ed] no opinion on the issue of standing.”¹²² Therefore, the court reasoned that there might have been an issue as to whether the child could argue this restitution order on behalf of his mother, but since the state did not raise an objection the issue was declared shut.

Appellant’s mother testified that her son had an unblemished record outside of this incident, she said that his behavior at school and home was exemplary - “the best behaved kid that ever was.” She continued stating that he always obeyed her and never argued, had a good school attendance record and was even on the honor roll. A.S. was a 13 year old child of divorced parents whose father was located in Connecticut (which he only spoke to by phone) at the time of his sentencing. Along with this, the court also considered the mother’s series of relationships with other men, which caused a lack of family stability in his personal life.

Concededly the court took note that “the evidence [was] one-sided. Hence, the issue might properly be viewed as whether the court could make the mother liable simply by not believing her testimony.”¹²³ The court found in particular that the State did not argue this point, but instead “[contended] that the mother could have anticipated the boy’s delinquent acts and that she ‘had the burden to establish a degree of effort above and beyond the normal parenting tasks to establish her diligence by the greater weight of the evidence.’”¹²⁴ The court went on to decide

¹²² *A.S. v. State of Florida*, 627 So.2d 1265 (Fla. 4th DCA 1993).

¹²³ *Id.* at 1266.

¹²⁴ *Id.* at 1266.

that the States position was “clearly [not] what section 39.054(a)(f) requires. All she need have shown is ‘diligent good faith efforts to prevent the child from engaging in delinquent acts.’”¹²⁵

Considering all the facts and evidence the appellate court was presented, it held that “...the child is otherwise well-behaved, then surely it should be enough for the parent to show merely that she had accomplished the ‘normal parenting tasks’ to escape liability for restitution under this statute. To do otherwise would be to impose strict liability on parents for all delinquent acts of their minor children. If the legislature had intended that result, it would have chose a different text than the one it had adopted at the time.”¹²⁶ In regard to this interpretation of the said statute and furthering considering the state’s particular argument in support of the order on appeal, the court reversed the part of the order requiring the mother of A.S. to be responsible for part of the restitution award. All other respects of the order were affirmed. In examining the parent’s “good faith effort,” opinions may exist that the burden of proof is rather lenient on parents of regular children and heavy on parents of adjudicated delinquents, where the efforts they must make are burdensome and can be very difficult to prove.

Due Process Issues Regarding Restitution

There are constitutional rights that parents and guardians have which must addressed if the State is looking to impose restitution against them. One of these rights is the parent’s due process requirement. If one is to be ordered to pay restitution, he or she must be notified of the allegations against them and have an opportunity to be heard in their defense. Keeping in mind the “good faith effort” defense as mentioned in *M.D.*, the 2003 *Fisher v. State of Florida* case

¹²⁵ *Id.* at 1266.

¹²⁶ *Id.* at 1266.

discussed the importance the State's need to abide by the due process doctrine.¹²⁷ In *Fisher* the court decided that Appellant, Ms. Fisher (the mother of juvenile delinquent T.F.), was wrongfully ordered to pay restitution in the amount of \$25,861 for T.F.'s burglary and arson convictions. Ms. Fisher was ordered by a juvenile court to satisfy her restitution requirement by monthly installments of \$250. Ms. Fisher was ordered to pay this restitution based on section 985.231 (9), Florida Statutes (2003) which stated in part that "[A court could] order the parent or guardian of the child to perform community service if the court finds that the parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts. The court may also order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense."¹²⁸ *Fisher* decided that the juvenile court made two fatal errors in this case. The first being that the court never held a hearing to determine if Ms. Fisher had made any diligent or good faith effort to prevent T.F. from engaging in the delinquent acts. The second error was the lack of notice provided to Ms. Fisher that she would be liable for restitution. Ms. Fisher never attended any of her daughter's juvenile proceedings. The *Fisher* court held that there were no pleadings or allegations which could have put her on notice that the state would seek restitution against her personally. This lack of notice left Ms. Fisher ignorant of the allegations and consequences she faced and was deemed to have violated her due process rights. Due to the circumstances of this case, the court in *Fisher* held that the contempt order against Ms. Fisher (for failing to pay the monthly restitution penalty and the actual restitution amount in its entirety) was unconstitutional because it violated her due process right. The court decided that, since Ms. Fisher was not given an opportunity to defend

¹²⁷ *Fisher v. State of Florida*, 840 So. 2d 325 (Fla. 4th DCA 2003).

¹²⁸ *Id.* at 328.

herself and prove her “good faith effort” to deter her child’s conduct, the State was not ultimately entitled to the assumption that Ms. Fisher could not have otherwise proven such efforts. Also, a “good diligence and good faith hearing” should have taken place to protect Ms. Fisher from unjust liability in case she could have proven that her efforts to deter and/or remedy the actions of the child were legally sufficient to escape liability.¹²⁹ These fatal errors led the *Fisher* court to their decision to remove the contempt order against Ms. Fisher, for her failure to pay restitution, and reverse the restitution order in its entirety. The decision was made without prejudice, leaving the door open for the State to file new charges against Ms. Fisher if it wanted to seek restitution.

Other Exceptions to a Parent or Guardian’s Liability and Past

Attempts to Hold Parents Criminally Liable

In various cases parents will not be financially responsible for the actions of their children. One such case is if the child is an adult and emancipated. In *Carney v. Gambel*, the Fourth District Court of Appeals in Florida held that “Generally, there is no duty to control the conduct of a third person to protect him or her from causing physical harm to another... an exception arises where a special relationship exists between the actor and the third person... the special relationship, however, must include the right or the ability to control another’s conduct.”¹³⁰ *Carney* held the “the [d]efendants [parents of the adult child] may not be held legally responsible for the conduct of their emancipated, adult child... [the court recognized] that in those instances

¹²⁹ Fla. R. Juv. P. 8.040 (b) (2).

¹³⁰ *Carney v. Gambel*, 751 So.2d 653, 654 (Fla. 4th DCA 1999).

where a special relationship has been found imposing liability on a parent for conduct of a child, the duty to exercise control is limited to a minor child.”¹³¹

In instances where the parents of a child are separated or divorced only the custodial parent may be responsible for the child’s actions. This legal concept was demonstrated in *Canida v. Canida* where a divorced couple’s minor child, Bradley Canida, vandalized school property.¹³² Under section 741.24, Florida Statutes (1997) the school district was entitled to recover damages ““from the parents of any minor under the age of 18 years, living with the parents, [when the child] maliciously or willfully destroys or steals property...’ belonging to the school district.”¹³³ The minor’s father, Lyle Canida, moved for summary judgment regarding his liability, arguing that the statute intended to limit liability to the parent(s) who has actual custody of and control over the minor child. The trial court granted the father’s summary judgment motion and the mother, Christine Canida, appealed. The first issues addressed by the court was “whether §741.24 applies to both parents equally regardless of marital status or custody/parental responsibility circumstances, or whether it applies only to the parent with whom the child is living at the time of the offense.”¹³⁴ At the time of this incident the minor, Bradley, was living with his mother and she had primary custody and control over the child. The court “[agreed] with the lower court that the statute contemplates finding the mother liable for the child’s offenses.”¹³⁵ *Canida* also noted that “Section 741.24, Florida Statutes, was enacted in 1956... [And since then was] virtually unchanged. [Citing *Stang v. Waller*, the *Canida* court held that] The statute was

¹³¹ *Id.* at 654.

¹³² *Canida v. Canida*, 751 So.2d 647 (Fla. 3d DCA 1999).

¹³³ *Id.* at 648.

¹³⁴ *Id.* at 648.

¹³⁵ *Id.* at 649.

intended to ‘aid in reducing juvenile delinquency by imposing liability upon the parents who control minors...’¹³⁶ The court went on to determine that the statute was “in derogation of the common law and thus must be strictly construed in favor of the common law... As the *Stang* court observed, it is the crucial element of parental control over the minor child that indicates who will bear liability for the child’s acts... Where the parents are divorced and one parent necessarily has primary residential custody over the minor, that custodial parent has the immediate and day-to-day opportunity to exert his or her parental control and discipline of the resident child.”¹³⁷ Appellant, Christine Canida, also argued that the plain meaning of section 741.24, Florida Statutes (1997) as applied to the facts of this case must necessarily hold both parent liable because of the word ‘parents’ is plural. The *Canida* court decided that “Section 1.01(1), Florida Statutes (1993) provides that ‘[i]n construing these statutes and each and every word, phrase, or part hereof, where the context will permit... [t]he singular includes the plural and vice versa.’ [The court interpreted] that the word ‘parents’ necessarily includes the singular ‘parent’ as well.”¹³⁸ Based on these reasons, the court in *Canida* reasoned that the language in the aforementioned statute excludes non-custodial parents from liability if he or she only has occasional visitation rights with the child.¹³⁹

There have also been cases from other states in the past where legislatures have attempted to hold parents criminally liable for the actions of their children. In 1985 Wisconsin enacted legislation which made grandparents financially and criminally responsible for babies born to

¹³⁶ *Id.* at 649.

¹³⁷ *Id.* at 649.

¹³⁸ *Id.* at 649.

¹³⁹ *Id.* at 649.

their unmarried minor children.¹⁴⁰ The criminal penalty was up to two years in jail. Four years after this legislation was enacted, it was allowed to “sunset” after being applied to roughly fourteen grandparents. The Wisconsin legislature found that it had led to greater parental pressure on their teenage children to have abortions and had lowered the rate of paternity establishments for such babies.¹⁴¹ This law was clearly passed as a rash attempt to control an ever growing problem in the state and, after deliberation, was found as faulty legislation.

In 1988, California enacted the Street Terrorism Enforcement and Prevention Act. This legislation had a misdemeanor provision permitting parents to be prosecuted and punished for certain illegal acts allegedly committed by their children where the parents had failed to control and supervise them. By 1995 it was determined by the Los Angeles City Attorney’s Gang Unit that the statute had sent nearly 1,000 parents to counseling or classes (presumably, under the threat of possible prosecution) and only two parents, both of which refused to cooperate with the Unit, were actually prosecuted.¹⁴² Many states have been reluctant to follow in California’s footsteps due to the “slippery slope” theory that suggests that in addition to holding parents accountable for the serious acts of delinquency, authorities could criminally sanction a parent whose teenage child commits a status offense.¹⁴³

¹⁴⁰ Wisconsin Abortion Prevention and Family Responsibility Act of 1985.

¹⁴¹ Barbara Kantrowitz et al., Now, Parents on Trial at 54, 55. NEWSWEEK. Oct. 2, 1989.

¹⁴² CAL. PENAL CODE §§ 186.20-.28 (West Supp. 1990).

¹⁴³ Davidson, H., *supra* note 3, at 28.

CHAPTER V: THE INSURANCE FACTOR OF LIABILITY

Basic Homeowner Insurance Principles and Terminology

In regard to parental liability for actions committed by their children, it is important to analyze the possibility of recovery from available insurance coverage. Recovery may be available from homeowner's insurance, whose coverage includes: Damage to the insured's residence and liability claims made against the insured, especially those arising from the insured's negligence.¹⁴⁴

It is important to understand of the general principles that govern the interpretation of insurance contracts. First, as stated in *Praetorians v. Fisher*, insurance contracts are typically interpreted by courts "in the manner most favorable to the insured and that statutes governing insurance contracts be liberally construed so as to protect the public."¹⁴⁵ Second, as mentioned in *James v. Gulf Life Insurance Company*, when interpreting insurance contracts, courts do not simply interpret a section of the contract, but rather interpret that portion of the contract "in connection with other provisions of the policy in order to arrive at a reasonable construction to accomplish the intent and purpose of the parties."¹⁴⁶

By definition, insurance is "A contract by which one party (the insurer) undertakes to indemnify another party (the insured) against risk of loss, damage, or liability arising from the occurrence of some specified contingency, and [also] to defend the insured or to pay for a defense regardless of whether the insured is ultimately found liable... Insurance, or as it is sometimes called, assurance, is a contract by which one party, for a consideration, which is usually paid in money

¹⁴⁴ Garner, B. A., *supra* note 25.

¹⁴⁵ *The Praetorians v. Fisher*, 89 So.2d 329, 333 (Fla.1956).

¹⁴⁶ *James v. Gulf Life Ins. Co.*, 66 So.2d 62 (Fla.1953).

either in one sum or at different times during the continuance of the risk, promises to make a certain payment of money upon the destruction of injury of something in which the other party has interest.”¹⁴⁷

In order to recover under an insurance policy there must be an injury or loss, which is “The violation of another’s legal right, for which the law provides a remedy; a wrong or injustice... Injuries are divided into real injuries (such as wounding) and verbal injuries (such as slander). They may be criminal wrongs (as with assault) or civil wrongs (such as defamation).”¹⁴⁸

This thesis focuses on a parent’s civil liability for two forms of damage or injury caused by a child. The first form is accidental or intentional property damage. Accidental damage is covered under insurance policies and intentional damage is not. This is because intentional damage is criminal in nature. In part criminal property damage includes “Injury, destruction, or substantial impairment to the use of property (other than by fire or explosion) without the consent of a person having an interest in the property.” A second definition, highlighting the intentional nature of the actor, states “Injury... to the use of property... with the intent to injure or defraud an insurer or lien holder.”¹⁴⁹ The second form of damage is bodily injury, which is “[P]hysical damage to a person’s body.”¹⁵⁰ Bodily injury also has a subcategory of ‘serious bodily injury’, defined as “Serious physical impairment of the human body, [especially] bodily injury that creates a substantial risk of death or causes serious, permanent disfigurement or protracted loss or impairment of the function of any body part or organ.”¹⁵¹

¹⁴⁷ Garner, B. A., *supra* note 25.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

Lastly, homeowner insurance policies provide coverage for ‘accidents’, which are defined as “An unintended and unforeseen injurious occurrence(s); something that does not occur in the usual course of events or that could not be reasonably anticipated... [and which are] not attributable to the victim’s mistake, negligence, neglect, or misconduct.”¹⁵² To accommodate the layperson’s understanding of this term, courts have more broadly defined an accident as “An occurrence which is unforeseen, unexpected, extraordinary, either by virtue of the fact that it occurred at all, or because of the extent of the damage. An accident can be either sudden happening or a slowly evolving process like the percolation of harmful substances through the ground.”¹⁵³

When discussing whether an injury is the result of an accident or intentional act, the difference between these two terms is not always clear. In *Allstate Insurance Company v. Travers* the United States district court in northern Florida shed some light on this issue and distinguished the difference between an intentional and accidental injury by stating that “The general rule in Florida is that an ‘intentional injury’ exclusion in a liability insurance policy does not apply to injuries caused by intentional acts, where the insured did not specifically intend to cause the injury which occurred... Under this rule, the insured’s subjective intent to cause the result must be shown in order for an injury to be deemed an ‘intentional injury’ under the exclusion.”¹⁵⁴ Therefore even if an insured’s act is intentional, if they did not specifically intend to cause the resulting injuries and the injuries were not foreseeable, the insurer will still be liable to the victim. Also, as stated above, the criteria that is commonly analyzed to evaluate an accident is

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Allstate Ins. Co. v. Travers*, 703 F. Supp. 911, 914 (N.D. Fla. 1988); also supported by *Grange Mut. Cas. Co. v. Thomas*, 301 So.2d 158 (Fla. 2d DCA 1974).

“The degree of foreseeability, and [2] the state of mind of the actor in intending or not intending the result.”¹⁵⁵

It is also important to note that in cases where liability insurance is available and the insurer is forced to provide coverage, juries will be asked to determine the appropriate amount of monetary compensation the victim(s) of bodily injury damage should receive. In part, juries are instructed to consider damages related to “...expenses, time, suffering, [and/or] death” which may lead to hefty judgments.¹⁵⁶

Homeowner insurance policies typically cover all individuals who reside within a dwelling, including spouses and children of the policyholder. In *Philbin ex rel. Edwards v. American States Insurance Company* an example of such a policy provision may include a definition of insured, in part as “(a) If you are designated in the Declarations as an individual: (1) You and the following residents of your household: (a) Your relatives.”¹⁵⁷

In *Philbin* the court decided that Appellant/Cross-Appellee, Timothy Philbin, was not entitled to indemnity from Appellee/Cross-Appellant, American States Ins. Co., for a judgment he received against William Curtis (the at-fault party) because William was found to not be included as a resident within the same household as the insured, Rosemary and Richard Curtis (William’s parents). At the time of the said incident William was renting the house from his parents who were living elsewhere. This fact raised the court’s attention to *Sembric v. Allstate Ins. Co.*, which stated that “a policy with a resident family household member provision, requires that those members of the ‘household’ dwell or live together on a permanent basis.”¹⁵⁸ As such,

¹⁵⁵ Garner, B. A., *supra* note 25.

¹⁵⁶ *Id.*

¹⁵⁷ *Philbin ex rel. Edwards v. American States Ins. Co.*, 729 So.2d 484 (Fla. 4th DCA 1999).

¹⁵⁸ *Sembric v. Allstate Ins. Co.*, 434 So.2d 963, 264 (Fla. 4th DCA 1983).

William was determined by the court as not being an insured of American States Insurance Company. The separate residence would require a separate policy for coverage.

Often, in instances involving parental liability, parents may not be able to pay the judgments ordered against them for the damages caused by the actions of their children. In many serious cases where parents are sued vicariously for the acts of their children, the outcome results in huge settlements or judgments. These outcomes are a result of the justice system's designed effort to properly compensate the victim(s). Often, parents do not have the "deepest" pockets to recover from. Fortunately, an answer may be found under the homeowners insurance policies carried by many families. Although homeowner's insurance policies do not cover intentional or criminal acts, they do allow coverage for "accidents". Authority exists which interprets "accidents" to include acts of "negligence" on behalf of the policyholder, since negligence is not an intentional act. Thus, as mentioned in the Illinois case *Illinois Farmers Insurance Company v. Kure*, if a parent is found to be negligent in supervising their child (or any other related responsibility owed to the child) a victim may recover from the parent's homeowners' insurance policy under an accident claim.¹⁵⁹ In the *Kure* case, Matthew Kure (child of Thomas and Cindy Kure) had an altercation with Kyle Signorelli. During the altercation Matthew executed a "pile-driver" type of maneuver by lifting Kyle from the ground then driving Kyle's head into the ground with the weight of his body. Kyle was paralyzed from the neck down. Matthew Signorelli brought suit against the Kure family alleging that Matthew negligently injured him and that Thomas and Cindy Kure were negligent also for providing Matthew with the vehicle he used to travel to Kyle's house and for failing to control their child. A separate count also existed

¹⁵⁹ *Illinois Farmers Insurance Co. v. Kure*, 364 Ill.App.3d 395, 301 Ill.Dec. 319, 846 N.E.2d 644 (3d Dist. 2006).

alleging willful conduct and battery against Matthew. The Kure family sought coverage from their insurer, Farmers. Farmers filed an action for declaratory judgment that it had no duty to defend or indemnify any member of the Kure family in this matter. They based their action on three assertions, “(1) the Kures’ policy covered occurrences, (2) the policy defined an “occurrence” as an accident, and (3) the injury did not result from an accident.”¹⁶⁰ Farmers also argued that it had no duty to defend or indemnify based on Matthew’s intentional conduct exclusion. Farmers also contended that Thomas and Cindy were not covered because of Matthew’s intentional conduct. The trial court decided that Farmers had a duty to defend Thomas and Cindy, but not Matthew, and granted a partial summary judgment. The appellate court affirmed the trial court’s ruling.

Interestingly, there have been attempts to hold parents liable for actions involving proper supervision of each other. One such case was *Korhonen v. Allstate Insurance Company*, where the plaintiff, the mother of a sexually molested daughter, sued defendants, husband and wife, under their homeowner insurance.¹⁶¹ The complaint alleged negligence on behalf of the wife for her lack of supervision of “the child who ‘accessed the alcohol [in their home] and became extremely ill as a result’”, her negligent “[infliction of] emotional distress, first, by failing to learn that William [her husband] had... engaged in sexual acts with [Plaintiff’s] daughter, and second, by verbally blaming, admonishing, and degrading the daughter and accusing her of lying.”¹⁶² This attempt to hold a spouse liable for negligence in the supervision of the other spouse, in part, was denied but is an interesting attempt that deserves attention when considering

¹⁶⁰ *Id.* at 846 N.E.2d 644, 646.

¹⁶¹ *Korhonen v. Allstate Ins. Co.*, 2003 ME 77, 827 A.2d 833.

¹⁶² *Id.* at 827 A.2d 833, 839.

the responsibilities policyholders have in regard to other insureds residing within their household.

Contractual Ambiguity

In Florida, courts enforce the principle that liability contracts must state their exclusions in clear and unambiguous writing. If they do not, the courts will deem the contract ambiguous and rule, at its discretion, as to what the contract meant to say, typically in the favor of the insured as mentioned earlier in *Praetorians v. Fisher*.¹⁶³ Ambiguity is best defined as “[An] uncertainty in meaning. In legal documents ambiguity may be patent or latent. A patent ambiguity is obvious to anyone looking at the document; for example, when a blank space is left for a name. A latent ambiguity at first appears to be an unambiguous statement, but the ambiguity becomes apparent in the light of knowledge gained other than from the document. An example is ‘I give my gold watch to X’, when the testator has two gold watches. In general, extrinsic evidence can be used to clarify latent ambiguities, but not patent ambiguities. Extrinsic evidence cannot be used to give a different meaning to words capable of ordinary interpretation.”¹⁶⁴

One popular court interpretation that shares the same legal concept is *Apgar v. Commercial Union Insurance Company* where the court held that “the language in a contract of insurance is ambiguous if it is reasonably susceptible to different interpretations.”¹⁶⁵ According to *State Farm Fire and Casualty Company v. Steinberg*, Florida law dictates contractual ambiguity with the following rationale “if the language in the contract is unambiguous, it governs. If the

¹⁶³ *The Praetorians v. Fisher*, 89 So.2d 329 (Fla.1956).

¹⁶⁴ Martin, E. A. (2002). Oxford Dictionary of Law 5th Edition at 24-25. Oxford, NY: Oxford University Press.

¹⁶⁵ *Apgar v. Commercial Union Insurance Co.*, 683 A.2d 497, 498 (Me. 1996); *See also Twombly v. AIG Life Ins. Co.*, 199 F.3d 20 (1st Cir.1999).

relevant policy language is susceptible to more than one reasonable interpretation, one providing coverage and the other limiting coverage, the insurance policy is considered ‘ambiguous.’”¹⁶⁶ Finding precedent in *Auto-Owners Insurance Company v. Anderson*, the court in *State Farm Fire and Casualty Company* agreed that if a liability policy is determined to be ambiguous, it must be “interpreted liberally in favor of the insured and strictly against the drafter who prepared the policy.”¹⁶⁷ Thus, if a contract is found to be ambiguous the courts will interpret the contract for the parties and decide at its discretion (after reviewing the facts and evidence) the coverage of the policy. As previously stated, a failure to state the exclusions clearly within the contract may expose insurers to liability that they may have wanted to exclude. Courts have consistently interpreted liability exclusions (or a lack thereof) as provisions which are placed in insurance contracts intentionally and with purposefulness. In *Brown v. Travelers Insurance Company*, “[W]hen a carrier has such freedom over the coverage it will insure, the non-presence of expressed intentions on discrete subjects should ordinarily be taken as purposeful non-inclusion of the intention. The absence of the expression should mean the absence of the intent. Thus the failure to write an exclusion from coverage... should be understood as a purposeful omission.”¹⁶⁸

Insurance Companies Liability Limits

Insurers are free to limit their policies in many ways as long as the provisions within their contracts do not violate State statutes and/or public policy. The decision of what is and is not against public policy is a careful distinction that courts are often asked to consider. When asked to do so, courts treat the burden of determining public policy with carefully diligence. As Justice

¹⁶⁶ *State Farm Fire and Casualty Company v. Steinberg*, 393 F.3d 1226, 1230 (11th Cir. 2004).

¹⁶⁷ *Auto-Owners Ins. Co. v. Anderson*, 756 So.2d 29, 34 (Fla. 2000).

¹⁶⁸ *Brown v. Travelers Insurance Co.*, 649 So.2d 912, 915 (Fla. 4th DCA 1995).

William Glenn Terrell, in *Story v. First National Bank & Trust Company*, mentioned as a popular saying “[Public policy is] a very unruly horse, and, when once you get astride it, you never know where it will carry you.”¹⁶⁹ In *France v. Liberty Mutual Insurance Company* the Third District Court of Appeals in Florida stated that “In the absence of statutory provisions to the contrary, insurers have the right to limit their liability and to impose such conditions as they wish upon their obligations, not inconsistent with public policy and the court are without the right to add to or take away anything from their contracts.”¹⁷⁰ Thus, insurers are free to limit their liability to accidents and make exceptions to their coverage by implementing specific conditions on the coverage they offer.

Intentional or Criminal Conduct and other Public Policy Exclusions

There are liability insurance coverage exceptions that are not at the insurer’s discretion to exclude. One such coverage is exclusion from coverage for the intentional or criminal actions of the insured. In *Ranger Insurance Company v. Bal Harbour Club*, the Supreme Court of Florida held that the public policy of Florida prohibited insurer from being indemnified for loss resulting from an intentional act of religious discrimination.¹⁷¹ In accordance with the decision in *Ranger Insurance Company*, other cases have expanded this concept to also include other intentional and criminal actions. One such case was *Mason v. Sheriffs’ Self-Insurance Fund* where the court, referencing *Ranger Insurance Company*, stated that “the general rule is that one may not insure against one’s own intentional misconduct because the availability of insurance will directly

¹⁶⁹ *Story v. First Nat. Bank & Trust Company*, 115 Fla. 436, 439, 156 So. 101, 102 (1934).

¹⁷⁰ *France v. Liberty Mutual Insurance Co.*, 380 So.2d 1155, 1156 (Fla. 3rd DCA 1980).

¹⁷¹ *Ranger Insurance Company v. Bal Harbour Club*, 549 So.2d 1005 (Fla. 1989).

stimulate the intentional wrongdoer to violate the law.”¹⁷² Expanding on the concept that allowing insurance coverage for intentional and criminal actions would encourage such conduct, the Florida Supreme Court also had another reason for limiting insurance liability, as it found that such coverage would be against the State’s public policy and insurance contracts cannot violate either State law or public policy. In determining whether public policy would allow liability contracts to provide coverage for intentional or criminal conduct, as stated in *Ranger Insurance Company*, the courts look at two factors: “[1] the conduct of the insured (is it a type that will be encouraged by insurance?) and [2] the purpose served by the imposition of liability for that conduct [deterrence or compensate victims]... An examination of the first factor leads to the determination of whether the existence of insurance will directly stimulate commission of a wrongful act, and an examination of the second factor leads to the determination of whether deterrence or compensation should be given priority.”¹⁷³ Thus, insurance coverage for the insured actor in cases involving intentional or criminal conduct will generally not be enforced by courts in Florida. Although, as it pertains to multiple causation issues where injury ensued by the actions of more than one insured actor, there are cases outside of Florida that have affirmed the denial of coverage for the intentional acts of one party, but still ordered coverage for the actions of another that were found to be contributory to the damages suffered by the victim, i.e. negligence. See *Illinois Farmers Ins. Co. v. Kure*.¹⁷⁴

¹⁷² *Mason v. Florida Sheriffs’ Self-Insurance Fund*, 699 So.2d 268, 270 (Fla. 5th DCA 1997).

¹⁷³ *Ranger Insurance Company v. Bal Harbour Club*, 549 So.2d 1005, 1007 (Fla. 1989).

¹⁷⁴ *Illinois Farmers Insurance Co. v. Kure*, 364 Ill.App.3d 395, 301 Ill.Dec. 319, 846 N.E.2d 644 (3d Dist. 2006).

Exceptions to the Intentional or Criminal Conduct Exclusion

For some issues presented, there are no juvenile cases and therefore other cases must be examined for guidance. There are exceptions to the legal principle that excludes insurance coverage for the intentional or criminal conduct of the insured. One such exception was recognized in *Ranger Insurance Company* who addressed the issue by stating that “Florida... [has] allowed exceptions [to an insurer’s coverage exclusion for an insured’s intentional or criminal action(s)] only in individualized cases where innocent third parties were involved or it appeared unlikely that the wrongful act could have been produced by the prospect of coverage.”¹⁷⁵ As explained above, the public policy doctrine that excludes insurance liability for intentional or criminal actions of the insured does not apply to third party beneficiaries; such inapplicability is exemplified by the case of *Everglades Marina*.¹⁷⁶ In this case the Supreme Court of Florida held that public policy does not prohibit third-party beneficiaries of an insurance policy from recovery of benefits because the loss was intentionally caused by the criminal acts of an insured, when the insurance policy did not contain any express clause excluding such liability. *Everglades Marina, Inc.* involved Monroe Spodek, who was the president and sole stockholder of Everglades. In March 1979 Mr. Spodek set fire to the business building, damaging it and the boats that belonged to appellees, American Eastern Development Corporation. It was stipulated that Mr. Spodek intentionally and unlawfully set fire to the building. American Eastern Dev. Corp. made claims to its insurance carrier, Royal Globe Insurance Company, which paid those claims and brought its subrogated claim against Everglades Marina and its insurer, Switzerland

¹⁷⁵ *Ranger Insurance Company v. Bal Harbour Club*, 549 So.2d 1005, 1007 (Fla. 1989), referencing *Everglades Marina, Inc. v. American Eastern Development Corporation*, 374 So.2d 517 (Fla. 1979).

¹⁷⁶ *Everglades Marina, Inc. v. American Eastern Development Corporation*, 374 So.2d 517 (Fla. 1979).

General Insurance Company. The appellant insurance company, Switzerland Gen. Insurance Co., argued that “the boat owners [American Eastern Dev. Corp.] were precluded from recovery on the basis of the public policy that an insurance company is not liable to indemnify its insured for losses directly incurred by the insured’s fraud or misconduct, and the boat owners in this instance stand in the shoes of the insured.”¹⁷⁷ Thus, they reasoned that Mr. Spodek’s intentional conduct also applied as the actions of American Eastern Dev. Corp. and both were excluded from recovery. The court did not agree with this argument made by Switzerland Gen. Insurance Co., stating that “[the court rejects] the request to extend the public policy doctrine to third-party beneficiaries of the insurance policy and, consequently, [also rejected] the assertion by the appellant insurance company that the arson of the marina owner should be attributed or imputed to the boat owners who had their boats stored within the premises.”¹⁷⁸ In this case the policy with the expressly written clause excluding such coverage was contrary to public policy.

An insured’s mental condition at the time of incident may be another exception to the “intentional or criminal acts exclusions” of insurance contracts in some States. In Florida, the landmark case decided by the state Supreme Court that addresses this topic is *Prasad v. Allstate Insurance Company*.¹⁷⁹ In this case, Renuka Prasad filed suit against her mother, Chandra Palat, and her brother, Toreshwar Nauth, for injuries she sustained when Nauth viciously attacked her with a knife. The incident occurred on a day when Prasad was visiting her mother who lived with her brother. Prasad’s brother was a treated schizophrenic. Sometime during Prasad’s visit, Nauth casually walked over to Prasad and started stabbing her repeatedly. In her complaint

¹⁷⁷ *Id.* at 518.

¹⁷⁸ *Id.* at 519.

¹⁷⁹ *Prasad v. Allstate Insurance Company*, 644 So.2d 992 (Fla. 1994).

Prasad alleged negligence against Palat for her duty of care breach, since she “[K]new that her son was insane; that [Prasad] knew that her son had violent propensities, was in a deteriorating mental condition, unpredictable and dangerous, and suffering from paranoid schizophrenia; and that as a direct result of the son’s failure to take his antipsychotic medication his mental condition was so severely deteriorated that he was legally insane and thus unable to form intent.”¹⁸⁰ In count two, Prasad alleged that Nauth was also negligent by his “[A]wareness that he must take his antipsychotic medication, and his failure to do so, rendering him insane and incapable of formulating intent.”¹⁸¹ The Supreme Court of Florida was asked to answer the following three questions: “[1] Under Florida law, does the intentional acts exclusion of the policy in question apply in circumstances alleged in the state court complaint? ... [2] Are the injuries alleged in the state court complaint an ‘accidental loss’ as described in the policy? ... [3] Does the criminal acts exclusion of the policy apply in the circumstances alleged in the state court complaint?”¹⁸² *Prasad* followed the court’s earlier decision in *Landis v. Allstate*, where it determined that the intentional acts exclusion clause applied where an insured was acting under a diminished mental capacity and had sexually abused children in her home.¹⁸³ In *Landis* the Florida Supreme Court held that “specific intent to commit harm is not required by the intentional acts exclusion.”¹⁸⁴ As it pertains to the *Prasad* case, the issue was determined to be whether Nauth could form, and if he had at the time of the incident, the specific intent to commit the act; rather than whether he had the specific intent to commit the harm. *Prasad* found that “[A] person who is considered insane may still be capable of entertaining the intent to commit

¹⁸⁰ *Id.* at 993.

¹⁸¹ *Id.* at 993.

¹⁸² *Id.* at 993.

¹⁸³ *Landis v. Allstate Ins. Co.*, 546 So.2d 1051 (Fla.1989).

¹⁸⁴ *Id.* at 1053.

certain acts, even if that intent is the consequence of a delusion or affliction.”¹⁸⁵ The court attempted to give an example of its decision by stating that “an insane or mentally ill person can still make plans to harm another, going so far as to obtain the weapon to be used and to seek out the victim. By any stretch of the imagination, the person ‘intended’ the act against the victim, even if the person did not fully understand what he or she was doing at the time of the crime.”¹⁸⁶ In its decision, the Florida Supreme Court in *Prasad* noted the conundrum that could ensue with this ruling and explained by noting the:

[A]pparent inconsistencies of finding that an individual intended a crime for purposes of this type of civil insurance claim but allowing that person to escape criminal liability by reason of insanity. [*Prasad* went on to state] That inconsistency, however, was appropriately addressed by the Virginia Supreme Court in *Johnson v. Insurance Company of North America*, where it stated: “On the surface, there appears to be a blatant inconsistency in concluding, as we do, that a person may be criminally insane when shooting another, and thus avoid full criminal sanctions, and yet that same individual can be denied insurance coverage because he ‘intended’ to shoot his victim. A more careful analysis, however, will reveal that there is no inconsistency at all. In the law, there are many situations in which a person may intentionally injure or kill another and will not be subject to criminal punishment. For example, an individual may kill in self-defense. The executioner may kill with the sanction of the State. A soldier may injure or kill under rules of combat. This conduct is intentional, but it is also excusable. Likewise, an individual may be excluded from penalty if he is insane at the time he commits a criminal act. As here, he may do the act with every intention of consummating it, but when it is shown that he was mentally ill, he is excused from the imposition of the usual sanctions. ‘The absence of punishment, however, does not retrospectively expunge the original intention.’”¹⁸⁷

Through this rationale, *Prasad* found that Nauth’s actions were intentional and Nauth was thereby not covered through the intentional acts exclusion of Allstate’s contract. For the reasons stated above the court answered the first question it was presented with in the affirmative and the

¹⁸⁵ *Prasad v. Allstate Insurance Company*, 644 So.2d 992, 995 (Fla. 1994).

¹⁸⁶ *Id.* at 995.

¹⁸⁷ *Id.* at 995, quoting *Colonial Life and Accident Ins. Co. v. Wagner*, 380 S.W.2d 224, 226 (Ky. 1964), quoting *Johnson v. Insurance Company of North America*, 232 Va. 340, 384, 350 S.E.2d 616, 621 (1986).

second in the negative (reference questions 1 - 3 mentioned above). In regard to question three, the court determined that the answer hinged on whether there was proof of the allegation made by Prasad. If she could prove that this incident was an accident by definition, the criminal acts exclusion in Allstates's contract would not apply to the claim against Palat, the mother. As such, coverage for Nauth was excluded and coverage for Palat was determined as pending further litigation.

Outside of Florida there exists authority contradictory to *Prasad*. In *Allstate Ins. Co. v. Barron*, the Supreme Court in Connecticut determined that an insured's mental illness can negate intent for purposes of intentional conduct insurance exclusions.¹⁸⁸ The incident in *Allstate v. Barron* occurred during the early morning hours of June 10, 1999. That morning Kelly S. stabbed her husband, Charles S., to death. Their nine year old daughter, Jessica M., was awakened by the screams coming from her parents' bedroom and ran to the room. Jessica was then repeatedly stabbed by her mother, Kelly. Jessica ran down the hall while being pursued by Kelly. Kelly then doused herself, Jessica M. and a bedroom with gasoline, and set the house on fire. Kelly S., Jennifer S. (nearly three years old at the time), Jonah S. (one and one-half years old at the time), died in the conflagration. The only survivors were Jessica M. (who was able to flee the house) and Joshua S. (then two months old). Kelly S. was a thirty one year old woman with a long history of psychiatric problems. Through the testimony of her psychiatrist, Dr. Ann H. Kazarian, it was found that Kelly had been suicidal at times (including an incident in 1994 in which Kelly overdosed on Xanax and again in 1995 where she attempted to hang herself). After Kelly's treatment, the psychiatrist's final diagnosis (given before the incident that occurred on June 10 of

¹⁸⁸ *Allstate Ins. Co. v. Barron*, 269 Conn. 394, 848 A.2d 1165 (2004).

1999) was that Kelly S. was severely depressed and not psychotic. Kelly had previously stated to Dr. Kazarian that “[Kelly’s] baby was gorgeous. I force myself to smile. He smiles back, but I can’t feel it.”¹⁸⁹ Kelly also described her husband as “a beautiful husband.”¹⁹⁰ Dr. Kazarian’s last meeting with Kelly occurred on July 2, 1998, where Kelly informed Dr. Kazarian that she had stopped taking her prescribed medications and that she now believed that her illness was a result of sin and that, if she followed the teaching of the Bible, she would recover. Dr. Kazarian testified that the events that occurred on June 10, 1999 were “consistent with her diagnosis of bipolar disorder and were ‘the kind of thing that [Dr. Kazarian] worried about when [she] was taking care of [Kelly].’”¹⁹¹ Dr. Kazarian also testified that a person diagnosed with bipolar disorder may be incapable of controlling their actions at times and understanding the harmfulness of their conduct. Dr. Kazarian testified that, to a reasonable medical certainty, a diagnosis of bipolar disorder will progress without treatment and medication. Finally, Dr. Kazarian concluded that due to her lack of continuing treatment with Kelly after July 2, 1998, she could not provide an opinion as to whether postpartum depression had impaired Kelly’s ability to tell right from wrong, to control her actions or to form an intent during the events of June 10, 1999. The defendants, Stephen C. Barron (the administrator of Kelly’s estate), also presented the trial court with an affidavit from Dr. Walter Borden, another psychiatrist. Dr. Borden reviewed the complaint and all related documents of the case and came to the conclusion that based on his review of the aforementioned documentation, “[His] opinion to a reasonable degree of medical probability, [was that] on June 10, 1999 Kelly was incapable of appreciating

¹⁸⁹ *Id.* at 848 A.2d 1165, 1169.

¹⁹⁰ *Id.* at 848 A.2d 1165, 1169.

¹⁹¹ *Id.* at 848 A.2d 1165, 1170.

the nature of her behavior, unable to control herself and incapable of forming rational intent to do the acts attributed to her.”¹⁹² The trial court went on to grant the plaintiff’s, Allstate, motion for summary judgment by deciding that the defense, Kelly’s estate, had not provided sufficient evidence that Kelly was “legally insane” at the time of the incident that would constitute a basis for denying the motion for summary judgment. On appeal, the Supreme Court of Connecticut decided, in part, that the criminal acts exclusion is inapplicable when an insured lacks the mental capacity to form intent and cannot be convicted of a crime.¹⁹³

Joint Obligation Clauses

In Florida, insurers may deny coverage for all policyholders if any “one” of the policyholders is exempt from coverage. This liability exclusion is normally addressed in a contract’s “Joint Obligation” clause. In *Hrynkiw v. Allstate Floridian Insurance Company*, the Fifth District Court of Appeals in Florida decided that an intentional or criminal act exclusion clause in conjunction with a joint obligation clause will allow an insurer to deny coverage for all policyholders if one of them is found guilty of an intentional or criminal act.¹⁹⁴ In *Hrynkiw*, a trial court decided that Appellee, Allstate, had no duty to defend or indemnify Robert and Mary Jane Thompson nor their minor son, Lon, in the underlying personal injury suit brought by Appellant, Jeffrey Hrynkiw. Appellant alleged in his complaint that Lon willfully and intentionally committed a battery upon him when he obtained possession of a pistol belonging to his parents, Robert and Mary Jane Thompson. Lou then proceeded to point the weapon at Appellant’s head and fired at close range. The bullet pierced Appellant’s skull near the bridge of

¹⁹² *Id.* at 848 A.2d 1165, 1171.

¹⁹³ *Id.* at 848 A.2d 1165, 1180.

¹⁹⁴ *Hrynkiw v Allstate Floridian Insurance Company*, 844 So.2d 739 (Fla. 5th DCA 2003).

his nose and exited behind his right ear. The complaint went on to allege that Lon “intended to cause harmful or offensive contact... in that he fired the pistol at the victim’s head and knew that such an act was substantially certain to result in harm or death.”¹⁹⁵ The Appellant alleged that he was entitled to recover from Robert and Mary Jane Thompson’s insurance based on their negligence in failing to safely store the pistol in their home and in failing to exercise parental control over Lon. Appellant alleged that Robert and Mary Jane were aware that Lon was on probation with the State of Florida for violent behavior, that Lon had dangerous propensities and was unfit to use a firearm. Upon Appellant’s initial filing of a suit against the Thompsons, Appellee reserved its right to deny coverage, provided a defense and filed the instant declaratory judgment action naming both the Thompsons and Hrynkiw as defendants. The Thompsons did not answer and Appellee moved for judgment on the pleadings. The trial court entered judgment for Appellee.

The exclusion clauses considered in *Hrynkiw* were read and considered by the court through strict interpretation because the court reasoned that since “exclusion clauses are generally considered contrary to the fundamental protective purposes of insurance... the courts give a strict interpretation... as opposed to the liberal interpretation accorded coverage provisions.”¹⁹⁶ When determining the meaning and scope of these clauses, the courts read them not as though a legal scholar were attempting to understand the provisions, but as if a layperson were attempting to comprehend the meaning of the policy. The joint obligation clause of the Thompsons’ policy read, in pertinent part, “The terms of this policy impose joint obligations on persons defined as

¹⁹⁵ *Id.* at 741.

¹⁹⁶ *Id.* at 741.

an insured person. This means that the responsibilities, acts and failure to act of a person defined as an insured person will be binding upon another person defined as an insured person.”¹⁹⁷

In looking to interpret this provision, the court in *Hrynkiw* referenced *Allstate Ins. Co. v. Raynor*, which provided an interpretation of a joint obligation clause as a provision which “forges the various parties insured by a policy into a joint and inseparable legal entity... [so that] when the conduct of one insured defeats liability protection for a given loss, the policy deprives all other insureds of liability protection for that loss, even if the loss was also proximately caused by one of those parties.”¹⁹⁸ The same contract addressed intentional or criminal acts in a provision which read in pertinent part that “[The policy will] not cover any bodily injury or property damage intended by, or which may reasonably be expected to result from the intentional or criminal acts or omissions of, any insured person.”¹⁹⁹

The court decided that the everyday meaning of this provision is that policy does not insure against damages that an insured intentionally inflicted or that are reasonably expected to result from an insured’s intentional or criminal acts. The court noted the “the willingness of the courts to uphold intentional or criminal act exclusion clauses is premised on the jurisprudential maxim that no person should be allowed to profit from his or her own wrongdoing. Lawyers and laymen alike generally understand that the public policy against insuring for losses resulting from intentional or criminal acts is usually justified by the assumption that such acts would be

¹⁹⁷ *Id.* at 742.

¹⁹⁸ *Id.* at 742, 743, quoting *Allstate Ins. Co. v. Raynor*, 143 Wash.2d 469, 480, 21 P.3d 707, 713 (2001).

¹⁹⁹ *Id.* at 742.

encouraged, or at least not dissuaded, if insurance were available to shift the financial burden of the loss from the wrongdoer to the insurer.”²⁰⁰

Through the strict interpretation of these clauses the court decided that they were clear and unambiguous, thus both clauses were enforceable. The court then proceeded to analyze whether coverage was excluded for the alleged negligent acts of the parents based on the intentional or criminal act exclusion provision in conjuncture with the joint obligations clause. During the time period this case was heard, the court realized that Florida had not yet considered the appropriate application of the joint obligations clause to the intentional or criminal act exclusion clause, which was the main argument made by appellee; contending that they were immune from having to provide coverage under the rationalization that since Lon was excluded from coverage, so were his parents. Looking to other jurisdictions for guidance, the court considered *Allstate Insurance Co. v. Steele*, a case from Minnesota.²⁰¹ In the *Steele* case, the court stated that “such clauses [joint obligation] have... been consistently construed to mean that an insured’s intentional act bars a claim against another insured for negligent supervision.”²⁰² *Hrynkiw* also found *Landis v. Allstate Ins. Co.* analogous to its immediate case.²⁰³ It agreed with *Landis* that “in essence, regardless whether the immediate intentional act inflicts the injury or the antecedent negligence sets in motion the events that lead to that injury, it is the underlying cause of the injury – the intentional act for which all of the insureds are equally responsible – that determines

²⁰⁰ *Id.* at 742.

²⁰¹ *Allstate Insurance Co. v Steele*, 74 F.3d 878 (8th Cir.1996).

²⁰² *Id.* at 881.

²⁰³ *Landis v. Allstate Ins. Co.*, 546 So.2d 1051 (Fla.1989). (*Landis* allowed a homeowner insurer, Allstate, to deny its insured coverage based on the intentional act exclusion clause contained within their policy. The court affirmed the ruling that coverage was excluded for injuries suffered by the children because of the intentional acts of the insured even though the gist of the action filed against them was negligence.)

coverage. Hence the injured should not be allowed to circumvent the intentional act exclusion clause by filing a claim for negligence based on the same underlying intentional act that actually caused the injury.”²⁰⁴ The court found this rationalization “logical, reasonable and comport[ing] with Florida law.”²⁰⁵ Thus, *Hrynkiw* decided to treat the Thompsons and Lon as a “joint and inseparable legal entity” so that the act of Lon, in essence, became the act of the Thompsons for purposes of coverage under the policy from appellee. Therefore, the trial court’s decision granting judgment on the pleadings in appellee’s favor was affirmed. This landmark case in insurance law will have great impact in cases similar to *Prasad*, which as we discussed earlier involved a mother’s liability for the actions of her insane son. If ruled upon today, the parent might have been exempt from coverage purely on the basis of her son’s intentional act.

Other state courts disagree with the decision in *Hrynkiw*. One case was *C.P. v. Allstate Insurance Company*.²⁰⁶ In this case from Alaska, Harold Lancaster, the adult son of homeowners Dolan and Eleanor Lancaster, physically and sexually assaulted the child of the plaintiff, C.P, an 11 year old girl. The incident occurred during a sleepover C.P. attended at her friend C.L.’s (Harold’s daughter) residence. At the time, C.L. and her father were living in the elder Lancaster’s home. The allegations brought forth by C.P. alleged that Harold assaulted her and that “the elder Lancasters were negligent in failing to disclose Harold’s presence or his alleged propensity to assault children and in failing to watch over C.P.”²⁰⁷

²⁰⁴ *Hrynkiw v Allstate Floridian Insurance Company*, 844 So.2d 739, 743 (Fla. 5th DCA 2003).

²⁰⁵ *Id.* at 743.

²⁰⁶ *C.P. v. Allstate Insurance Company*, 996 P.2d 1216 (Alaska 2000).

²⁰⁷ *Id.* at 1219.

These facts are similar to those in *Hrynkiw*, as they involve parental negligence allegations for the intentional conduct of the child. The difference in the *C.P.* court decision is partially based upon the Doctrine of Reasonable Expectations, a doctrine which is not favored in Florida. The doctrine, as applicable to insureds, was defined as “[t]he objectively reasonable expectations of applicants and intended beneficiaries regarding the terms of insurance contracts will be honored even though painstaking study of the policy provisions would have negated those expectations.”²⁰⁸

The court rationalized that this case involved multiple causation, and that C.P.’s injury was contributed in part through the negligence of the elder Lancaster’s and in part by the intentional and criminal acts of Harold. The court decided that Allstate’s contract was unclear and ambiguous in its liability coverage section when addressing incidents that involve both causes which would be covered or excluded, in other words multiple causes. In its opinion the court referenced the contract’s property loss exclusion, which it interpreted as excluding acts arising from multiple causes. In part, the section the court considered stated:

We [Allstate] do not cover loss to the property... resulting in any manner from:

...

7. One or more of the items listed below, if that item is one of two or more causes of a loss and if the other cause(s) of the loss is (are) excluded by this policy:

a) Conduct, act, failure to act, or decision of any person, group, organization or governmental body whether intentional, wrongful, negligent or without fault.²⁰⁹

The court in *C.P.* rationalized that “this exclusion makes it clear that there is no coverage for property losses in cases of multiple causes where all of the causes are excluded under the policy... This clause demonstrates that Allstate knew how to address this multi-cause problem

²⁰⁸ *Id.* at 1222.

²⁰⁹ *Id.* at 1227.

when it wanted to. No equivalent provision is to be found in Allstate's liability coverage. The joint obligations clause does not address this issue."²¹⁰ After considering the property loss section, along with the rest of the policy, and comparing it to the liability section, the court in *C.P.* held that the language used by Allstate in its liability section was not clear and unambiguous. It decided that the liability portion of the policy was ambiguous when addressing the exclusion of coverage in incidents that involve multiple causes. Thus, the court held that Allstate's policy provided coverage to the elder Lancasters. The court held that Allstate knew how to correct this issue and therefore, in accordance with *Brown*, had intentionally excluded the necessary verbiage from their liability coverage section.²¹¹

²¹⁰ *Id.* at 1227.

²¹¹ *Brown v. Travelers Insurance Co.*, 649 So.2d 912, 915 (Fla. 4th DCA 1995).

CHAPTER VI: CONCLUSION

Juvenile delinquency is a problem that may never be solved. There will continue to be cases of children committing status and delinquent acts. What society can do to mitigate these problems is find a means to deal with these children and their families collectively. Sometimes the child's problem is a denouement of his experiences and lifestyle. As discussed, a child may be more apt to act in a certain manner if their actions are either reinforced or ratified by the parents, or if the caregiver fails to provide them with adequate supervision or guidance. In the event that parents or other caregivers fail in their duty to control and deter a child's misconduct, they may face liability. Liability is bestowed upon parents for two purposes, to deter juvenile delinquency and to compensate victims.²¹²

Florida's long-standing rule regarding parental liability is that "a parent is not liable for the tort of his minor child because of the mere fact of paternity."²¹³ There are four exceptions to this legal concept. The first exception is if the parent entrusts his child with an instrumentality which (because of the lack of age, judgment or experience of the child) may become a source of danger to others.²¹⁴ The second is where a child, in the commission of a tortious act, is occupying the relationship of a servant or agent of its parents.²¹⁵ The third is where the parent knows of his child's wrongdoing and consents to it, directs or sanctions it.²¹⁶ The last exception occurs when

²¹² Fla. Stat. Ann. §985.01 (1)(c), 577 (2011).

²¹³ *Seabrook v. Taylor*, 199 So.2d 315, 317 (Fla. 4th DCA 1967); *See also Gissen v. Goodwill*, 80 So.2d 701 (Fla. 1955).

²¹⁴ *Gissen v. Goodwill*, 80 So.2d 701, 703 (Fla. 1955).

²¹⁵ *Id.* at 703.

²¹⁶ *Id.* at 703.

the parent fails to exercise parental control over his minor child, although he knows or in the exercise of due care should have known that injury to another is a probable consequence.²¹⁷

Several issues arise when parents are held vicariously liable for the actions of their child. The first issue to analyze is due process. It is difficult to justifiably hold someone accountable for the actions of another if they have no opportunity to defend themselves. Juvenile courts in Florida have become aware of this problem and have attempted to correct it by including parents in delinquency cases. They have been able to do this by requiring the State to file “Petitions for Parental Sanctions.”²¹⁸ These petitions, in cases where the State pursues restitution, serve to notify the parents of the allegations against them and provide them with the opportunity to be heard in their defense. This is accomplished through a “good diligence and good faith” hearing, thus satisfying the basic rights of due process.²¹⁹ In cases where private lawsuits are brought against parents in civil jurisdictions (separate from the state), due process is not at issue as long as proper service occurs in the course of the lawsuit.

Another problem with seeking restitution against parents is that courts may be lenient on parents of non-delinquent children. To avoid liability, parents of children who have no criminal history must prove ‘good faith efforts’ equivalent to abiding by their ‘normal parenting tasks.’²²⁰ As for parents of delinquent child, they are required to prove ‘painstaking’ efforts to control their children.²²¹ It is important that society provide resources to parents of delinquents to assist them in their efforts to correct their child’s misbehavior. By holding parents liable if they do not

²¹⁷ *Id.* at 703.

²¹⁸ Fla. R. Juv. P. 8.031.

²¹⁹ Fla. R. Juv. P. 8.040 (b) (2).

²²⁰ *A.S. v. State of Florida*, 627 So.2d 1265 (Fla. 4th DCA 1993).

²²¹ *M.D. v. State*, 561 So.2d 1259 (Fla. 2^d DCA 1990).

adequately supervise or guide their children, parents are forced to become more involved in their children's lives. In theory, parental liability may have an adverse effect on parents of lower class families because of their lack of resources (according to the belief that lower class parents cannot devote as much time as would be necessary to correct their child's misbehavior). To hold parents liable, it is important that they have access to the resources necessary to address the needs of their child. This would allow plaintiffs to argue that the defendant parents were given ample opportunity to control their children and failed to do so. This would also allow courts to justify ordering restitution or other related judgments against parents. Until community programs are enhanced or parents are given more assistance in their efforts to correct their child's behavior, they will continue to escape liability by showing that they took even the most minuscule efforts to deter or correct their child's behavior. It is also important to mention that plaintiffs in civil matters must connect the parent's negligence to the child's delinquent conduct in the complaint.²²² This is necessary for liability to be considered.

Florida has no statutory caps on parental liability. It is not unreasonable to infer that statutory limits on parental liability are created to punish parents, rather than to compensate the victims of crimes.²²³ Children who commit status offenses are also important to consider when discussing parental liability because they may become delinquent in the future. Status offenders are difficult for courts to deal with because, in most cases, parents cannot be held liable for a status offense. Courts have found it increasingly burdensome to deal with these children. The courts

²²² *Snow v. Nelson*, 475 So.2d 225 (Fla. 1985).

²²³ Validity and construction of statutes making parents liable for torts committed by their minor children. (2011). In *American Law Report 3d* (pp. 615, Vol. 8). Rochester, New York: The Lawyers Co-operative Publishing Company; Supporting case law includes *Marionneaux v. Brugier*, 35 La. Ann. 13 (1883).

have a limited ability to enforce orders on to a status offender.²²⁴ Labeling a child as a status offender may insulate parents from liability for the children's future actions.

Lastly, in civil lawsuits for the criminal actions of children, as in the Columbine High School massacre, plaintiffs have a heavy burden to prove parental liability. Even when liability is proven, it is often difficult to recover large settlements or verdicts. Many middle and lower class families do not have the funds necessary to satisfy large judgments. Therefore, insurance plays a crucial role in compensation. In Florida, insurers may not be liable for a child's intentional or criminal action. In civil suits following delinquent actions, insurers may avoid liability toward negligent parents through "Joint Obligation" clauses or the insertion other multi-causation language into their contracts.²²⁵ This has led to cases where victims who receive huge settlements or judgments have no way to collect from negligent parents, even when they have liability insurance. These insurance concepts have serious implications and might need to be reevaluated. Insurance laws might be changed to require insurers to provide coverage for contributing factors to damages, even when the damages are the proximate result of intentional or criminal actions. State legislatures may want to re-analyze public policy to determine whether changes should be made. If it finds that public policy demands that coverage denial under 'joint obligation' or similar multi-causation exclusions are questionable, they may want to reconsider enforcing such insurance provisions.

²²⁴ Davidson, H., *supra* note 3.

²²⁵ *Hrynkiw v Allstate Floridian Insurance Company*, 844 So.2d 739 (Fla. 5th DCA 2003).

APPENDIX A

APPENDIX A

Figure 1

Juvenile Arrest Rates Organized by Date

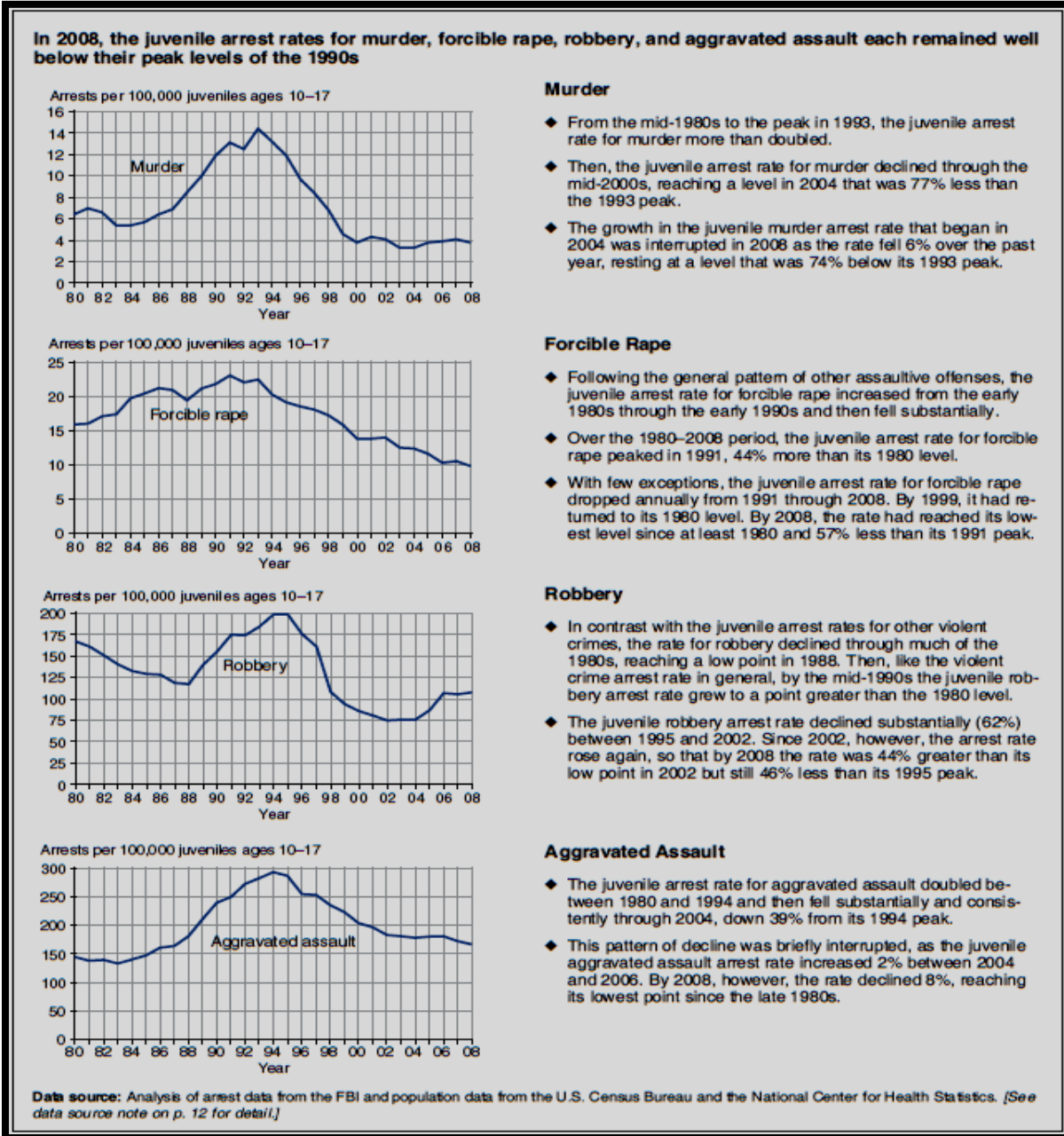
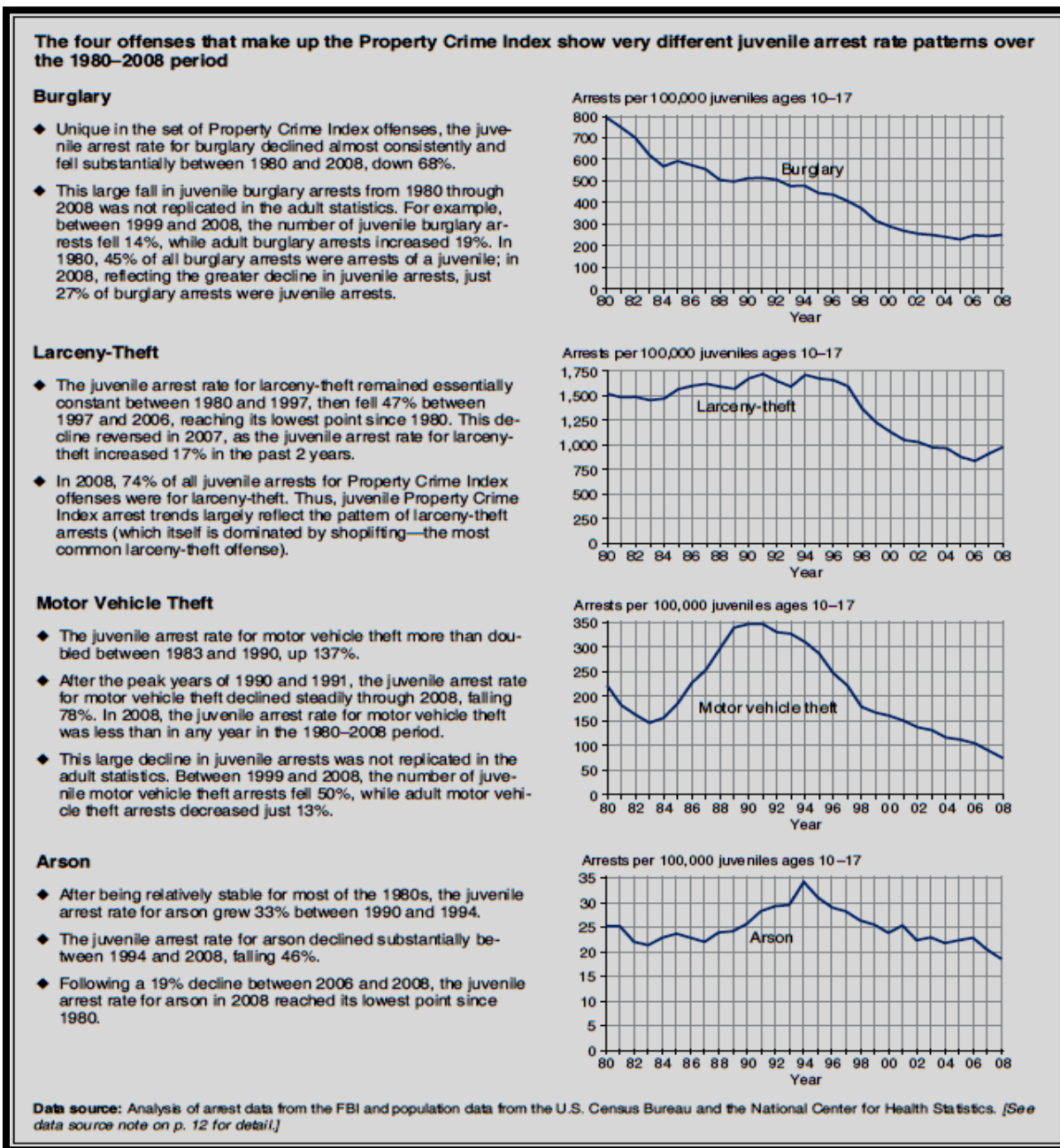


Figure 2

Juvenile Property Crime Rates Organized by Date

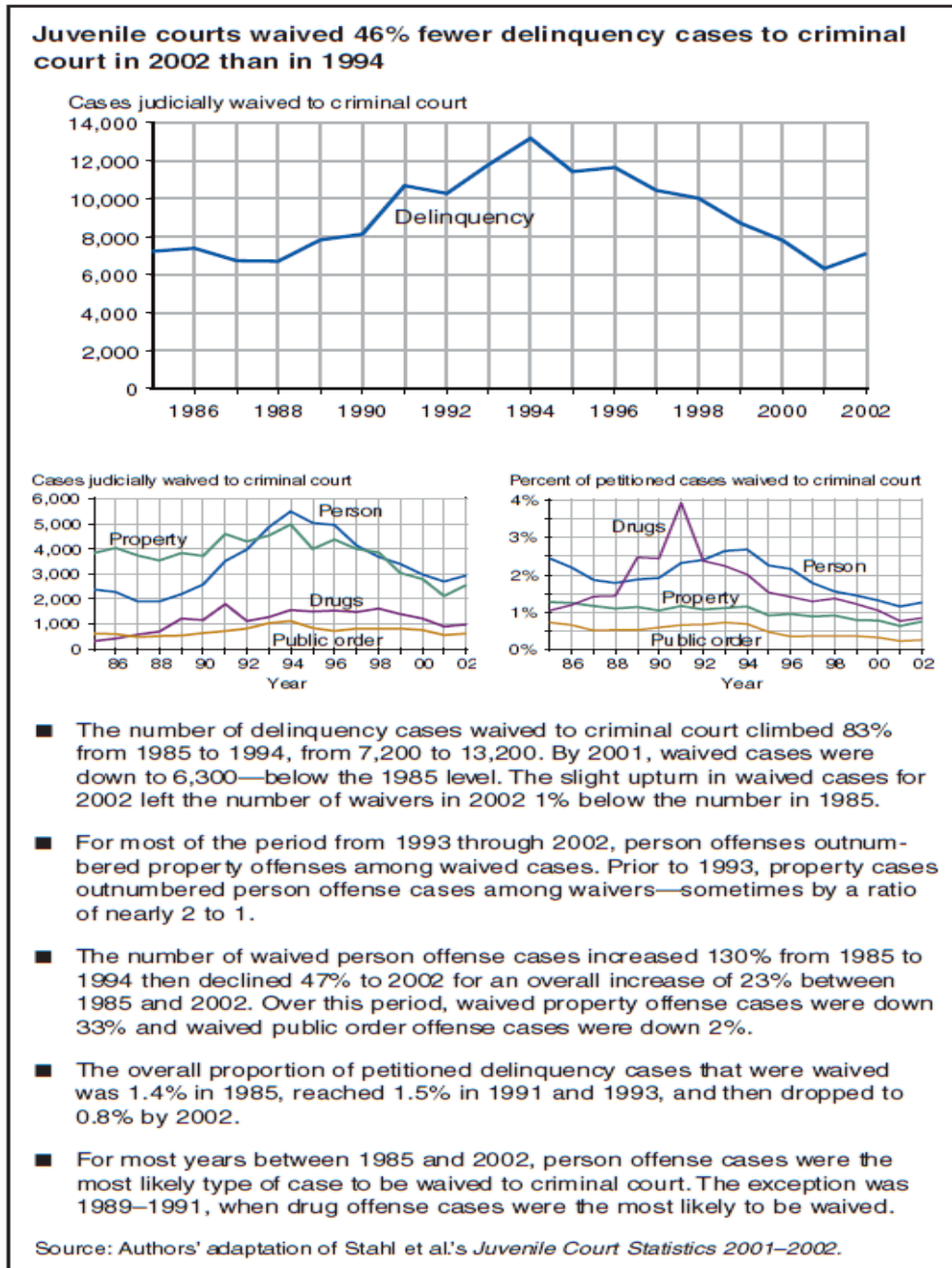


APPENDIX B

APPENDIX B

Figure 3

Juvenile Delinquency Case Transfers to Adult Criminal Courts (1985-2002)



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