

## FROM COLUMBINE TO KAZAA: PARENTAL LIABILITY IN A NEW WORLD

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*In light of the recent high-profile violent acts committed by teenagers, there has been an increased interest in strengthening parental liability statutes. Ultimately, though, parental liability statutes have proven to be ineffective. If parental liability statutes are to be more effective, there must be a correlation between parenting and the child's tortious conduct. If this relationship is absent, culpability is missing and the threat of civil or criminal liability imposed by these parental liability statutes cannot compel parents to better monitor their children's activities.*

*The sole cause of child delinquency is not bad parenting. Numerous studies have concluded that even though parenting may be one factor that increases the likelihood that the child will commit a delinquent act, there are other contributing factors, including socio-economic status, biological factors, and the media. Further, there is no exact science to parenting and no exact way of anticipating how the child will react in every situation. Because no direct relationship exists between a parent's parenting and her child's malfeasance, a parent is not culpable and should not be held liable for every bad act of her child. Therefore, even though parental liability laws may help to ensure that the injured party is fully compensated, these statutes should not be used to hold parents liable for their child's tortious conduct.*

You may give them your love but not your thoughts, for they have their own thoughts. You may house their bodies but not their souls, for their souls dwell in the house of tomorrow, which you cannot visit, not even in your dreams.

Kahlil Gibran

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\* J.D., University of Illinois College of Law (2005). To my husband, Matthew, who graciously and lovingly agreed to shoulder the burden of singularly supporting the family while I attended law school. And to my sons, Josh and Max, who taught me that it does not matter what I say or do; they're going to do whatever they please anyhow.

## I. INTRODUCTION

The parents of the Columbine massacre victims sought answers, and then, they sought retribution. In the words of Michael Shoels, father of eighteen-year-old Columbine victim Isaiah: “They ask us if we blame the parents? . . . Who else do we blame? I taught my son right from wrong. My son wasn’t shooting people up. My son was in the library doing what he was supposed to do.”<sup>1</sup> To that end, the Shoels and other families likewise affected by the Columbine murders filed suit against Eric Harris and Dylan Klebold, parents of the Columbine killers.<sup>2</sup> The initial lawsuit for \$250 million<sup>3</sup> encountered some legal barriers in the context of parental liability: Colorado’s parental liability statute regarding “[d]amages for destruction or bodily injury caused by minors” limits recovery to \$3500.<sup>4</sup> The startling disparity between the compensation demanded and the statutory cap, as well as the violence and breadth of the murders themselves, highlighted for many people a shortcoming of parental liability laws.<sup>5</sup> The families argued that the statutory caps were unconstitutional.<sup>6</sup> Pundits railed at the “largely symbolic and political nature of parental responsibility laws,”<sup>7</sup> and suggested either “expanding the liability of parents for the torts of their minor children”<sup>8</sup> or enacting parental negligence criminal statutes.<sup>9</sup> Critics of existing parental liability laws focused on their limitations<sup>10</sup> and asserted that stricter statutes would reduce juvenile crime, promote justice, and motivate parents to “better monitor their children.”<sup>11</sup>

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1. Lisa Belkin, *Parents Blaming Parents*, N.Y. TIMES, Oct. 31, 1999, § 6 (Magazine), at 61 (quoting Michael Shoels, parent of a student murdered in the Columbine massacre on April 20, 1999).

2. *Id.* at 61.

3. Andrew Guy, Jr., *Suit Seeks \$250 Million; Shoeless Sue Killers’ Parents, Say They’re Sending Message*, DENV. POST, May 28, 1999, at B2.

4. COLO. REV. STAT. ANN. § 13-21-107 (West 1997); *see also* Eric Paul Ebenstein, Note, *Criminal and Civil Parental Liability Statutes: Would They Have Saved the 15 Who Died at Columbine?*, 7 CARDOZO WOMEN’S L.J. 1, 5–8 (2000).

5. *See, e.g.*, Rhonda V. Magee Andrews, *The Justice of Parental Accountability: Hypothetical Disinterested Citizens and Real Victims’ Voices in the Debate Over Expanded Parental Liability*, 75 TEMP. L. REV. 375 (2002); Ebenstein, *supra* note 4, at 4; Andrew C. Gratz, Symposium Comment, *Increasing the Price of Parenthood: When Should Parents Be Held Civilly Liable for the Torts of Their Children?*, 39 HOUS. L. REV. 169 (2002).

6. Belkin, *supra* note 1, at 61. *But cf.* *Watson v. Gradzik*, 373 A.2d 191, 192 (Conn. C.P. 1977) (holding that the Connecticut parental liability law was constitutional, while noting that it was aware of only one state statute ever held to be unconstitutional. The law in question, from Georgia, had no limitation on monetary liability, unlike the Connecticut law. *See Corley v. Lewless*, 182 S.E.2d 766, 768 (Ga. 1971).).

7. Ebenstein, *supra* note 4, at 17.

8. Andrews, *supra* note 5, at 442.

9. *See, e.g.*, Pamela K. Graham, *Parental Responsibility Laws: Let the Punishment Fit the Crime*, 33 LOY. L.A. L. REV. 1719, 1729–39 (2000).

10. Andrews, *supra* note 5, at 377 (“Presently, the parents of a minor child are vastly more likely to be held responsible if their child shatters the window of his high school than if the child shatters the skull of his high school teacher.”).

11. Ebenstein, *supra* note 4, at 28.

In this age, when children commit violent crimes, it seems imperative to find someone or something to blame: for example, video games, movies, or parents.<sup>12</sup> But, if legislatures react to the demand for stricter parental liability laws and higher, or no, caps on damages, what are the implications for other types of juvenile crime?

On September 10, 2003, the Recording Industry Association of America (RIAA) sued 261 people who downloaded protected music onto their personal computers for violating copyright law.<sup>13</sup> Among the defendants were surprised parents—and at least one grandparent—who were ignorant of their child's downloading activities.<sup>14</sup> RIAA also sued twelve-year-old honor student Brianna LaHara for illegally downloading music over the internet.<sup>15</sup> Brianna's mother, who had paid a monthly service fee for Kazaa, a file sharing service, finally settled with RIAA for \$2000.<sup>16</sup>

The web of children, parents, and the internet complicates the logistics of parental liability. Parents may be held liable for the violent crimes of their children under a theory of strict vicarious liability; however, the applicability of this theory is called into question when technology and business enter the picture. Add the demarcation of ages, and it becomes very hard for legislators to draw a fair line. While a parent might have a legitimate responsibility to oversee the behavior of a small child, a teenager, who is more likely to engage in inappropriate behavior, is more independent. Therefore, the relationship between poor parenting and the teen's actions is more attenuated.

This note looks at the recent interest in modifying parental liability laws, and in particular focuses on the potential pitfalls of strengthening parental liability statutes, either in the form of strict liability or harsher consequences for parents of malfeasant children. Part II explores the background of parental liability in both its common law and statutory forms and considers how both are currently applied in our legal system. Part III considers the link between a parent's action or inaction and her child's potential juvenile delinquency, and questions the purported rationales behind parental liability and why punishing the parent more aggressively will somehow remedy the problem of juvenile delinquency. More specifically, it analyzes the constitutionality of current parental liability laws and further considers the dilemmas that may arise from the

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12. Katherine R. Richardson, *Parental Liability and the Criminal Misconduct of Children in the Wake of an Unregulated Internet: Who Should Pay?*, 7 CARDOZO WOMEN'S L.J. 29, 34–35 (2000).

13. Alex Veiga, *It Could Be Hard to Sue Parents for Song Swaps*, SEATTLE POST-INTELL., Sept. 13, 2003, available at [http://seattlepi.nwsource.com/business/139406\\_download13.html](http://seattlepi.nwsource.com/business/139406_download13.html).

14. See BBC News, *Music Firms Target 12-Year-Old*, at <http://news.bbc.co.uk/go/pr/ft/-/1/hi/entertainment/music/3096340.stm> (Sept. 10, 2003) (“Grandfather Durwood Pickle, 71, was shocked on Tuesday to discover a lawsuit had been filed against him, saying his grandchildren used his computer during visits to his Texas home.”).

15. *Id.*

16. *Id.*

application of parental liability laws to children who commit nonviolent white-collar crimes, especially internet crimes. Part IV argues that any statutory “strengthening” of parental liability is rhetoric at best and would fail to accomplish any of the goals it sets out to achieve. It concludes that determining parental liability is best left to the common law, where individual cases can be fairly evaluated by examining both the minor’s crime and the parents’ potential responsibility for their child’s behavior.

## II. BACKGROUND

### A. *Common Law*

As scholar Tammy Thurman writes, “[t]he concept of holding parents responsible for the acts of their children is not new. It has been a common practice in our society to seek compensation from the parents of children who cause property damage . . . .”<sup>17</sup> The concept of parental liability, in its simplest form, appears in the common law. Because it is based on the common law of torts, recovery hinges on the plaintiff’s ability to establish the elements of general negligence: “duty, breach, the requisite causal connection between the parents’ negligence and the harm suffered, and resulting damages.”<sup>18</sup> Recovery under the common law for parental liability is difficult because a generally accepted standard of parental duty is elusive.<sup>19</sup> First, a person has no affirmative duty under the common law to protect another without the existence of special circumstances.<sup>20</sup> The existence of a parent-child relationship is not enough; the parent must take an affirmative action that causes the child to commit the tort for a duty of care to arise.<sup>21</sup> Since parental liability is typically invoked when a parent has failed to act to prevent her child’s negligence—nonfeasance—it is difficult to prove that a duty arose.<sup>22</sup> The parent-child relationship could be included as one of the special relationships traditionally recognized in the common law,<sup>23</sup> thus automatically

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17. Tammy Thurman, *Parental Responsibility Laws: Are They the Answer to Juvenile Delinquency?*, 5 J.L. & FAM. STUD. 99, 99 (2003).

18. Andrews, *supra* note 5, at 388 (citing *Robertson v. Wentz*, 232 Cal. Rptr. 634, 636–37 (Cal. Ct. App. 1986)).

19. *See id.* at 389–93.

20. *Id.* at 389. For example, common law parental liability in Texas is imposed only when: “(1) a master and servant relationship existed between the parent and child; (2) the parent directed the child in committing the tortious act; or (3) the parent negligently permitted the child to engage in conduct likely to harm another.” Gratz, *supra* note 5, at 174 (citing *Aetna Ins. Co. v. Richardelle*, 528 S.W.2d 280, 285 (Tex. Civ. App. 1975)).

21. *Cf. Farwell v. Keaton*, 240 N.W.2d 217, 220 (Mich. 1976) (holding that no duty arises until defendant attempts to aid the victim).

22. Andrews, *supra* note 5, at 389.

23. *Id.* at 390 (alluding to the examples of special relationships listed in the *Restatement (Second) of Torts* § 314A: employer-employee, common courier-passenger, holder of land open to public, and inn-keeper-guest).

engendering a duty on behalf of the parent.<sup>24</sup> However, the broad scope of the parent-child relationship would preclude any reasonable belief that a parent could foresee every potential victim of every potential negligent act her child may perform.<sup>25</sup> In any case, courts often find that parents do not have a duty that extends to unforeseeable victims of their minor child's torts.<sup>26</sup> Finally, traditional common law does not find parents strictly or vicariously liable.<sup>27</sup> So, under the common law, a parent is not, as a rule, liable solely on the basis of parenthood. The common law requires something more. There must be a close, demonstrable connection between the child's bad act and some action, or lack of action, on the parent's part.<sup>28</sup>

Proponents of greater parental liability are frustrated by the common-law provisions.<sup>29</sup> The common law, they assert, is ineffective in holding parents responsible and centers, essentially, on the protection of the parent and not of the victim.<sup>30</sup>

#### B. *Restatement (Second) of Torts Section 316*

Frustrations with the limitations imposed by the common law on parental liability led to the codification of parental liability, making it easier for victims to obtain relief.<sup>31</sup> Many courts relied on the Restatement (Second) of Torts, established in 1965, as a basis for codifying the elusive standard of duty.<sup>32</sup> Under that standard,

[a] parent is under a duty to exercise reasonable care so to control his minor child as to prevent it from intentionally harming others or from so conducting itself as to create an unreasonable risk of bodily harm to them, if the parent

(a) knows or has reason to know that he has the ability to control his child, and

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24. *Id.* (comparing the duty of a parent to that of the psychiatrist in *Tarasoff v. Regents of the University of California*, 551 P.2d 334 (Cal. 1976), whose relationship to his patient gave rise to his duty to his patient's victim).

25. *Id.* at 390-91. "*Tarasoff* arguably turned on the presence of a readily identifiable third party potential victim. As . . . the typical school shooting case lacks the presence of a specific or readily identifiable victim . . . known to the parents in advance . . . *Tarasoff* would not adequately support an extension of the parents' duty in these cases." *Id.* (footnotes omitted).

26. *See id.* at 389.

27. *See id.* at 388.

28. Andrew Schepard, *Parental Responsibility: The Columbine Aftermath*, N.Y. L.J., July 8, 1999, at 3.

29. *See, e.g.*, Andrews, *supra* note 5, at 388-97; Ebenstein, *supra* note 4, at 2-4; Gratz, *supra* note 5, at 174-75.

30. *See supra* notes 18-28 and accompanying text; *see also infra* notes 74-81 and accompanying text.

31. *See infra* notes 36-39 and accompanying text. *But see, e.g.*, Andrews, *supra* note 5, at 391-92.

32. *See Gratz, supra* note 5, at 175-80.

(b) knows or should know of the necessity and opportunity for exercising such control.<sup>33</sup>

The Restatement notably expands the common-law duty to include even acts by a child that “may be so young as to be incapable of negligence.”<sup>34</sup> Thus, it distinguishes between the parent’s responsibility and the age of the child. Under this scenario, a parent of a young child is understood to have a “more effective ability to control its actions and to make it more often necessary to exercise it” than a parent of an older child.<sup>35</sup>

Studying the application of common law, statutory law, and the Restatement in the Texas justice system, Andrew Gratz argues that courts tend to interpret the Restatement either broadly (victim-centered) or narrowly (parent-friendly).<sup>36</sup> Under the broad interpretation, a parent must have knowledge of her child’s potential to create harm before liability can be established.<sup>37</sup> Once the plaintiff shows that the young tortfeasor demonstrated a propensity for misbehavior in the past—even once<sup>38</sup>—the victim has a greater opportunity for recovery than he would under the common law or the narrow interpretation of the Restatement.<sup>39</sup> The parent then has a duty to warn the victim or affirmatively control the child’s behavior.

The narrow interpretation of the Restatement, however, is applied much like the common law.<sup>40</sup> In an Illinois case, *Cooper v. Meyer*,<sup>41</sup> the court did not hold a parent liable when his son, out of the parent’s presence, “flew into a rage and wilfully [sic] and maliciously attacked the plaintiff by striking her with his hands.”<sup>42</sup> Analyzing the Restatement, the *Cooper* court found that the child’s parent “had no opportunity to directly control the conduct of the minor child at the time of the tort” and thus fell outside the boundaries for parental liability under the Restatement.<sup>43</sup> Even if the child’s previous behavior hints at a propensity for misbehavior, without a direct link between past behavior and the tort in question, courts taking the narrow view of the Restatement rarely find

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33. RESTATEMENT (SECOND) OF TORTS § 316 cmt. c (1965); see also Ebenstein, *supra* note 4, at 8–9.

34. RESTATEMENT (SECOND) OF TORTS § 316 (1965). Some states have taken steps to limit parental liability for the damages caused by children in their late teens. See, e.g., H.B. 1244, 91st Gen. Assem., 2d Reg. Sess. (Mo. 2002).

35. RESTATEMENT (SECOND) OF TORTS § 316 cmt. c (1965).

36. Gratz, *supra* note 5, at 180–90.

37. See *id.* at 186; see also Wood v. Groh, 7 P.3d 1163, 1172–73 (Kan. 2000); Linder v. Bidner, 270 N.Y.S.2d 427, 428–90 (N.Y. Sup. Ct. 1966); Ellis v. D’Angelo, 253 P.2d 675, 679–80 (Cal. Dist. Ct. App. 1953).

38. Gratz, *supra* note 5, at 189.

39. Cf. Wood, 7 P.3d at 1172–73 (“Although the evidence at trial revealed that Ed had only one previous run-in with the law, the Grohs knew that Ed had a curfew and that it was a violation of his probation to possess a gun without the permission of the probation officer.”).

40. See Gratz, *supra* note 5, at 182–86.

41. 365 N.E.2d 201 (Ill. App. Ct. 1977).

42. *Id.* at 202.

43. *Id.* at 203; see also Dinsmore-Poff v. Alvord, 972 P.2d 978, 984 (Alaska 1999).

parental liability.<sup>44</sup> Gratz construes this interpretation as a “sympathetic view toward the parents of violent children.”<sup>45</sup>

### C. *Civil and Criminal Statutes*

#### 1. *Civil Statutes*

The legislative purposes of civil parental liability statutes are typically “to compensate innocent victims for wilful [sic] or malicious juvenile misconduct and to oblige parents to control their children to prevent intentional harm to others.”<sup>46</sup> “Fear of consequences is a significant factor in controlling behavior,” argues attorney Bobby McDaniel, an advocate for the families of five children who were killed by another child in Arkansas.<sup>47</sup> He reasons that “[w]e’ve already won [the lawsuit against the killer’s parents] to some extent because we got people talking about it.”<sup>48</sup> Another rationale offered by legal analysts for parental liability statutes incorporating a parental punishment aspect, assumes that parental inaction or action is the primary cause of the child’s delinquency and thus, the “bad” parents should be disciplined.<sup>49</sup> As well, supporters of parental liability statutes insist that the laws will control and even reduce juvenile delinquency by forcing more effective parenting through threat of punishment.<sup>50</sup>

All states have adopted some version of a civil liability statute.<sup>51</sup> Most states require a negative mental state—“willful or malicious,” or “knowing and intentionally”—on the part of the minor.<sup>52</sup> Almost all states have a cap on damages, which range from \$800 to \$25,000.<sup>53</sup> States differ in their interpretation of whether state statutes preclude recovery under an independent common law claim.<sup>54</sup> For example, Tennessee courts interpret their state parental liability statute to preclude recovery under independent common-law claims in actions against parents for the

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44. See Gratz, *supra* note 5, at 182–86.

45. See *id.* at 185 (discussing the court’s analysis in *Moore v. Crumpton*, 295 S.E.2d 436, 443 (N.C. 1982)).

46. *Robison v. First State Bank*, 495 N.E.2d 637, 639 (Ill. App. Ct. 1986).

47. Belkin, *supra* note 1, at 61.

48. *Id.*

49. Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the United States*, 37 SANTA CLARA L. REV. 621, 624 (1997).

50. *Id.* at 622; see also Ebenstein, *supra* note 4, at 15.

51. See L. Wayne Scott, *Liability of Parents for Conduct of Their Child Under Section 33.01 of the Texas Family Code: Defining the Requisite Standards of ‘Culpability,’* 20 ST. MARY’S L.J. 69, 87–91 (1988) (listing, by state, current civil parental liability laws). New Hampshire, which at the time of Professor Scott’s compilation did not have a statute, now does: N.H. REV. STAT. ANN. § 507:8-e (1997) (regulating acts of vandalism by a minor to the real or personal property of another).

52. See, e.g., ALASKA STAT. § 34.50.020(a) (Michie 2002); 740 ILL. COMP. STAT. ANN. 115/3 (West 2002).

53. Andrews, *supra* note 5, at 444–46.

54. See *infra* text accompanying notes 55–56.

tortious acts of their children.<sup>55</sup> Illinois, on the other hand, specifically acknowledges the plaintiff's right to claim an independent cause of action: "This Act shall not affect the recovery of damages in any other cause of action where the liability of the parent . . . is predicated on a common law basis."<sup>56</sup>

Even if a state statute provides for civil parental liability, liability may be limited to property damage.<sup>57</sup> Thus, a victim seeking restitution has an excellent chance of recovery from the parent of the negligent child.<sup>58</sup> Most parental responsibility statutes allow vicarious liability for property damage caused by children.<sup>59</sup> The toughest laws that "impose unlimited vicarious liability on parents of minor tortfeasors" require fault but generally do not require intention or malice on the part of the child.<sup>60</sup> Frustration arises when strict liability goes hand-in-hand with statutory limits to recovery—as is typical in most civil parental liability laws.<sup>61</sup> Though victims can collect on damages, they may or may not be able to recoup the full loss.<sup>62</sup> Moreover, courts typically interpret statutes narrowly, further limiting the liability of the parent even under a strict liability statute.<sup>63</sup>

As a result of the 1999 Columbine massacres by teenagers Eric Harris and Dylan Klebold and subsequent similar violence by other teens—most using guns—there has been heightened focus on the limitations of civil parental liability laws.<sup>64</sup> Rhonda V. Magee Andrews argues that "[c]ivil liability statutes have therefore served, at least partially, to fill the gaps created by the common law's failure to provide adequate relief for the victims of torts of children and youth."<sup>65</sup> But the question remains whether civil liability statutes fairly fill the breach—if one indeed exists—created by the *nonviolent* crimes of children under eighteen.

## 2. *Criminal Statutes*

Columbine prompted a renewed interest in criminal liability for parents whose children engage in criminal acts.<sup>66</sup> Generally, there are three types of criminal statutes that address parental liability. First, almost every state penal code contains a statutory penalty for "contribut-

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55. Lavin v. Jordon, 16 S.W.3d 362, 363 (Tenn. 2000).

56. 740 ILL. COMP. STAT. ANN. 115/6 (West 2002).

57. Andrews, *supra* note 5, at 399 & n.156.

58. *See id.* at 398.

59. Gratz, *supra* note 5, at 190.

60. Andrews, *supra* note 5, at 401 (citing Hawaii, Georgia, New Jersey and Louisiana as states that adopted broad vicarious parental liability laws).

61. *Id.* at 399.

62. *See id.*

63. *Id.* at 403.

64. *See id.* at 380–81.

65. *Id.* at 387.

66. *See, e.g.,* Paul Frisman, *Searching for Answers to Littleton*, CONN. L. TRIB., May 10, 1999, at 1.

ing to the delinquency of a minor” (CDM).<sup>67</sup> While CDM statutes apply to any adult who encourages a child to commit a delinquent act, they can also apply to parents whose children fail to attend school.<sup>68</sup> Second, by 1997, laws holding parents criminally responsible for their children’s delinquent acts existed in seventeen states.<sup>69</sup> These more explicit criminal statutes focused specifically on parental liability and lessened the mens rea required under typical criminal statutes.<sup>70</sup> A third type of criminal statute involving the responsibility of adults to a child’s act requires, for example, that owners of firearms to secure their guns and ammunition, thereby making them inaccessible to children.<sup>71</sup>

### III. ANALYSIS

In order for parental liability statutes to be civilly or criminally useful, the concerns behind the laws must be legitimate; one must agree that parents are, in some sense, responsible for the acts of their children. Then, fear of liability should both compel parents to be more effective guardians, as well as, contribute to a drop in juvenile delinquency.<sup>72</sup>

How do we measure a parent’s level of legal responsibility? Andrews argues for a broad finding of parental responsibility beyond foreseeable harm:

The legal responsibility for the harm caused by a minor child should be extended beyond the minor . . . herself to encompass those whose decision it was to bring the child with its attendant risks and responsibilities, into the social world, and who are traditionally considered at least partially responsible for the child’s conduct and character in its formative years: the parents.<sup>73</sup>

Under this expansive umbrella, a parent is liable for any tortious or criminal acts committed by her child.<sup>74</sup> Andrews contends that strengthening parental liability laws advances both corrective and distributive justice.<sup>75</sup> Corrective justice, which Andrews believes to be the “primary normative foundation of tort law,”<sup>76</sup> demands that individuals that are to blame for harming another must then mend the injury.<sup>77</sup> This makes

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67. Graham, *supra* note 9, at 1731–32; *see also* Howard Davidson, *No Consequences—Re-examining Parental Responsibility Laws*, 7 STAN. L. & POL’Y REV. 23, 25 (1996).

68. Graham, *supra* note 9, at 1731–32; *see also* Davidson, *supra* note 67, at 25.

69. Graham, *supra* note 9, at 1732–33.

70. *Id.*

71. *See* Frisman, *supra* note 66, at 1; Graham, *supra* note 9, at 1743–45 (discussing the Youth Gun Crime Enforcement Act of 1999 and similar state statutes).

72. Thurman, *supra* note 17, at 100.

73. Andrews, *supra* note 5, at 442.

74. *Id.* (“[P]arents should be subject to greater liability for the torts of their children, whether through an expansion of liability in negligence, through expanded strict liability, or through expansions of liability premised on both theories.”); *see also infra* note 123 and accompanying text.

75. Andrews, *supra* note 5, at 442.

76. *Id.* at 408.

77. Jules L. Coleman, *The Practice of Corrective Justice*, 37 ARIZ. L. REV. 15, 15 (1995).

sense in the realm of parental liability if the priority is to make the victim whole and when the minor tortfeasor is most likely insolvent.<sup>78</sup> Thus, assuming that corrective justice demands a financial bandage, the victim can only be made whole by the deep pockets of the parent.<sup>79</sup> Andrews stresses that seeking corrective justice, however, is focused not only on fairly distributing the benefits of law (here, protecting the victim), but also as a way of affirming humanity.<sup>80</sup> To her, expansive parental liability contributes to a “greater ‘humanity consciousness’ among members of our society” by fairly dispensing justice to victims while forcing minor tortfeasors, and their parents, into awareness of their potential/actual misdeeds and the potential/actual legal repercussions.<sup>81</sup>

It is particularly easy to feel sympathy for victims of violent crimes and to want to find some sort of compensation for their pain. Columbine victim Isaiah Shoels’ father bitterly contends that the family is owed more than the apology offered by the killers’ parents: “We are like victims of an earthquake or a hurricane . . . . Our lives have been destroyed.”<sup>82</sup> Other parents of Columbine victims who did not initially plan to join the litigation against the killers’ parents have been forced to sue for financial reasons.<sup>83</sup> One parent stated, “I’ve forgiven the parents. . . . I’ve prayed and prayed and I’ve forgiven them. But I still have medical bills to pay and it was their kids who did this. Forgiveness doesn’t mean there aren’t consequences.”<sup>84</sup>

Yet, not everyone agrees that holding parents responsible for the actions of their children, independent of foreseeability, is fair to all parties.<sup>85</sup> Although concern for the victim is undoubtedly a significant factor, it cannot be the only one. Other goals, such as controlling juvenile delinquency by deterring youthful misdeeds and challenging parents to be better role models, are equally important.<sup>86</sup> And it is far from settled that either of these goals are met by parental liability laws.<sup>87</sup>

#### A. *Bad Parents and Juvenile Delinquency*

There are a number of theories that try to explain the forces driving children to delinquency. The nexus between parenting and juvenile delinquency is based primarily on the theory that the child acts badly be-

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78. Andrews, *supra* note 5, at 387.

79. See, e.g., *id.*; see also *supra* text accompanying notes 1–11.

80. Andrews, *supra* note 5, at 409.

81. See *id.*; Coleman, *supra* note 77, at 15–18.

82. Belkin, *supra* note 1, at 61.

83. *Id.*

84. *Id.* The parent had just been billed for a \$1800 mattress prescribed by a doctor to help relieve the pressure of her son’s pain due to remaining shrapnel. Her HMO had failed to reimburse her.

85. See, e.g., Chapin, *supra* note 49, at 621; Thurman, *supra* note 17, at 99.

86. Thurman, *supra* note 17, at 100.

87. See discussion *infra* Part III.B.

cause her “bonds to conventional society are weak or broken.”<sup>88</sup> This theory, called the Control Theory, focuses on the role that the parent plays in creating a juvenile delinquent.<sup>89</sup> A strong bond between the child and society is forged when four elements are present: (1) an attachment to various persons and institutions within society; (2) a commitment to obeying the rules of society through fear of consequences; (3) an involvement in conventional activities such as schoolwork and hobbies; and (4) an assumption that the child buys into the rules of society (even if she chooses to violate them).<sup>90</sup>

According to Travis Hirschi, a proponent of the Control Theory, the link between the child and her parent is a crucial variable in determining whether the child will form a relationship with society and thus, be less likely to misbehave.<sup>91</sup> Linda A. Chapin argues that to embrace the Control Theory—or any theory that links parenting with juvenile delinquency—is to take for granted some “interconnected assumptions.”<sup>92</sup> First, suppose that the parent’s actions or inactions directly affect her child’s behavior.<sup>93</sup> If that is assumed, then it necessarily follows that a good parent would raise a “well-behaved and law-abiding child.”<sup>94</sup> Poor parenting, on the other hand, results in juvenile delinquency.<sup>95</sup> However, any parent knows that the line cannot be drawn so starkly. Richard Kling, a professor of clinical law at the Chicago-Kent College of Law and a criminal defense lawyer, acknowledges that, “[y]ou can be the best parent in the world and have a kid who goes bad . . . [a]nd you can be the most neglectful parent in the world and your kid might never shoot up a schoolyard.”<sup>96</sup>

The Control Theory assumes that the parent is the only cause of the child’s misconduct.<sup>97</sup> But, according to Chapin, “[m]ost current researchers concede that the relationship between the family and juvenile delinquency is complex, and that a ‘bad’ parent is not the sole cause of a ‘bad’ child.”<sup>98</sup> Further, a bad parent is not the only cause of the child’s delinquent behavior.<sup>99</sup> Other theories look at a variety of factors that may contribute to or even more directly influence a child’s behavior, such as socioeconomic issues, biological influences, or the impact of media intru-

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88. Thurman, *supra* note 17, at 102 (citations omitted).

89. *Id.*

90. Chapin, *supra* note 49, at 668–69.

91. *Id.*; see also Thurman, *supra* note 17, at 102 (citations omitted).

92. See Chapin, *supra* note 49, at 624.

93. *Id.*

94. *Id.*

95. *Id.*

96. Belkin, *supra* note 1, at 61.

97. Chapin, *supra* note 49, at 669.

98. *Id.* at 671.

99. Graham, *supra* note 9, at 1719.

sion.<sup>100</sup> The Strain (anomie) Theory uses as its basis socioeconomic concerns.<sup>101</sup> “[P]resum[ing] that people generally are socialized into the majority society, and therefore want to achieve the goals championed by that society,” the Strain Theory asserts that children who lack the aptitude or the resources to realize these goals on their own resort to criminal means to obtain something equivalent.<sup>102</sup> Critics argue that the Strain Theory suggests juvenile delinquency is limited to the lower class.<sup>103</sup>

Other commentators suggest that biological factors such as physical strength and brain functioning, as well as nervous activity and hormone levels, may contribute to delinquency.<sup>104</sup> However, according to the Office of Juvenile Justice and Delinquency Prevention (OJJDP), “it is far from clear to what extent biological processes determine delinquency at a young age.”<sup>105</sup> One magazine article written soon after Columbine suggested that the effect of expanding the scope of parental criminal liability would widen a “criminalization of children with mental health issues,” because, without the need for a provable *mens rea*, any bad behavior, whether driven by an unsavory character or mental problems, would be criminal.<sup>106</sup>

The link between juvenile delinquency and the media is relatively recent. Video games, the internet, and parents’ control over their child’s access to these media faced heightened scrutiny in the aftermath of Columbine. The Columbine killers apparently posted the recipe for pipe bombs on their website;<sup>107</sup> moreover, the video game *Doom* was rumored to be the killers’ inspiration for the massacre.<sup>108</sup>

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100. See, e.g., Thurman, *supra* note 17, at 102; Gail A. Wasserman et al., *Risk and Protective Factors of Child Delinquency*, CHILD DELINQ. BULL. SERIES 1 (Off. Juv. Just. & Delinq. Prevention, Wash., D.C.), Apr. 2003, at 1 (finding that a number of factors potentially influence a child’s likelihood to become delinquent and include the individual child, the child’s family, the child’s peer group, the child’s school, the child’s neighborhood, and the media. Individual risk factors include antisocial behavior, emotional factors, cognitive development and hyperactivity.).

101. Chapin, *supra* note 49, at 666.

102. *Id.*

103. *Id.*

104. Wasserman et al., *supra* note 100, at 4.

105. *Id.*

106. Frisman, *supra* note 66, at 1; see also Schepard, *supra* note 28, at 3 (“There is strong evidence . . . that links violent behavior by children to their brain chemistry [for which parents surely cannot be held responsible] . . .” (alteration in original)).

107. Lisa Lockwood, *Where Are the Parents? Parental Criminal Responsibility for the Acts of Children*, 30 GOLDEN GATE U.L. REV. 497, 498 (2000).

108. See Janelle Brown, *Doom, Quake and Mass Murder*, at <http://www.salon.com/tech/feature/1999/04/23/gamers/> (discussing the Columbine killers’ propensity for gaming, against the rest of the teenage male population: “Millions of gamers have put hours into these two [video games] bloody shoot’em-ups, happily blowing pixilated enemies to bits. And, of course, the vast majority of them have never killed anything but a fictitious opponent.”) (Apr. 23, 1999).

*B. But Is There a Juvenile Crime Trend?*

A major motivation for intensifying parental liability laws is the prevention of juvenile delinquency.<sup>109</sup> But discovering a link between parental liability and juvenile delinquency has proven elusive and raises thorny questions. First, is the juvenile crime rate increasing so significantly that more stringent measures are needed to control it? And, second, does strengthening parental liability statutes help control, or even lessen, juvenile delinquency?

Statistics show, in fact, that juvenile crime has declined.<sup>110</sup> By 2001, the Juvenile Violent Crime Index<sup>111</sup> arrest rate fell to its lowest level since 1983—down forty-four percent from its 1994 peak.<sup>112</sup> In 2000, for every 100,000 children in the United States between the ages of ten and seventeen, there were 7327 arrests.<sup>113</sup> Property crime offenses made up the bulk of these arrests; only “about one-third of one percent” of these children were arrested for violent crime.<sup>114</sup> This was a twenty-three-percent decline in arrest rates since 1996.<sup>115</sup> As Thurman writes, “[a] closer look at the juvenile crime problem suggests that though there has been increased publicity of juveniles committing violent crime, when examined in context, these incidents alone do not support the theory of an emerging juvenile crime wave.”<sup>116</sup>

Indeed, focus on the juvenile crime trend seems to be based on politics and historical social responses to perceived threats, not on statistics.<sup>117</sup> Children, and especially teenagers, are often seen as potential threats to the status quo.<sup>118</sup> Critics of harsh sentencing for juvenile offenders observe the character of youth: “Rebellion is a natural urge for most teenagers as they break away from parental control and try to establish their own identity.”<sup>119</sup> They fear the “growing intolerance for nonconformity” that drives society’s single-minded dread of children

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109. See, e.g., Thurman, *supra* note 17, at 99–103.

110. Howard N. Snyder, *Juvenile Arrests 2001*, Office of Juvenile Justice and Delinquent Prevention), available at <http://www.ncjrs.org/html/ojjdp/201370/contents.html> (Dec. 2003).

111. The Juvenile Violent Crime Index tracks four offenses: murder, forcible rape, robbery, and aggravated assault. See *id.*

112. *Id.* As well, juvenile arrests for property crimes were the lowest in three decades. However, some fear that the reduction in juvenile crime rates was due, in part, to “youthful offender” statutes which allow children charged of committing a felony to be tried as adults. See, e.g., Press Release, Citizens for Juvenile Justice, (Dec. 11, 2000), at <http://www.cfjj.org/myweb4/Fact%20Book%20Press%20Release.htm>.

113. Thurman, *supra* note 17, at 101 (citing the *OJJDP Statistical Briefing Book, 2001*).

114. *Id.*

115. *Id.*

116. *Id.*

117. See *id.*

118. See *id.* at 100 (“[L]iterature suggests that these concerns [about juvenile crime] were sometimes fueled by misconceptions of young people and youth behavior.”).

119. Neil Taylor, *Making Example of “Evil Cyberhacker” Not the Answer*, S. CHINA MORNING POST, Sept. 2, 2003, at 2.

gone mad.<sup>120</sup> For every Columbine murderer, there are hundreds of thousands of Doom-playing teens who will go on to lead productive, maybe even conventional, lives. Video games and internet access do not portend a future of crime, and a parent who does not forbid, or even monitor access, is not always a bad parent.<sup>121</sup>

There is no one way to measure the effectiveness of parental liability statutes on juvenile delinquency rates. Thurman suggests looking for decreasing juvenile crime rates in areas where parental liability laws are strenuously enforced.<sup>122</sup> The crime rate, however, can be tainted by other factors in the criminal justice system. For example, if police refer juveniles to juvenile court instead of pursuing other approaches, such as referral to other public agencies, the juvenile crime rate increases whether or not the actual number of juvenile criminals has increased.<sup>123</sup> So, it is almost impossible to assess the significance of parental liability laws as they relate to juvenile delinquency. What it seems to boil down to, as Eric Ebenstein notes, is that the effectiveness of these laws is not important; but “rather society’s perception of their impact on the crime rate.”<sup>124</sup>

With this in mind, there is little evidence that parental liability laws have affected juvenile delinquency.<sup>125</sup> Proponents of parental liability statutes argue that because courts undervalue the role parents play in a child’s delinquency, the statutes are ineffective.<sup>126</sup> Others bemoan the “largely symbolic and political nature of parental responsibility laws” as currently applied and suggest that somehow “increased civil and criminal liability for parents may be the quickest, most cost-effective way of getting parents to better monitor their children.”<sup>127</sup> Increased how? Andrews urges an expansion of, among other things, strict liability for parents.<sup>128</sup> Thus, the tortfeasor’s parents would be responsible for the costs of any mishap unless they could show that the victim was “entirely or largely” at fault.<sup>129</sup> Although strict liability ensures that no victim is uncompensated for her suffering, it gives no credence to the possibility that factors *other* than the parent might be involved.<sup>130</sup> The burden falls

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120. Frisman, *supra* note 66, at 1.

121. See discussion *infra* Part III.D.

122. Thurman, *supra* note 17, at 105.

123. *Id.* (“In 1961, for example, police nationwide referred 49% of the juveniles they arrested to the juvenile court while the remainder were released or referred to other community agencies. In 1995, however, police referred 65.7% of arrested juveniles to the juvenile court, increasing the juvenile caseloads by 30%.” (citations omitted)).

124. Ebenstein, *supra* note 4, at 19 (citation omitted).

125. Chapin, *supra* note 49, at 624; see also Davidson, *supra* note 67, at 27.

126. Davidson, *supra* note 67, at 23.

127. Ebenstein, *supra* note 4, at 17, 28 (footnote omitted).

128. Andrews, *supra* note 5, at 442. Andrews also proposes an expansion of liability in negligence, which would put the onus back on the courts to take a broader reading of the concept of the parental duty of care. *Id.* at 437–39.

129. *Id.* at 420.

130. See, e.g., Wasserman et al., *supra* note 100, at 1.

squarely on the parent. That is fine, says Andrews: the “decision to parent should not be made lightly” and, once made, a parent should expect to take responsibility for all of her child’s actions.<sup>131</sup> In Andrew’s view, protecting the victim’s interest outweighs a consideration of the parent’s degree of responsibility.<sup>132</sup>

Given the limited success of parental liability laws and the numerous variables that contribute to teen violence, it would seem that courts, unlike Andrews, would have difficulty applying the apparently black-and-white statutes of parental liability. However, courts have not had such difficulty. Take, for example, a Michigan case that arose from a parental liability ordinance requiring the parent to “exercise *reasonable* control to prevent the minor from committing any delinquent act.”<sup>133</sup> The Provenzino’s sixteen-year-old son “burglarized homes and churches, kept a marijuana plant in his room, and engaged in random assaults.”<sup>134</sup> Despite previous affirmative efforts to obtain counseling for their son, to monitor his friendships, to enforce stricter control of his actions, and to even request police to put him in jail, his parents were nonetheless found guilty of violating the ordinance.<sup>135</sup> Apparently, the court found that the Provenzino’s efforts were not reasonable. One wonders, though, what more they could have done.<sup>136</sup>

Because of the difficulties presented by accurately and fairly defining “reasonable control,” society’s willingness to blame parents for juvenile delinquency seems tempered by “a reluctance to actually punish parents for their parenting, unless the parent has actively encouraged or solicited the child’s delinquent act.”<sup>137</sup> Advocates of strengthened parental liability laws argue that strict liability is one way to avoid the lack of clarity that trying to define reasonable control brings.<sup>138</sup> Yet, perhaps the very thing that drives their frustration—lack of general parental statutory effectiveness—demonstrates the general public’s weak stomach when it comes down to actually finding parental liability. Rarely is the link between the parent’s action or inaction and the child’s misaction unambiguous and transparent.

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131. Andrews, *supra* note 5, at 417 (“If the idea of sharing responsibility with one’s minor child for the child’s wrongs is unpalatable to a would-be parent, that person *should* reconsider whether parenting is right for him or her.”).

132. Andrews, *supra* note 5, at 436, 442.

133. Ebenstein, *supra* note 4, at 16 (emphasis added) (citing ST. CLAIR SHORES, MICH., CODE § 20.563(a) (1994)).

134. *Id.* at 17.

135. *Id.* at 16–17.

136. The Provenzinos eventually ended up with a sentence “of \$100 fines for each parent and court costs of \$1000,” as well as being required to fund their son’s care at a youth detention home at a cost of \$13,000 per year. *Id.* at 17–18, n.104.

137. Chapin, *supra* note 49, at 624.

138. Andrews, *supra* note 5, at 442.

C. *The Tie That Binds: A Parent's Responsibility for Her Child's Behavior*

Even if one does not find strict liability a fair or reasonable alternative to the common law or Restatement, the difficulty in finding a connection between the parent and the child's behavior, which both the common law and Restatement require, drives most parental liability supporters back to some sort of statutory strict liability standard. However, the complexity and potential injustice is part of the reason that codifying parental liability is so unsatisfactory. First, it is difficult to assume that there exists what Linda A. Chapin calls the "universal model of adequate parenting."<sup>139</sup>

[A]pplicable, regardless of other factors, such as race, ethnicity, culture, social class, economic status . . . [this model requires that] all parents are presumed to know what adequate parenting is, and to have both the ability and the resources to adequately parent; if they are not, then it follows that they must be intentionally or negligently avoiding doing what they know they should do, and can do.<sup>140</sup>

And, if a parent fails to be an adequate parent according to the model, asks Chapin, can she then be *punished* into being a better parent?<sup>141</sup>

Critics of statutory parental liability argue that the complexity of juvenile delinquency calls for policy considerations that favor solutions, rather than punishment.<sup>142</sup> Even Howard Davidson, a proponent of parental liability statutes, urges that a prerequisite must be an existing effective family policy: "There is a great need for appropriate, abundant, and affordable resources to aid parents and families with a broad array of family problems long before the issue of a child's delinquent behavior becomes a public concern."<sup>143</sup> In fact, parental liability statutes may have a *negative* impact on the family system.<sup>144</sup> Parental liability statutes potentially infringe on the family's constitutional right to privacy.<sup>145</sup> For ex-

139. Chapin, *supra* note 49, at 624.

140. *Id.*

141. *Id.*

142. See, e.g., *id.* at 672; Graham, *supra* note 9, at 1751; Thurman, *supra* note 17, at 109. Also note that according to the OJJDP, early intervention is always the best guarantee that a child will not become a juvenile delinquent. Wasserman et al., *supra* note 100, at 2.

143. Davidson, *supra* note 67, at 24. "It is simply inappropriate to rush into legislative solutions that punish parents for their children's criminal acts without ensuring that effective services are readily available to families at all income levels . . ." *Id.* at 28. Davidson recommends getting parents more involved with juvenile courts and agencies, and *encouraging* parents to exercise more responsibility and control over their children. *Id.* at 27-28.

144. Thurman, *supra* note 17, at 106.

145. However, most current statutes have been found *not* to interfere with a parent's constitutional right to raise their children. See *Williams v. Garcetti*, 853 P.2d 507, 516-17 (Cal. 1993). The concern is whether parental liability statutes will remain constitutional if they are strengthened or changed to strict liability for *all* crimes committed by children. For a brief discussion on past constitutional challenges to parental liability statutes on charges of vagueness, overinclusiveness, substantive due process and cruel and unusual punishment, see Christine T. Greenwood, *Holding Parents Crimi-*

ample, some laws make it an element of the offense if parents fail to report the child's criminal act.<sup>146</sup> As well, it is feared that these laws "encourag[e] parents to abandon their traditional role of protecting their children and join in partnership with the state in becoming risk managers."<sup>147</sup> Parental liability laws may drive parents to invoke "unnecessarily strict parenting techniques,"<sup>148</sup> possibly leading to abuse or, at the least, a lack of emotional support for their children.<sup>149</sup> Furthermore, parents' right to decide *how* to raise their children, which may differ from a legislature's view due to cultural, political, or monetary reasons, may be unfairly inhibited by statutorily defined mores.<sup>150</sup>

Thurman is also concerned by the "types of families most vulnerable to [parental liability] legal intervention."<sup>151</sup> Looking at a 1999 statistical study, minorities, while only one-third of the juvenile population, make up two-thirds of the residents in secure juvenile facilities.<sup>152</sup> Thurman postulates that the disproportionate representation of minorities in the juvenile justice system could reasonably lead to a disproportionate targeting of minority parents.<sup>153</sup> Similarly, socioeconomic station may affect a parent's likelihood of failing to meet the "reasonable control" standard articulated by many parental liability statutes.<sup>154</sup> Parents that cannot afford counseling for their troubled teen or who cannot be home consistently to provide adequate supervision due to burdens of employment would be more apt to fail the "reasonable control" requirement than wealthier parents.

Though poverty does not entitle one to suspect class status,<sup>155</sup> one wonders if, depending on the type of crime involved, a due process claim could be argued given the vast differences in families' economic and edu-

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nally Responsible for the Delinquent Acts of Their Children: Reasoned Response or "Knee-Jerk Reaction"?, 23 J. CONTEMP. L. 401, 436-37 (1997).

146. Thurman, *supra* note 17, at 106.

147. *Id.*

148. *Id.*

149. See Schepard, *supra* note 28, at 3.

150. See discussion *supra* Part II.B. For example, if a parent has access to internet regulation and decides not to implement it, are they a "bad parent"? Should they be *more* liable for the criminal acts of their children over the internet than a parent that does monitor? If parents cannot afford psychiatric help for their troubled teens, are they *more* responsible than affluent parents who have either health coverage or can afford therapy? With strict liability, there would be no need to consider these questions. *But cf.* Andrews, *supra* note 5, at 439. Andrews asserts that a parent's conduct should be held against a community standard for appropriate behavior. Should a parent's conduct fall "below a standard of care," then the parent "should suffer the consequences." Andrews does not say what scope the community standard would encompass.

151. Thurman, *supra* note 17, at 107.

152. *Id.*

153. *Id.*; *cf.* Andrews, *supra* note 5, at 440 (voicing a similar concern but arguing that *current* parental liability laws, which she feels are ineffective and thus in need of strengthening, are responsible for the disparity in treatment of minorities).

154. See *supra* text accompanying notes 46-50.

155. See, e.g., Dandridge v. Williams, 397 U.S. 471 (1970); Harper v. Va. Bd. of Elections, 383 U.S. 663 (1966).

educational resources.<sup>156</sup> To this end, many commentators believe the focus should not be on punishing the parent but instead, on pursuing a broader approach that would address “some of the other social factors that contribute to juvenile delinquency,” including but not limited to parenting classes.<sup>157</sup> Chapin, for example, argues that “we must continue to pursue a multiplicity of solutions to this complex social problem; parental liability laws should be acknowledged as only a partial solution, not effective when children, for a variety of reasons, may be beyond their parents’ control.”<sup>158</sup> Without additional support—for example, a judge’s ability to direct parents of juvenile tortfeasors to social work professionals instead of automatically subjecting them to damages without consideration of their circumstances<sup>159</sup>—parental liability laws place a disproportionate burden on families that could benefit from these support systems.<sup>160</sup>

Still, probably much to the glee of parental liability champions,<sup>161</sup> the potential for expanded parental liability took a fearsome leap in September 2002 when a grand jury investigating the overdose of eighteen-year-old Leonardo DiPasquale (Leo) indicted his parents for reckless manslaughter. Neither parent was present at the time of Leo’s overdose, nor did they provide him with the heroin.<sup>162</sup> Still, the grand jury found that Leo’s parents knew he had not only overdosed before, but also been “charged previously for drug distribution in another person’s fatal drug overdose.”<sup>163</sup> Thus, according to the grand jury, despite Leo’s age and attenuated causation, the parents’ conduct *after* they learned about Leo’s condition warranted an indictment.<sup>164</sup> This case adds a further twist on the parental liability scenario, for here the parents were not held liable for a tort their son committed against another person,<sup>165</sup> but instead were held liable for Leo’s actions against *himself*.<sup>166</sup>

Although the judge eventually dismissed the charge against Leo’s parents,<sup>167</sup> the possibility of holding parents liable for failing to act opens a Pandora’s Box of issues. While it might be obvious that failing to provide adequate food or shelter to a child is bad parenting, finding a causal

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156. *But cf. supra* text accompanying note 73 (considering the parent’s decision to have a child in the first place).

157. Thurman, *supra* note 17, at 108–09 (discussing a project in Maryland that works with the community to rehabilitate youthful offenders).

158. Chapin, *supra* note 49, at 626.

159. Thurman, *supra* note 17, at 108.

160. *Id.* at 107.

161. *See, e.g.,* Andrews, *supra* note 5, at 401–02; Davidson, *supra* note 67, at 25; Gratz, *supra* note 5, at 191–92.

162. *Paying for Their Son’s Overdose* (ABC television broadcast, Sept. 10, 2002), available at [http://abcnews.go.com/sections/us/DailyNews/nj\\_heroindeath020910.html](http://abcnews.go.com/sections/us/DailyNews/nj_heroindeath020910.html).

163. *Id.*

164. *Id.*

165. *Id.*

166. *Id.*

167. *Lebanon Twp. Parents Innocent in Heroin Death of Son*, HUNTERDON COUNTY NEWS, Oct. 29, 2003, available at [http://www.thehcnews.com/breaking/\\_news04/00000cc8.htm](http://www.thehcnews.com/breaking/_news04/00000cc8.htm).

connection between failing to supply basic necessities and a child's tortious acts is an awkward correlation.<sup>168</sup> When the child is in his late teens, the likelihood of a parent's ability to control the child lessens.

If one believes that parental liability is a matter of strict liability, then the above scenario is just a part of the parent's responsibility.<sup>169</sup> However, for those who feel that some sort of definitive link is necessary to find liability, in almost every case, it is difficult to answer the question: Is it "reasonable" to find that the family "should have known?" First, especially with teenagers, characterizing what is normal behavior and what is not is virtually an impossible task:

We all wonder how parents can miss a gun in the bedroom or a bomb-making setup in the garage. But living with a teen-ager is living with an intimate stranger, and parents are left to puzzle through when to step in and when to let go. It is an equation complicated by the fact that parents can be blinded by love for their child.<sup>170</sup>

The Columbine killers were ostracized by their classmates as being "different,"<sup>171</sup> yet individualism itself should not be a quality that parents are forced to quash due to the demands of an intolerant public.<sup>172</sup>

Second, what is "knowledge of propensity"?<sup>173</sup> Lisa Belkin, in a *New York Times* article written six months after Columbine, reviewed several cases where parents of violent crime victims sued the parents of the teen-aged perpetrators.<sup>174</sup> In each case, the parents of the victims pointed to historical events in the criminal's past that, they claimed, should have prophesized the teen's potential for violence.<sup>175</sup> Yet Belkin, after assessing the depositions of one killer's parents, is not so sure. "It is possible," she writes, "to read the documents and come to another conclusion. Even under the adversarial questioning of [the victims' attorney], the depositions paint a portrait of parents trying to parent."<sup>176</sup> No doubt, as in this violent teen's case, there are many times that parents miss signals that should clue them into the likelihood that their child is headed for trouble. Rarely, however, are the indicia as evident as some insist.<sup>177</sup>

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168. Thurman, *supra* note 17, at 104.

169. See *supra* text accompanying note 73.

170. Belkin, *supra* note 1, at 61.

171. See Frisman, *supra* note 66, at 1.

172. See, e.g., *id.*; Taylor, *supra* note 119, at 2.

173. See, e.g., Schepard, *supra* note 28, at 3.

174. Belkin, *supra* note 1, at 61.

175. *Id.* ("Breen [the victims' attorney] . . . shared the depositions [of the killer's parents] with me [Belkin] because he thinks they show that the Carneals [killer's parents] had ample clues that something was wrong with their son."). Not all victim's parents are eager to point fingers at the potential parenting failures of the killer's parents. The parents of Cassie Bernall, murdered at Columbine, "have chosen to forgive." *Id.* Even though they have no desire to meet with the Klebolds or the Harises, "if that were to happen, 'I [Cassie's father] would want to first give them a hug and tell them I'm sorry they lost their child.'" *Id.*

176. *Id.*

177. See *supra* note 108 and accompanying text.

#### D. Constitutionality

Many have challenged the constitutionality of parental liability statutes, but courts, almost without exception, have upheld the laws.<sup>178</sup> In *Stang v. Waller*,<sup>179</sup> the court used a due process analysis to find constitutional support for the Florida civil statute.<sup>180</sup> Finding that the state had a legitimate interest in controlling juvenile delinquency, the court then established that the statute's "willfully and maliciously" provision related rationally to the state's concern.<sup>181</sup> Commenting on a Georgia decision in which the state statute was deemed unconstitutional, the *Stang* court noted that the construct of the Florida law "overcame any objections" that the Georgia court used in striking down the Georgia statute.<sup>182</sup> In the Georgia case, *Corley v. Lewless*,<sup>183</sup> the court found that the end result of the statute did not fit with the legislature's original motive.<sup>184</sup> Because the law had no limit on the amount recoverable, it strayed from the objective of providing "an aid in the control of juvenile delinquency" and instead, focused on "restorative compensation for the victims of injurious or tortious conduct of children."<sup>185</sup> The *Corley* court compared the law to a tort case in which a railroad foreman was liable for his failure to comply with a statute requiring that he list the marks and brands of stock killed, without considering any existing mitigating circumstances.<sup>186</sup> Because the parental liability statute at issue, like the tort liability law, created liability "solely by virtue of the statute, regardless of whether [someone] was at fault or even had knowledge" that a tort was committed, the court found that "[t]o allow any recovery on the basis stated by the statute would deprive the defendant of property without due process of law."<sup>187</sup> Thus, the presence of a damage cap seems to be important to the success of these statutes in the face of a constitutional challenge.

However, not all states cap damages on parental liability, and those that do not often remain unchallenged.<sup>188</sup> Some speculate that despite the widespread existence of parental liability laws, they are rarely utilized,<sup>189</sup> thus keeping a tight lid on a proverbial can of constitutional

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178. See, e.g., *Stang v. Waller*, 415 So. 2d 123, 124 (Fla. Dist. Ct. App. 1982); *Watson v. Gradzik*, 373 A.2d 191, 192 (Conn. C.P. 1977).

179. 415 So. 2d 123.

180. *Id.* at 124.

181. *Id.*

182. *Id.* (distinguishing *Corley v. Lewis*, 182 S.E.2d 766, 769-70 (Ga. 1971)).

183. 182 S.E.2d 766.

184. *Id.* at 769-70.

185. *Id.* at 769 (citation omitted).

186. *Id.* at 770.

187. *Id.*

188. See, e.g., HAW. REV. STAT. § 577-3 (1999); LA. CIV. CODE ANN. art. 2318 (West 1997); MD. CODE ANN., CTS. & JUD. PROC. § 3-8A-28 (2001); *Andrews*, *supra* note 5, at 401-02; *Gratz*, *supra* note 5, at 191.

189. See *Davidson*, *supra* note 67, at 25 (commenting on the constitutionality of "contributing to the delinquency of a minor" criminal statutes); *Graham*, *supra* note 9, at 1734 (discussing the real ef-

worms. If parental liability laws are fortified, as many legal scholars contend they should be, would the likelihood of lawsuits under these provisions increase or decrease? Assuming *arguendo* that tougher laws drive more lawsuits against parents for the acts of their children, the potential for increased constitutional challenges rises.

### *E. Parental Liability and the Internet*

While the recent focus on parental liability in legal literature seems driven primarily by high-media exposure and extraordinarily violent crimes,<sup>190</sup> recent technological advances provide other potential avenues for parental liability. The recent RIAA lawsuits<sup>191</sup> launched a maelstrom of concern from parents wanting to know the liability implications of their child's on-line activities.<sup>192</sup> Suddenly, people who thought the parents of the Columbine killers should be liable for not monitoring their sons' video game playing and website content were arguing for their own innocence. For example, Durwood Pickle, a man sued by the RIAA for his grandchildren's illegal use of his computer, expressed his frustration: "Some of my grandkids got in there . . . I didn't do it, and I don't feel like I'm responsible . . . I'm not a computer-type person. . . . They come in and get on the computer . . . How do I get out of this? Dadgum it, got to get a lawyer on this."<sup>193</sup>

The RIAA lawsuits targeted people that paid the internet service bill in the households where sharing digital music occurred.<sup>194</sup> Because teenagers constitute about half of the sixty million file-swapping users,<sup>195</sup> the resulting lawsuits surprised a number of unsuspecting, and then unhappy, parents.<sup>196</sup>

Law and internet experts such as Jonathan Zittrain<sup>197</sup> and Fred von Lohmann<sup>198</sup> assured parents that, in general, they could not be held responsible for "any unauthorized swapping of songs online by their un-

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fectiveness of existing criminal liability laws due to the "lack of actual enforcement of parental liability through the legal system").

190. See, e.g., Andrews, *supra* note 5, at 380-86; Ebenstein, *supra* note 4, at 1-4; Gratz, *supra* note 5, at 170-72.

191. See *supra* notes 13-16 and accompanying text.

192. See, e.g., John Roska, *Parents Aren't Liable in Downloaded Music Suit*, ST. CLAIR-MONROE POST, Aug. 28, 2003, at 2; Veiga, *supra* note 13.

193. Ted Bridis, *Record Industry Sues Music File Swappers*, ASSOCIATED PRESS, Sept. 8, 2003, available at 2003 WL 63459852.

194. Veiga, *supra* note 13.

195. Bridis, 2003 WL 63459852.

196. See *id.* But see Veiga, *supra* note 13 ("But in at least one case, the industry sued the child, not the parent. A 12-year-old honors student . . . somehow got named as the defendant. Her mother settled for \$2,000 and an apology from the girl."), available at [http://seattlepi.nwsourc.com/business/139406\\_download.13.html](http://seattlepi.nwsourc.com/business/139406_download.13.html).

197. Co-director of the Berkman Center for Internet and Society at Harvard Law School. Veiga, *supra* note 13, available at [http://seattlepi.nwsourc.com/business/139406\\_download.13.html](http://seattlepi.nwsourc.com/business/139406_download.13.html).

198. Attorney for the San Francisco-based Electronic Frontier Foundation. Leslie Brooks Suzukamo, *Music Industry Lawsuits Creating Confusion*, ST. PAUL PIONEER PRESS, Sept. 13, 2003, at 1A.

derage children.”<sup>199</sup> The problem, they observed, is that although minors can be sued for copyright infringement, the child’s lack of assets and income would hinder a plaintiff’s ability to recover.<sup>200</sup> And, because many states do not hold parents liable for the copyright violations of their children,<sup>201</sup> “[c]opyright infringement cases levied against parents for something their child did are rare . . . . It is legally very uncertain and untested.”<sup>202</sup> Other commentators, attempting to apply current parent liability laws, found them ineffective where a child shares music over the internet because it is too difficult to pin down responsibility short of strict or vicarious liability—as with parental liability for the violent acts of children.<sup>203</sup>

The next question that will need to be answered, then, is whether parents should be held liable for any malfeasance resulting from their children’s unsupervised use of the internet.<sup>204</sup> Several issues emerge if such a link is to be assumed. First, to what steps must a parent go in order to avoid liability? The internet is more difficult to monitor than other media. While parents depend on the government to monitor television and radio broadcasts,<sup>205</sup> courts have been wary of treading on internet user’s First Amendment rights and typically find any regulating statutes unconstitutional.<sup>206</sup> Lawrence Lessig describes recent legislative efforts as follows:

Congress has now twice tried to enact legislation that would regulate the availability of [adult] speech to ‘minors.’ At the time of this writing, it has twice failed. Its failure in both cases came from a certain clumsiness in execution. In the first case, Congress tried to regulate too broadly; in the second, it corrected that problem but burdened the wrong class of users—adults.<sup>207</sup>

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199. *Id.*

200. *Id.*; see also *supra* notes 18–28 and accompanying text.

201. See Bridis, 2003 WL 63459852 (California, does not hold parents “explicitly liable for copyright infringement by minor children.”); see also Veiga, *supra* note 13, available at [http://seattlepi.nwsource.com/business/139406\\_download.13.html](http://seattlepi.nwsource.com/business/139406_download.13.html) (According to Zittrain, “in general, if you win an action against a kid, you don’t get to collect against the parent.”).

202. Suzukamo, *supra* note 198, at 1A.

203. For example, RIAA would likely need to prove the following: (1) the parent could have controlled or stopped the child’s behavior but failed to do so; (2) the parent knew the child was doing something illegal but still gave the child access to the means to do so, such as paying for the internet account; and (3) the parent received a financial benefit from the child’s illicit activity, such as not having to spend money on compact discs. Veiga, *supra* note 13, available at [http://seattlepi.nwsource.com/business/139406\\_download.13.html](http://seattlepi.nwsource.com/business/139406_download.13.html).

204. See generally Richardson, *supra* note 12, at 31–32 (discussing the link between internet use and violent crime by children, and whether parents who fail to supervise their children’s internet use should be liable for their violent acts).

205. *Cf. id.* at 32.

206. See, e.g., *Cyberspace Comm., Inc. v. Engler*, 55 F. Supp. 2d 737, 747–51 (E.D. Mich. 1999). See generally Jennifer Zwick, *Casting a Net Over the Net: Attempts to Protect Children in Cyberspace*, 10 SETON HALL CONST. L.J. 1133 (2000) (discussing federal and state attempts to protect children through the regulation of speech over the internet and the resulting First Amendment issues).

207. Lawrence Lessig, *The Law of the Horse: What Cyberlaw Might Teach*, 113 HARV. L. REV. 501, 516–17 (1999).

While concerned parents cannot yet depend on government regulation, they may opt to manage their child's internet access on their own. For example, some internet providers offer parents the ability to filter internet content,<sup>208</sup> and parents may purchase software that either tracks the sites visited or prohibits access to violent or pornographic material.<sup>209</sup>

However, if parents are forced to limit their child's internet usage in order to avoid parental liability for any criminal actions their child engages in via the internet, there arises concern over the privacy rights of monitored children, as well as their First Amendment rights to publish on the Web. The Supreme Court in 1979, however, held that the rights of children differ from those of adults:

We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.<sup>210</sup>

Thus, it is unlikely that a court would find that regulation of a minor's internet use violates her constitutional rights.<sup>211</sup> Still, because courts have acknowledged the difficulty in forming "regulation of the internet" statutes that do not fail First Amendment strict scrutiny requirements due to overbreadth and vagueness issues,<sup>212</sup> the same pitfalls may arguably plague any law attempting to hold parents liable for any misaction their children may engage in while on the internet.<sup>213</sup>

But, what if a parent decides *not* to install internet content software or, as often happens, knows little about the internet and is unaware that such regulatory devices exist? Furthermore, a parent may determine not to monitor a child's internet usage at all. For every available pornographic site, there exists a plethora of informative and worthwhile websites that provide educational opportunities for children to examine.<sup>214</sup> Despite claims to the contrary, already many parents—bad or not—permit their teens to play video games, as evidenced by the sheer numbers of avid teenage gamers.<sup>215</sup> Valuing independence and creativity in a

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208. See Richardson, *supra* note 12, at 41 n.90.

209. For examples of different filters available for parents and other internet subscribers, see <http://safetysurf.com>.

210. Bellotti v. Baird, 443 U.S. 622, 634 (1979).

211. For an interesting article discussing the legality of parents tracking their children via GPS systems, see Stephen N. Roberts, *Tracking Your Children with GPS: Do You Have the Right?*, WIRELESS BUS. & TECH., Dec. 1, 2003, at 20.

212. See, e.g., Reno v. ACLU, 521 U.S. 844, 870-79 (1997).

213. See Greenwood, *supra* note 145.

214. Jennifer Zwick tells a story of a boy, who is concerned that he might be gay, seeking information on homosexuality over the internet but afraid to request that his parents or the librarian unblock legitimate sites that have been blocked by the library's filtering software. See Zwick, *supra* note 206, at 1134.

215. See, e.g., Brown, *supra* note 108, available at <http://www.salon.com/tech/feature/1999/04/23/gamers/pnnt.html> ("Everyone is always quick to point out murderers that play violent video games,

child, especially a teen, may lead some parents to forego strict oversight of their child's access to the internet.

It remains to be seen whether a parent's failure to monitor her child's use of the internet generates automatic liability for any crime her child may commit via the internet. While the website of the Columbine killers raised questions as to their parents' knowledge, it was not the defining piece of evidence in the parental liability cases against them.<sup>216</sup> As both children and parents become more computer savvy, it becomes more and more likely that, despite recent expert opinion,<sup>217</sup> finding parental liability in these situations will soon become some commentator's vocation. However, the potential victims in this case may not be innocent individuals, but instead, corporations seeking to fill their coffers. If these cases are evaluated under current parental liability statutes, the damages will be most likely be limited to the caps for property damage.<sup>218</sup> It is likely that these limits will be challenged again,<sup>219</sup> not by neighbors suffering a broken window, but by companies with far more political clout and deeper pockets. Then, one wonders if even proponents of tougher parental liability statutes can find justification behind the rationale. Retribution seems callous in this case. And, as far as deterrence is concerned, given the inability to effectively monitor another's usage, the only effective deterrent may be forbidding the use of the computer at all. Monitoring a minor on the internet is particularly difficult if the parent is technologically challenged.

Consider the potential implications of this huge liability net in the case of eighteen-year-old<sup>220</sup> Jeffrey Parson, who, in the fall of 2003, unleashed the Blaster worm onto the internet, "crippl[ing] computer networks worldwide."<sup>221</sup> Parson was charged with one count of intentionally causing damage to a protected computer for which, if convicted, could result in a maximum of ten years in prison and a \$250,000 fine.<sup>222</sup> While Parson's parents were not charged with civil liability, it is interesting to consider the possibilities that might arise if they were. Parson was not looking at pornographic or violent sites. Instead, he ran a website "where viruses were made available for download alongside lyrics of

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but no one ever thinks of the millions of people that play video games and aren't murderers,' said a gamer who goes by the log-in name Theoddone 33.").

216. Ebenstein, *supra* note 4, at 11–13.

217. See *supra* notes 197–203 and accompanying text.

218. See *supra* note 52 and accompanying text.

219. See discussion *infra* Part II.C.1.

220. While Minnesota has a civil parental liability statute under which a Blaster-worm sufferer could conceivably sue, it is limited to children under eighteen. Age itself, of course, is not a barrier under the common law, and the Minnesota provision itself does not bar litigants from seeking recovery under another theory. MINN. STAT. § 540.18 (1993) ("The liability provided in this subdivision is in addition to and not in lieu of any other liability which may exist at law."). *But see supra* note 55 and accompanying text.

221. Associated Press, 'Blaster' Teen Says Case Against Him Inflated, available at <http://www.foxnews.com/story/0,2933,96276,00.html> (Sept. 2, 2003).

222. *Id.*

songs by Judas Priest, Megadeth and Weird Al Yankovic.”<sup>223</sup> Internet content software program would not have prevented him from writing the code that created the Blaster worm.<sup>224</sup> His family, by most accounts, was normal, apparently middle-class, and they did not know that Jeff was about to unleash a destructive virus across the internet.<sup>225</sup>

But, is it reasonable to believe that should they have known? And, if convicted, who will pay the \$250,000 maximum fine?<sup>226</sup>

#### IV. RECOMMENDATION

Strengthening parental liability laws, whether by generally expanding parental liability,<sup>227</sup> by toughening current statutes,<sup>228</sup> or creating new criminal statutes,<sup>229</sup> is but a posturing proposition. In real life, it is unworkable. Creating statutes that fail to account for a link between the child’s behavior and a parent’s action or, alternatively, lack of action,

223. Erwin Lemuel G. Oliva, ‘Blaster’ Author Loves Computers, *Megadeath*, Infotech, available at [http://www.inq7.net/inf/2003/sep/05/inf\\_3-1-p.htm](http://www.inq7.net/inf/2003/sep/05/inf_3-1-p.htm) (Sept. 4, 2003).

224. It is unlikely that any blocking program currently available could have prevented Jeff from writing a code or, indeed, accessing a website that would teach him to write a code. Internet content filters are programs that react to offensive words, masking them or denying access to websites containing these words, or by reacting to a predetermined “site list.” See generally Melissa Rabey, *Limiting the Limitless: How Internet Content Filters Work*, available at <http://members.aol.com/melrabey/papers/filters.doc> (1999). In the case of words, the filter is typically generated when certain preordained words—such as breast or virus or homosexual, for example—appear on the website. See *id.* Most code-writing websites—which by far consist of helpful how-tos for novice programmers—would not be caught by an internet filtering web. The best his parents could have done is denied access to particularly specified websites (hard to ensure a full capture given the expanse of information on the web), denied Jeff access to the computer altogether (abstinence always works, although Jeff could easily find access at his school or library), or watched over his shoulder to catch him in the act. For examples of the different filters available for internet subscribers, see <http://www.safetysurf.com>.

225. See Associated Press, *supra* note 221, available at <http://www.foxnews.com/story/0,2933,96276,00.html>. (“His parents, Bob and Rita Parson, spoke publicly for the first time Tuesday on the ‘Today’ show, and said their son was an ordinary teenager, not a computer whiz. ‘My son is not brilliant; he’s not genius,’ Rita Parson said. ‘Anyone that has any computer knowledge could have done what Jeff did.’ The Parsons said they do not yet have a lawyer because they cannot afford one.”).

226. Oliva, *supra* note 223, available at [http://www.inq7.net/inf/2003/sep/05/inf\\_3-1-p.htm](http://www.inq7.net/inf/2003/sep/05/inf_3-1-p.htm). On January 28, 2005, U.S. District Judge Marsha Pechman sentenced Parson to eighteen months of prison and performance of ten months of community service: the low-end of a possible maximum of ten years in prison. Interestingly, Judge Pechman opted for a lower sentence, she said, because Parson has suffered neglect at the hands of his parents. “[The internet] has created a dark hole, a dungeon if you will, for people who have mental illnesses or people who are lonely. . . . I didn’t see any parent standing there saying ‘It’s not a healthy thing to lock yourself in a room and create your own reality.’” Paul Levy, *Parson Sentenced in Net Case: Hopkins Man, 19, Tells Judge: “I Know I’ve Made a Huge Mistake”*, STAR TRIB., Jan. 29, 2005, at 1B. Clearly, the judge would not agree with the premise of this Note; moreover, I doubt she has parented teenagers who, in my experience, no matter how well-adjusted tend to lock themselves in their rooms more often than not.

227. Andrews, *supra* note 5, at 442 (“[P]arents should be subject for greater liability for the torts of their children, whether through an expansion of liability in negligence, through expanded strict liability, or through expansions of liability premised on both theories.”).

228. See, e.g., Gratz, *supra* note 5, at 199–200.

229. See, e.g., Greenwood, *supra* note 145, at 436–37; Lockwood, *supra* note 107, at 553–57. But see Richard M. AuBuchon, *Juveniles, Firearms and Crime: Extending Criminal Liability to Parents in Oklahoma and Beyond*, 36 TULSA L.J. 435, 456–57 (2000).

have not been shown to decrease juvenile delinquency nor encourage parents to take a more active role in their child's life.

Parental liability laws do not function as a deterrent. While it could be argued that these statutes serve to give parents notice that they better be "good parents," the measure of a "good parent" is not a line easily, nor equitably, drawn. Furthermore, parents, even good ones, cannot always anticipate what their children may do. Many other factors contribute to a child's willingness to engage in criminal behavior. As well, children, especially teenagers, are individuals in their own right; forcing parents to strictly oversee their child's every move to avoid liability does not necessarily guarantee a good child nor does it demonstrate good parenting. The only effect of parental liability laws is retributive which, while important, is a poor reason on which to base such potentially vicarious fault.

Any form of strict liability for parental responsibility is unnecessarily harsh. The ineffectiveness of current parental liability statutes is due not to their construction but, instead, to an unwillingness on the part of courts and society to find responsibility where there exists no clear connection between the parent and the child's actions. Put simply, it is easy to talk the political talk while not as easy to walk the legal walk. Strict liability with caps does not meet the needs of the victims; strict liability without caps would raise substantive due process issues on the part of the tortfeasor's parents. Strict liability is an unsatisfactory solution in every respect.

Unlimited statutory parental liability implicates concerns of justice, especially when laws can conceivably apply to misbehavior as varied as breaking a neighbor's window with a misplaced baseball toss to downloading illegal music to conspiring to murder. Limiting—or even eliminating—parental liability statutes is especially important in the age of technology, where the potential for a juvenile to incur trouble grows, and a parent's ability to monitor all aspects of potential disaster diminishes. Justice dictates that parental liability should be left to the common law. Indeed, circumstances vary so dramatically from case to case, making it difficult to establish concrete lines of fault. Statutes cannot be tailored to fairly contemplate the differences between violent and nonviolent crimes, or variations in the financial and educational resources of liable parents that are likely to affect their ability to control their child. Left to the common law, legal parental liability can better evaluate the link between parent and child behavior, provide adequate recovery for victim, and differentiate between the nature of crimes.

## V. CONCLUSION

Juvenile crime is not increasing. Rather, recent impetus for tougher parental liability statutes are an overreaction to high-profile, violent

cases that are not the societal norm and do not deserve the focus on liability that those cases have inspired. As well, parental liability statutes cannot be fairly or properly applied to nonviolent crimes by children. While statutes may make the public feel better about the protection of victims—“satisfying an immediate emotional need”<sup>230</sup>—the only fair and constitutional way to ensure proper administration of parental liability is through the common law.<sup>231</sup>

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230. Frisman, *supra* note 66, at 1.

231. *See, e.g.*, Schepard, *supra* note 28, at 3.

