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Infants - Contributing to the Delinquency of a Minor - Minor Need Not Be Adjudged a Delinquent to Constitute Offense

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In practice the statutes have had little effect in suppressing fraudulent advertising. Some states at first were rather lenient and unwilling to convict.[24] Most jurisdictions have never used the statute and only a few have initiated more than a handful of prosecutions.[25] Failure to use the statutes is certainly not due to the absence of fraudulent advertising—yearly losses from this phase of white-collar crime are staggering[26] — but state prosecuting agencies seem to be preoccupied in matters considered more pressing.[27] Further the public fails to realize that fraudulent advertising is a crime.[28] Diligent prosecution would in many cases publicize its disgraceful effects labeling such conduct criminal. The potential protection these statutes can give to the public and honest advertisers can be utilized fully only through effective enforcement by responsible state officials.[29]

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INFANTS — CONTRIBUTING TO THE DELINQUENCY OF A MINOR — MINOR NEED NOT BE ADJUDGED A DELINQUENT TO CONSTITUTE OFFENSE. — Defendants transported their daughter from their home in Ohio to West Virginia where they procured a marriage license by representing her age as seventeen when in fact it was eleven; she was then married in West Virginia where the marriage was legal. Upon returning to Ohio, complaints were issued charging the parents with contributing to the delinquency of a minor in violation of an Ohio statute.[1] The Supreme Court of Ohio *held,* two justices dissenting, that the action of the parents in enabling their minor child to marry "tended" to cause the child to become delinquent in the future which was sufficient ground for conviction under the statute. *State v. Gans,* 151 N.E.2d 709 (Ohio 1958).

Reported cases in the field of prosecutions for contributing to the delinquency of a minor are very few. Various reasons exist for this, the major reason being that most of the parents convicted lacked the funds necessary to appeal their convictions to a higher court.[2] It appears from these cases that have arisen that the majority in the instant case was on sound ground in their opinion. The prevailing view of most courts is that in order to convict a parent of contributing to the delinquency of a minor, the minor need not have been actually adjudged delinquent; rather, all that needs to be shown is that the conduct of the parents "tends" to cause the minor to become delinquent.[3]

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24. *Cf.* State v. Massey, 95 Wash. 1, 163 Pac. 7 (1917).
25. *The Regulation of Advertising, supra* note 2 at 1063. There is no reported appellate case involving the North Dakota statute.
26. Barnes and Teeters, *New Horizons in Criminology,* 15 (2d ed. 1951).
27. *The Regulation of Advertising, supra* note 2 at 1064.
28. Barnes and Teeters, *op. cit. supra* note 26 at 13. N. D. Rev. Code § 51-1202 (1943) (labels violation of § 51-1202 a misdemeanor and provides for a penalty).
29. *The Regulation of Advertising, supra* note 2 at 1063. N. D. Rev. Code § 51-1203 (1943) provides for enforcement.

1. Ohio Rev. Code § 2151.41 (1955) "No person shall abuse a child or aid, abet, induce, cause, encourage, or contribute to the . . . delinquency of a child . . . or act in such a way tending to cause delinquency in such child . . ."
2. Ludwig, *Delinquent Parents and The Criminal Law,* 5 Vand. L. Rev. 719, 726 (1952).
3. State v. Davis, 58 Ariz. 444, 120 P.2d 808 (1942); State v. Scallon, 201 La. 1026, 10 So.2d 885 (1942). See Smithson v. State, 34 Ala. App. 343, 39 So.2d 678

Statutes authorizing such prosecution are not uncommon; they exist in almost every state,[4] including North Dakota.[5] The primary purpose in enacting such laws was to nip delinquency in the bud by preventing parents from suggesting improper conduct to their children.[6] The mere fact that these statutes have enjoyed such a wide acceptance does not infer that they accomplish the purpose for which they were enacted. A recent study made in Ohio points to the conclusion that the punishment of parents does little to aid the erring child and accomplishes little except revenge.[7] Better results might be obtained through the use of probationary procedures or supervisory orders with the courts taking over active guidance of erring minors.[8] In fact a possibility exists that the present procedure of prosecuting parents does little more than give a child a weapon with which to thwart his parents by threatening them with possible legal sanctions. However, some justification can be seen for disciplining parents for acts of "malfeasance" on their part, as opposed to "nonfeasance". Thus there is no reason why a mother should not be prosecuted for sending her minor daughter out to sell liquor in contravention of local statutes,[9] but a different situation is presented where the parent allegedly neglected to exercise proper parental control by leaving a loaded gun in a drawer from which his son took it and unintentionally wounded another person.[10]

Punishment of parents is no panacea. The probationary method suggested above might require a greater amount of funds to employ trained supervisory personnel than jailing parents; but the primary consideration is not the initial cost but deterring children from entering the path of crime. Statutes such as the one applied in the instant case should be resorted to only upon clear and convincing proof of some culpability on the part of the parent as well as delinquency on the part of the minor child. Just as there is no one cause

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(1949); Reger v. State, 249 Wis. 201, 23 N.W.2d 456 (1946); People v. Calkins, 48 Cal. App. 2d 33, 119 P.2d 142 (1941).

4. Delaware and Vermont do not have statutes. For a complete listing of statutory responsibility of parents and others for juvenile delinquency see, Ludwig, *supra* note 2 at 737.

5. N.D. Rev. Code § 14-0922 (Supp. 1957). "A parent, guardian, or other custodian of any child under the age of eighteen years . . . who shall knowingly and willfully permit any such child to be in a disreputable place or associate with vagrants, vicious or immoral persons . . . or to engage in an occupation injurious to his health or morals or to the health or morals of others . . . shall be guilty of a misdemeanor."

6. Judge Matthias in the instant case stated, "It is apparent that the purpose . . . is to prevent a delinquency before it occurs rather than to await such delinquency and then to punish the adult offender . . . It is the old theory of preventive medicine. A disease is much easier to prevent than to cure." See Commonwealth v. Jordan, 168 Pa. Super 242, 7 A.2d 523 (1939); People v. Cohen, 62 Cal. App. 521, 217 Pac. 78 (1923); State v. Adams, 95 Wash. 189, 163 Pac. 403 (1917).

7 Alexander, *What's This About Punishing Parents?*, 12 Fed. Prob. 23 (1948).

8. See Alexander, *supra* note 7 at 28; Ludwig, *supra* note 2 at 734-36. North Dakota presently provides for such probationary procedure; N. D. Rev. Code § 14-0922 (Supp. 1957) ". . . where it shall appear to the satisfaction of the court that the ends of justice . . . as well as the defendant, will be subserved thereby, the court shall have power . . . to suspend the imposition or excution of sentence and to place the defendant upon probation for such period and upon such terms and conditions as the court may deem best . . .".

9. People v. Ferello, 94 Cal. App. 683, 268 Pac. 915 (1928); People v. Lett, 69 Cal. App. 2d 683, 160 P.2d 112 (1945) (father performed unnatural sexual acts with his daughter.).

10. *In re* Di Maggio, 65 N. Y. S.2d 413 (Dom. Rel. Ct. 1947); See Bowman v. Cruz 68 N. Y. S.2d 413 (Dom. Rel. Ct. 1947) (Shopkeeper by selling cartridges to a minor contributed to his delinquency when the minor shot anonther child, but the complaint was dismissed due to a conviction under a penal law prohibiting sale of cartridges to minors which served the community purpose.).

of juvenile delinquency, there is no one cure.[11] To ascribe all acts of juvenile misconduct to the factor of parental training would seem an oversimplified and unrealistic view.

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NEGLIGENCE — GOVERNMENTAL IMMUNITY — FEDERAL TORTS CLAIM ACT— Action was brought against the United States for damages to buildings allegedly caused by nuclear detonations conducted by employees of the United States. The United States District Court *held* that in view of cooperation of the legislative and executive departments of the United States in the firing of atomic devices, no liability could be predicated because of the explosions themselves, whatever the consequences. *Bartholamae Corp. v. United States*, 253 F.2d 716 (9th Cir. 1957).

The court in the instant case rendered judgment for the government on the ground that the plaintiff in a negligence case must prove not only that the employees of the defendant were negligent, but that such negligence, if any, was the proximate cause of damage.[1]

The Federal Torts Claim Act provides that the Federal District Courts have exclusive jurisdiction over all civil actions on claims against the United States occurring on and after January 1, 1945, for injury, death or loss of property caused by the negligent or wrongful act or omission of any governmental employee while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.[2] It is important to note, however, that the Act excepts discretionary duties of governmental employees whether or not the discretion involved be abused.[3] The exception extends not only to agencies of the government but to all governmental employees acting within the scope of their employment.[4] It has even been extended to errors in administration of governmental functions.[5]

The legislative history of the Act indicates that Congress desired to waive the government's immunity only for ordinary common law torts.[6] It was not

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11. Witmer & Herzog, *And What About The Parents of Juvenile Delinquents*, 19 Fed. Prob. (1955).

1. Nevada Transfer and Warehouse Co. v. Peterson, 60 Nev. 87, 107, 108, 89 P.2d 8, 99 P.2d 633 (1940). Week v. Reno Traction Co., 38 Nev. 285, 149 Pac. 65 (1915).

2. 60 Stat. 843 (1946), 28 U. S. C. § 1346 (2) (b) (1949).

3. Indeed, it has been so held by those district courts which have dismissed complaints charging negligence, following the government's confession and avoidance plea that the acts alleged to be culpable fall within the exception. *E. g.*, Boyce v. Uuited States, 93 F. Supp. 866 (1950).

4. Employees of the government includes members of the military or naval forces of the United States, and persons acting on behalf of a federal agency in an official capacity. 63 Stat. 106 (1945), 28 U. S. C. § 2671 (Supp. 1956).

5. Hearing before the House Committee on the Judiciary on H. R. Rep. No. 5373 and H. R. Rep. No. 6463, 77th Cong., 2d Sess. 1, 4 (1942). *Cf.* Alzua v. Johnson, 231 U.S. 106 (1913); Louisiana v. McAdoo, 234 U.S. 627 (1914); Perkins v. Lukens Steel Co., 310 U.S. 113 (1940).

6. That congressional thought was centered on granting relief for the run-of-the mill accidents, as distinguished from injury from performing discretionary functions, is indicated by the message of President Franklin D. Roosevelt in 1942 to the 77th Congress recommending passage of a tort claims statute. 88 Cong. Rec. 312-314 (1942).