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Gresham v. Davenport: Minor Social Host Drinking Liability, Where Does the Duty Lie?

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Gresham v. Davenport:[1] Minor Social Host Drinking Liability, Where Does the Duty Lie?

Fifteen-year-old Molly, who had been living with her father, threw a party at his home while he was out of town. During this party, Molly served beer that she had obtained from Brian, an adult friend, to her minor guests. After leaving the party, five of the minors who had been drinking were involved in a serious car accident. In the suit that arose from this accident, the trial court refused to impose liability on Molly or Brian. The second circuit court of appeal reversed in part finding Molly, but not Brian, liable.[2] The supreme court reversed and reinstated the trial court's dismissal of plaintiffs' demands. *Gresham v. Davenport*, 537 So. 2d 1144 (La. 1989).

Louisiana's judiciary has traditionally been hesitant to impose liability in the context of injuries caused by social drinking.[3] In 1986 the legislature codified this trend in Louisiana Revised Statutes 9:2800.1,[4] which exempts from tort liability social hosts serving alcohol to guests over the age of twenty-one. Since 1958 the legislature has provided criminal sanctions for minors purchasing alcohol and for adults purchasing alcohol on behalf of minors.[5] *Gresham* is troublesome because it leaves unresolved the question whether liability should be imposed on

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1. 537 So. 2d 1144 (La. 1989).

2. Gresham v. Davenport, 524 So. 2d 49 (La. App. 2d Cir. 1988).

3. See Robinson v. Fidelity and Casualty Co., 135 So. 2d 607 (La. App. 1st Cir. 1961). See also Note, Thrasher v. Legget: Judicial Restraint in the Imposition of Liquor Vendor Liability, 40 La. L. Rev. 938 (1980); Note, Tort—Bar Owner's Liability to Patron for Injuries Arising from Sale of Intoxicating Liquor, 51 Tul. L. Rev. 394 (1977).

4. La. R.S. 9:2800.1 (Supp. 1990). This statute provides for a limitation of liability for loss connected with the sale, serving, or furnishing of alcoholic beverages to persons holding permits to sell liquor and social hosts who have sold or served alcoholic beverages to anyone over the lawful age for the purchase thereof. The proximate cause of any injury is declared to be the consumption of the intoxicating beverages. For injuries to third persons the insurer of the intoxicated person shall be primarily liable.

5. La. R.S. 14:91.1.A(1) (Supp. 1990) provides that "[i]t is unlawful for any person seventeen years of age to purchase any alcoholic beverage either of high or low alcoholic content."

La. R.S. 14:91.2 (Supp. 1990) provides that "[i]t is unlawful for any person under the age of seventeen to purchase or possess any alcoholic beverage either of high or low alcoholic content."

La. R.S. 14.91.3 (1986) provides that "[i]t is unlawful for any adult to purchase on behalf of a person under the age of eighteen any alcoholic beverage either of high or low alcoholic content."

Violations of the above three statutes are considered misdemeanor crimes.

minors who supply other minors with alcohol for any resulting damages.

This article will examine the holding in *Gresham* to ascertain the standard for determining liability for alcohol-related injuries involving minors and compare Louisiana's treatment of these situations with that of other states. First, the historical attitude of the common law toward social hosts and liquor liability will be discussed along with current trends in other jurisdictions. Second, the attitude of the Louisiana judiciary toward the imposition of liability in these cases will be presented along with the related statutes. Finally, this article will summarize 1) how the test of liability for minor social hosts has been altered by the supreme court's decision in *Gresham* and 2) the repercussions of the new standard.

Historical View of the Common Law and Current Trends in Other Jurisdictions

At common law there was no recovery against the providers of alcoholic beverages.[6] Courts reasoned that the consumption of the alcohol was the true cause of the injury, or constituted at least contributory negligence and, as such, barred recovery.[7] However, this jurisprudential trend has recently been legislatively altered in many states by the enactment of civil damage, or "dram shop," statutes.[8] A dissenting opinion by Wisconsin Supreme Court Chief Justice Hallows in *Garcia v. Hargrove*[9] may help explain the change in trend. Hallows stated that "the basis upon which these cases were decided is sadly eroded by the shift from commingling alcohol and horses to commingling alcohol and horsepower."[10] Additionally, contributory negligence is no longer a complete bar to recovery in tort suits.[11] Even in the absence of a civil damage statute, some courts have imposed liability based on the traditional proximate cause analysis or on a statutory negligence theory.[12]

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6. See, e.g., Hitson v. Dwyer, 61 Cal. App. 2d 803, 143 P.2d 952 (Dist. Ct. App. 1943); Cruse v. Aden, 127 Ill. 231, 20 N.E. 73 (1899); Cavin v. Smith, 228 Minn. 322, 37 N.W.2d 368 (1949).

7. See, e.g., Collier v. Stamatis, 63 Ariz. 285, 162 P.2d 125 (1945); Cookinham v. Sullivan, 23 Conn. Supp. 193, 179 A.2d 840 (Super. Ct. 1962); Noonan v. Galick, 19 Conn. Supp. 308, 112 A.2d 892 (Super. Ct. 1955).

8. A civil damage or "dram shop" statute generally imposes strict liability on the provider of intoxicating beverages to an individual where injury or damages to the individual or others has resulted. See 48A C.J.S. Intoxicating Liquors § 429 (1981).

9. 46 Wis. 2d 724, 737, 176 N.W.2d 566, 572 (1970) (Hallows, C.J., dissenting).

10. Id.

11. La. Civ. Code art. 2323; compare with Robinson v. Fidelity and Casualty Co., 135 So. 2d 607 (La. App. 1st Cir. 1961).

12. See, e.g., Galvin v. Jennings, 289 F.2d 15 (3d Cir. 1961); Waynick v. Chicago's Last Dept. Store, 269 F.2d 322 (7th Cir. 1959), cert. denied, 362 U.S. 903, 80 S. Ct. 611 (1960); Vance v. United States, 355 F. Supp. 756 (D. Alaska 1973).

The liability of social hosts for alcohol-related accidents involving minors is currently in a state of flux. Many states have found that violation of a penal statute prohibiting the sale or furnishing of alcohol to a minor constitutes negligence per se. In *Koback v. Crook*[13] plaintiff received injuries after she left a party as a passenger on another guest's motorcycle. The motorcycle driver, a minor, had become intoxicated at the party and subsequently drove into a parked car. The Supreme Court of Wisconsin held the social hosts, who were parents of one of the students, liable because violation of Wisconsin's penal statute prohibiting furnishing minors with alcohol was negligence per se. The court determined the extent of liability under the rules of comparative negligence. Georgia, New York, and Michigan are additional jurisdictions that have found a statutory duty or at least a prima facie case of negligence upon violation of a statute prohibiting the furnishing of alcohol to minors.[14] The courts reasoned that the legislative intent in enacting these statutes was to protect minors from their own immaturity.

Other jurisdictions have refused to extend liability to social hosts. In *Bankston v. Brennan*,[15] a recent Florida decision, defendant had served alcohol to a minor who became intoxicated. Upon leaving the defendant's home, the minor struck a third party with his automobile. Florida law[16] provides immunity for anyone selling or furnishing alcohol to an adult; however, it further provides that if alcohol is furnished to a minor liability may result. The Florida Supreme Court found that liability for providing minors with alcohol should be imposed only on vendors, not on social hosts. Courts in Minnesota, Illinois, California and Missouri have also found no liability existed when social hosts provided minors with alcohol.[17] The courts avoided imposing liability by stating that relief against social hosts was prevented due to statutory immunity (extending the statutes to minors) or that the statutes prohibiting this activity applied liability only to licensees.

Louisiana Jurisprudence

Louisiana has no civil damage, or "dram shop," statute. Claims of this nature are generally based on Louisiana Civil Code articles 2315

13. 123 Wis. 2d 259, 366 N.W.2d 857 (1985).

14. See Sutter v. Hastings, 254 Ga. 194, 327 S.E.2d 716 (1985); Longstreth v. Gensel, 423 Mich. 675, 377 N.W.2d 804 (1985); Montgomery v. Orr, 130 Misc. 2d 807, 498 N.Y.S.2d 968 (Sup. Ct. 1986). See also Lindgren and Ream, Social Host Liability and Minor Guests, For the Defense, June 1986, at 2.

15. 507 So. 2d 1385 (Fla. 1987).

16. Fla. Stat. Ann. § 768.125 (West 1986).

17. See Bass v. Pratt, 177 Cal. App. 3d 129, 222 Cal. Rptr. 723 (Ct. App. 1986); Zamiar v. Linderman, 132 Ill. App. 3d 886, 478 N.E.2d 534 (App. Ct. 1985); Holmquist v. Miller, 367 N.W.2d 468 (Minn. 1985); Harriman v. Smith, 697 S.W.2d 219 (Mo. Ct. App. 1985). See also Lindgren and Ream, supra note 14, at 2.

and 2316.[18] Before 1976, Louisiana courts refused to impose liability on the providers of alcoholic beverages, reasoning that the true cause of any subsequent injuries was consumption of the alcohol.[19] *Pence v. Ketchum*[20] overruled this theory in 1976. In *Pence*, a car struck the plaintiff after she had been ejected from defendant's bar while intoxicated. The court found that defendant had breached a statutory duty by serving an intoxicated patron additional alcohol. To prevent plaintiff's claim from being barred by contributory negligence, the court applied the doctrine of last clear chance and allowed recovery.

Three years later, however, in *Thrasher v. Leggett*[21] the supreme court reconsidered the analysis applied in *Pence* and overruled it. In *Thrasher*, the intoxicated plaintiff was injured in a fall when the bar bouncer attempted to eject him. The court held that the proximate cause of the injury was plaintiff's consumption of alcohol, not defendant's actions. The court found that absolute liability did not apply, that the duty owed by a bar owner was simply to avoid affirmative acts that would increase the risks to an intoxicated person and that a "reasonable man" standard would apply in ascertaining whether liability should be imposed.

One of the earliest Louisiana cases dealing with minors involved in alcohol-related accidents was *Robinson v. Fidelity and Casualty Co.*[22] Here the first circuit court of appeal concluded that although defendant violated penal statutes by selling alcohol to a minor plaintiff, contributory negligence barred plaintiff's claim. A similar scenario arose in *Chausse v. Southland Corporation*,[23] in which a suit was brought against a beer seller for wrongful death and for the injuries of three minors resulting from an alcohol-related car accident. The three minors were passengers; the driver was intoxicated and was also a minor. The first circuit held that defendant had breached a statutorily-imposed duty by selling alcohol to minors and that contributory negligence would not bar plaintiffs' recovery. The court agreed with plaintiffs' contention that

> where the purpose of the statute is to protect the minor against the risk of his own negligence . . . the general rule is that the

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18. La. Civ. Code art. 2315 provides in part that "[e]very act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

La. Civ. Code art. 2316 provides that "[e]very person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill."

19. See Lee v. Peerless Insurance Co., 248 La. 982, 183 So. 2d 328 (1966).

20. 326 So. 2d 831, 838 (La. 1976).

21. 373 So. 2d 494 (La. 1979).

22. 135 So. 2d 607 (La. App. 1st Cir. 1961).

23. 400 So. 2d 1199 (La. App. 1st Cir.), writs denied, 404 So. 2d 278, 497 and 498 (1981).

> minor's contributory negligence or assumption of the risk will not defeat recovery for his injury or death, the very risk and harm the statute was designed to prevent.[24]

The court additionally found the *Thrasher* rationale inapplicable here because the legislature's intent was to keep minors from drinking.[25]

The only recent case dealing with the imposition of liability for serving alcohol to minors came out of the fifth circuit court of appeal in 1988. *Clement v. Armoniet*[26] involved a suit against an adult social host who served "an uncontrolled amount" of liquor to minors at a party at which a fight broke out.[27] The court found that while one of these minors was "the source of most of the trouble," he was only ten percent at fault, because the host was wrong in serving him.[28] The court, applying Louisiana law, did not discuss any statutory duty of the host not to serve a minor; rather, it merely said his actions were "contrary to the reasonable standard of behavior for any normal young adult."[29]

Relevant Louisiana Statutes

The Louisiana legislature has recently codified the historical trend of judicial restraint toward the imposition of liability in alcohol-related cases with the enactment of Louisiana Revised Statutes 9:2800.1.[30] This statute limits the liability for loss connected with the sale, serving, or furnishing of alcoholic beverages and declares consumption of the alcohol to be the proximate cause of any alcohol-related damages. Although it specifically limits liability for *adults* who serve alcohol to individuals *over the age for lawful purchase*, no mention of minors is made within the statute. The possession of alcohol by minors is specifically addressed by penal statutes: Louisiana Revised Statues 14:91 through 91.3.[31] As the supreme court pointed out in *Gresham*, however, absolute liability does not necessarily result from the violation of these penal statutes. Further, because these only focus on situations in which minors are in possession of alcohol or in which *adults* furnish them with alcohol, the *Gresham* situation, in which the provider of alcohol to the minor plaintiffs is a minor herself, is left unaddressed.[32]

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24. Id. at 1202 (citing Boyer v. Johnson, 360 So. 2d 1164, 1169 (La. 1978)).
25. Id. at 1203.
26. 527 So. 2d 1004 (La. App. 5th Cir.), writ denied, 531 So. 2d 475 (1988).
27. Id. at 1009.
28. Id.
29. Id.
30. La. R.S. 9:2800.1 (Supp. 1990).
31. La. R.S. 14:91-91.3 (1986 and Supp. 1990).
32. Gresham v. Davenport, 537 So. 2d 1144, 1147 (La. 1989).

The Gresham *Decision*

Defendant, fifteen-year-old Molly, had planned a party while her father was out of town. Eighteen-year-old Brian purchased three cases of beer at Molly's request. Five teen-age boys who attended the party were involved in a one-car accident on their way home. The driver was killed, and two of the passengers were seriously injured, when an intoxicated front passenger grabbed the car's steering wheel. The parents of the two injured passengers brought this suit against the mother of the deceased driver and her insurer, against Molly's father as owner of the home at which the party occurred and his homeowner's insurance company, and against Brian, the adult who had purchased the liquor, and his insurer.

The trial judge rejected the plaintiffs' demands, finding no causal connection linked the party, the beer, and the accident. The second circuit court of appeal reversed this decision in part.[33] The court of appeal found that Molly had a duty not to furnish alcohol to minors, which she had breached, and that the risk of an intoxicated car passenger acting irresponsibly (grabbing the steering wheel) was within the scope of this duty. The court of appeal found that although Brian had a duty not to purchase liquor for a minor and had breached the duty, the risk encountered was not within this duty.

The Louisiana Supreme Court reversed the court of appeal decision and reinstated the judgment of the trial court dismissing plaintiffs' claims.[34] The supreme court found that although Molly's conduct was a cause-in-fact of the accident, "it would be doubtful that Molly had a duty not to serve beer,"[35] and even if she had such a duty, the particular risk of serving beer to a minor who would later grab the steering wheel was not easily associable with her conduct.[36]

Additionally, the supreme court found it unlikely that the legislature

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33. Gresham v. Davenport, 524 So. 2d 48 (La. App. 2d Cir. 1988).

34. In *Gresham* the supreme court did not address the issue of the liability of Brian, the adult who purchased the beer for Molly. The second circuit found that although Brian breached a duty, the subsequent risk was not within this duty. One must question the reasoning behind this finding because Brian purchased *three cases* of beer for Molly. It is unlikely that a fifteen-year-old girl intended to drink this much alcohol alone; obviously other minors would be drinking with her.

35. 537 So. 2d at 1147.

36. It should be noted that Molly's mother, not her father, was Molly's legal guardian. No substitution of the parties was made nor even addressed by the supreme court. The court of appeal had found the father not to be vicariously liable; however, it did hold the father's homeowner's insurance company liable for Molly's actions. 524 So. 2d at 54.

intended this risk to be covered by Louisiana Revised Statutes 14:91.2,[37] which provides criminal penalties for minors purchasing alcohol. The supreme court thus rejected the contention that absolute liability should be imposed on a minor social host who serves intoxicating liquor to another minor.[38] The supreme court analogized this situation to *Thrasher v. Leggett*,[39] in which an alcoholic beverage retailer was found not to be absolutely liable for actions occurring after serving an already-intoxicated patron. The court found that the intoxicated patron's injuries were caused by his own behavior rather than the bar owner's breach of duty.

Analysis

Gresham is troublesome in three respects: 1) the supreme court's determination of whether a duty existed under the circumstances; 2) the court's narrow application of the test of ease of association; and 3) the court's failure to enunciate a standard of care for minor social hosts serving alcohol to other minors.

In determining whether Molly was liable for the injuries, the court of appeal found Molly to have breached a duty:

> It is apparent from an examination of our statutory law on the subject that, as a matter of public policy, we attempt to keep alcoholic beverages out of the hands of minors, recognizing that this could result in harm both to the minor and to third parties.[40]

The appellate court further found that the risk that one of the car passengers would act in an unruly manner was within Molly's duty. Molly saw the boys getting into their vehicle and even gave them a six-pack of beer to take with them.

The supreme court addressed the issue of Molly's liability differently finding that the situation was not covered by any existing statutory law and that even if the criminal statutes could be extended to include this scenario, they would be mere guidelines for the court.[41] Finding it *doubtful* that Molly had a duty under these circumstances, the supreme court noted that neither Molly nor the intoxicated car passenger "was a novice to drinking, having both been drinking beer occasionally on the weekends for about a year."[42]

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37. La. R.S. 14:91.2 (Supp. 1990). This statute now provides that "[i]t is unlawful for any person under the age of seventeen to purchase or possess any alcoholic beverage of either high or low alcoholic content."

38. 537 So. 2d at 1148.

39. 373 So. 2d 494 (La. 1979).

40. 524 So. 2d 49, 51 (La. App. 2d Cir. 1988).

41. 537 So. 2d at 1147.

42. Id.

Since drinking is clearly an adult activity, the supreme court's comments on the teenagers' familiarity with alcohol suggests that in this case an adult standard of care should be applied. The court failed, however, to apply or even to refer to the adult standard for social hosts, enunciated by the legislature in Louisiana Revised Statutes 9:2800.1.[43] If the supreme court meant that because *both* parties were familiar with alcohol and equally at fault, it could have used comparative fault in determining liability.

Additionally, this interpretation implies that the only type of duty considered to have existed was a statutory duty. The standard of care of a reasonable man in like circumstances was not even discussed. Certainly the only duties owed are not statutory ones. The court failed to address the question of whether the standard should be that of a reasonable minor in like circumstances or that of an adult. Generally, minors engaged in an adult activity are held to an adult standard of care.[44] This would, however, be contrary to the legislatively provided age requirement implemented to prevent minors from drinking.

Automobile accidents are the most notorious of all alcohol-related injuries. Rather than using this general risk as the test of ease of association, the supreme court considered more specific factors. The court focused on the fact that an intoxicated passenger caused the accident, rather than on the fact that a car accident occurred. The supreme court further concluded that even if Molly had a duty, the subsequent risk was not within this duty. The court stated "there is no indication that such a risk was within the legislative intent in passing the statute prohibiting a minor from purchasing alcoholic beverages."[45] This analysis ignores the unpredictable behavior common among intoxicated persons that causes many alcohol-related accidents to occur. General results, such as car accidents or drownings, are foreseeable; however, the specific manner in which they occur is often dependent upon the varying effects of alcohol on each individual. The supreme court's determination, that the risk in *Gresham* was not within the legislative intent in passing statutes prohibiting minors from drinking, derogates from jurisprudence indicating the general, not specific, risk should control in cases involving alcohol-related damages.[46]

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43. La. R.S. 9:2800.1 (Supp. 1990).

44. W. Prosser and W. Keeton, The Law of Torts § 32, at 181 (5th ed. 1984).

45. 537 So. 2d at 1147-48.

46. In the following cases the courts imposed liability on plaintiffs for furnishing minors with alcohol because the resulting risks were within the plaintiffs' duties: St. Hill v. Tabor, 542 So. 2d 499 (La. 1989) (*duty*: "to act as a 'reasonable' person and to guard against unreasonable risks of injury or harm to her guests;" *risk*: "that one of the guests at the party would drown," id. at 502); Garcia v. Jennings, 427 So. 2d 1329 (La. App. 2d Cir. 1983) (*duty*: not to furnish alcohol to a minor and having done so, to exercise

With its decision in *Gresham*, the supreme court has clearly created the need for the legislature to address situations involving minor social hosts, because it fails to enunciate a standard for minor social hosts serving alcohol to other minors. Penal statutes, Louisiana Revised Statutes 14:91-91.3, impose strict penalties for furnishing minors with alcohol. A civil statute, Louisiana Revised Statutes 9:2800.1, imposes non-liability for adult social hosts serving alcohol to other adults, but none of these statutes contain provisions for situations in which minors furnish alcohol to other minors. For example, if a sixteen-year-old were to give liquor to a ten-year-old, both minors would be statutorily liable for possession of the alcohol. If the ten-year-old were to cause damage to property or to another individual, under the *Gresham* analysis no statutory liability would exist for the sixteen-year-old who supplied the alcohol. In fact, if a ten-year-old were not a novice to drinking, it appears a sixteen-year-old would not even have a duty not to furnish that younger minor with alcohol.

Fortunately, the legislature limited the non-liability of social hosts to situations where the guests are adults. However, *Gresham* appears to jurisprudentially extend this non-liability of social hosts to minors depending upon the minor's experience with alcohol. The legislature determined the proximate cause of alcohol-related injury to be the adult's consumption of alcohol in Louisiana Revised Statutes 9:2800.1. If the legislature intended the providing of alcohol to minors to be the proximate cause of injury then, as the penal statutes suggest, the legislature needs to provide a standard for all situations involving minors. What will happen when a twenty-year-old (a minor by law) hosts a party, and a twenty-one-year-old (a legal adult) becomes intoxicated and subsequently injures himself or others? Louisiana Revised Statutes 9:2800.1 may cover this situation and limit the liability of the minor social host, since the guest is over the age of twenty-one and since the statute does not limit its applicability to adult social hosts. Yet this result is contrary to the competing policy contained in Louisiana Revised Statutes 14:91.1, which prohibits minors from possessing or purchasing alcohol. It appears the courts are moving away from using the penal statutes involved here even as guidelines. It is clear, therefore, that legislative action is necessary to enunciate when and where a duty lies when minors are involved in social drinking, particularly when a minor is the provider of the alcohol to other minors.

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a degree of protection toward the minor, and certainly refrain from affirmative acts which place the minor in peril; *risk*: "falling into a bayou and drowning," id. at 1333); Chausse v. Southland Corp., 400 So. 2d 1199 (La. App. 1st Cir.), writ denied, 404 So. 2d 278, 497 and 498 (1981) (*duty*: statutory duty prohibiting the sale of alcoholic beverages to minors; *risk*: "death and injury due to the girls' improvident riding with another inebriated teenager" in an automobile, id. at 1203).

Conclusion

In *Gresham*, several minors were injured in an automobile accident after a minor social host served them beer. The trial court dismissed plaintiffs' claims, finding that no causal connection linked the beer, the party, and the accident. The appellate court reversed and imposed liability on the minor social host. The supreme court reversed and reinstated the trial court's dismissal of plaintiffs' action.

The *Gresham* decision is troublesome because it leaves unanswered the question of liability when minors serve alcohol to other minors who cause damages as a result of their intoxication. Penal statutes prohibit minors from possessing alcohol, but the *Gresham* court found them to be inapplicable. The court applied a duty-risk analysis, finding that no liability existed, because even if a duty not to serve the alcohol to minors existed, the risk of an intoxicated car passenger grabbing the steering wheel was not within this duty. The court made no mention of comparative fault or of the reasonable man standard of care. Further the court did not discuss the recently-enacted social host non-liability statute. After *Gresham* it appears that the trend of judicial restraint in imposing liability for alcohol-related accidents has been extended to situations involving minors.

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