derivative elements that may be added to the work. If these derivative elements are not given to the author, when the author uses one of the derivative elements in a sequel, it will infringe upon the derivative owner's copyright.

In the instant case, it is evident that McClory has no right to create his own line of James Bond films because he would infringe the underlying work's copyright. Yet, he may have a right to past or future profits, based on MGM's use of the derivative elements contained in the McClory Scripts. In the end, with the competing interests in the Bond franchise, and in the immense revenues that it generates, we can be assured of one thing: as the end credits of each Bond film promise us, "Bond Will Be Back."

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WHEN PARENTAL INTERFERENCE GOES TOO FAR: THE NEED FOR ADEQUATE PROTECTION OF CHILD ENTERTAINERS AND ATHLETES

INTRODUCTION

When Dominique Moceanu and her six teammates won a team gold medal at the 1996 Summer Olympics in Atlanta, they were the picture of innocence and the sheer embodiment of talent and excellence. Dubbed the "Magnificent Seven," these young gymnasts not only possessed the most coveted award in amateur sports, but also stood on the brink of stardom and celebrity, poised to earn millions of dollars in endorsements, and ready to grace the world with their presence on every television show, magazine cover, and cereal box that should come their way.[1] Overnight, these athletes, fresh faced and barely in their teens, were confronted with the pleasures, opulence, and money-making power that adults twice their age would have difficulty managing. Perhaps that explains why less than three years later, the first casualty became apparent. Moceanu, at seventeen years old and in training for the 2000 Summer Olympics, obtained court permission to be emancipated from her parents and obtain legal status as an adult.[2] Moceanu felt obligated to take this action due to the fact that her parents apparently squandered away nearly all of her earnings, which had been placed in a trust fund that they controlled.[3] Moceanu also cited the missed opportunities she had for a normal childhood, due to her parents' constant push to turn her into a world class gymnast, which began when she was barely a toddler. She stated, "I would think, 'Don't you guys know anything besides gymnastics? . . . Can't you be my mom and dad instead of me being your business?'"[4]

[1] *See* Paul Daugherty, *Check Your Child at the Door*, CINCINNATI ENQUIRER, Oct. 23, 1998, at D01; *see also* James Langton, *Focus on Asymmetric Childhood: Why Dominique Is Divorcing Her Father*, DAILY TELEGRAPH, Oct. 25, 1998, at 28.

[2] *See Dateline NBC: Profile, A Delicate Balance: Dominique Moceanu's Parents Speak Out* (NBC television broadcast, Dec. 8, 1998).

[3] Moceanu claims her parents have not worked since she won the gold medal in 1996 and consequently began earning a great deal of money. She claims that the trust fund was misused by her father when "her earnings bankrolled a [four] million [dollar] gym bearing her name and other, more risky investments without her approval." *Gymnast: Split with Parents Difficult*, ARIZ. REPUBLIC, Oct. 24, 1998, at C2; *see also Dateline NBC: Interview, Balance of Power: Dominique Moceanu Talks about Wanting Emancipation from Her Parents* (NBC television broadcast, Oct. 26, 1998) [hereinafter *Dateline*].

[4] Ann Killion, *Overbearing Parents Won't Steal Gymnast Moceanu's Soul*, AUSTIN AM. STATESMAN, Oct. 24, 1998, at C5; *see also* Terri Langford, *Olympic Gymnast Sues Parents to be*

Unfortunately, Moceanu's story is not uncommon, considering recent stories of child celebrities that have been in the media spotlight. In 1997, it became well known that child actor Macaulay Culkin needed judicial intervention to remove his finances from his parents' control after a long custody battle.[5] Several states, starting with California and including New York, Florida, and Massachusetts, have laws in effect that are supposed to protect a child's earnings and keep parents from total entitlement to them.[6] These laws, named after Jackie Coogan, a famous child actor whose mother spent nearly all of his earnings,[7] are often referred to collectively as "Coogan's Law." Despite the source of the laws, there are inherent imperfections that make application difficult and fail to protect all of a child's money.[8] Recently, California modified Coogan's Law, making it more effective,[9] but this new version of the law has yet to be invoked throughout the United States.

The problem of parental money management for children is not the only common complaint from child entertainers and athletes. There is also the issue of exploitation and excessive labor and practice demands. The Fair Labor Standards Act,[10] which banned child labor for those under sixteen years of age, allowed an exemption for children working in the entertainment industry. The states, therefore, were left to make their own regulations.[11] Although some states, especially California and New York, have enacted rules and laws regarding this issue, many states have simply let this exemption remain open, thus encouraging oppressive labor and abuse of children in the entertainment industry.[12] Furthermore, with regard to child athletes, there are currently no laws regulating their labor and grueling training schedules, as athletic participation is not considered employment, but merely an extracurricular activity.[13] The laws for children in the entertainment industry are generally deficient, and where they do exist, proper enforcement is lacking.[14] However, this is not the only problem that needs to be addressed in order to alleviate the distress of child celebrities and athletes.[15] To prevent the exploitation of children, there must be legislation available to address the root of the problems that frequently occur. These children need protection not only from their careers or employers, but most essentially, from their parents.

Under the current legislation existing throughout the United States, even in those states with strict regulations, there is no way to keep a parent from forcing their child into a quest for stardom, either in entertainment or athletics. The present laws might require a child to apply for a permit, and maintain at least a "C" average to work,[16] but there are no laws regarding parents' behavior.[17] Parents alone often make the important decision to prompt a child to embark on a career in either show business or elite athletics. Not all parents have selfish motives, and some children have raw talent and their own desire to perform and become celebrities.

Legal Adult, NEW ORLEANS TIMES-PICAYUNE, Oct. 22, 1998, at A14 (complaining her relationship with her parents was always "about the gym"); Editorial, *Teen's Plea for Freedom Shows Pressures on Sports Prodigies*, SUN-SENTINEL FT. LAUDERDALE, Oct. 26, 1998, at 8A.

5 A New York judge took control of Culkin's finances because his accounts were in such a bad state and because the only income source for his parents were management fees from their children's acting income. *See Culkin's Parents Lose Control of His Money*, CHI. TRIB., March 5, 1997, at 2; *see also* Amy Scherzer, *Parents Gone as Guardians*, TAMPA TRIB., Mar. 6, 1997, at 4.

6 *See infra* notes 58-61, 63-68, 69-72, 73-76.

7 *See infra* notes 45-47.

8 *See* Randy Curry, *The Employment Contract with the Minor under California Civil Code Section 36: Does the 'Coogan Law' Adequately Protect the Minor?* 7 J. JUV. L. 93, 96-97 (1983) (explaining that Coogan's Law does not apply unless courts affirm employment contracts, a practice that is typically used only for long-term contracts, which are no longer common in the movie industry).

9 *See* CAL. FAM. CODE §§ 6752-6753 (West 2000); E-mail from Paul Petersen, President, A Minor Consideration, (Jan. 4, 2000) (explaining that the amended Coogan's law in California provides far more protection than the previous law) (on file with the *Cardozo Arts & Entertainment Law Journal*) [hereinafter Petersen, E-mail of Jan.4, 2000]. Paul Petersen is a former child actor who appeared as a regular on the *Donna Reed Show*. He is currently the president and founder of A Minor Consideration, a non-profit organization formed to give support and aid to child actors of the past, present, and future. Petersen is currently pushing for change and reform in all the labor laws regarding children in the entertainment industry. *See id.*

10 29 U.S.C. §§ 201-219 (1998).

11 *See id.*; Gerald Solk, *Legal Rights and Obligations of Minors in the Entertainment Industry: The California Approach* 4 J. JUV. L. 78, 80 (1980).

12 *See* Marc R. Staenberg & Daniel K. Stuart, *Children as Chattels: The Disturbing Plight of Child Performers*, 32 BEVERLY HILLS B. ASS'N J. 21, 30 (1997).

13 "The sports' national governing bodies, for their part, are mostly impotent." JOAN RYAN, LITTLE GIRLS IN PRETTY BOXES 11-12 (1995). No federal laws or agencies put limits on the hours a child can train or the methods that can be used by coaches, which are both particular causes of harm to the athletes. *See id.*

14 *See* E-mail from Paul Petersen, President, A Minor Consideration (Oct. 27, 1998) (on file with the *Cardozo Arts & Entertainment Law Journal*) [hereinafter Petersen, E-mail of Oct. 27, 1998]. Petersen believes that enforcement is a major problem with current legislation because even when a state has well-written laws, often "what the state says is not what it does." *Id.*

15 *See* Paul Petersen, *"Parents Don't Change, Coogan Does," A Minor Consideration* (visited Jan. 3, 2000) <http://www.minorcon.org>.

16 *See infra* note 112. *See generally* CAL. LAB. CODE § 1308.6 (West 1997) (stating that among the prerequisites necessary for commissioner consent in a work permit there must be satisfaction that a minor's education will not be neglected or hampered by involvement in the entertainment industry).

17 *See* Telephone Interview with Alan Simon, President, On Location Education (Jan. 11, 1999). On Location Education is an organization that sets up studio teachers and tutorials for children with alternative lifestyles in entertainment and sports. Simon states that parents never have to go before the court of law or a labor department to state that the child's career has nothing to do with their own personal motivations. *See id.* Simon also verifies that there are currently no laws in the entertainment industry regarding parents. *See id.*

Nonetheless, due to recent notable situations involving child athletes and entertainers, it is apparent that the laws and regulations in place for these children are not enforced sufficiently and are defective in the task of providing adequate protection for children from their parents.

This Note will address the need for statutory regulations that would ensure the benevolence of parents' intentions, prevent parents from misusing their children's earnings, and allow only those children who are both physically and mentally capable of handling the realities of show business to pursue their own careers. Part I will discuss past and current laws that were intended to protect a child's earnings and survey how these laws have failed many child entertainers and athletes. Part II will assess the current state labor laws that govern child entertainers and detail how children are not shielded from labor exploitation and abuse. In addition, Part II will expose how current trends in the entertainment industry purposely evade the existing laws, thus making enforcement difficult. Part III will discuss the scarcity of laws aimed at children in elite athletics, such as gymnastics and tennis, and review the real-life damages that athletic children often experience. Part IV will propose new federal legislation to place more controls on parents, which will alleviate the commonplace problems that face children in entertainment and sports today.

I. The Right of Parents to Retain their Child's Earnings

A. *Background of the Laws*

A significant area of law that is severely inept at protecting children from their parents is the contract law regarding the earnings of child athletes and entertainers. At common law, the earnings and services of children belonged to their parents while the children lived with and were being supported by their parents.[18] Traditional English law applied this standard, which was also adopted in the United States.[19] Almost every jurisdiction in the United States still holds that a parent with legal custody and control of an unemancipated minor child has a right to retain that child's earnings.[20] This rule applies regardless of whether that

[18] *See* Roger W. Cooley, Handbook on the Law of Persons and Domestic Relations §127, at 354-57 (3d ed. 1921).

[19] *See* Jules D. Barnett & Daniel K. Spradlin, *Enslavement in the Twentieth Century: The Right of Parents to Retain Their Childrens' Earnings*, 5 Pepp. L. Rev. 673, 675 (1978).

[20] *See id.*

child makes a minimum wage delivering newspapers or over $1,000,000 for starring in a film.

California was the first state to recognize the need for legislation that would provide for some degree of protection of a child's earnings in the entertainment industry.[21] This law, known as Coogan's Law, is actually derived from the California Civil Code, sections 35[22] and 36,[23] which govern contracts for child actors.[24] Under common law, all minors possessed the right to disaffirm or void any employment contracts at will, in order to protect them from exploitation.[25] In 1872, Civil Code sections 35 and 36 were enacted in order to insulate employers from a minor's right to void contracts.[26] Section 35 restated the common law rule that allowed the disaffirmance of a contract by a minor.[27] However, section 36 then introduced a major exception that prevented minors from disaffirming contracts when they had entered into the contract alone and where their earnings would be used for basic support of themselves and their family.[28] Problems not contemplated by the law arose in the late 1920s as child actors entered into the motion picture industry. The industry standard leaned toward long-term contracts that produced levels of income that greatly exceeded the

[21] California and New York were the forerunners in passing legislation regulating the employment and earnings of child entertainers. California enacted legislation first and subsequently became a model for New York. *See* Erika D. Munro, *Under Age, Under Contract, and Under Protected: An Overview of the Administration and Regulation of Contracts with Minors in the Entertainment Industry in New York and California*, 20 Colum.-VLA J.L. & Arts 553, 554 (1996).

[22] Cal. Civ. Code § 35 (West 1996).

[23] Cal. Civ. Code § 36 (1872) (repealed 1993).

[24] *See* Staenberg & Stuart, *supra* note 12, at 24 (stating that Coogan's Law is "an outgrowth of the original version of Civil Code sections 35 and 36 that the legislature passed in 1872 to protect employers from the common law and statutory rights of minors to disaffirm contracts").

[25] *See* 42 Am. Jur. 2d *Contracts and Conveyances* § 58 (1969) ("[T]he prevailing rule today is that in the absence of a statute to the contrary, an infant's contracts or conveyances are voidable, with the exception of certain limited classes of contracts or transactions which are valid and binding.").

[26] *See* Staenberg & Stuart, *supra* note 12, at 24.

[27] *See* Cal. Civ. Code § 35 (West 1996), *quoted in* Staenberg & Stuart, *supra* note 12, at 24 n.19.

> In all cases other than those specified by sections 36 and 37, the contract of a minor may, upon restoring the consideration to the party from whom it was received, be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards, or in the case of his death within that period, by his heirs or personal representatives.

Id.

[28] *See* Cal. Civ. Code § 36 (1872), *quoted in* Munro, *supra* note 21.

> A minor, or a person of unsound mind of whatever degree, cannot disaffirm a contract, otherwise valid, to pay a reasonable value of things necessary for his support, or for that of his family, entered into by him when not under the care of a parent or guardian able to provide for him.

Id.

basic support standard defined in section 36.[29] As a result of these long-term contracts, the section 36 exception did not apply to children in the movie industry, creating a major risk for child film actors.[30] In 1927, California amended section 36, eliminating the right of a minor to disaffirm contracts when the contract provided for the employment of "an actor, actress or other such dramatic service"[31] and the employer had previously asked the superior court to approve the contract.[32] When approval was granted by the superior court, the child lost the ability to disaffirm the contract at will.

The 1927 amendment was clearly intended to benefit film makers and studios, not children.[33] This was illustrated in the well-known case of *Warner Brothers Pictures v. Brodel*.[34] In that case, the superior court approved a young actress's exclusive contract with Warner Brothers for one year with further options. Four years later, when she turned twenty-one and was no longer a minor, the actress disaffirmed the contract.[35] The California Supreme Court held that she could be enjoined from working for another studio and that section 36 could still prohibit her from invoking a disaffirmance, although she had already reached majority and was only disaffirming during the option period.[36] The California Supreme Court echoed this decision in *Loew's Inc. v. Elmes*,[37] holding that a superior court judge could approve and bind the actor to the options that were written into the contract, in addition to the initial term.[38] In that case, a young actor signed a one-year contract that included the possibility of six more consecutive one-year options.[39] The California Supreme Court remanded the case to the superior court, reaffirming its power under section 36 to approve options.[40]

These cases demonstrate the California legislature's intention in 1927 to protect the movie studios, rather than child performers.[41] In addition, California was operating under the common law principle that a child's earnings belonged to his or her parents.[42] As stated in California Civil Code section 197,[43] "The father and mother of a legitimate unmarried minor child are entitled to its custody, services and earnings."[44] In 1938, when publicity arose concerning child actor Jackie Coogan's finances, the California legislature was forced to provide new protections of a child actor's earnings.[45] Coogan's parents spent nearly $4,000,000 of his earnings, leaving him penniless when he turned eighteen in 1934.[46] After the public learned of this debacle, discontent and dissatisfaction with the common law rule emerged.[47] The changes took effect in 1939, when the California legislature enacted Civil Code sections 36.1 and 36.2, codified in sections 6752[48] and 6753[49] of the California Family Code. Section 36.1 granted a court the power to require the formation of a trust fund or savings plan in conjunction with the court's approval of a contract under section 36.[50] Furthermore, section 36.2 gave the court continuing jurisdic-

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29 *See* Curry, *supra* note 8, at 95.

30 Studios were reluctant to sign minors to lucrative contracts and make investments of time and money for the development of a child's career while there was a risk that he or she could void the contract upon obtaining stardom and then switch to another studio. *See* Staenberg & Stuart, *supra* note 12, at 25.

31 CAL. CIV. CODE § 36 (1872) (amended 1927), *quoted in* Staenberg & Stuart, *supra* note 12, at 21.

> A minor cannot disaffirm a contract otherwise valid to perform or render services as actor, actress, or other dramatic services where such contract has been approved by the superior court of the county where such minor resides or is employed. Such approval may be given on the petition of either party to the contract after such reasonable notice to the other party thereto as may be fixed by said court, with opportunity to such other party to appear and be heard.

Id.

32 *See id.*

33 *See* Staenberg & Stuart, *supra* note 12, at 26 ("The limited body of case law on the subject suggests that the Coogan law provided far more protection to film makers than to child actors.").

34 31 Cal. 2d 766 (1948).

35 *See id.* at 770. The age of majority in California in 1948 was 21. It was later changed to age 18 in 1971. *See* 32 CAL. JUR. 3D *Family Law* § 270 (1994).

36 The court held that "[d]isaffirmance of a contract, executed or executory, whether declared before or after majority has the effect of a rescission." *Brodel*, 31 Cal. 2d at 771. "The option contract gives the optionee a right against the optionor for performance of the contract to which the option relates upon the exercise of the option, which the optionor cannot defeat by repudiating the option." *Id.* at 773.

37 31 Cal. 2d 782 (1948).

38 *See id.* at 783.

39 *See id.* at 782.

40 *See id.*

41 *See supra* note 33 and accompanying text.

42 *See* Munro, *supra* note 21, at 559.

43 CAL. CIV. CODE § 197 (West 1999).

44 *Id.*

45 *See* Curry, *supra* note 8, at 95.

46 *See* Paul Petersen, *"Kids and the Law," A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org>.

47 *See* Curry, *supra* note 8, at 95; *see also The Work of the 1939 California Legislature*, 13 S. CAL. L. REV. 1, 44 (1939). In the aftermath of the Jackie Coogan scandal,

> At least one judge of the superior court announced that as a matter of exercise of his discretion under Section 36, he would not approve contracts unless they contained provisions whereby substantial portions of the child's earning[s] would be set aside, in trust, for the benefit of the child itself.

Id.

48 CAL. FAM. CODE § 6752 (West 1999).

49 *Id.* § 6753 (West 1999).

50 *See* Staenberg & Stuart, *supra* note 12, at 26. This trust fund could contain as much as one-half of the child's earnings. *See* CAL. FAM. CODE § 6752 (granting the court the power to "require that the portion of the net earnings of the minor, not exceeding one-half thereof, that the court determines is just and proper, be set aside and preserved for the benefit of the minor, either in a trust fund or other savings plan approved by the court").

tion over the child's earnings, and the court had the power to terminate or amend the plan as long as it provided reasonable notice to the parties involved.[51] Now, despite the popularity of long-term contracts and the employers' additional need to protect themselves from disaffirmance, children could depend on the courts' ability to set aside some of their money in a trust fund.[52] Nonetheless, the child was left with the problem that at least one-half of their money could still be left under the discretion of their parents, depending on the decision of the judge reviewing the contract.[53]

Coogan's Law suffered further problems beyond the parental and judicial discretion that loomed over a child's earnings. As this law was written over sixty years ago, it failed to incorporate many paramount changes in the entertainment industry that affected child actors.[54] First, the studio system, under which movie producers made many long-term contracts with young actors in order to cultivate their promise for stardom, declined in popularity.[55] Children now commonly sign contracts to work in television commercials or to appear in single film projects.[56] When children make contracts for individual projects, the risk of disaffirmance decreases.[57] Thus, the incentive for employers or parents to have long-term contracts approved by the courts disappeared and Coogan's Law was never put to use.

On January 1, 2000, a new bill went into effect in California that amended Coogan's Law.[58] It finally makes strides towards preventing parental and employer manipulation of a child's earnings and protecting those earnings for the child only. The amended Coogan's Law now covers all contracts, not just those ap-

51 *See* CAL. FAM. CODE § 6753.
The court has continuing jurisdiction over a trust or other savings plan established pursuant to Section 6752 and may at any time, on good cause shown, order that the trust or other savings plan be amended or terminated, notwithstanding the provisions of the declaration of trust or other savings plan. The order may be made only after such reasonable notice to the beneficiary and to the parent or parents or guardian, if any, as is fixed by the court, with opportunity of all such parties to appear and be heard.
Id.

52 *See* Curry, *supra* note 8, at 95-96.

53 *See id.* at 96.

54 *See id.* at 95-98.

55 *See id.* at 97.

56 *See id.*

57 *See id.* Today, a child would rarely have a reason to disaffirm because they have been granted an opportunity for media exposure, and the contract itself is for a short period of time. *See* Munro, *supra* note 21, at 555.

58 S.B. 1162, 1999-00 Reg. Sess. (Cal. 1999); *see also* SENATE RULES COMMITTEE, COMMITTEE REPORT FOR 1999 CALIFORNIA SENATE BILL NO. 1162, 1999-00 Reg. Sess. (Cal. 1999) (stating that S.B. 1162 would "overhaul" Coogan's Law).

proved by the courts,[59] and allows the money earned by the child to be considered the sole property of the child.[60] The new law replaces California Civil Code section 197, which essentially had made the child's earnings community property of the family.[61] The new legislation ensures that a child's money is always set aside in a trust fund and that the trust cannot be touched by anyone but the child.

Coogan's Law and the corresponding California legislation regarding contracts for child entertainers and athletes served as a model for New York laws concerning the same issues.[62] New York Arts and Cultural Affairs Law section 35.03[63] provides that a contract can be approved in order to assure an employer that a child cannot disaffirm it. Furthermore, it grants the court the ability to set aside and protect part of the child's earnings.[64] In contrast to

59 *See* CAL. FAM. CODE § 6752(c)(1) (West 1999).
Notwithstanding any other statute for any contract of a type described in Section 6750 that is not being submitted for approval by the court pursuant to Section 6751, or for which the court has issued a final order denying approval, 15 percent of the minor's gross earnings pursuant to the contract shall be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753.
Id.

60 *See* CAL. FAM. CODE § 6752(b)(1) (West 1999).
Notwithstanding any other statute, in an order approving a minor's contract of a type described in section 6750, the court shall require that 15 percent of the minor's gross earnings pursuant to the contract be set aside by the minor's employer in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753. The court may also require that more than 15 percent of the minor's gross earnings be set aside in trust, in an account or other savings plan, and preserved for the benefit of the minor in accordance with Section 6753, upon request of the minor's parent or legal guardian, or the minor, through his or her guardian ad litem.
Id.

61 *See* CAL. FAM. CODE § 771(b) (West 1999) (providing "[t]he earnings and accumulations of an unemancipated minor child related to a contract of a type described in Section 6750 shall remain the sole legal property of the minor child").

62 *See* Munro, *supra* note 21, at 554.

63 N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 1998).

64 *See id.*
1. A contract made by an infant or made by a parent or guardian of an infant, or a contract proposed to be so made, under which
(a) the infant is to perform or render services as an actor, actress, dancer, musician, vocalist or other performing artist, or as a participant or player in professional sports, or
(b) a person is employed to render services to the infant in connection with such services of the infant or in connection with such services of the infant or in connection with contracts therefor, may be approved by the supreme court or the surrogate's court as provided in this section where the infant is a resident of this state or the services of the infant are to be performed or rendered in this state. If the contract is so approved the infant may not, either during his minority or upon reaching his majority, disaffirm the contract on the ground of infancy or assert that the parent or guardian lacked authority to make the contract. A contract modified, amended or assigned after its approval under this section shall be deemed a new contract.

Coogan's Law, where there was a fifty percent cap on the amount of earnings that the judge could set aside, in New York, the judge may set aside as much of the child's earnings as is deemed appropriate.[65] In addition, the New York laws differ from the earlier Coogan's Law in that contracts cannot be approved if they exceed three years,[66] whereas in California, contracts of any length were approved. While these New York provisions provide some protections, the issue of the need for court approval remains. Even though New York only allows for approval of contracts up to three years, short-term contracts still prevail, so the producers have no reason to fear disaffirmance.[67] Also, even if a contract is unapproved, it is still valid.[68] Therefore, the problems remedied by the amended California legislation still undermine New York law.

Two other states, Massachusetts and Florida, also have statutory regulations in place to protect the earnings of children in the

. . . .

3.(a) The court may withhold its approval of the contract until the filing of consent by the parent or parents entitled to the earnings of the infant, or of the infant if he is entitled to his own earnings, that a part of the infant's net earnings for services performed or rendered during the term of the contract be set aside and saved for the infant pursuant to the order of the court and under guardianship as provided in this section, until he attains his majority or until further order of the court. Such consent shall not be deemed to constitute an emancipation of the infant.

Id.

65 *See id.* § 35.03.3(b).

The court shall fix the amount or proportion of net earnings to be set aside as it deems for the best interests of the infant, and the amount or proportion so fixed may, upon subsequent application, be modified in the discretion of the court, within the limits of the consent given at the time the contract was approved. In fixing such amount or proportion, consideration shall be given to the financial circumstances of the parent or parents entitled to the earnings of the infant and to the needs of their other children, or if the infant is entitled to his own earnings and is married, to the needs of his family. Unless the infant is at the time thereof entitled to his own earnings and has no dependents, the court shall not condition its approval of the contract upon consent to the setting aside of an amount or proportion in excess of one-half of the net earnings.

Id.

66 *See id.* § 35.03.2(d).

No contract shall be approved if the term during which the infant is to perform or render services or during which a person is employed to render services to the infant, including any extensions thereof by option or otherwise, extends for a period of more than three years from the date of approval of the contract.

Id.

67 *See supra* note 57 and accompanying text.

68 *See, e.g.*, Prinze v. Jonas, 38 N.Y.S.2d 570 (1976) (holding that, although the contract in the case did not qualify for approval, the contract and the arbitration clause it contained were not unreasonable as a matter of law); *see also* Shields v. Gross, 58 N.Y.2d 338 (1983) (holding that, although the contract in the case was not valid because the child was a model, it was still enforceable as a matter of law); Scott Eden Management v. Kavovit, 563 N.Y.S.2d 1001 (1990) (forcing a child actor to pay his agent commissions and thus holding a contract enforceable in order to avoid unjust enrichment, despite its lack of judicial approval).

entertainment industry. Florida's law is similar to those of New York and California, because the contract must be approved in order to protect an employer from the child's disaffirmance.[69] However, Florida Labor Code section 743.08(3)(b) states that upon approval of a contract, "all earnings, royalties, or other compensation earned or received by the minor pursuant to said approved contract shall become the property of the minor."[70] This protection reaches beyond that of a trust fund set aside by the court, as the common law regulation is overruled and the earnings become the sole property of the child. Before California amended its statutes, Florida was the only state declaring that all of a child's earnings can be solely retained by the child.[71] However, this rule will only apply in Florida when a contract is subject to court approval. If the contract is never approved, then the earnings still belong to the parents. The statute, then, cannot be truly effective because, as previously emphasized, there is rarely a motive to have the contract approved in the entertainment industry today.[72]

Massachusetts' legislation provides further protections of a child's earnings than that of Florida. Under Massachusetts General Law section 85P,[73] while the earnings do not belong to the child outright, as they do in Florida,[74] the employer is required to have the contract approved by the probate and family court in the county where the child resides in order for the child to be employed.[75] Once the contract is approved, the court then uses the factors in section 85P(d)(2) to ensure that there is a protection plan for the child's earnings.[76] By requiring contract approval,

69 *See* FLA. STAT. ANN. § 743.08(3)(a) (West 1998).

If a contract is so approved by the circuit court pursuant to the requirements of this section and the requirements of sections 743.09, 743.095, and chapter 744, the minor may not, either during his or her minority or upon reaching his or her majority, disaffirm the contract on the ground of minority or assert that the parent or guardian lacked authority to make the contract.

Id.

70 *Id.* § 743.08(3)(b).

71 Florida's law is the only of its kind and is considered a milestone. *See* Petersen, E-mail of Oct. 27, 1998, *supra* note 14.

72 *See* Curry, *supra* note 8, at 97.

73 MASS. GEN. LAWS ANN. ch. 231, § 85P(c) (West 1998).

74 *See* FLA. STAT. ANN. § 743.08(3)(a) (West 1998).

75 *See* MASS. GEN. LAWS ANN. ch. 231, § 85P(c).

Notwithstanding the provisions of subsection (a), a child may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in said subsection (a); provided, however, that such employment, use or exhibition takes place pursuant to the provisions of a written contract which has been approved by the probate and family court for the county in which the child resides.

Id.

76 *See id.* § 85P(d)(2).

Massachusetts retains for the court the opportunity to intervene to protect a child's earnings and eliminates the problems present in New York and Florida. The compulsory approval requirement for all contracts regarding child entertainers and athletes in Massachusetts is progressive and suitable legislation, similar to the California amendment that guarantees comprehensive protection for children. In addition, the existence of any legislation is notable, especially considering that only four states have enacted any type of law overruling the common law parental entitlement to their children's earnings.[77]

B. *The Earnings of Child Entertainers and Athletes: Current Trends of Abuse*

In spite of the landmark enactment of the original Coogan's Law, children clearly suffered from the law's inadequacies.[78] Shirley Temple Black, the popular, cherubic movie star of the 1950s, supported her entire household of twelve people throughout her career. Eventually, she only retained a mere few thousand dollars and a dollhouse.[79] Lee Aaker, of the television show *Rin Tin Tin*, only had $20,000 remaining when he left the industry, and Beverly Washburn of the movie *Old Yeller*, only had $250 when she became an adult, after her mother spent all of her earnings.[80]

A more recent case involved Gary Coleman, the famous child actor from the television show *Diff'rent Strokes*. To deplete his income, his parents purposely worked around Coogan's Law by using their son's earnings to create a pension fund.[81] When Coleman's parents appeared before the judge to enforce this pension, they did not inform the judge that they were employees of Coleman's production company, and when they dissolved the pension fund they received $770,000 while Coleman received only $220,000.[82] In 1993, Coleman sued his parents and was awarded $3,800,000.[83] However, the 2000 amendment to Coogan's Law could prevent the type of manipulation and financial abuse that Coleman suffered.

Although the California laws now appear to be able to properly protect the earnings of superstar children, problems are likely to continue in other states where the laws are still inadequate. Macaulay Culkin is another young celebrity who recently faced financial distress. Like child actors from several decades before him, he was the main source of financial support for his parents and siblings. He was finally relieved of this burden when a New York court granted control over his earnings to an accountant he chose.[84] As part of the court decision denying his parents access to his money, Culkin was also granted permission to withdraw money from his trust fund to prevent his parents from possible bankruptcy and homelessness.[85] In spite of the fact that he gained more control over his earnings, Culkin still needed to save his parents from financial ruin.

Dominique Moceanu, the young, successful gymnast who participated in the 1996 Summer Olympics, was another recent young victim of financial loss, due to the acquisition and squandering of her money by her parents.[86] Moceanu, who petitioned for and

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The court shall consider the following when determining the protection of earnings:
(i) the interest of the petitioner in the contract or proposed contract or in the child's performance under said contract;
(ii) the parties who are entitled to the child's earnings, and, if the if the child is not so entitled, facts regarding the property and financial circumstances of the parent or parents or legal guardian or other third party;
(iii) a bank or trust account used expressly for the deposit of fees generated under the contract and the relationship of any proposed trustee of the child's funds;
(iv) the percentage of fees generated which are intended for deposit; and
(v) the child's financial advisor or other third party who shall render investment advice and administer the bank or trust account.

Id.

77 *See* E-mail from Paul Petersen, President, A Minor Consideration, (Sept. 3, 1998) (on file with the *Cardozo Arts & Entertainment Law Journal*) [hereinafter Petersen, E-mail of Sept. 3, 1998].

78 *See* Curry, *supra* note 8, at 97-98.

79 *See* Kent Black, *After the Fame, Too Many End Up Addicted, Arrested or Dead*, NEWSDAY, Jan. 12, 1994, at 49.

80 Lee Aaker recently asked his mother what had happened to the other hundreds of thousands of dollars he made and she stated that she did not know. *See id.* Beverly Washburn stated: "When my mother sold the house she'd bought with my earnings, she gave me fifty dollars to go buy a new pantsuit. . . I know she loved me. I guess she just didn't know any better. *Id.*

81 *See* Staenberg & Stuart, *supra* note 12, at 22.

82 *See id.* (noting that Gary Coleman's case is among the more famous child exploitation and abuse cases, and that Coleman was forced to sue his parents to recover millions in earnings). Coleman says, "Even after the lawsuit was concluded, I still don't know. I don't know where 18 million dollars went." *See 20/20: The Rise and Fall of a 'Diff'rent Strokes' Star* (ABC television broadcast, May 14, 1999) (interviewing Coleman, who revealed that the money he received from the lawsuit actually came from insurance policies that he had paid for himself).

83 *See* Black, *supra* note 79, at 49.

84 State Supreme Court of New York Justice David Saxe transferred Culkin's parents' power over his earnings to his long-time accountant, Billy Breitner. *See* Sherzer, *supra* note 5, at 4.

85 *See* Staenberg & Stuart, *supra* note 12, at 22. In addition, Culkin's parents used almost all of their own money, as well as some of their son's, to wage a costly legal battle against each other to gain custody of Culkin and his five younger siblings. *See id.* Due to the expenses of their custody battle, Culkin's parents, who have six other children, were unable to pay rent on the family's three apartments. The judge ruled that Culkin could use some of his $17,000,000 to help keep his family from homelessness. *See* Sherzer, *supra* note 5, at 4.

86 *See* Daugherty, *supra* note 1; at 70 (noting that Moceanu is "one very unhappy kid," despite her accolades from the Summer Olympics, just over two years ago).

gained emancipation from her parents in 1998, claims that her parents stopped working after 1996, choosing instead to live completely off of her money.[87] In addition, her father spent nearly $4,000,000 of her trust fund to build a 70,000 square foot gym, the largest in the United States, without her permission and a clear understanding of how large and costly it would be.[88] Furthermore, Moceanu was unaware that her parents had created a trust fund for her, which she could not control until she was thirty-five, until she learned of it after the controversy was initiated.[89]

While money management difficulties have led Moceanu and other gymnasts like her, including Mary Lou Retton and Shannon Miller, to take extreme measures,[90] there are other child athletes and entertainers whose parents have pursued more beneficial paths for their children's finances. Jaycie Phelps, who along with Miller and Moceanu, won the team gold medal at the 1996 Olympics, has parents who made smart and fair business decisions for her when she began to earn astronomical amounts of money.[91] She was informed of every dollar she earned, and she has an agent, a financial advisor, and a savings account for college.[92]

Phelps is not the only child with a great deal of money who has her earnings firmly set aside and her future secured. Mary-Kate and Ashley Olsen, superstar twins who have been in the television and movie spotlight since they were infants, have full financial con-

87 *See* Karen M. Thomas, *Divorcing Mom and Dad: Separation Anxiety Takes on a New Meaning when Kids Move Legally to Break Free from Their Folks*, DALLAS MORNING NEWS, Nov. 4, 1998; *see also Dateline*, *supra* note 3 (claiming that Moceanu has been her family's only source of income since she was 14); *Teen's Plea for Freedom Shows Pressures on Sports Prodigies*, *supra* note 4, at 8A; Langford, *supra* note 4, at A14; *Moceanu Breaks from Her Parents' Jurisprudence: Olympic Gymnast, 17, Petitions Court for Adulthood to Gain Control of Her Earnings*, L.A. TIMES, Oct. 22, 1998.

88 Moceanu's father claims that the gym was built with her blessing, but she asserts that she never approved of such a large and expensive facility that would utilize almost all of the money she had made over the past few years. The gym is described as a "state of the art, 70,000 square foot gymnasium, the largest of its kind in the country." *Dateline*, *supra* note 3. Moceanu also never knew how much money she had, or even if she had made money for certain appearances, tours, and endorsements. *See id.*

89 *See id.* (describing Moceanu's amazement at discovering the details of her trust fund and her fear that at 35, when her gymnastics career would be over, there would be nothing left).

90 It has been common to see child stars and performers take their parents to court to be able to control their earnings. Mary Lou Retton, who had petitioned the same court as Moceanu, and Shannon Miller, Moceanu's friend and co-member of the Olympic team, both won legal emancipation from their parents while they were still teenagers. *See id;* Thomas, *supra* note 87, at 1C.

91 *See* Amy Rosewater, *A Game Without Rules: Parents of Young, Elite Athletes Call Career Management Tough Balancing Act*, PLAIN DEALER, Oct. 25, 1998, at 1C. Phelps' parents were "adamant that the money Jaycie earned from her gymnastics success was hers to keep." *Id.*

92 The Phelps family also aided Jaycie in setting up a pension plan with fairly liquid accounts, which enable her to use the money easily. Jaycie has bought herself a home in Phoenix and a luxury automobile—a Mitsubishi Spider. *See id.*

trol of their careers as the owners of their own production company.[93] Their financial plan dictates that whenever they sign contracts, the twins generate fees not only as actors, but also as executive producers.[94] In addition, their attorney and parents have created a trust fund in accordance with Coogan's Law, and the twins will be given full access to their money when they reach age eighteen.[95]

While the Olsen twins and Jaycie Phelps have proved invulnerable to financial exploitation by their parents, it is critical to recognize that their parents made the decisions to safeguard their children's money and to keep their children informed of their financial status. Parents can just as easily decide to use their children's money to their own advantage and keep their children in the dark as to how much they are worth, as was the case for Moceanu. Her appalling situation may be explained because it took place in Texas, where the laws protecting children are lacking.[96] However, Macaulay Culkin suffered a similar predicament to Moceanu in New York, where the laws on their face seem to be adequate and purport to protect children from greedy parents.[97]

These examples of financial abuse and the need for children to go to court to maintain their dignity and to keep the money they worked hard to earn, demonstrate the immediate need for more legislative intervention to secure children's earnings. The states of Florida, Massachusetts, and now California, have the most well-rounded and adequate legislation. If similar laws were invoked nationwide, children could finally maintain a hold on their own earnings.[98]

93 When the girls began to earn money and develop clout in Hollywood as the stars of the television show *Full House*, their parents acquired the help of an entertainment attorney who assured them that by establishing Dual Star, their very own production company, the Olsens could create and own their own projects in show business. *See Primetime Live: Twins' Peak Entertainment Empire of Mary-Kate, Ashley Olsen* (ABC television broadcast, Aug. 26, 1998).

94 *See id.* (illustrating how the girls have generated fees as producers by appearing in two made-for-television movies, taking in over $1,000,000 in fees in their role as producers).

95 Although Coogan's Law allows the girls to set aside up to 50% of their earnings, their attorney says that they will end up with much more than that when they turn eighteen. For now, the money is safely set aside and Mary-Kate and Ashley receive a weekly allowance appropriate for young girls their age. *See id.*

96 The only mention of child entertainers or performers in Texas law is the following: "The commission may authorize the employment of children under 14 years of age as performers in a motion picture or a theatrical, radio, or television production." TEX. LABOR CODE ANN. § 51.012 (West 1993).

97 *See* Scherzer, *supra* note 5; *see also supra* notes 63-68 and accompanying text; *infra* notes 121-24 and accompanying text.

98 *See supra* notes 69-77 and accompanying text.

II. Labor Laws and Child Entertainers

A. *Varying State Labor Laws in Relation to Children in Entertainment*

There are currently limited laws in effect to help protect children actors and athletes from oppressive and abusive labor requirements. More specifically, there are no federal laws that ensure children in the entertainment industry will not be forced to work in unsafe and hazardous conditions for an unrealistic amount of time, and will not be compelled to do so by their parents. In 1938, Congress enacted the Fair Labor Standards Act ("FLSA" or "Act"),[99] which is the main piece of federal legislation that covers child labor practices. The FLSA generally prohibits the employment of children under eighteen in any occupation detrimental to their well-being or health.[100] In particular, the Act forbids an employer from producing goods for commerce by utilizing oppressive child labor.[101] The Act does not allow any manufacturer or producer to ship into commerce any goods that were manufactured in the United States where oppressive child labor has been employed to produce the goods.[102]

The FLSA included many exemptions from this blanket rule forbidding excessive child labor. Children are permitted to work in agriculture at their home provided that they are at least fourteen years of age, or, in the alternative, are at least twelve years of age and have parental consent.[103] Subject to certain stipulations, once

99 29 U.S.C. §§ 201-219 (2000).

100 *Id.*

101 *See* 29 U.S.C. § 212(c) (2000). "No employer shall employ any oppressive child labor in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce." *Id.*

102 *See id.* § 212(a). "No producer, manufacturer or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed." *Id.*

103 *See id.* § 213(1).

> [T]he provisions of section 212 of this title relating to child labor shall not apply to any employee employed in agriculture outside of school hours for the school district where such employee is living while he is so employed, if such employee—
>
> (A) is less than twelve years of age and (i) is employed by his parent, or by a person standing in the place of his parent, on a farm owned or operated by such parent or person, or (ii) is employed, with the consent of his parent or person standing in the place of his parent, on a farm, none of the employees of which are . . . required to be paid at the wage rate prescribed by section 206(a)(5) of this title,
>
> (B) is twelve years or thirteen years of age and (i) such employment is with the consent of his parent, or person standing in the place of his parent, or (ii) his parent or such person is employed on the same farm as such employee, or
>
> (C) is fourteen years of age or older.

Id.

they have reached the age of sixteen, children are permitted to load and unload paper,[104] and at seventeen they are permitted to drive on public roadways.[105]

The FLSA permitted several straight exemptions to the ban, including exemptions for delivering newspapers and for children employed as actors and performers in the entertainment industry.[106] The Act states, "The provisions of section 212 of this title relating to child labor shall not apply to any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions."[107] Congress authorized this section of the FLSA without creating any special legislation for child entertainers, therefore leaving the states free to provide their own legislation without the hindrance of federal preemption in this area.[108] As a result, there is no uniform set of laws for children in the entertainment industry, and the laws vary widely from state to state.[109]

California has the most specific and stringent statutory scheme to deal with the employment of children in entertainment. These laws apply both inside and outside of California, as long as the contract is signed there, in order to accommodate on-location shooting.[110] A minor can invoke the entertainment industry exception to the FLSA's prohibition on the employment of children under

104 *See id.* § 213(5)(A).

> In the administration and enforcement of the child labor provisions of this chapter, employees who are 16 and 17 years of age shall be permitted to load materials into, but not operate or unload material from, scrap paper balers and paper box compactors—
> (i) that are safe for 16 and 17 year old employees loading the scrap paper balers or paper box compactors; and
> (ii) that cannot be operated while being loaded.

Id.

105 *See id.* § 213(6). "In the administration and enforcement of the child labor provisions of this act, employees who are under 17 years of age may not drive automobiles or trucks on public roadways." *Id.*

106 *See id.* §§ 213(3), 213(6)(d).

107 *Id.* § 213(3)

108 *See* Solk, *supra* note 11, at 80.

109 *See* Staenberg & Stuart, supra note 12, at 30 (discussing how "the disparate range and content of statutes affecting child performers begs for legislative intervention").

110 California law will apply to on-location shooting when the employment contract is signed in California and the minor is a California resident. *See* Cal. Code Regs. tit. 8, § 11756 (1999).

> When minors resident in the State of California and employed by an employer in the entertainment industry located in the State of California, are taken from the State of California to work on location in another State, as part of, and pursuant to, contractual arrangements made in the State of California for their employment in the entertainment industry, the child labor laws of California and the regulations based thereon shall be applicable, including, but not limited to, the requirement that a studio teacher must be provided for such minor in accordance with Section 11755.1.

Id.

the age of sixteen by obtaining written consent and a permit issued by the state Labor Commission.[111] The permit and consent will only be granted if the environment of employment is proper for the child, not detrimental to the child's health, and will not interfere with the child's education.[112] Once the permit is granted, the child is only permitted to work under the regulations and conditions prescribed by the California Labor Code.[113] The permit is subject to revocation if there are violations of the Labor Code or reported mistreatment of the child.[114]

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111 *See* CAL. LAB. CODE § 1308.5(a) (West 1997).

> The written consent of the Labor Commissioner is required for any minor, not otherwise exempted by this chapter, for any of the following:
> (1) The employment of any minor, in the presentation of any drama, legitimate play, or in any radio broadcasting or television studio.
> (2) The employment of any minor 12 years of age or over in any other performance, concert or entertainment.
> (3) The appearance of any minor over the age of eight years in any performance, concert, or entertainment during the public school vacation.

Id.

112 *See id.* § 1308.

> No consent shall be given at any time unless the officer giving it is satisfied that all of the following conditions are met:
> (a) The environment in which the performance, concert, or entertainment is to be produced is proper for the minor.
> (b) The conditions of employment are not detrimental to the health of the minor.
> (c) The minor's education will not be neglected or hampered by his or her participation in the performance, concert or entertainment.

Id.

The process for receiving the permit begins with an application that must be filled out and signed by the employer. The application must then be taken to the child's school to assure that the child has at least a "C" average, and the child's physician must verify the child's health. *See* CAL. CODE REGS. tit. 8, § 11753.

> A minor desiring to be employed in the entertainment . . . industry must obtain an Entertainment Work Permit. . . . The minor must provide the information called for on the application, to-wit: his/her name, age, birth date, address, sex, height, weight and color of hair and eyes. In addition, such minor must obtain verification in writing from the appropriate school district of the minor's school record (and attendance, and must satisfactorily meet the requirements of that school district with respect to age school record,) attendance and health. Such verification of school record and attendance and proof that the school district's requirements with respect to age, school record, attendance and health have been met must be filed with the Division, concurrently with the filing of the application. Such verification and proof may be in any form as provided by the school district if reasonably demonstrative of the information required to be furnished by this subsection. The Division may require in appropriate cases a physical examination of the minor to ensure that the minor's physical condition permits the minor to perform the work or activity called for by the Permit to Employ Minor and Entertainment Work Permit.

Id.

113 *See id.* § 1308.6 ("Such permit shall permit the minor to work only under the conditions prescribed by these regulations and in conformity with all provisions of law governing the working hours, health, safety, morals and other conditions of employment of minors.").

114 *See* CAL. CODE REGS. tit. 8, § 11758 (1999) ("Any misdemeanor violation of any Labor Code provision respecting child labor, or any violation of these regulations may constitute grounds for denying a Permit to Employ Minors in the entertainment industry, or for suspending or revoking any such permit."); *see also id.* § 11758.1.

> It shall also constitute grounds for denial of the issuance or renewal, or suspension or revocation of a Permit to Employ Minors in the Entertainment Industry for any permit holder or authorized agent or representative of such holder to discharge or in any manner discriminate against any studio teacher because such studio teacher either:
> (1) made any oral or written complaint to the division or permit holder, its agent, representatives or employees, that conditions on the set or location were dangerous to the health, safety or morals of minors employed on said set or location; or
> (2) took any action to preclude, suspend or terminate the employment of minor on a set or location for reasons of health, safety, or morals of the minors.

Id.

It is mandatory in California for a parent or guardian to be present at the child's place of employment.[115] The employer must also provide a studio teacher for the child.[116] This teacher must turn in a report describing a child's general activities and demeanor, which, if negative, can nullify the validity of the work permit.[117] In addition, if the employed child has not yet graduated

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115 *See id.* § 11757 ("A parent or guardian of a minor under sixteen (16) years of age must be present with, and accompany, such minor on the set or location and be within sight or sound of said minor at all times.").

116 The relevant statute provides:

> Employers shall provide a studio teacher on each call for minors from age fifteen (15) days to their sixteenth (16th) birthday (age sixteen (16)), and for minors from age sixteen (16) to age eighteen (18) when required for the education of the minor. One (1) studio teacher must be provided for each group of ten (10) minors or fraction thereof.

Id. § 11755.2. This teacher must also be certified and take a written examination to verify knowledge of the labor laws for the employment of children in the entertainment industry. The statute further provides:

> (a) A studio teacher within the meaning of these regulations must be a certificated teacher who holds one California teaching credential listed in paragraphs (1) through (4) of subsection (d) of this section and one California teaching credential listed in paragraphs (5) through (7) of subsection (d) of this section which are valid and current, and who has been certified by the Labor Commissioner.
>
> (b) . . . A written examination will be required of the studio teacher by the Labor Commissioner at the time of certification or renewal. Such examination shall be designed to ascertain the studio teacher's knowledge of the labor laws and regulations of the State of California as they apply to the employment of minors in the entertainment industry.

Id. § 11755.

117 *See id.* § 11755.3.

> The studio teacher, in addition to teaching, shall also have responsibility for caring and attending to the health, safety and morals of minors under sixteen (16) years of age for whom they have been provided by the employer, while such minors are engaged or employed in any activity pertaining to the entertainment industry and subject to these regulations. In the discharge of these responsibilities, the studio teacher shall take cognizance of such factors as working conditions, physical surroundings, signs of the minor's mental and physical fatigue, and the demands placed upon the minor in relation to the minor's age, agility, strength and stamina. The studio teacher may refuse to allow the engagement of a minor on a set or location and may remove the minor therefrom, if in the judgment of the studio teacher, conditions are such as to present a danger to the health, safety or morals of the minor. Any such

from high school, then he or she must have continuous education and be taught at least three hours a day on school days.[118]

California also limits the amount of time a child entertainer can work. A child cannot be employed for more than eight hours in one day or more than forty-eight hours in one week, or before five in the morning or after ten at night on any day before a school day.[119] If necessary, a written request can be made to the Labor Commissioner to allow a minor to work outside of the specified guidelines on a particular occasion.[120]

New York also set up regulations for children in the entertainment industry, yet it has not adopted the detailed rules regarding education and hours that are in place in California.[121] New York

action by the studio teacher may be immediately appealed to the Labor Commissioner who may affirm or countermand such action.

Id.

118 *See id.* § 11760(f).

> Minors who have reached the age of sixteen (16) years but who have not attained the age of eighteen (18) years may be permitted at the place of employment for a maximum of ten (10) hours. Such ten (10) hour period shall consist of not more than six (6) hours of work and at least three (3) hours of schooling when the minor's school is in session, and one (1) hour of rest and recreation. On days when school is not in session, working hours may be increased to not more than eight (8) hours, with one (1) hour of rest and recreation.

Id.

119 *See* CAL. LAB. CODE § 1308.7 (West 1989). The Labor Commission also set up specific hour limitations for children based on their age, starting with only twenty minutes of work for an infant under six months of age, up to four hours for a minor between the ages of six and 18. *See, e.g.*, CAL. CODE REGS. tit. 8, § 11760(e) (1999).

> Minors who have reached the age of nine (9) years but who have not attained the age of sixteen (16) years may be permitted at the place of employment for a maximum of nine (9) hours. Such nine (9) hour period shall consist of not more than five (5) hours of work and at least three (3) hours of schooling when the minor's school is in session. The studio teacher shall assure that the minor receives at least one (1) hour of rest and recreation. On days when the minor's school is not in session, working hours may be increased to seven (7) hours, with one (1) hour of rest and recreation.

Id.

120 *See* CAL. CODE REGS. tit. 8, § 11760(g) (1999).

> If emergency situations arise, for example, early morning or night exteriors shot as exteriors, live television or theatrical productions presented after the hours beyond which a minor may not work as prescribed by law, a request may be made to the Labor Commissioner for permission for the minor to work earlier or later than such hours. Each request shall be considered individually by the Division and must be submitted in writing at least forty-eight (48) hours prior to the time needed.

Id.

121 California is frequently cited as the state with the most comprehensive statutory scheme for children in entertainment. Although New York has substantially followed the California approach to children in entertainment, "[u]nfortunately, the New York Legislature has yet to adopt many of the more detailed regulations governing child performers that are contained in the California Administrative Code." Robert A. Martis, Comment, *Children in the Entertainment Industry: Are They Being Protected? An Analysis of the California and New York Approaches*, 8 LOY. L.A. ENT. L.J. 25, 30. "One of the features of California law that clearly distinguishes it from New York law is the California Administrative Code's clear and firm school requirement policies." *Id.* at 35.

supplies a set of conditions that must be met in order for child performers to be exempt from the restriction on employment of minors under fourteen years of age.[122] As in California, a child performer in New York must be issued a permit, which is granted by the mayor's office.[123] The permit will not be issued if it will intrude upon the welfare, development, or proper education of the child.[124]

The state of Florida also has laws specifically enacted to regulate child entertainers. The Division of Jobs and Benefits in Florida has the duty to ensure that, before a child can be employed in any job in the entertainment industry, the work will not be hazardous to their health, morals, education, or welfare.[125] There is a system

122 *See generally* N.Y. ARTS & CULT. AFF. LAW § 35.01 (McKinney 1998).

123 *See id.* § 35.01(3) ("Notwithstanding the foregoing provisions of subdivision one of this section, such a child may be employed, used or exhibited in any of the exhibitions, rehearsals or performances set forth in subdivision one of this section if a child performer permit has been issued as hereinafter provided."); *see also id.* § 35.01(5).

> An application for a child performer permit shall be made on a form prescribed by the issuing authority and shall contain such matters as the issuing authority may deem to be necessary, including the following:
> (a) The true and stage name and the age of the child, and the name and address of his parent or guardian;
> (b) The written consent of the parent or guardian;
> (c) The nature, time, duration and number of performances, together with the place and nature of the exhibition;
> (d) A detailed description of the entire part to be taken and each and every act and thing to be done and performed, except that if the performance is in connection with a radio or television program, the application shall contain a general statement describing the part or parts to be taken by the child and the nature of the radio or television program.

Id.

124 *See id.* § 35.01(7) ("No child shall perform except as provided in the permit. No permit shall be issued for the exhibition, rehearsal or performance of a child which is harmful to the welfare, development or proper education of such child. A permit may be revoked by the issuing authority for good cause."). The law does not specify how it will be determined if the employment is proper, yet the law stipulates that the mayor's office can invoke the assistance of the New York Society for the Prevention of Cruelty to Children or a similar agency. *See id.* § 35.01(6).

> The mayor or other chief executive officer of the city, town or village where the exhibition, rehearsal or performance will take place may solicit the assistance of the Society for the Prevention of Cruelty to Children . . . or other child protective organization, if there be one and such other state and local agencies as he may determine.

Id.

125 *See* FLA. STAT. ANN. § 450.132(2) (West 1997).

> The Division of Jobs and Benefits shall, as soon as convenient, and after such investigation as to the division may seem necessary or advisable, determine what work in connection with the entertainment industry is not hazardous or detrimental to the health, morals, education, or welfare of minors within the purview and protection of our child labor laws. When so adopted, such rules shall have the force and effect of law in this state.

Id.

of permits in Florida, yet unlike in California and New York, the employers or agents, rather than the children, apply to the Division for the permit, which qualifies them to employ minors.[126] In addition, the employer or agent must notify the Division concerning the timing and location of the work.[127]

There are many states with less extensive regulations for child performers that still require work permits before a child under sixteen can be exempt from labor laws.[128] However, these states generally only require that the employment will not endanger a child's health or disrupt a child's education.[129]

There are still other states that simply leave the exemption open, just as it was written in the Fair Labor Standards Act.[130] Children in those states are simply allowed to be employed as minors, the only stipulation being that the employment is in the entertainment industry.[131] Many of these unregulated states are in the Southeast,[132] and they often compete with each other for film production.[133] In order to solicit filmmakers, many of the production companies in the Southeast boast about their lack of labor laws for children in the entertainment industry.[134] In the state of Alabama,

[126] *See id.* § 450.132(3).

> Entertainment industry employers or agents wishing to qualify for the employment of minors in work not hazardous or detrimental to their health, morals, or education shall make application to the division for a permit qualifying them to employ minors in the entertainment industry. The form and contents thereof shall be prescribed by the division.

Id.

[127] *See id.* § 450.132(5) ("Any entertainment industry employer and its agents employing minors hereunder are required to notify the division, showing the date of the commencement of work, the number of days worked, the location of the work, and the date of termination.").

[128] *See, e.g.*, ARK. CODE ANN. § 11-12-104 (Michie 1987); D.C. CODE ANN. § 36-506 (1987); GA. CODE ANN. § 39-2-18 (1982); 820 ILL. COMP. STAT. ANN. § 205/8.1 (West 1993); LA. REV. STAT. ANN. §§ 253, 254 (West 1998); MD. CODE ANN., LAB. & EMPL. § 3-207 (1997); N.J. STAT. ANN. § 34:2-21.2 (West 1988); N.C. GEN. STAT. § 95-25.5 (1997); VA. CODE ANN. § 40.1-101 (Michie 1991).

[129] *See supra* note 114.

[130] *See, e.g.*, ALA. CODE § 25-8-60 (1998); ARIZ. REV. STAT. ANN. § 23-235 (West 1995); COLO. REV. STAT. ANN. § 8-12-104 (West 1994); IND. CODE. ANN. § 20-8.1-4-2 (West 1994); KAN. STAT. ANN. § 38-614 (1993); KY. REV. STAT. ANN. § 339.210 (Banks-Baldwin 1997); MICH. COMP. LAWS ANN. § 409.114 (West 1985); MINN. STAT. ANN. § 181/A.07 (West 1993); NEV. REV. STAT. § 609.250 (1997); OHIO REV. CODE ANN. § 4109.06 (West 1995); 43 PA. CONS. STAT. ANN. § 48.1 (West 1992); R.I. GEN. LAWS § 28-3-8 (1995); S.C. CODE ANN. § 71-3105 (Law. Co-op. 1998); TENN. CODE ANN. § 50-5-107 (1998); TEX. LAB. CODE ANN. § 51.012 (West 1993)

[131] *See supra* note 107 and accompanying text.

[132] *See, e.g.*, ALA. CODE § 25-8-60 (1998); KY. REV. STAT. ANN. § 339.210 (Banks-Baldwin 1997); S.C. CODE ANN. § 71-3105 (Law. Co-op. 1998); TENN. CODE ANN. § 50-5-107 (1998).

[133] *See* Petersen, E-mail of Oct. 27, 1998, *supra* note 14. Petersen asserts that the same exemption is posted in virtually every state in the Southeast, and that these states compete with each other for film production. *See id.*

[134] *See* NORTH CAROLINA FILM COMMISSION, THE OFFICIAL NORTH CAROLINA FILM AND VIDEO DIRECTORY 6 (1999) (describing the applicable child labor laws and emphasizing the exemption for children in the entertainment industry).

the exemption enables child actors or performers to avoid being subjected to any time restrictions or permit requirements that are imposed on children employed in other exempted industries.[135] The labor laws for child entertainers are very divergent and range from very specific in California to completely lacking in the Southeast.

B. *How the Labor Laws Allow for Parental Exploitation: Current Trends of Abuse*

California appears to be a safe haven for children in the entertainment industry, which is promising, considering that the majority of the entertainment industry is located in California.[136] However, California, like many other states with progressive statutes, has a problem with enforcing its laws.[137] Although the permit process seems very stringent, in reality it is not, as the current work permit process is carried out primarily via the mail.[138] A mail-in process makes it difficult to assure that a working environment is adequate and proper for the welfare of a child. "Forged documents and phony assertions have become commonplace . . . and overnight 'permitting' is done with a phone call . . . should the studio teacher even make that call."[139] In addition, despite the fact that the law asserts that a permit will be revoked if the employment conditions are not appropriate for the child, it is very rare for either the employer's or the child's permit to actually be rescinded.[140]

[135] *See* ALA. CODE § 25-8-60 (1998).

> Time and hour restrictions shall not be imposed upon, and no work permits shall be required for persons under 18 years of age who are employed as actors and performers. Persons may be employed and appear for the purpose of signing, acting, or performing in any studio or movie set of a motion picture approved and coordinated by the Alabama Film Office in conjunction with and under the jurisdiction and supervision of the department. A person under 18 years of age may be employed as provided in this section only under the following conditions and with the written consent of the Alabama Film Office, the department and the parent, legal guardian, or responsible adult of the person.

Id.

[136] *See* Petersen, E-mail of Oct. 27, 1998, *supra* note 14.

[137] *See id.*

[138] Before the current mail-in process became the norm, the children had to appear at the Board of Education twice a year to be examined. Paul Petersen, who was a child actor in the 1950s, remembers that he submitted to "a cursory examination that most of us lied our way through. . . . I, for example, just memorized the eye chart and the doctor was never the wiser." *See E-Mail from Paul Petersen, President, A Minor Consideration* (Jan. 7, 1999) (on file with the *Cardozo Arts & Entertainment Law Journal*) [hereinafter Petersen, E-mail of Jan. 7, 1999].

[139] *Id.*

[140] *See* Solk, *supra* note 11, at 83. Even in the odd situation that a permit is revoked, the

There are further problems in California concerning education and the use of studio teachers. In the 1930s, there were many influential and authoritative studio teachers who performed their jobs well and took care of the children properly; however, in recent years in California, the system has declined.[141] The Labor Department now hires teachers with no experience in the movie business to be employed as studio teachers.[142] There have also been more formal changes in recent years that disregard the notion that a child's work should not interrupt their regular schooling. The *Blue Book* of the Screen Actor's Guild, published by the Los Angeles Unified School District, used to contain all of the regulations for child performers and had a provision to ensure that a child would maintain continuity in education.[143] Currently, the regulations are found in the California Administrative Code, which states that it has become a parent's duty to make sure that their child's education is continuous, thus perpetuating the need for more specific legislation to ensure that the parents comply with that duty.[144]

1. Allegations and Violations on the *Apt Pupil* Set

In 1997, the lack of enforcement of laws regarding child entertainers materialized when allegations were made on the set of the movie *Apt Pupil* that at least a dozen adolescent male extras were pressured into being filmed in the nude.[145] The local high school athletes who were recruited to appear in the scene were brought into a locker room and instructed to wear flesh colored g-string

employer can get around the permit requirement by coordinating with a production company that has a permit to film the segment in which the child appears. *See id.*

141 *See* Paul Petersen, *"A Failing System," A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org> (illustrating that, as the studio system and the business of Hollywood became modified, the problems with studio teachers began to surface, especially when the Los Angeles Unified School District ended its involvement and the Labor Commission took over the matter).

142 Studio teachers only need the certification required by teachers in an ordinary school environment and must pass a written examination about child labor laws in California. They also must take a short course describing the duties of a studio teacher. *See* CAL. CODE REGS. tit. 8, § 11755 (1986).

143 Until 1980, when it was replaced by Title 8 of the California Administrative Code, *The Rules and Regulations Governing the Employment of Minors in the Entertainment Industry*, or *Blue Book*, which was prepared by the Los Angeles Unified School District governed the employment practices of the entertainment industry in California. The original *Blue Book* seemed to express greater concern for education. For example, one *Blue Book* "provision expressly required continuity in the child's education," and another "gave parents the power to refuse or replace a specific teacher by submitting a complaint to the Los Angeles Unified School District." *See* Martis, *supra* note 121, at 27, 28, 36.

144 *See id.* at 36.

145 *See* Rebecca Ascherwalsh, *A Clothes Call: Was an Indecent Proposal Made on the 'Apt Pupil' Set?*, ENT. WKLY., May 2, 1997, at 21; Bob Strauss, *Evil Knows No Age Limit in 'Apt Pupil'*, L.A. DAILY NEWS, Oct. 23, 1998, at L7.

underwear known as dancer belts.[146] While some of the boys were allegedly already uncomfortable, they were then instructed to completely undress.[147] When the young extras raised their concerns, they were assured that it was legal to film them in the nude.[148] Three of the boys filed a lawsuit as a result of the experience, claiming negligence, invasion of privacy, and infliction of emotional distress.[149]

This disturbing incident reflected violations of the laws designed to protect children from this kind of harm. Although filming children completely naked with full frontal nudity is a violation of California Penal Code section 311.4,[150] following an investigation, the Los Angeles District Attorney's office opted not to prosecute.[151] Another problem occurring in the situation was that there were two studio teachers present, who failed to ensure that the labor laws were properly followed and did not report the incident to the Department of Labor.[152] If it is true that this ordeal occurred, the teachers were not adequately protecting the children; yet, in

146 *See* Ascherwalsh, *supra* note 145, at 21.

147 *See id.*

148 *See id.*

149 *See id.*

150 CAL. PENAL CODE § 311.4(b) (West 1999).

> Every person who, with knowledge that a person is a minor under the age of 18 years, or who, while in possession of any facts on the basis of which he or she should reasonably know that the person is a minor under the age of 18 years, knowingly promotes, employs, uses, persuades, induces, or coerces a minor under the age of 18 years, or any parent or guardian of a minor under the age of 18 years under his or her control who knowingly permits the minor, to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing any representation of information, data, or image, including, but not limited to, any film, filmstrip, photograph, negative, slide, photocopy, videotape, video laser disc, computer hardware, computer software, computer floppy disc, data storage media, CD-ROM, or computer-generated equipment or any other computer-generated image that contains or incorporates in any manner, any film, filmstrip, or a live performance involving, sexual conduct by a minor under the age of 18 years alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

Id.

151 The Department of Labor's Standards and Enforcement Agency started the investigation and determined that the labor code violations were criminal acts. The case was then turned over to the Sexual Abuse Federal Enforcement Task Force, which concluded that eight individual adults had participated in criminal acts toward six minors. The report was then given to the District Attorney's Office in Los Angeles. On December 15, 1997, the decision was made not to prosecute. *See* Paul Petersen, *"Apt Pupil: An Ode to Power," A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org>; Strauss, *supra* note 145, at L7. According to one attorney involved in the case, the report given to the District Attorney's office confirmed that the children were forced to strip naked, but the office determined that there was no criminal intent and therefore no reason to prosecute. *See id.*

152 *See* Paul Petersen, *"Justice? Out of Balance! District Attorney Declines to Prosecute!" A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org>.

the aftermath, they were still allowed to retain their credentials.[153] In addition, there had been previous reports that the children were working for an impermissible amount of hours, demonstrating the apparent indifference of the film's producers with regard to the applicable laws in place to protect child actors.[154]

It may be helpful to examine how these events could have occurred. One possibility is that the directors believed they had obtained a waiver from the Department of Labor allowing them to film the actors in the nude from behind.[155] However, the Department of Labor has no authority to issue such a waiver.[156] Furthermore, the Screen Actor's Guild claims that the producers violated their guild contract by failing to obtain the proper consent forms necessary when filming actors in the nude.[157] There has also been speculation that the crew was impatient to finish the filming, and that the parents of the actors were anxious to see their children in the spotlight.[158] Parents were on the set and obviously willing to let their children out of their sight, despite the laws mandating that they be present at all times.[159] If the parents on the *Apt Pupil* movie set had better informed themselves and truly looked out for the welfare of their children, perhaps the trauma that their children suffered could have been avoided.

It would seem that the situation on the *Apt Pupil* set should never have occurred in California, where the laws are quite thorough; however, as evidenced by this incident, the laws are not enforced as written.[160] In addition, the laws do not account for the role of the parents in a child's career.[161] Without additional protective provisions, it can never be ascertained whether a child is

153 *See id.*
154 *See* Ascherwalsh, *supra* note 145, at 23.
155 *See id.*
156 *See id.* at 24.
157 *See SAG Says 'Pupil's Were Naked Without Contract: Guild Files Claim Against Happy Ending*, HOLLYWOOD REP., Oct. 23, 1998, at 6. The Screen Actors Guild filed a six-count arbitration claim against Happy Ending Productions, the company that produced *Apt Pupil*. The three major allegations include the failure to obtain proper consent forms before filming the adult extras in the nude, not permitting the parents/guardians to be within the sight and sound of the filming of the shower scene, and failure to notify parents that there would be nudity required in the shooting of the scene. *See id.*
158 *See* Ascherwalsh, *supra* note 145, at 24.
159 *See supra* note 115. On many productions there can be circumstances which can make it difficult for parents to be physically present with their children at all times. When there are shooting areas that are unsuitable for parental participation, producers have been known to set up video monitors and sound systems so that they can remain aware of their children's whereabouts. No such system was available on the *Apt Pupil* set. *See* Paul Petersen, *"Apt Pupil," A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org>.
160 *See* Petersen, *supra* note 159.
161 *See supra* note 17 and accompanying text.

performing based on personal desires or parental pressure. The lawsuits arising from the *Apt Pupil* episode may illustrate this dilemma, as it has been noted that the parents were present at the set and the incident still occurred.[162] To prevent similar exploitation of children, the already restrictive laws in California need to be strictly followed, adapted, and applied in every state, and must account for the role of parents. This could be accomplished with a more stringent permit scheme, precursory physical and mental examinations for the child, and stricter regulation of parents.[163]

2. Babies in the Entertainment Industry

Many parents decide to launch their child's show business career when the child is still a baby, and there is more demand in the job market for babies than ever before.[164] Under California law, babies are protected in theory, but in practice they are subject to extensive demands by producers and even parents, who are eager to push their children into the entertainment business.[165] The California Administrative Code enacted very strict guidelines governing the employment of babies, including the rule that babies cannot perform until they are fifteen days old and then, between the age of fifteen days and six months, they can be at the place of employment for no more than two hours.[166]

162 *See supra* note 159 and accompanying text.
163 *See infra* Part IV.
164 *See* DICK VAN PATTEN & PETER BERK, LAUNCHING YOUR CHILD IN SHOW-BIZ: A COMPLETE STEP-BY-STEP GUIDE 125 (R.R. Donnelly & Sons Co., 1997). This book was written as an aid for parents who are attempting to start a career in entertainment for their children. In regard to babies, the authors emphasize how much easier it is to start when the child is a baby because babies are currently in great demand. *See id.*
165 *See* Sharon Waxman, *Infant TV Actors are Overworked, Critics Charge; Watchdog Group Presses for Tougher Industry Rules*, WASH. POST, June 6, 1996, at A1 (emphasizing that the tight schedules of production companies lead to more demand).
166 *See* CAL. CODE REGS. tit. 8, § 11760 (West 1986).

> (a) Babies who have reached the age of fifteen (15) days but have not reached the age of six (6) months may be permitted to remain at the place of employment for a maximum of two (2) hours.
> (1) The day's work shall not exceed twenty (20) minutes and under no conditions shall the baby be exposed to light of greater than one hundred (100) foot candlelight intensity for more than thirty (30) seconds at a time.
> (2) When babies between the age of fifteen (15) days and six (6) weeks of age are employed, a nurse and a studio teacher must be provided for each three (3) or fewer babies. When infants from age six (6) weeks to six (6) months are employed, one (1) nurse and one (1) studio teacher must be provided for each ten (10) or fewer infants.
>
> (b) Minors who have reached the age of six (6) months but who have not attained the age of two (2) years may be permitted at the place of employment for a maximum of four (4) hours. Such four (4) hour period shall consist of not more than two (2) hours of work; the balance of the four (4) hour period shall be rest and recreation.

Despite the existence of these well-written laws, they are rarely followed, and the abusive situation concerning infants has only worsened.[167] The lack of adherence to the laws is evident on some of the most popular television shows.[168] In particular, the top-rated show *E.R.* was noted for a serious offense, when the producers allegedly used premature one-month old twins to depict a live birth scene during which they were smothered with cream cheese and jelly.[169] Many professionals in the television and movie industry seem to harbor an indifferent attitude toward infants, as exemplified in the report that a production coordinator on the CBS television show *Chicago Hope* tried to sedate a baby in order to portray a story line concerning an anesthetized infant.[170]

There are special concerns for babies in the entertainment industry because the existing laws are ignored, and because many producers have found ways to work around them. The "Twins Game" is one of the most frequently used tactics.[171] Although by law twins are considered two distinct individuals, the movie business utilizes them as one.[172] Originally, twins were hired so that one baby could substitute for the other when one became fussy or cranky.[173] Then, the producers began to use the twins to effectively double the time that infants could be on the set, instead of employing them for interchangeability.[174] Although this is illegal, producers still frequently engage in these activities, and, as a result, multiple birth babies are in high demand in the industry.[175]

Producers also use methods that enable them to hire babies that are smaller and younger looking than those at fifteen days old. When a scene portrays a live birth, it requires a baby with a low

Id.

167 Rana Platz-Petersen, a nurse at CBS and a business representative for Local 767 of Studio First Aid, part of one of the largest unions in the industry, says, "Since I came into the business 22 years ago, it has definitely gotten worse . . . I have nurses calling me and saying 'The baby's still here.'" Waxman, *supra* note 165, at A1.

168 On the television show, *Dr. Quinn: Medicine Woman*, a nurse noted that one-year-old twins were brought to work on the show at eight in the morning and did not leave until nine at night. *See id.* at A2. On a recent movie made for Home Box Office, three-month-old triplets were kept on the set for nine hours, when they should have been there for only two hours. *See id.*

169 Petersen describes this incident as the most severe of all the others that have been reported. *See id.*

170 *See id.* at A2.

171 *See* Paul Petersen, *"Babies in the Industry," A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org>.

172 *See id.*

173 *See id.*

174 *See* Waxman, *supra* note 165, at A1 (stating that twins and triplets are often working back-to-back shifts which result in exhaustive days that have lasted up to thirteen hours).

175 *See id.*

birth weight that resembles a newborn, less than two weeks old.[176] The law only requires that the child be fifteen days old as measured from the actual date of birth, not the due date, so premature babies who are still underweight can satisfy the requirements needed for a live birth scene and still be valid employees within the law.[177] Although the law permits this, premature babies face serious health risks to their lungs, eyes, and immune system, which are not prepared for such exposure.[178]

Although the laws, their lack of execution, and the disregard of producers all contribute to the plight of babies in the entertainment industry, it is the parents who deserve most of the blame.[179] Regardless of the laws, there is a far more complex issue at hand because parents repeatedly grant permission to the producers to violate these laws.[180] Parents must be present with their child on the set,[181] so they know when the laws are being violated, yet quite frequently, they do not seem to care. Often, parents who allow their infants to appear in movies or in television are "enamored with the set."[182] They are fixated on securing their child's entertainment career, rather than concerned with the child's best interests.[183]

176 *See* Paul Petersen, *"The Trouble with Babies," A Minor Consideration* (visited Sept. 3, 1998) <http://www.minorcon.org>.

177 *See id.*

> The law only recognizes the actual date of birth . . . not the due date. So an infant born six weeks premature and still underweight when it passes its fifteen day birthday neatly satisfies the producer's requirements for a simulated newborn. Best of all, the producer can say he has not 'knowingly employed' a premature infant.

Id.

178 Children's rights activists and nurses say that week-old infants, who were born prematurely and are still very fragile and susceptible to infection, are commonly used to depict newborns. *See* Waxman, *supra* note 165, at A1.

179 *See id.* at A1 ("[Paul] Petersen, nurses and producers say that the fault largely lies with parents, who are seduced by the entertainment business, and casting agencies, which scour hospitals looking for parents of preemies or multiple births.").

180 Often on sets, when producers need to knowingly violate labor laws, they can find it easy to do so when parents consent to it. Rick Rice, a spokesman for California's Department of Industrial Relations, states, "We've done a lot in terms of enforcement, but the industry has to come around here . . . . There are child labor laws across the board, but it's a very complex issue, especially when you usually have parents standing there saying, 'Okay, sure. Whatever.'" *Id.* at A2.

181 *See* CAL. CODE REGS. tit. 8, § 11757. "A parent or guardian of a minor under sixteen (16) years of age must be present with, and accompany, such minor on the set or location and be within sight or sound of said minor at all times." *Id.*

182 Waxman, *supra* note 165, at A4. Laura Simmons, the nurse on *Dr. Quinn: Medicine Woman*, says, "the parents are so enamored with the set that their eyes are not on their children all day long . . . it's like Disneyland for them." *Id.*

183 Paul Petersen says that many parents complain to him about the way their children are treated, "such as a mother who said she was instructed to keep her twins up all night so they would sleep soundly during a scene, then was upset after they were startled awake in the scene by a loud noise . . . ." *Id.* However, he notes that these same parents refuse to

The abundance of babies in the entertainment industry is also disturbing because of the harmful effects on an infant's health and well-being.[184] The labor laws for infants in California have numerous shortcomings, yet the unfortunate reality is that California is the only state with any specific laws pertaining to newborns.[185] If the system is flawed in California, it can only be worse in other states.[186] Furthermore, after identifying parents as a major component of the problem, the only way to curb this corruption would be to place controls on parents as well as employers.[187]

III. Elite Child Athletes

A. *The Absence of Laws for Elite Child Athletes*

While some contract and labor laws have been enacted for children who pursue careers in the entertainment industry, there has never been any law in place for child superstar athletes. Generally, a figure skater, gymnast, or tennis player must endure up to nine hours of training each day, in addition to attending school.[188] Issues of abuse and exploitation most often arise for young women, as they excel at their sports at a younger age.[189] While male gymnasts and figure skaters can perform at their best when they are grown men, female gymnasts and figure skaters are at the height of their abilities when they are in their teens, usually while they still have the bodily characteristics of children.[190] While these young

talk to reporters. A mother said to him, "Well if I complain, won't that jeopardize the children's careers?" *Id.* Parents of babies in show business lose sight of the risk involved when they contemplate the money and fame their children could earn and simply allow their children to be subjected to overexposure and misuse. A parent can sense that a career in entertainment for their children will certainly pay off if they succeed. It is hard for a parent to refuse when they might be struggling with money and then someone offers thousands of dollars for a role using their child. "They are like rabbits on a night time highway, bright lights blind them." Petersen, *supra* note 176, at 1.

184 *See* Waxman, *supra* note 165, at A4.

185 *See id.*

186 *See id.* (interviewing Rick Rice, who states, "there are no other states that have laws specifically for children; where else can a 15 day old person get a job?").

187 *See supra* notes 179-80.

188 *See Morning Edition, World Class Gymnast Dies from Eating Disorders* (National Public Radio broadcast, Aug. 4, 1994) (stating that, although gymnastics is supposed to be an after-school sport for children, it can become a nine-hour training marathon per day, in which a child can leave their home at five in the morning and return after nine at night).

189 *See* Ryan, *supra* note 13, at 7, 9 ("'Women's gymnastics' and 'ladies' figure skating' are misnomers today. Once the athletes become women, their elite careers wither . . . female champions are usually fourteen to seventeen years old in gymnastics and sixteen to early twenties in figure skating.").

190 Sportswriter Christine Brennan, who is often viewed as an expert in the problems confronted by young gymnasts and figure skaters, discusses the significance of a child maintaining a small stature and states, "When you look at the sports of gymnastics and figure skating especially, to do the tricks, whether it's the triple selchow or the incredible tumbling pass in gymnastics, you've got to have that tiny body. So whereas a young man in figure skating or gymnastics can be in his prime in his 20s, a girl, by [and] large is over the hill in her 20s." *Good Morning America: Child Stars in Sports, Child Millionaires often Breadwinner for Family* (ABC television broadcast, Oct. 25, 1998) [hereinafter *Good Morning America*]. The physical shape of the body is also very important to achieving excellence in gymnastics and figure skating. The womanly curves and weight gain associated with female puberty can be detrimental to a child's career. "[T]he physical skills have become so demanding that only a body shaped like a missile—in other words, a body shaped like a boy's—can excel. Breasts and hips slow the spins, lower the leaps and disrupt the clean, lean body lines that judges reward." Ryan, *supra* note 13, at 7.

women openly revel in the glory of their sport, especially when they make it to the Olympics, in recent years, much attention has been focused on the rigors and hardships involved in reaching that point.[191]

There is currently no labor legislation available to regulate the activities of elite child athletes.[192] The Fair Labor Standards Act prohibits the employment of children under the age of sixteen; however athletes are not viewed as employees because they do not officially receive payment for their efforts.[193] The government intends for the regulation of athletes to be maintained by sports' individual governing bodies, yet none of these governing bodies provide protection of child athletes from exploitation and physical abuse.[194] These organizations do not address the personal health and well-being of the athletes, and they ignore the prominent issue of overtraining, thus leaving the training regimens of children to the discretion of the coaches and parents.[195]

Despite the extensive labor involved in becoming an elite

191 Elite women's gymnastics is a sport clouded with concerns of child abuse and exploitation. *See* Philip Hersh, *Childhood Lost: Olympic Gymnast Sues Parents*, Chi. Trib., Oct. 22, 1998, at 1.

192 *See* Rachelle Propson, Note, *A Call for Statutory Regulation of Elite Child Athletes*, 41 Wayne L. Rev. 1773, 1782 (1995); Ryan, *supra* note 13, at 12 (emphasizing that "no laws, no agencies, put limits on the number of hours a child can train or the methods a coach can use.").

193 *See* Fair Labor Standards Act, 29 U.S.C. § 203(1); Propson, *supra* note 192, at 1782. Despite the many endorsements and commercial offers often granted to child athletes, the law still views them only as athletes, rather than employees, because they receive no official compensation for their services. *See id.*

194 These governing bodies, including the United States Figure Skating Association and the United States Gymnastics Federation, do enact some regulations; however, they are most involved with setting technical and administrative rules for membership, eligibility, competition, and testing. *See* Propson, *supra* note 192, at 1782.

195 *See id.* In addition to not actually making these vital regulations for child athletes, the sports governing bodies lack the power to enforce laws that will lead to the revocation of a coach or athlete's membership.

> The sports' national governing bodies, for their part, are mostly impotent. They try to do well by the athletes, but they, too, often lose their way in a tangle of ambition and politics. They're like small-town governments: personal, despotic, paternalistic and absolutely without teeth. The federations do not have the power that the commissioners' offices in professional baseball, football and basketball do. They cannot revoke a coach's or an athlete's membership for anything less than criminal activity.

See Ryan, *supra* note 13, at 11.

child athlete, there is "no safety net"[196] to protect these children, aside from the judgment of their parents, who often stand idly by and allow abusive practices to occur.[197] Many parents of child athletes choose to allow their children to live with a coach and train excessively.[198] Parents are also privy to the fact that their child may "pop handfuls of painkillers" daily in order to numb their aching muscles.[199] Parents, just like their children and their children's coaches, can be blinded by the prospect of a future payoff of money and celebrity status.[200] Elite child athletes are in desperate need of laws to regulate their excessive labor, and like child entertainers, there is a need for laws that will encompass the fact that parents often push their children too far.[201]

B. *Superstar Athletes and Their Parents: Current Trends of Abuse*

When a young child decides to pursue a career as an elite athlete, he or she will likely face the loss of a normal, healthy childhood. Child athletes train incessantly and forgo a daily education and social life.[202] It would seem that the only children who would choose a life of extreme athleticism are those so devoted to their sport that they are willing to make these sacrifices. However, many children have not necessarily selected this route for themselves—their parents have chosen it for them.[203]

Dominique Moceanu, who also faced the dilemma of parental abuse of her earnings, has voiced her complaints about the lifestyle

196 *Id.*

197 *See id.*

198 Frequently, parents will claim that children should be allowed to follow extraordinary paths to realize their potential. "They argue that a child's wants are no less important than an adult's and thus she should not be denied her dreams just because she is still a child." *Id.* at 12.

199 *Id.* at 39. Taking care of their aches and pains are part of every gymnast's daily routine. Most gymnasts take at least a handful of painkillers before every training session and competition. *See id.*

200 The payoff in money and fame for elite child athletes is more apparent to parents than ever, driving parents and children to go to extremes to reach these lofty goals. *See id.* at 14.

201 Due to the lack of existing legislation and the ease by which it can be violated, it is clear that a child is "subject to the unchallenged judgment of his parents." Martis, *supra* note 121, at 31.

202 *See* Propson, *supra* note 192, at 1773; *see also* RYAN, *supra* note 13, at 7 (explaining that, in the Eastern European system, children were involuntarily taken from their homes and put in state-supported training facilities). The sport of gymnastics in the United States now features an East German and Russian twist, as young children are leaving home at a young age to train arduously to excel at a sport. *See Good Morning America*, *supra* note 189.

203 Ryan compares this choice to the old Eastern European system, in which the government mandated that certain children would be taken from their homes and forced to participate in gymnastics. *See* RYAN, supra note 13. In the United States, it has historically been the parents who make the choice to send their children away for better training. *See id.*

she has led since she was a young child.[204] At the age of six months, Dominique enjoyed swinging from a clothesline, and at the age of three, she began gymnastics lessons.[205] At a very young age, Moceanu's father was already trying to enroll her in the gym of Bela Karolyi, the infamous Romanian coach who trains champions, yet is accused of abusive practices.[206] Moceanu succeeded in entering his gym at age ten, and then, when she was fourteen, she and her teammates won the gold medal at the 1996 Olympics.[207] Moceanu has spoken of how much she missed due to her rigorous schedule,[208] and how she wished that she was able to spend more time with her friends and less time in the gym.[209] She complains that all of her experiences and conversations with her parents revolved around issues concerning her career.[210] Her father even admits that he lamented the gymnastics career that he never had, and that he vowed that his first child would be a gymnast.[211] Dominique's upbringing exemplifies that she was never given a choice in deciding her life's direction.

Once parents involve their children in an elite sport, they may find it difficult to separate themselves from the competition and not lose their perspective.[212] Parents of athletes have been notorious for forcing their children to compete despite sickness, or becoming upset with them for performing less than perfectly.[213]

204 *See* Daugherty, *supra* note 1, at D1; Killion, *supra* note 4, at C5; Langton, *supra* note 1, at 28 ("When I went to compete when I was young I was always in fear because I would get yelled at by my father. . . . I never had a childhood." (quoting Moceanu)). *Id.*

205 Before she could even walk, Moceanu's father encouraged her to swing from a garden clothesline. *See* Langton, *supra* note 1, at 28.

206 When Dumitru Moceanu noticed Dominique's abilities as a toddler, he immediately called Bela Karolyi, who was an old friend, to see if he would train Moceanu. Karolyi refused to see Dominique until she was at least ten. *See id.* Karolyi rose to fame as the coach of the 1976 Romanian gymnastics team, which included Nadia Comaneci. In 1981 he arrived in the United States and immediately transformed the sport in this country to resemble the system in East European countries. He insists that his gymnasts live near his gym, remain very thin and petite, and they consistently compete with varying injuries and severe determination. He has also reportedly been abusive physically and mentally, by pushing the girls around and chiding them with insults concerning their weight and performance. Despite the apparent harshness of Karolyi's regime, gymnastics in the United States has thrived and achieved more success. His coaching antics have become popular because of this success, and many coaches have adopted his style. *See* RYAN, *supra* note 13, at 197-205.

207 *See* Langton, *supra* note 1, at 28.

208 *See id.*

209 *See* Hersh, *supra* note 191, at 1.

210 *See* Killion, *supra* note 4, at C5.

211 Dumitru Moceanu admits that he made a commitment to himself that his first child would be a gymnast, and Camelia, Dominique's mother, knew of Dumitru's plan before they were even married. *See* Langton, *supra* note 1, at 28.

212 Parents speak of how "swept away" they become from the competitiveness, ambition, and "insanity" associated with elite athletics. *See* RYAN, *supra* note 13, at 146.

213 Carrol Stack, mother of Chelle Stack, who competed on the 1988 Olympics gymnas-

Eight-year-old figure skater Holly Bragg began skating as a toddler because her father had decided that if he ever had a daughter, she would become a champion figure skater.[214] He was so obsessed with her career that after he and his wife separated, he and Holly were homeless because he spent all of their money on ice skating lessons and rink time.[215] Amy Jackson, an aspiring gymnast who appeared to be on the verge of championship success, eventually sabotaged her own career because she could not handle the pressure to win that her father inflicted on her.[216]

Tennis is another sport where domineering parents have been known to interfere in their children's careers. Jennifer Capriati was a highly-publicized and promising young tennis prodigy when she turned professional at the age of thirteen, and she was the youngest player ever to be seeded at Wimbledon.[217] Capriati won the Olympic gold medal in 1992, but less than two years later she was charged with possession of marijuana and entered a court-administered drug rehabilitation program.[218] The blame for Capriati's downfall has consistently been placed on one person—Stefano Capriati, her father.[219] As a child, Capriati was programmed and pushed by him to become a tennis star.[220] Unlike in gymnastics and figure skating, where young girls are encouraged to peak early in their career, tennis players can compete professionally at a later age. This is beneficial for young athletes because it enables them to reach the maturity and competence levels necessary to handle the pressure.[221] However, Capriati's father insisted she become a professional at an early age, which was detrimental to

tics team, remembers forcing Chelle to perform under extreme conditions. She withheld flu medication because it interfered with her training, and even sent her daughter to compete in a meet with a high fever. Stack also recalls informing Chelle that she was "humiliated" when she did not excel, and that she bribed and even spanked her daughter to force her to practice. *See id.* at 153.

214 *See id.* at 141.

215 *See id.*

216 Bill Jackson, Amy's father, admits he was a domineering stage father. He would offer no congratulations if Amy took second place, and she entirely consumed her father's attention. He often subjected her to intense training at home after her practices, by forcing her to do pushups and handstands to increase her strength and dexterity. *See id.* at 163.

217 *See* William C. Rhoden, *Surviving the Push to Stardom*, EMERGE, Oct. 31, 1995, at 72.

218 At age 17, Capriati reached the peak of her career when she won the gold medal in the 1992 Olympics. Her downfall began in 1993, when she was arrested for shoplifting. In 1994 she was arrested for possession of marijuana. *See id.* Despite two small comebacks, Capriati has never returned to the level of tennis play she reached at a young age. *See Father Dear Father: Tennis Dads Who Did Bad*, GUARDIAN, Jan. 16, 1998, at 9.

219 *See id.* (describing how Stefano Capriati controlled his daughter's career).

220 *See id.*

221 *See* Al Picker, *Time to Learn from Capriati's Collapsed Career*, STAR LEDGER (Newark, N.J.), Aug. 24, 1995 (interviewing Jana Novotna, the number four ranked woman tennis player in the world who discusses the need for a young tennis player to mature and develop before competing professionally).

the growth of her personality and character.[222] Her father also pushed her to be a professional player for the monetary payoff. He signed contracts with many sponsors in order to make her a millionaire before she even played in one professional tournament.[223] By the time she began to excel in tennis, Capriati was not winning for herself anymore, but for her father.[224] The psychological effects clearly overwhelmed her, leading her into a personal abyss.

Other tennis players achieved fame as a result of the aggressive and abusive actions of their fathers. Mary Pierce, who is currently ranked seventh in the world, was forced to have her father banned from the WTA Tour in June of 1993.[225] Like Stefano Capriati, Mary Pierce's father started training his daughter at a very young age, and he was mentally and physically abusive from the start.[226] Although he is now coaching another young tennis player and is allowed at WTA tournaments, Mary refuses to have any sort of relationship with him.[227]

Another famous tennis father is Richard Williams, the parent of two tennis prodigies, Venus and Serena. He often boasts that he is more of a celebrity than some players and that he started both of his daughters in tennis from early childhood.[228] Even when Serena won the U.S. Open in 1999, it was in the shadow of her father's prediction boasting that his two daughters would play each other in the final match.[229]

222 Capriati seemed to lack the maturity to withstand the pressure of being a worldwide celebrity and in the limelight. *See id.*

223 Stefano Capriati and his wife, Denise, Jennifer's mother, devoted their entire lives to Jennifer's career. They made Jennifer and themselves millionaires before she hit a ball in a professional competition, and it was clear they saw Jennifer as a meal ticket. She was carrying a burden to help her family achieve extraordinary wealth. *See Father Dear Father, supra* note 218, at 9.

224 *See* Picker, *supra* note 221.

225 *See Pushy Parents: Dads Who have Played a Central Role in Their Children's Careers*, GUARDIAN, July 17, 1998, at 4.

226 Jimmy Pierce would slap Mary for losing matches and performing poorly in practice. *See id.* Pierce was even known to scream obscenities at Mary and her opponents during tournaments. *See Father Dear Father, supra* note 218, at 9 (quoting Mary Pierce, who stated, "Dad would slap me after I lost a match, or sometimes if I had a bad practice"). *Id.*

227 *See Pierce's Controversial Father Returns to U.S. Open*, AGENCE FRANCE-PRESSE, Sept. 2, 1998, *available at* WL16590830 (reporting on the major news stories occurring at the French Open in 1998).

228 *See* Judy Goldstein, *Tennis Notebook, Lucic's Tale of Abuse Raises Some Familiar Concerns for WTA*, HOUSTON CHRON., Sept. 13, 1998, at Sports 2 (describing how Williams was bombarded by fans at the U.S. Open in 1998). Thus far, Williams has not been accused of any wrongdoing, but he is known for showboating and trying to upstage his daughters. *See id.*

229 *See* Shaun Powell, *"While Serena Williams Just Stood there Dazed, Not Knowing how to Celebrate a U.S. Open Victory,"* NEWSDAY, Sept. 12, 1999, at C2. "This was also the final confirmation for the father, who brought his daughters along slowly and went against conventional thinking in tennis to do it his way . . . [r]aised on a balanced diet of tennis, education and religion . . . 'So far, everything I said has come true,' said the proud papa." *Id.*

The problem of overbearing parents in tennis has proven to be a common nuisance. As Billie Jean King has stated, "I wish there was a psychologist around who would do a study on parent-daughter relationships in tennis . . . [i]t's incredible. It is scary. I think it's always been a problem."[230]

In these elite sports, parents have served as a motivating, influential, yet often dictatorial factor.[231] The need for a talented child to achieve celebrity and money has become an addiction for many parents, which produces extremely harmful physical and psychological effects on their children.[232] The idealism and allure of excellence in sports is stronger than ever, due to the fame and fortune associated with it.[233] The creation of explicit and uniform laws pertaining to child athletes would control commanding parents and enable children to make their own decisions regarding their careers.[234] Perhaps these children could then grow up in healthier, more suitable environments, as opposed to the ice rink, gym, or tennis court.

IV. Legislative Proposal

Despite the apparent novelty of the idea to thoroughly regulate parents of children in the entertainment and sports industries, regulating parents is not a new concept—most states currently have other laws in place that oversee the behavior of parents. The most popular and longstanding of these laws is the compulsory school attendance policy for minor children.[235] Under the compulsory attendance statutes of most states, parents or guardians are responsible for ensuring that their children attend school.[236]

230 Goldstein, *supra* note 228, at 32.

231 *See Pushy Parents*, *supra* note 225, at 4 (describing many parents who have been influential and sometimes detrimental to a child prodigy's life, including Jimmy Pierce, Mary's father, and Tiger Woods' father, Earl).

232 *See* Rhoden, *supra* note 217, at 72 ("Sports for so many has become a drug to be consumed and it is routinely addiction forming.").

233 *See id.*

234 *See id.*

235 *See, e.g.*, ALA. CODE § 16-28-3 (1999); CAL. EDUC. CODE § 48980 (West 2000); COLO. REV. STAT. ANN. § 22-33-107 (West 1999); FLA. STAT. ANN. § 232.09 (West 1999); GA. CODE ANN. § 20-2-690.1 (1999); ILL. COMP. STAT. ANN. § 5/26-10 (West 1999); MD. CODE ANN. EDUC. § 7-301 (1997); MASS. GEN. ANN. LAWS ch. 76, § 1 (West 1999); MINN. STAT. ANN. § 120A.22 (West 1999); N.Y. EDUC. LAW § 3210 (McKinney 1999); N.C. GEN. STAT. § 115C-378 (1997); OHIO REV. CODE ANN. § 3321.38 (West 1999); PA. STAT. ANN. tit. 24, § 13-1333 (West 2000); TEX. EDUC. CODE ANN. § 25.085 (West 1999).

236 *See, e.g.*, ALA. CODE § 16-28-2.1 ("Parents shall be held accountable . . . for the failure of the child who is of compulsory attendance age to attend either public, private or church-school."); CAL. EDUC. CODE § 48454 (stating that any parent or guardian who fails to comply with attendance requirements will be punished by fine and imprisonment); COLO. REV. STAT. ANN. § 22-33-107 (stating that parents will be investigated for causes of nonattendance); FLA. STAT. ANN. § 232.09 (stating that every parent and legal guardian of a child within the compulsory attendance age is responsible for the child's school attendance and that "absence of a child from school is prima facie evidence of a violation of this section"); GA. CODE ANN. § 20-2-690.1 (providing that parents who violate this law will be guilty of a misdemeanor); ILL. COMP. STAT. ANN. § 5/26-10; MD. CODE ANN. EDUC. § 7-301 (1997); MASS. GEN. ANN. LAWS ch. 76, § 2 (West 1999); MINN. STAT. ANN. § 120A.22 ("The parent of a child is primarily responsible for assuring that the child acquires knowledge and skills that are essential for effective citizenship."); N.Y. EDUC. LAW § 3212 (describing the duties of parents upon sending children to school and their penalties for not doing so); N.C. GEN. STAT. § 115C-378 ("Every parent, guardian or other person . . . having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session."); OHIO REV. CODE ANN. § 3321.38 (stating that each parent who violates the law shall be subject to fine and possible prosecution and conviction); PA. STAT. ANN. tit. 24, § 13-1333; TEX. EDUC. CODE ANN. §25.093 (stating that parental or guardian violation of the code results in the filing of a complaint with the county court and is a misdemeanor).

In addition, states often provide laws that direct parents regarding the safety of their children. Some examples include laws regulating firearms, alcohol, and automobiles.[237] Considering that many states have executed laws requiring that children attend school regularly and not be exposed to harm, it is difficult to understand why so many states ignore the issue of regulation for child entertainers and athletes.[238] These children are certainly not attending school to the same extent as other children, and the pursuit of a career while still a minor can clearly harm the health and well-being of a child.[239] Furthermore, the enaction of compulsory attendance laws demonstrates that the concept of regulating parents is acceptable to nearly every state in the United States. It should not seem illogical to regulate parents of children in the entertainment industry, especially considering how disruptive a career as an actor or athlete can be to a child's life.

Standardized laws regarding child entertainers and athletes in the United States are now necessary. This legislation should be embodied in federal legislation under the Fair Labor Standards Act,[240] or in a Model Code to be adopted by the states.[241] It is vital for every state to have similar laws in order to universally protect

237 *See, e.g.*, CAL. PENAL CODE § 12101 (West 2000) (providing that, if a child is found illegally in possession of a firearm, a parent or guardian may be required to participate in educational classes on parenting); IND. CODE ANN. § 7.1-5-7-9 (West 1999) (stating that it is an infraction for a parent or guardian to take a child into a bar, tavern, or other place where alcoholic beverages are sold); PA. STAT. ANN. tit. 75, § 4581 (stating that a parent or guardian must place a child between the age of four and eighteen in a seatbelt).

238 *See supra* notes 128-29 and accompanying text.

239 *See* Martis, *supra* note 121, at 36.

240 29 U.S.C. §§ 201-219 (1998). The Fair Labor Standards Act would be the proper forum for further legislation for child athletes and performers because it encompasses the whole country, and it has been the dominant national law aimed at protecting children from excessive labor. *See* Propson, *supra* note 192, at 1805.

241 *See* Staenberg & Stuart, *supra* note 12, at 30 (proposing a Model Code to be adopted by every state so that each state can address the protection and welfare of its children, even when they are successful and earning great sums of money).

children in sports and entertainment.[242] Uniform laws are needed because the centers for movie and television production are no longer located only in California and New York, and training centers for elite athletes are not concentrated in specific areas.[243] The purpose of the legislation would be threefold: to comprehensively safeguard children's earnings, to set stringent and uniform labor requirements, and to finally recognize the need for regulation of child athletes.

To stop parents from treating their child's earnings as their own, all states should adhere to a law resembling California's amendment to Coogan's Law. By either requiring court approval of all contracts or statutorily requiring a set-aside provision for all contracts, a percentage of the money would be guaranteed to be put in a trust fund or savings plan for the children.[244] In addition, there should be a fixed percentage standard used to determine the amount of money that should be set aside, based on the duration of the contract and the sum of money involved.[245] In order to ensure that those parents who have invested large amounts of money in their children do receive some benefits for their expenses, there could be specific funds taken out of a child's earnings and allotted to the parents.[246] A parental compensation provision would ensure that parents would be unable to demand reimbursement from their children for the personal monies that they spent on support, training, and contract expenses—such expenses would be automatically reimbursed.

Due to the inconsistencies in child labor laws throughout the

242 *See id.*; E-mail from Paul Petersen, President, A Minor Consideration (Feb. 23, 1999) (describing the need to "even the playing field across the board from Maine to California") (on file with the *Cardozo Arts & Entertainment Law Journal*) [hereinafter Petersen, E-mail of Feb. 23, 1999].

243 The business of Hollywood has changed considerably over the past sixty years since the laws in California were enacted. At that time, the film industry was concentrated in California. Currently, the industry has expanded all over the country, beyond the scope of the original laws. *See* Telephone Interview with Alan Simon, *supra* note 17; *see also* Propson, *supra* note 192, at 1802 (discussing the need for federal, rather than state, legislation regarding athletes because sports are not dependent on particular locations).

244 *See* CAL. FAM. CODE § 6750-6753; *see also* Curry, *supra* note 8, at 98; Martis, *supra* note 121, at 28; Munro, *supra* note 21, at 569.

245 *See* Curry, *supra* note 8, at 98 (stating that the purpose of court approval would be to set aside a percentage of earnings in trust or savings plans); Martis, *supra* note 121, at 29; Munro, *supra* note 21, at 569 (providing that the trust fund or savings plan should consist of no less than 25% of the child's earnings).

246 "The best way to protect the child's interest in his or her earnings would be to endorse a straight net going to the parents. If taxes, support, training and contract related expenses are covered first, the parents should not have a claim on any of the child's additional earnings." Martis, *supra* note 121, at 49; *see also* Staenberg & Stuart, *supra* note 12, at 31 ("[P]arents would be compensated for their time and effort, but could not be unjustly enriched at their child's expense by squandering their child's earnings.").

United States, the uniformity of this proposed legislation would provide a great benefit to children. The best way to monitor and keep track of child laborers would be to continue operating under the work permit system,[247] yet with far more rigid requirements.[248] Permits should be issued by local departments of labor, should require physical examinations similar to those that were implemented in the 1950s, and should be renewable every six months.[249] More importantly, the child should be required to participate in a brief, yet thorough interview, which would serve as a basic psychological evaluation and allow the child to articulate his or her reasons for wanting to be employed.[250] The idea behind interviewing the child is to illustrate whether the child is well-suited for a career in entertainment. If a child is extremely shy and introverted, the interview would show that he or she might not want to choose to forego a normal education and childhood in favor of working in the entertainment industry or a sport. This assessment would deter overbearing parents from compelling their children to pursue a career that could be physically or psychologically detrimental. For very young children, including infants, the parents should participate in the cursory interview to ensure their proper intentions and to inform them of the possible inherent risks.

Labor laws should also hold education in a higher regard. In addition to the physical and psychological examinations, the child's school should also be required to verify that the child has at least a "C" average, and the school should only allow permit renewal if this average is maintained.[251] Education should also be mandatory, and studio teachers should be present on every set in every state to report any questionable incidents.[252] As in California, the laws should set specific limitations on hours for children, incorporating strict rules for newborns that are gradually expanded as children grow older.[253]

In regard to child athletes, the most important step is subjecting them to the same laws as child entertainers; however, specific

247 The work permit system should resemble the procedure in place in the state of California. *See supra* notes 110-14 and accompanying text.

248 *See* Petersen, E-mail of Feb. 23, 1999, *supra* note 242.

249 *See supra* note 138 and accompanying text.

250 *See* Staenberg & Stuart, *supra* note 12, at 30 (asserting that emotional and psychological counseling should be addressed in a proposed Model Code).

251 *See* Petersen, E-mail of Feb. 23, 1999, *supra* note 242.

252 Petersen's theory of mandatory education would require that the child attend school at least three hours a day, which has proven adequate for maintenance of a "C" average. In addition, he is against the idea of home schooling, because this type of education is a frequent outlet for abuse. *See id.*

253 *See id.*

stipulations would have to be incorporated to account for their atypical lifestyles.[254] Like the children in the entertainment industry, when elite child athletes wish to dedicate themselves to their sport to the point of competing nationally and hiring a coach for intensive training, the children should submit to the same permit process as child entertainers. The children should also be subject to time restrictions[255] and have a third-party protector, resembling the studio teacher, who has nutrition and training expertise and who would be available at centers where elite child athletes train.[256] When elite child athletes sign any contracts for endorsements, competitions, and appearances, the contracts should be subject to court approval, conditioned upon a protected savings plan or trust fund.

CONCLUSION

Despite the risks and challenges involved when children pursue careers in entertainment and sports, children have been and will continue to be a fundamental part of these industries. When a child decides to actively pursue and develop a career as an actor or athlete, the parental role is a vital, if not deciding, factor in making such a choice. Children belong to their parents, and the law, within reason, depends on parental supervision "colored with love and genuine sensitivity" to the needs of a child.[257] Unfortunately,

254 *See* RYAN, *supra* note 13, at 15 ("But since those charged with protecting young athletes so often fail in their responsibility, it is time the government drops the fantasy that certain sports are merely games and takes a hard look at legislation aimed at protecting elite child athletes.").

255 Petersen suggests restrictions such as no more than six consecutive days of training, travel or competition when there is a competition scheduled in the same week, and no more than five days when there are no competitions scheduled. He also groups athletes and entertainers together under the proposition that a log should be kept to keep track of the actual hours put in by the child, which should never exceed the federal standard of 48 total work and school hours for minors under fourteen in a given week. This restriction could be relaxed as the child gets older. *See* Petersen, E-mail of Feb. 23, 1999, *supra* note 242. Propson also believes hour restrictions are necessary for the regulation of elite child athletes, and notes that if the NCAA can enforce regulations for college athletes, then younger children should certainly be subject to similar, if not more strict, hourly rules. *See* Propson, *supra* note 192, at 1802.

256 A person available at training centers would benefit a child athlete with guidance and protection and would be completely uninvolved with his or her career. Considering that parents often send their children away for training, they are often unaware and ignorant of the continuous harm that can occur. A disinterested third party who acts as a studio teacher would provide the appropriate regulation and enforcement. *See* Propson, *supra* note 192, at 1805.

257 E-mail from Paul Petersen, President, A Minor Consideration (Jan. 6, 1999) (on file with the *Cardozo Arts & Entertainment Law Journal*). "There are no rules . . . and the ancient dependency on parental supervision colored with love and genuine sensitivity to the needs of that most precious gift, a child, is demonstrably lacking." *Id.*

in the entertainment and sports industries, parents do not always act with the best interests of their children in mind.

The best solution would be a national legislative plan preserving both the welfare and earnings of children in entertainment and sports. Children engaged in entertainment and elite athletics may seem to be well-rounded, successful, and prosperous on the surface, as they achieve fame and wealth, but many of them are in dire need of help to manage their financial affairs and livelihood. Once enacted, this standardized legislation could finally provide child celebrities with a shield from interference by overbearing and greedy parents with their earnings, careers, and aspirations.

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