

INFORMATION TO USERS

This reproduction was made from a copy of a document sent to us for microfilming. While the most advanced technology has been used to photograph and reproduce this document, the quality of the reproduction is heavily dependent upon the quality of the material submitted.

The following explanation of techniques is provided to help clarify markings or notations which may appear on this reproduction.

1. The sign or "target" for pages apparently lacking from the document photographed is "Missing Page(s)". If it was possible to obtain the missing page(s) or section, they are spliced into the film along with adjacent pages. This may have necessitated cutting through an image and duplicating adjacent pages to assure complete continuity.
2. When an image on the film is obliterated with a round black mark, it is an indication of either blurred copy because of movement during exposure, duplicate copy, or copyrighted materials that should not have been filmed. For blurred pages, a good image of the page can be found in the adjacent frame. If copyrighted materials were deleted, a target note will appear listing the pages in the adjacent frame.
3. When a map, drawing or chart, etc., is part of the material being photographed, a definite method of "sectioning" the material has been followed. It is customary to begin filming at the upper left hand corner of a large sheet and to continue from left to right in equal sections with small overlaps. If necessary, sectioning is continued again—beginning below the first row and continuing on until complete.
4. For illustrations that cannot be satisfactorily reproduced by xerographic means, photographic prints can be purchased at additional cost and inserted into your xerographic copy. These prints are available upon request from the Dissertations Customer Services Department.
5. Some pages in any document may have indistinct print. In all cases the best available copy has been filmed.

**University
Microfilms
International**
300 N. Zeeb Road
Ann Arbor, MI 48106

8520604

Medley, Sue Ellen

LEGAL ASPECTS OF PARENTAL LIABILITY FOR STUDENT VANDALISM

The University of North Carolina at Greensboro

Ed.D. 1985

**University
Microfilms
International** 300 N. Zeeb Road, Ann Arbor, MI 48106

Copyright 1985

by

Medley, Sue Ellen
All Rights Reserved

LEGAL ASPECTS OF PARENTAL LIABILITY
FOR STUDENT VANDALISM

by

Sue E. Medley

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

Greensboro
1985

Approved by

Dissertation Advisor/

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

Dissertation Advisor John T. Frazee

Committee Members Ward B. Langford
W. L. Dabbs
John H. Murphy

May 10, 1968
Date of Acceptance by Committee

May 10, 1968
Date of Final Oral Examination

© 1985

SUE ELLEN MEDLEY

All Rights Reserved

MEDLEY, SUE E. The Legal Aspects of Parental Liability for Student Vandalism, (1985).
Directed by: Dr. Joseph E. Bryson, Pp. 216.

Since the 1950's, the willful and malicious damage by young vandals to school property has cost taxpayers hundreds of millions of dollars each year. Dwindling educational budgets have had to include the ever-growing expense required to repair or replace school property, as well as to cover the hidden costs of increased security devices and personnel. Through the years, the public has demanded that parents of vandals bear at least some of the financial responsibility for their children's destructive acts. As a result, forty-nine state legislatures have passed parental responsibility laws which place no-fault or vicarious liability on parents of children who damage property.

It was the primary purpose of this study to provide pertinent information to educators who might bring suit against parents of vandals in order to defray the costs of vandalism and to reduce the number of such incidents. State statutes were analyzed and selected court cases were reviewed for the issues which they presented. Selected findings of congressional sub-committees were also given concerning factors of vandalism and suggested strategies school officials might employ.

Several questions were posed in the introductory chapter. One major question involved the constitutional challenge to the parental liability statutes of different states since the late 1950's. Another vital question that the study

addressed concerned the arguments for and against having no-fault liability for parents of vandals. Also, the question of statutory law requirements for parental liability versus common law was considered.

Based upon the review of the literature, an analysis of parental liability statutes, and a review of court cases, certain conclusions and recommendations were made. One specific conclusion was that despite the many challenges in state courts, the parental responsibility laws have almost always been upheld as constitutional. Also, it was concluded that since the statutes are in derogation to common law and must be strictly construed, the statutes need to be reviewed and revised periodically. One major recommendation for school officials was for them to become informed about the school-related factors that have been shown to reduce incidents of student vandalism.

ACKNOWLEDGEMENTS

I wish to express special appreciation to Dr. Joseph E. Bryson for serving as Dissertation Advisor and as Committee Chairman. Sincere appreciation is also extended to Dr. Dale Brubaker, Dr. Jack Humphrey, and Dr. Harold Snyder for their encouragement and assistance in the preparation of this study.

I want to thank my parents and Ms. Linda Bennetts for their support and encouragement throughout my studies. Appreciation is also extended to Mrs. Cooper Vuncannon, my typist who was so helpful in preparing the manuscript. I also want to thank Mrs. Mary Lou Stone, librarian for the Guilford County Law Library, for her generous assistance and encouragement. Finally, I want to thank my colleagues in the Greensboro Public Schools for their support in all of my work.

TABLE OF CONTENTS

	Page
APPROVAL PAGE.	ii
ACKNOWLEDGEMENTS	iii
CHAPTER	
I. INTRODUCTION.	1
Statement of the Problem	2
Questions to be Answered	3
Scope of the Study	4
Methods, Procedures, and Sources of Information	5
Definition of Terms.	6
Significance of the Study.	8
Design of the Study.	13
II. REVIEW OF RELATED LITERATURE.	15
Overview	15
Selected Significant Factors of Student Vandalism	22
Common Law Doctrine of Parental Liability	23
Civil or Statutory Law Concerning Parental Liability.	28
III. ANALYSIS OF THE STATE STATUTES.	36
Overview	36
Legislative Intent for Parental Responsibility Laws	38
General Property Destruction Statutes.	41
Specific Statutory Requirements for Recovery.	51
Statutes Dealing Specifically with the Destruction of School Property.	58
IV. LEGAL ASPECTS OF PARENTAL RESPONSIBILITY LAWS.	68
Overview	68
Constitutionality of Parental Responsibility Laws	71

CHAPTER	Page
Issues Related to General Property Statutes.	79
Issues Related to School Property Statutes	88
V. REVIEW OF COURT DECISIONS.	96
Overview.	96
Organization of Cases Selected for Review	97
Cases Related to Constitutional Challenges to Statutes	98
Cases Related to Statutes Being Strictly Construed and Requirements for Recovery.	123
Cases Related to Limits of Recovery and Insurance	133
VI. SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS.	142
Summary	142
Conclusions	146
Recommendations	148
BIBLIOGRAPHY.	151
APPENDIX.	160

LIST OF TABLES

TABLE	Page
1. Parental Liability Statutes, as of 1984, Dealing with the General Destruction of Property by Minors	44
2. Conditions Specified for Recovery.	55
3. Statutes Containing Provisions for Suspension or Expulsion on Grounds of Destruction of School Property.	59
4. Pupil/Parent Liability Statutes Dealing with the Specific Destruction of School Property by Minors	63

CHAPTER I

INTRODUCTION

Vandalism has been a very costly and disruptive influence in this nation's public schools for at least the past thirty years. Since the 1950's, the media has frequently reported on school crime and the public has become more aware and alarmed about the amount of vandalism occurring in schools. Even administrators and teachers, who were generally reluctant at first to share such information with the public, have expressed serious concern regarding the willful and wanton destruction of school property. As a result of media coverage, reports of congressional committees, and reports from educators themselves, the public has learned that vandalism is definitely a national problem. They have come to learn, too, that vandalism has had a negative impact on public schools, and that it continues to present staggering costs to already strained educational budgets.

Much of the literature concerned with vandalism has focused on the various factors which cause this particular type of school crime, on the extent to which vandalism occurs in public schools, and on the preventive measures that have been taken to reduce such destructive acts. As this study shows, vandalism has been examined from a variety of perspectives, but it is a problem that continues to challenge

educators seeking to provide a safe environment for their students and for themselves. With public awareness of vandalism, however, has come some public support for the efforts of school administrators combatting vandalism and its effects.

One means of such support has been through the passage of parental responsibility statutes by almost all of the state legislatures. This study examines these state statutes and the court cases that have resulted from issues concerning the vicarious liability of parents for the destruction of property by their children. The major purpose of this study, then, is to provide educators with pertinent information concerning the legal aspects of parental responsibility laws. This information should enable public school officials to decide whether such statutory law offers a feasible means for obtaining compensatory damages and for reducing the number of incidents of vandalism.

Statement of the Problem

After three decades, school officials are still seeking effective means with which to reduce vandalism in public schools. The incidents and costs of destruction to school property have greatly increased from the 1950's until the present. During this time period, the public's attitude about who should pay for vandalism has come to focus on the parent whose child has purposefully damaged school property. Every state legislature except New Hampshire's has enacted statutory law known as parental responsibility laws. In

addition, some states have also passed statutes pertaining to the specific destruction of school property.

One means, then, for opposing vandalism has been for educators to seek compensation through the statutory laws that hold the parents financially responsible, at least to some extent, for the torts of their children. The parental liability statutes have provided officials with a means for obtaining a degree of financial relief from the cost of repairing or replacing school property. However, some controversial issues concerning these laws have emerged in specific court cases. For example, the constitutionality of some of these state statutes has been debated in several court cases.

Questions to be Answered

The purpose of this study is to review state statutes and court cases that involve vicarious liability of parents for the torts of their children in order to determine the extent to which the parental responsibility laws can be used to defray costs from and to serve as a deterrent to student vandalism of school property. Below are listed key questions to be answered through this study.

1. What states have passed statutes pertaining to the liability of parents for the willful and wanton destruction to property by their children?
2. What states have specific statutes pertaining to the destruction of school property?

3. What were the intended purposes of the parental responsibility laws enacted by the state legislatures?
4. Under what circumstances can parents be held liable for their children's torts according to common law as opposed to civil or statutory law?
5. What are the pros and cons for having parents be vicariously liable for the torts of their children?
6. Have the state statutes, commonly known as parental responsibility laws, withstood challenges to their constitutionality?
7. Can parents utilize homeowner's insurance policies for financial relief for court-ordered payments of compensation for the torts of their children?
8. Based on case law, what are the trends and directions for parental responsibility for student vandalism?

Scope of the Study

This is a descriptive study of the legal aspects of the state statutes that are referred to as the parental responsibility laws. The research presents each of these statutes and also presents the specific statutes that refer to destruction of school property. The difference between the destruction incurred through careless or negligent acts of minors and those that are the result of willful and wanton acts is distinguished early in the study. Also, this study compares the issue of parental liability for the torts of the child according to common law versus statutory law.

After an analysis of the parental responsibility laws, court cases which have challenged their constitutionality are reviewed. In addition, major court cases which have involved aspects of the vicarious liability issue concerning the parent-child relationship are included in this study. These selected court cases that stem from statutory law have particular significance to school officials seeking means to reduce the increasing costs of vandalism to school property.

Methods, Procedures, and Source of Information

The basic research technique of this descriptive research study was to examine the available references concerning the legal aspects of the vicarious liability of parents for the torts of their children under statutory law.

In order to determine if a need existed for such research, Dissertation Abstracts was searched for this topic. A review of related literature was obtained through a computer search from the Educational Information Center (ERIC). In addition, general research summaries were sought in the Encyclopedia of Educational Research.

Journal articles related to the topic were located through the aid of such sources as Reader's Guide to Periodical Literature, Education Index, Index to Legal Periodicals, and the Current Law Index. Other information concerned with this topic was searched for in such selected books on school law as Newton Edwards' The Courts and the Public Schools: The Legal Basis of School Organization and Administration. The

Social Science Citations was another source for articles concerned with the issue of parental responsibility for destructive acts of minors.

Each state's statutes were searched for statutory law which maintains that parents are liable for the torts of their children and for specific statutes pertaining to the destruction of school property. Federal and state court cases concerned with these statutes were located through use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, and the American Digest System. More recent court cases were located by examining case summaries contained in the 1983 and 1984 issues of the NOLPE School Law Reporter. All court cases were read and categorized according to the issues which are stated in the general literature review.

Definition of the Terms

The specific terms used in this study were found in Black's Law Dictionary and are defined below:

Common law. As distinguished from law created by the enactment of legislatures, the common law comprises the body of those principles and rules of action, relating to the government and security of persons and property, which derive their authority solely from usages and customs of immemorial antiquity, or from the judgments and decrees of the courts recognizing, affirming, and enforcing such usages and customs; and, in this sense, particularly the ancient unwritten law of England.

Liability created by statute. One depending for its existence on the enactment of a statute, and not on the contract of the parties. One which would not exist but for the statute.

Liable. Bound or obliged in law or equity; responsible; chargeable; answerable; compellable to make satisfaction, compensation, or restitution.

Malicious. Characterized by, or involving, malice; having, or done with, wicked or mischievous intentions or motives; wrongful and done intentionally without just cause or excuse.

Parental liability. By statutes in certain states, the parents may be held liable up to a specified amount for damages caused to property of others by their children if such damage is found to have resulted from negligent control of parent over acts of child.

Vandalism. The willful and malicious destruction of property generally, and the destruction must have been intentional or in such reckless and wanton disregard of rights of others as to be equivalent of intent, and malice may be inferred from act of destruction.

Vicarious liability. Indirect legal responsibility; for example, the liability of an employer for the acts of an employee, or a principal for torts and contracts of an agent.

Tort. A private or civil wrong or injury other than breach of contract, for which the court will provide a remedy in the form of an action for damages.

Statutory law. That body of law created by acts of the legislature in contrast to law generated by judicial opinions and administrative bodies.

Wanton. Reckless, heedless, malicious, characterized by extreme recklessness or foolhardiness; recklessly disregardful of the rights or safety of others or of consequences.

Police power. The power of the state to place restraints on the personal freedom and property rights of persons for the protection of the public safety, health, and morals or the promotion of the public convenience and general prosperity. The police power is subject to limitations of the federal and state constitutions, and especially to the requirements of due process.

Willful. Premeditated; malicious, done with evil intent, or with a bad motive or purpose, or with indifference to the natural consequences; unlawful; without legal justification.

Significance of the Study

Since the 1950's, much of the literature about public schools has focused on the causes and effects of vandalism and the preventive strategies that school officials have used in their attempt to reduce the costly destruction of school property. It was in the 1950's that crime by youth generally increased in this society, and school crime itself was definitely a problem by the late 1950's and early 1960's.¹ During the

¹Rodger Bybee, Violence, Values, and Justice in the Schools (Boston: Allyn and Bacon, Inc., 1982), p. 101.

past thirty years, then, school officials have grappled with understanding the nature and extent of vandalism in the hope that this hydra-headed problem could be contained, if not completely eliminated. However, despite concentrated efforts to reduce vandalism, many public school systems have met with limited success. The costs of repairing and replacing school property because of vandalism continues to be a financial drain on educational budgets.

According to the National Institute of Education's three-part Safe School Study published in 1977, approximately 24,000 of the nation's 84,000 public elementary and secondary schools (at least one out of every four schools) report some vandalism each month with an average of \$81.² Added to this report is the estimate that around 8,000 schools (1 out of 10) are broken into each month with the average cost of a school burglary being \$183.³ The rise in the number of school fires has been increasingly expensive, too. Arsonists caused 20,500 fires or \$87 million damages in schools during 1971 and these figures climbed in 1974 to result in at least \$100 million in damages.⁴ Estimates of the annual cost for the repair and replacement of public property were around \$200 million in

²National Institute of Education, Violent Schools-Safe Schools (Washington, D.C.,: U.S. Department of Health Education, and Welfare, 1977), p. 4.

³Ibid.

⁴Joseph I. Grealy, "School Violence-What Can Be Done About It?" American School and University, 47 (June 1975): 25.

1971 and were thought to be over \$600 million in 1977.⁵

These figures do not include the hidden costs of additional security measures which public school systems must provide in their attempts to protect themselves against further escalating costs of vandalism. In fact, while the Los Angeles County Schools reported a 56% increase between the 1977-78 school year and the 1978-79 school year in the cost of repairing damages done by vandals, this same school system also reported having to spend \$10 million in 1979-80 solely on the cost of security personnel.⁶ Such combined costs that stem from the actual destruction of school property and the expense of providing security measures to prevent even further costs are staggering. The National Association of School Security Directors estimates that on a national basis school vandalism siphons more than \$590 million from school education budgets.⁷ This sum is more than the total amount spent on school textbooks in 1972.⁸

Actual costs from vandalism are difficult to obtain simply because there is "no uniform nationwide reporting system for school related crime and the accuracy of school

⁵Peter C. Kratcoski, L. D. Kratcoski, and D. Peterson, "The Crisis of Vandalism in Our Schools," U.S.A. Today, 107 (July 1978):15.

⁶G. Roy Mayer and Thomas W. Butterworth, "Evaluating a Preventive Approach to Reducing School Vandalism." Phi Delta Kappan, 62 (March 1981):498.

⁷Birch Bayh, "Seeking Solutions to School Violence and Vandalism," Phi Delta Kappan, 59 (January 1978):301.

⁸Ibid.

and district level reporting varies widely from place to place.⁹ In fact, such record keeping and reporting of incidents in many districts were not practiced until the late 1960's and early 1970's.¹⁰ This lack of a consistent reporting system on a national level is only one reason for the lack of specific data about the real extent of vandalism in public schools and the resulting costs. Another ongoing problem has been the reluctance of many administrators in revealing these statistics because of the negative impression given to the public about educational settings.¹¹ These two factors are the major reasons why the public in general did not become aware of the extent of school vandalism until the beginning of the 1970's.¹²

In spite of the lack of a nationwide reporting system, there is strong evidence that even if specific statistics may vary in different public school systems from year to year, government studies, such as those sponsored by the Subcommittee to Investigate Juvenile Delinquency, have found school crime to have reached significant proportions.¹³ Also, many reports have been found to be quite conservative since these reports

⁹ Birch Bayh, Challenge for the Third Century: Education in a Safe Environment-Final Report on the Nature and Prevention of School Violence and Vandalism (Washington, D.C.: U.S. Government Printing Office, 1977), p. 12.

¹⁰ Shirley Boss Neill, "Violence and Vandalism: Dimensions and Correctives," Phi Delta Kappan, 59 (January 1978): 305.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

have frequently omitted cost items that stem directly from vandalism.¹⁴ In addition, an often unreported cost of vandalism has been the ever increasing insurance coverage that public school systems must maintain. Insurance rates and loss deductible exclusions have risen as destruction of school property has risen.¹⁵

As school officials have studied the factors that cause vandalism and have attempted a variety of strategies to prevent, or at least, to reduce this destruction of school property, the taxpaying public has borne the brunt of the costs of vandalism. A disturbing fact is that most of the vandals are children, adolescents, and young adults. FBI statistics reveal that 77% of those arrested for vandalism are under 18 years of age, with the majority being from 12 to 14 years old.¹⁶ Information gleaned from recent police records and from local, state, and national juvenile delinquency records point out that over 90% of vandalism related arrests and convictions are adolescent boys who are typically 12 years old.¹⁷

This age factor presents a dilemma to officials who are seeking some compensation for vandalism to school property. Although minors have always been responsible for their own torts under common law, suing minors does not appear to be a

¹⁴Ibid.

¹⁵Ibid.

¹⁶"School Crime," Education Digest, 44 (1975): 36-37.

¹⁷James L. Howard, "Factors in Vandalism," Journal of Research and Development in Education, 11 (1978):54.

satisfactory course of action in most cases.¹⁸ Indeed, minors are often not worth suing because they themselves generally do not have the funds or the means of acquiring enough funds to pay for any substantial costs of their destructive acts.¹⁹ Therefore, as costs for vandalism have greatly increased and educational budgets have been strained, the taxpaying public has sought restitution for vandalism from the parents of vandals through the passage of statutory law.

The primary purpose of this study, then, is to provide school officials with a thorough analysis of the legal aspects of the parental responsibility laws, which have also been labelled, "punish the parents laws."²⁰ This study will also enable school officials to determine the feasibility of reducing the incidents of vandalism and of obtaining appropriate compensation from parents of vandals through the courts.

Design of the Study

The remainder of the study is divided into five major parts. Chapter II contains a review of related literature. Not only is the literature focusing on the legal aspects of the liability of parents for the torts of their children, but this chapter also considers the factors of vandalism that are pertinent to the topic. This section is for the purpose

¹⁸ Jeri J. Goldman, "Restitution for Damages to Public School Property," Journal of Law and Education, 11 (April, 1982): 148.

¹⁹ Ibid.

²⁰ James A. Kenny and James V. Kenny, "Shall We Punish the Parents?" American Bar Association Journal, 47 (August 1961): 804.

of informing school officials about what recent studies have found to be the causes of vandalism and what major strategies have been proposed for reducing vandalism, in addition to pursuing legal procedures.

Chapter III presents a narrative discussion of the state statutes that hold parents vicariously liable for the torts of their children. This portion of the study also presents information about the specific statutes dealing with destruction of school property.

Chapter IV examines the major legal questions related to the vicarious liability of parents under statutory law. Court cases which have challenged the constitutionality of the concept of vicarious liability, which have involved specific requirements for recovery, and which have involved the issues of limits of recovery and insurance are also discussed.

Chapter V presents an analysis and review of selected court cases whose decisions have important implication for education officials seeking some financial recovery for the destruction of school property.

The final chapter of this study offers a review and summary of the information presented in the review of the literature and from the analysis of statutory law and specific court cases. The questions proposed in the first chapter are answered in this concluding chapter.

CHAPTER II

REVIEW OF RELATED LITERATURE

Overview

Some degree of vandalism has occurred in public schools since these educational settings were first established in this country. Destruction of school property, whether it was a broken window, a marred desk, or even an occasional fire set by an arsonist, has been one of the factors that has confronted educators every school year for decades. In fact, for at least fifty years now, school vandalism has been an issue of some concern to administrators and other school officials.¹ However, since the 1950's and continuing into at least the mid-1970's, a sharp rise in the number of incidents of school vandalism has caused educators to direct much of their attention and energies to this particular problem.

Many believe this increase in school vandalism is directly related to the significant increase in crime by youth that began in the early 1950's.² Federal Bureau of Investigation reports clearly indicate an increase in arrest rates of juveniles, not only for crimes against persons, but also for crimes against

¹E. L. Koch, "School Vandalism and Strategies of Social Control," Urban Education, 10 (April 1975): 54.

²Rodger Bybee, Violence, Values, and Justice in the Schools (Boston: Allyn & Bacon, Inc., 1982), p. 101.

property. For example, the arrest rate of 15 to 18-year-olds grew from 160 per 100,000 in 1953 to 520 per 100,000 in 1974 for crimes against property (including theft, burglary, vandalism, and arson).³ By the late 1950's and early 1960's, this general increase in crimes by youth soon began to be experienced in schools which at one time had traditionally been viewed, by the public at least, more as a "haven from the disorders of everyday life."⁴

Indeed, school crimes, including vandalism, were so widespread by 1965 that many groups such as the National Education Association began to examine this escalating issue.⁵ For example, in a 1969 study of vandalism, Bernard Greenberg of the Stanford Research Institute concluded that although vandalism has always been a problem in schools, ". . . the rate of incidents in the schools has reached alarming proportions."⁶ As an example of this increase, Greenberg estimated a rise in the total losses of 120 California school districts from vandalism climbed from \$1.7 in 1965-66 to \$3.0 million in 1967-68.⁷

³Ibid.

⁴Michael D. Casserly, Scott A. Bass, and John R. Garrett, School Vandalism (Lexington, Massachusetts: D. C. Heath and Company, 1980), p. 1.

⁵Bybee, p. 101.

⁶United States Department of Health, Education, and Welfare, National Institute of Education, Violent Schools: Safe Schools (Washington, D.C.: Government Printing Office, 1977), p. 33.

⁷Ibid.

After school crime had continued to grow by the early 1970's, it evolved into such an important public issue that it came under congressional investigation.⁸ Actually, the federal government had been actively involved with the problem of juvenile delinquency since the early 1950's when the U.S. Senate Committee and the Judiciary established a Subcommittee on Juvenile Delinquency.⁹ As crime and schools became more closely linked by the early 1970's, two major bills were passed. The Amendments to the Elementary and Secondary Education Act was one of the two bills passed in 1974. This bill later in 1977 provided for the publication of The Safe School Study. The Juvenile Justice and Delinquency Prevention Act was the second bill passed in 1974.¹⁰

With the 1970's hearings of the Senate Subcommittee to Investigate Juvenile Delinquency and those of the House Subcommittee on Elementary, Secondary, and Vocational Education, the general public became more informed about the extent and nature of the acts of violence and vandalism that were occurring in public schools across the nation.¹¹ Another result from these hearings was the passage of the "Safe School Study Act" in the House of Representatives and the Education Amendments of 1974 (Public Law 93-380) which directed the Department of

⁸ Bybee, p. 101.

⁹ Casserly, p. 2.

¹⁰ Ibid.

¹¹ Ernst Wenk and Nora Harlow, eds., School Crime and Disruption (Davis, California: Responsible Action, 1978), p. 7.

Health, Education, and Welfare to "conduct a study to determine the incidence and seriousness of school crime; the number and location of schools affected; the casts; the means of prevention in use, and the effectiveness of these means."¹²

Therefore, the National Institute of Education (NIE) designed and implemented a three-part study and included information from other studies including data from a survey conducted by the National Center for Education Statistics (NCES) in 1975 in order to produce Violent Schools-Safe Schools: The Safe School Study Report of the Congress in 1977.¹³ This same year the Subcommittee to Investigate Juvenile Delinquency presented their major study, Challenge for the Third Century: Education in a Safe Environment-Final Report on the Nature of School Violence and Vandalism.

Both reports conclude that vandalism in the nation's public schools is proving to be a serious disruption to these learning environments and a tremendous drain of expenditures for the repair and replacement of school property. In Challenge for the Third Century, the summary report declares that violence and vandalism are occurring with more frequency and intensity than in the past.¹⁴ The subcommittee has stressed in its report that "not every elementary and secondary school in this country is staggering under a crime wave of violence and

¹²United States Department of Health, Education, and Welfare, National Institute of Education, p. 1.

¹³Ibid.

¹⁴Birch Bayh, "Seeking Solutions to School Violence and Vandalism," Phi Delta Kappan, 59 (January 1978): 300.

vandalism.¹⁵ It does emphasize, however, that while many school systems are not greatly affected by any substantial amount of either violence or vandalism, there is ample evidence that "a significant and growing number of schools in urban, suburban, and rural areas are confronting serious levels of violence and vandalism."¹⁶

The Safe School Study concludes that property destruction in schools certainly increased from the early 1950's to the early 1970's, but that numerous studies published by the mid-1970's show this increase to be levelling off.¹⁷ The estimate of the annual cost of such a level of vandalism, however, proves to be at least \$200 million with some estimates running as high as \$600 million.¹⁸ Also, when answering the question of exactly how serious a problem vandalism presents to schools, the study concludes that it is "considerably more serious than it was 15 years ago, and about the same as it was 5 years ago."¹⁹

These two major studies and the congressional hearings held during the 1970's, then, brought dramatic attention to significant factors concerned with student vandalism. They also helped to give impetus to a growing belief that parents

¹⁵Ibid.

¹⁶Ibid.

¹⁷National Institute of Education, p. 2.

¹⁸Ibid., p. 4.

¹⁹Ibid., p. 37.

were to blame for the increase in crime by youth and that parents should be held legally accountable for the delinquent acts of their children. Such an attitude had begun to emerge as early as 1957 when one study found, for example, that almost nine out of ten persons believed that parents should be "held responsible to at least some degree for the delinquency of their children."²⁰

The public's perception of the responsibility of parents for the delinquent acts of their children prompted passage of what have been termed "punish the parents" laws. Since the 1950's, forty-nine of the fifty states (New Hampshire has statutory provisions for parents to be fined for the wrongdoings of their children) have translated this concept of the moral and legal responsibility of parents into statutory law. It is necessary to note early in this study, however, that historically the courts have not required parents to be financially responsible for destruction of school property that has occurred as a result of acts of neglect or carelessness. Instead, the courts have allowed boards of education to expel students or to charge their parents only for destruction of school property that involves willful or malicious acts.²¹

In addressing this issue, the Supreme Court of Indiana has declared:

²⁰ James A. Kenny and James V. Kenny, "Shall We Punish the Parents?" American Bar Association Journal, 47 (August 1961): 805.

²¹ Newton Edwards, The Courts and the Public Schools (Chicago: University of Chicago Press, 1940), p. 533.

Carelessness on the part of children is one of the most common, and yet one of the least blameworthy of their faults. In simple carelessness there is no purpose to do wrong. To punish a child for carelessness in any case is to punish it where it²² has no purpose or intent to do wrong or violate rules.

The Supreme Court of Iowa has also addressed this issue and has substantiated the concept that carelessness or neglect by children should be viewed differently from willful and destructive acts:

The state does not deprive its citizens of their property or their liberty, or of any rights, except as a punishment for a crime. It would be very hard and obviously unjust to deprive a child of education for the reason that through accident and without intention of wrong he destroyed property of the school district. Doubtless a child can be expelled from school as a punishment for breach of discipline or for offenses against good morals, but not for innocent acts.²³

In the remaining portion of this chapter, selected major factors of vandalism will be presented so that the role of parental responsibility laws can be viewed from a broad perspective of the variety of causes and strategies to reduce student vandalism. The concept of common law regarding parental responsibility will also be presented. Finally, a discussion of the pros and cons of the parental responsibility laws conclude the chapter. Therefore, the remainder of this review of the literature concerning parental responsibility for student vandalism will be as follows:

²²State v. Vanderbilt, 18 N.E. 266 (Ind. 1888).

²³Perkins v. Board of Directors of the Independent School District of West Des Moines, 9 N.W. 356 (Iowa 1880).

1. Selected Significant Factors of Student Vandalism
2. Common Law Doctrine of Parental Liability
3. Civil or Statutory Law Concerning Parental Liability

Selected Significant Factors of
Student Vandalism

The Safe School Study of 1977 provides systematic data concerning schools, communities surrounding schools, families of student, peers, and other factors that are for the purpose of assessing the causes, extent, and costs of student vandalism. This particular study presents the following 12 factors which are consistently related with school property losses:

1. The crime rate in the attendance area.
2. Residential concentration around the school. The school's proximity to students' homes may make it a convenient target for vandalism.
3. The presence of nonstudent youth around school, cited by principals as a problem. Evidently, they increase the school's risk of property loss.
4. Family intactness and family discipline. Schools having higher proportions of students from families in which both parents are present, and in which discipline is firm, suffer less property loss due to vandalism and other offenses.
5. School size. In larger schools, where there is more to steal or destroy, property losses will be higher.
6. Rule enforcement, classroom control, and nonclassroom supervision. These again indicate that the more firmly a school is run, the fewer offenses it has.
7. Coordination between faculty and administration. This is another measure of how well the school is run.
8. Hostile and authoritarian attitudes on the part of teachers toward students. As a response to such attitudes, students apparently take it out on the school.

9. Student's valuing their teachers' opinions of them. Schools in which students identify with their teachers have less vandalism.
10. The manipulation of grades as a disciplinary measure. This practice may be seen by students as arbitrary and unfair, with the result that the school again is the victim.
11. The importance of grades to students. Schools where students strive to get good grades have more vandalism.
12. The importance of leadership status to students. Schools where there is intense competition for leadership have greater property losses.²⁴

In summary, the Safe School Study and other studies since the 1950's have clearly revealed that there is no single factor that fully explains student vandalism. The causes are complex and at times they are interrelated. Depending on the basic approach used to explain vandalism, factors such as society itself, the individual vandal, and influential institutions such as the school and family have been cited.

Common Law Doctrine of Parental Liability

Essentially, the common law doctrine declares that a parent is not liable for the torts of his child, merely because of the parent-child relationship.²⁵ This doctrine contrasts sharply with the civil law doctrine which declares "that a parent is liable for the torts of his minor child unless that parent was unable to prevent the child's act or the child was under the legal age of responsibility."²⁶

²⁴National Institute of Education, p. 8.

²⁵Alice B. Freer, "Parental Liability for Torts of Children," Kentucky Law Journal, 53 (1965): 254.

²⁶Ibid.

Therefore, "Unless made so by statute, there is no liability on the part of a parent, as such, for the tort of a child."²⁷ The philosophical basis for this common law's doctrine of parental liability is the historical assumption that there should be no liability without fault.²⁸ Even under common law, however, both the child and the parent, under certain circumstances, can be held liable for the child's intentional damage to property.

In all, there are five frequently cited grounds upon which a parent could be found liable for the torts of his child at common law. They are the following:

1. where the relationship of master and servant exists and the child is acting within the scope of his authority accorded by the parent;

2. where a parent is negligent in entrusting to the child an instrument which, because of its nature, use, and purpose, is so dangerous as to constitute, in the hands of the child, an unreasonable risk to others;

3. where a parent is negligent in entrusting to the child an instrumentality which, though not necessarily a dangerous thing of itself, is likely to be put to a dangerous use because of the known propensities of the child;

4. where the parent's negligence consists entirely of his failure reasonably to restrain the child from vicious conduct imperiling others, when the parent has knowledge of the child's propensity toward such conduct;

5. where the parent participates in the child's tortious act by consenting to it or by later ratifying it and accepting the fruits.²⁹

²⁷ John J. Puig, "Parental Responsibility in New York for an Infant's Willful Property Damage," Albany Law Review, 44 (July 1980): 943.

²⁸ Jeri Goldman, "Restitution for Damages to Public School Property," Journal of Law and Education, 11 (April 1982): 151.

²⁹ John V. O'Connor, "Torts: The Constitutional Validity of Parental Liability Statutes," Marquette Law Review, 55 (1972): 586.

In the first and last situations listed above, liability is based on a theory of respondent superior.³⁰ In the first situation, the child may be considered to be acting as an agent of the parent if, for example, the child performs an errand under the direction of the parent at the time any damages occur.³¹ In the last situation, the parent may be liable if he either directs or encourages the child's acts, and the result is damage to property or to persons during the damaging of property.³² In this situation, the parent has approved a tortious act and, consequently, may be found liable at common law.

The negligence of the parent himself may be grounds for liability if his negligence is found to be the proximate cause of his child's harmful act. For example, the parent could be found negligent and therefore liable if he allowed his child to have an instrument that in itself could be dangerous. The 1917 Vallency v. Rigillo³³ case illustrates this situation because the child was entrusted with the use of a gun. Negligence may also be based on the parent's allowing the child to use any instrument which the child has previously shown a tendency to

³⁰ Nancy L. Speck, "The Pennsylvania Parental Liability Statute," University of Pittsburgh Law Review, 29 (1968): 579-80.

³¹ "The Iowa Parental Responsibility Act," Iowa Law Review, 55 (1969-70): 1039.

³² Ibid.

³³ Vallency v. Rigillo, 102 A 348 (N.J. 1917).

misuse. For example, in the 1945 Gossett v. Egmond³⁴ decision, the parent was found liable for allowing his mentally incompetent son to use the family car. Finally, a parent may be found negligent at common law if he fails to warn others of a child's dangerous traits or conduct. A babysitter was not warned about a child's violent characteristics and the parent was found liable in the case of Ellis v. D'Angelo.³⁵ However, finding liability for this particular situation is very difficult because it is not enough that the child is known to be mischievous or even reckless.³⁶ The parent is liable only when the parent knows that the child more than likely will cause damage or injury.³⁷

In summary, then, under the common law a parent is liable only when negligence is established or when there is evidence that the parent has had the child act as an agent. Therefore, although these situations do allow for compensation for victims of children's torts, the common law has been judged ineffective.³⁸ Proving that any of the situations exists is frequently difficult because each area of exception presents specific barriers to the goal of tort law, which is compensation

³⁴ Gossett v. Van Egmond, 155 Pzd 304 (Ore. 1945).

³⁵ Ellis v. D'Angelo, 253 Pzd 675 (Calif. 1953).

³⁶ Speck, p. 580.

³⁷ Ibid.

³⁸ Ibid.

for the innocent victim.³⁹

For example, in the exception which concerns entrusting a child with a dangerous instrumentality, the question of what is a dangerous instrumentality is often raised with different uses yielding different answers.⁴⁰ There is no specific answer to this question and the answer given is often dependent upon the circumstances of a specific case. These circumstances may include the child's age, judgment, and experience.⁴¹ Also, in cases that involve a dangerous instrumentality, it is often necessary to prove the child's incompetence.⁴²

Another major problem with parental liability under common law is that the case law in this area has not been applied consistently. "Even though a case seemingly fit into one of the above categories, some injured plaintiffs were denied recovery because a particular court was reluctant to impose liability without fault and, therefore, chose to ignore the case law."⁴³

These obstacles illustrate, then, that the common law provides compensation to victims of torts by minors only in

³⁹ Michael A. Axel, "Statutory Vicarious Parental Liability: Review and Reform," Case Western Reserve Law Review, 32 (1981-82): 559.

⁴⁰ Bruce D. Frankel, "Parental Liability for a Child's Tortious Acts," Dickinson Law Review, 81 (1977): 759.

⁴¹ Ibid.

⁴² Axel, p. 560.

⁴³ Deborah J. Fish, "Constitutional Law/Parental Responsibility," Illinois Bar Journal, 68 (March 1980): 475.

very particular situations and it presents difficult problems of proof to plaintiffs.⁴⁴ When the parent is not found liable, then only the child is responsible for compensating victims for damages. Since minors are most often without funds, the injured party is more than likely left with little or no compensation.

Civil or Statutory Law Concerning
Parental Responsibility

All but two states initially adopted the common law approach to help compensate for damages caused by minors. Only Louisiana and Hawaii originally adopted statutes like those of civil law countries rather than the common law doctrine from English law.⁴⁵ Since the 1950's almost all the other states have enacted parental liability statutes. In contrast to common law doctrine, these statutes place vicarious liability on parents for torts of unemancipated children. Unlike the principle of common law doctrine, statutory law holds parents responsible for torts of their children, regardless of fault.

The purpose of this portion of the chapter will be to present some of the major arguments for and against such statutory law in regard to student vandalism. An analysis of the statutes themselves will follow in Chapter III and the vital legal aspects of vicarious liability of parents

⁴⁴ Puig, p. 947.

⁴⁵ "The Iowa Parental Responsibility Act," p. 1040.

for the torts of their children that the courts have considered will be presented in Chapters IV and V. This portion, therefore, will focus on the pros and cons of these responsibility laws.

As juvenile delinquency increased in the 1950's, so did the public demand that parents of delinquents be held more responsible for their crimes against innocent victims. In surveys such as the one conducted in 1957 under the direction of Dr. Charles T. O'Reilly, the public clearly indicated (almost 9 out of 10 persons) that they believed parents to be a major cause of juvenile delinquency.⁴⁶ One result of this widely supported view by the general public was the passage of what have been termed in the literature as "punish the parents" laws, parental responsibility laws, or vandalism statutes.

Although the public overwhelmingly supported the enactment of these laws beginning thirty years ago, many arguments have been made for and against them. There continues to be support generated for these particular laws; presently, every state except New Hampshire, which has a statute providing for parents of delinquents to be fined, has a parental responsibility law. Some states have statutes specifically pertaining to destruction of school property. Yet, during these past thirty years, the wisdom of these laws continues to be debated.

The arguments in favor of such statutory law generally

⁴⁶Kenny and Kenny, p. 804.

cite the unique responsibility that parents have in the care and guidance of their children. The very impetus for the passage of these laws stemmed from societal norm that emerged during the 1950's which declared that part of the responsibility of bearing and rearing children also involves being accountable for their acts.⁴⁷ It includes, too, the obligation to rear children in such a way that they do not encroach on the rights of others.⁴⁸ Certainly, the American judicial system and legal scholars have historically placed many duties on the parent in the parent-child relationship.⁴⁹ When crimes by youth, including the destruction of school property, began to increase sharply in the 1950's, the public began to emphasize the responsibilities and duties of parents.

In addition, during this time emphasis was placed on the authority of the parent in the parent-child relationship. For example, the Court of Common Pleas of Connecticut the case of Watson v. Gradzik emphasized that "Since the parents have the authority under the law to demand obedience from their children, it is reasonable to hold parents responsible for exerting that authority to control their children."⁵⁰ The defendants in this case and in the 1979 Vanthournot v.

⁴⁷Fish, p. 476.

⁴⁸Ibid., p. 477.

⁴⁹Frankel, p. 755.

⁵⁰Watson v. Gradzik, 34 Conn. Sup. 7, 373 A. 2d 191 (1971).

Burge⁵¹ unsuccessfully presented the argument that parents are not totally responsible for the antisocial behavior of their children because the children are also influenced by others such as close relatives and friends.

Another argument in support of these parental responsibility statutes has been the belief that it is reasonable to place vicarious liability on parents rather than to expect innocent victims or the tax-paying public to pay for damages done by minors.⁵² Also, those who support the statutes believe that they serve as a deterrent to destruction of property because ". . . if Pop has to foot the bills for Junior's spree, he's likely to jolly well see that Junior doesn't do it again, if he can help it."⁵³ These two aspects--compensation for victims and deterrence to juvenile delinquency--continue to be the major purposes of and reasons for support from those who argue in favor of parental responsibility laws.

Although public opinion and the courts have thus far continued to support the premise that parents should be vicariously liable for the torts of their children, many arguments against this principle have been expressed. Some

⁵¹ Vanthournout v. Burge, 69 Ill. App. 3d 193, 387 N.E. 2d 341, Cert. denied, 79 Ill. 2d 618 (1979).

⁵² Goldman, p. 170.

⁵³ Michael Severino, "Who Pays--or Should Pay When Young Vandals Smash Things Up in Your Schools?" American School Board Journal, 159 (June 1972): 33.

of these arguments center around the parent-child relationship itself. For example, it has been argued that additional stress can be placed on the parent-child relationship if the parent is held so highly responsible.⁵⁴ Not only could this additional stress encourage the parent to be more strict and to punish the child too severely, this argument also contends that the child may well hope to hurt the parent by purposely destroying property.⁵⁵ The parent-child relationship is seen as a frequent cause of delinquency and critics of this statutory law believe it can greatly disrupt family situations that may already be stressed.⁵⁶

Further, with the possibility of impending financial obligations stemming from the torts of the child, a parent may not be at all cooperative with juvenile authorities. The parent may see it in his best interest to help establish the innocence of his child in court rather than face financial obligations.⁵⁷ Even if rehabilitative treatment would be in the child's best interest, a parent may focus his efforts solely on his avoiding restitution for damages.⁵⁸

Still another argument given in opposition to the statutes has been the belief that although bad parenting may

⁵⁴ Roberta Gottesman, "Kids Damages--Should Parents Be Held Responsible?" *Principal*, 61 (May 1982): 50.

⁵⁵ *Ibid.*

⁵⁶ Freer, p. 262.

⁵⁷ Speck, p. 595.

⁵⁸ Gottesman, p. 50.

be a major reason for delinquency of children, vicarious liability may be unfairly imposed on certain parents. Some critics believe the statutes make scapegoats of the parents who have attempted to control the behavior of their children because the laws do not discriminate between those parents who do and those who do not.⁵⁹ Further, there are those who believe that some parents may have contributed to their children's delinquency not intentionally, but because of their own human failings.⁶⁰ Harriett Goldberg speaks of this when she points out that parents of delinquent children also had parents:

When the circumstances are analyzed, it is usually found that these people are themselves "more sinned against than sinning" and require specialized care. The very factors that have brought about their own disintegration and disorganization are again operating to produce maladjustment in their children.

There are several arguments against these statutory laws, then, that are based on the parent-child relationship. Another major argument found in the literature, however, is concerned with one of the primary purposes of the statutes. This argument addresses the issue of whether these statutes actually are helping to deter destruction of property by juveniles. Although this aspect of the parental responsibility laws needs to be the focus of further studies, there is no conclusive evidence as yet, that these statutes serve as a

⁵⁹ Speck, p. 582.

⁶⁰ Kenny and Kenny, p. 808.

⁶¹ Ibid.

deterrent to student vandalism or juvenile delinquency in general.⁶²

First of all, it is most difficult to determine the effect of parental liability statutes:

Comparable data over a long period of time are often not available even for the same court--good data for a control group of courts not having parental liability laws are often not available to indicate the net impact of the parental liability laws. Without the latter, where states with parental liability laws have experienced an increase in delinquency, one cannot answer the questions as to how much greater the increase might have been without the laws.⁶³

Based on statistical information that is available, however, the contention that parental responsibility laws reduce vandalism cannot be supported.⁶⁴ A study done by the Department of Health, Education, and Welfare in 1963 revealed this following information:

--In one state in which a parental liability law was passed in 1955, acts of damage to property increased from 613 that year to 1,000 by 1962.

--In another state which passed a law in 1956, acts of carelessness or mischief (including vandalism) increased from 2,672 in 1956 to 3,151 in 1961.

--In another state which passed a law in 1953, court cases of damage to property increased from 502 in 1955 to 785 in 1959.⁶⁵

Therefore, although the evidence is not conclusive, critics

⁶²"The Iowa Parental Responsibility Act," p. 1042.

⁶³Freer, pp. 263-264.

⁶⁴Ibid., p. 264.

⁶⁵Ibid., pp. 264-65.

of parental responsibility laws point to statistics such as those from the five-year study by the Department of Health, Education, and Welfare to support their view that vandalism has not been substantially arrested.

In conclusion, many arguments for and against parental responsibility statutes are found in a review of the literature concerning vandalism. Much criticism of the no fault principle of tort law being applied to the parent-child relationship can be found primarily in articles from law reviews. Many questions have been raised in legal journals and education publications regarding the effectiveness of the parent responsibility laws as a deterrent to vandalism or as a means of compensation to victims of property damage. Yet each of the states (except for New Hampshire, with statutory law that provides for a parent to be fined) continues to maintain such statutory law as passed by each state legislature.

CHAPTER III

ANALYSES OF THE STATE STATUTES

Overview

This particular portion of the study is for the purpose of describing the statutory law that presently exists in the fifty states regarding the liability of parents for property damage by their children. Forty-nine states do now have what have been termed parental responsibility laws which hold parents vicariously liable for the destructive acts of their unemancipated children. Only New Hampshire is without such specific statutory law. Yet, even this state does have statutory provisions for making a parent be responsible for paying any fines levied against his child:

A warrant against a minor may require the parent or guardian of the minor to be summoned to attend the examination or trial, by delivering to him an attested copy of the warrant, and of the complaint, if annexed thereto, and the parent or guardian, being so summoned, may be adjudged to pay the fine imposed, and execution may issue against him herefor.¹

This statutory law is quite different from the responsibility laws passed by the legislatures of the other states. The statutory laws of these forty-nine states leave no doubt that the parent or legal guardian is held liable for the destructive acts of his child. These statutes definitely contain

¹New Hampshire, Revised Statutes Annotated (1974) Sec. 592-A:16.

more specifically worded conditions and reminders than does the New Hampshire statutes.

An examination of the statutes reveals that most statutes share some important similarities, as well as some interesting differences in their basic elements. For example, the parental responsibility laws generally have the same legislative intentions. Also, most of these laws insist on liability of parents for intentional torts of their children. Most statutes also declare a maximum amount of damages recoverable from such torts, and some states include limits for personal injury, as well as for property damage.

The forty-nine statutes also contain some obvious differences. There is a wide range in the amount of the recoverable damages and this proves to be perhaps the most major difference among the statutes. Another important difference, however, is that not all of the states allow for the additional use of common law remedies. This failure to include such provisions for additional liability may severely limit the amount a victim could receive for personal injuries or property damages.

The remainder of this chapter will analyze the state statutes in order to determine their purposes and their basic elements. Not only will the forty-nine statutes pertaining to general property destruction be reviewed, but also those state statutes dealing with the specific destruction of school property by students will be presented.

Legislative Intent for Parental Responsibility Laws

Only three of the forty-nine states with parental responsibility laws have included in their state statutes the purposes for the passage of these laws. Certainly, judicial decisions have interpreted various aspects of these laws, including their purposes. However, only three states have made an official record of these purposes by including them in their statutory laws. All three states, Georgia, New Jersey, and West Virginia, officially declare the legislative intent behind their respective parental responsibility laws. Their legislative findings reflect the public's concern for juvenile delinquency and the parent's responsibility for his children's acts of vandalism and willful injury to other persons.

The legislature of Georgia included its purpose for passage of the parental responsibility law titled "Liability for malicious acts of minor child" by including a subsection of that law when it was passed in 1956. The statement reads directly as follows:

(c) The intent of the legislature in passing this Code section is to provide for the public welfare and aid in the control of juvenile delinquency, not to provide restorative compensation to victims or tortious conduct by children.²

Whereas the Georgia statute stresses the concern of its legislature for the public welfare because of juvenile delinquency, the legislative findings in New Jersey's statutory law emphasize not only protection of the public, but the role of

²Georgia, Official Code of Georgia, Title 51, Chap. 2, Art. 3.

the parent. Under the heading of "Legislative Findings," the New Jersey lawmakers stated for the record the following in 1965:

The Legislature finds that malicious acts of vandalism by youths are increasing at an alarming rate; that such acts are frequently attributable to lack of care, custody and control exercised by the parent; that parents should have some responsibility for the conduct of their children; that while there is a reluctance to charge a child with juvenile delinquency, there should be some legal deterrent to juvenile acts of vandalism and to parental neglect of supervision. The Legislature therefore finds it desirable to establish a civil procedure for the recovery of damages for such acts from the neglectful parent, guardian, or other person having³ legal custody of the child who caused such damage.

The legislative intent found in West Virginia's statutory laws reiterates this concern for the rise in delinquent acts, particularly those of vandalism and injury to persons. Originally prepared in 1957, the section was rewritten in 1981 to read as follows:

The legislature hereby finds and declares that there are now and have been repeated and widespread acts of vandalism, willful and malicious destruction of property and other injury to persons and property occasioned by the willful, malicious and sometimes criminal acts of children under the age of eighteen years; that the majority of such children are living with a parent or parents; that there arises or should arise out of such relationship, a responsibility to recompense persons injured by such acts of vandalism and willful and malicious injury to persons and property. Therefore, it is the intent of the legislature to make parents responsible for the torts of their minor children by reason of the parent-child relationship, and to impose on such said parent or parents for such acts of their children, who live with them and who commit acts of vandalism or willful and malicious injury to persons and property,

³ New Jersey, Statutes Annotated (1984), Title 2A, Chap. 53A, art. 14.

liability in accordance with the provisions hereinafter set forth.⁴

The purposes of the parental responsibility laws for these three states are quite similar but also provide for some differences in what reasons are stressed in these statutes. For example, all three address their concerns for the amount of juvenile delinquency that the public now endures, particularly those acts of vandalism and willful and malicious injury to persons and property. The Georgia statute's statement of intent focuses largely on a rather general statement regarding the welfare of the public and control of juvenile delinquency as its major purposes. However, both the New Jersey and West Virginia statutes explicitly state the belief that such statutory law is for the major purpose of holding parents responsible for their children's acts. Whereas the New Jersey statute cites parental neglect as the primary cause of juvenile delinquency, the West Virginia statute emphasizes parental responsibility for delinquent acts of children that arises from the special parent-child relationship. All three statutes definitely reflect the public's attitude that parents should be held responsible for the wrongdoings of their children. This attitude emerged in the late 50's and early 60's as juvenile delinquency increased. These three statutes were written originally in that period and they still exist, with West Virginia's statute revised in 1981, as explanations for the parental responsibility laws of

⁴West Virginia, Code (Supp. 1984), Chap. 55, art. 7A-1.

those three states.

General Property Destruction Statutes

As of 1984, forty-nine states have enacted parent liability statutes dealing with the destruction of property. An analysis of these statutes is facilitated through tables which provide pertinent information regarding the basic elements of these statutes. Table 1, for example, illustrates some of the basic information concerning the statutory reference, date of enactment, maximum recovery limit permitted, whether liability for personal injury as well as property destruction is included, and whether stolen property or shoplifting is also specified.

As Table 1 indicates, two states, Hawaii and Louisiana, have had parental liability statutes since the 1800's, but the remaining forty-seven states, enacted such statutory law since 1951. Nebraska was the first state to place parental responsibility laws into effect during the 1950's. By the end of the 50's, twenty-eight states, not including Hawaii and Louisiana, had promoted the passage of parental responsibility laws. During the 1960's, beginning with North Carolina and Washington in 1961, sixteen additional states enacted these laws. Finally, in the 1970's three states--New York (1970), Utah (1977), and Mississippi (1978)--included such statutory laws. All states, with the exception of New Hampshire (which has statutory provisions by which parents may be fined for a child's wrongdoing), presently have parental responsibility laws. Of these forty-nine, forty-four have had revisions of these laws since their initial enactment. Alabama, Iowa,

Pennsylvania, Utah, and Vermont are the only states whose parental responsibility laws are those passed originally by their legislatures.

The limitations placed on the amount to be recovered by the plaintiff vary widely among the statutes. The minimum specified amount is Vermont's \$250 and the maximum amount specified is Texas' \$15,000. The amounts may prove deceptive, however, because Vermont, like nineteen other states, allows for additional recovery through other legal remedies such as those of common law. The wording within North Carolina's statute is similar to the phrasing of this provision within other statutes: "This act shall not preclude or limit recovery of damages from parents under common law remedies available in this state."⁵ Many states also allow the plaintiff to receive court costs and attorney fees if a parent is found liable. In all, seventeen states have specific stipulations that the plaintiff may recover at least some court costs that result from the civil action.

Specific provisions may also affect the amounts of recovery. For example, the statute for Kansas declares that if parental negligence is found, then there is no limit on recovery. This provision is stated in the following:

Such recovery shall be limited to the actual damages in an amount not to exceed (\$1,000), in addition to taxable court costs, unless the court or jury finds that the malicious or willful act of such minor causing such injury, damage or destruction is the result of parental

⁵North Carolina, General Statutes, Chap. 1, art. 538, sec. 1.

neglect, in which event the one thousand (\$1,000) limitation does not apply.⁶

Four states have no limits placed on recovery from damage to property. Hawaii's statute requires that the father and mother "shall jointly and severally be liable in damages for tortious acts committed by their children."⁷ No limit is designated in Louisiana's statute which simply states, "the father, or after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children. . . ."⁸ The New Jersey statute, however, reads somewhat differently, although it has no limit placed on recovery for damages to property. This statute also holds the parent, guardian or one who has legal custody of a child liable, not merely on the basis of the parent-child relationship. Instead, the statute declares this adult to be one ". . . who fails or neglects to exercise reasonable supervision and control of the conduct of such infant. . . ."⁹ Nebraska, too, has no limit placed on recovery for damages to property, but it does limit the amount of recovery from personal injury to \$1,000 for each occurrence.¹⁰

Table 1 also reveals that twenty-eight states allow at least some recovery for personal injury, as well as for

⁶ Kansas, Statutes Annotated, Vol. 3, chap. 38, art. 120.

⁷ Hawaii, Revised Statutes (1976) sec. 577-3.

⁸ Louisiana, Civil Code (West, 1979), art. 2318.

⁹ New Jersey, Statutes Annotated (1984), Title 2A, chap. 53A, art. 15.

¹⁰ Nebraska, Revised Statutes, (1978), art. 8, sec. 43-801.

TABLE 1

**Parent Liability Statutes, as of 1984, Dealing with the
General Destruction of Property by Minors**

<u>Statute</u>	<u>Date of Enactment</u>	<u>Statute is Original Version</u>	<u>Recovery Limit</u>	<u>Personal Injury Covered</u>	<u>Stolen Property/Shoplifting Covered</u>	<u>Allows for Court Costs</u>	<u>Allows for other Legal Remedies</u>
ALA. CODE tit. 6, 6-5-380 (Supp. 1983)	1965	Yes	\$ 500	No	No	Yes	Yes
ALASKA STAT. 34.50.020 (1975)	1957	No	2,000	No	No	Yes	No
ARIZ. REV. STAT. ANN. 12-661 (1982)	1956	No	2,500	Yes	Yes	No	Yes
ARK. STAT. ANN. 50-109 (Supp. 1981)	1959	No	2,000	No	No	No	No
CAL. CIV. CODE ANN. 1714.1 (1984)	1955	No	10,000	Yes	No	No	Yes
COLO. REV. STAT. ANN. 13-21-107 (Supp. 1983)	1959	No	3,500	No	No	Yes	No
CONN. GEN. STAT. ANN. 52-572 (West Supp. 1984)	1955	No	3,000	Yes	No	No	Yes
DEL. CODE ANN. tit. 10, 3922 (Supp. 1982)	1953	No	5,000	No	No	No	No
FLA. STAT. ANN. 741.24 (West Supp. 1984)	1967	No	2,500	No	Yes	Yes	No
GA. CODE ANN. tit. 51, 51-2-3 (Supp. 1984)	1956	No	5,000	No	No	Yes	Yes <i>+</i>

TABLE 1

**Parent Liability Statutes, as of 1984, Dealing with the
General Destruction of Property by Minors**

Statute	Date of Enactment	Statute is Original Version	Recovery Limit	Personal Injury Covered	Stolen Property/Shoplifting Covered	Allows for Court Costs	Allows for other Legal Remedies
HAW. REV. STAT. 577-3 (1976)	1858	No	No limit	Yes	No	No	No
IDAHO CODE 6-210 (1979)	1957	No	\$1,500	No	No	No	No
ILL. ANN. STAT. CH. 70 51-57 (Smith-Hurd Supp. 1983)	1969	No	1,000	Yes	No	Yes	Yes
IND. STAT. ANN. 34-4-31-1 (Burns Supp. 1984)	1957	No	2,500	No	No	No	No
IOWA CODE ANN. 613.16 (West Supp. 1983)	1969	Yes	1,000	Yes	No	No	No
KAN. STAT. ANN. 38-120 (1981)	1959	No	1,000	Yes	No	Yes	No
KY. REV. STAT. ANN. 405.025 (Michie Co. Supp. 1982)	1968	No	2,500	No	No	No	Yes
LA. CIV. CODE ANN. art. 2318 (West Supp. 1979)	1804	No	No limit	Yes	No	No	No
ME. REV. STAT. tit. 19, 217 (1981)	1959	No	800	Yes	No	No	No
MD. CODE ANN. 3-829 (1984)	1959	No	5,000	Yes	Yes	No	No

TABLE 1

**Parent Liability Statutes, as of 1984, Dealing with the
General Destruction of Property by Minors**

<u>Statute</u>	<u>Date of Enactment</u>	<u>Statute is Original Version</u>	<u>Recovery Limit</u>	<u>Injury Covered</u>	<u>Personal</u>	<u>Stolen Property/Shoplifting Covered</u>	<u>Allows for Court Costs</u>	<u>Allows for other Legal Remedies</u>
MASS. LAWS ANN. ch. 231, 85G (Lawyer's Co-op Supp. 1984)	1969	No	\$ 2,000	Yes		No	No	No
MICH. STAT. ANN. 27A.2913 (Callaghan Supp. 1984)	1953	No	2,500	Yes		No	No	No
MINN. STAT. ANN. 540.18 (West Supp. 1984)	1967	No	500	Yes		No	No	Yes
MISS. CODE ANN. 93-13-2 (Supp. 1983)	1978	No	2,000	No		No	No	Yes
MO. ANN. STAT. 537.045 (Vernon Supp. 1984)	1965	No	2,000	Yes		No	No	Yes
MONT. CODE ANN. 40-6-237 to 40-6-238 (1983)	1957	No	2,500	No		No	Yes	No
NEB. REV. STAT. 43-801 (1978)	1951	No	No limit	Yes		No	No	No
NEV. REV. STAT. 41.470 (1979)	1957	No	10,000	Yes		No	No	Yes
N. H. REV. STAT. ANN. 592-A:16 (1974)	1957	No	None Stated	Fine		No	No	No
N. J. STAT. ANN. 2A:53A-15 (Supp. 1984)	1965	No	No limit	No		No	No	No

TABLE 1

**Parent Liability Statutes, as of 1984, Dealing with the
General Destruction of Property by Minors**

<u>Statute</u>	<u>Date of Enactment</u>	<u>Statute is Original Version</u>	<u>Recovery Limit</u>	<u>Personal Injury Covered</u>	<u>Stolen Property/Shoplifting Covered</u>	<u>Allows for Court Costs</u>	<u>Allows for other Legal Remedies</u>
N. M. STAT. ANN. 32-1-46 (Michie Co. Supp. 1984)	1957	No	\$ 4,000	Yes	No	Yes	Yes
N.Y. GEN. OBLIG. LAW 3-112 (1983)							
N. C. GEN STAT. 1-538.1	1961	No	1,000	Yes	No	No	Yes
N. D. CENT. CODE ANN. 32-03-39 (1976) 32-03-39-2 (Allen Smith Supp. 1983)	1957	No	1,000	No	No	Yes	No
OHIO REV. CODE ANN. 3109.09 to 3109.10 (1980)	1965	No	3,000	Yes	Yes	No	No
OKLA. STAT. ANN. tit. 23, 10 (West Supp. 1983)	1957	No	2,500	Yes	Yes	No	No
ORE. REV. STAT. 30.765 (1977)	1959	No	5,000	Yes	No	No	No
PA. STAT. ANN. tit. 11, 2001-2005 (Purdon Supp. 1984)	1967	Yes	1,000	Yes	Yes	Yes	No
R. I. GEN. LAWS 9-1-3 (Michie Supp. 1983)	1956	No	1,500	Yes	No	No	Yes

TABLE 1

**Parent Liability Statutes, as of 1984, Dealing with the
General Destruction of Property by Minors**

<u>Statute</u>	<u>Date of Enactment</u>	<u>Statute is Original Version</u>	<u>Recovery Limit</u>	<u>Personal Injury Covered</u>	<u>Stolen Property/Shoplifting Covered</u>	<u>Allows Court Costs</u>	<u>Allows for other Legal Remedies</u>
S. C. CODE 20-7-340 (Lawyer's Co-op Supp. 1983)	1965	No	\$ 1,000	No	Yes	No	No
S. D. CODIFIED LAWS 25-5-15 (Allen Smith Supp. 1983)	1957	No	750	Yes	No	Yes	No
TENN. CODE ANN. 37-1001 to 1003 (Michie Co. Supp. 1983)	1957	No	10,000	No	No	Yes	No
TEXAS FAM. CODE ANN. tit. 2, 33.01-.03 (West Supp. 1984)	1957	No	15,000	No	No	Yes	No
UTAH CODE ANN. 78-11-20 to 21 (1977)	1977	Yes	1,000	No	Yes	No	No
VT. STAT. ANN. ch. 15, 901 (1974)	1959	Yes	250	Yes	No	No	Yes
VA. CODE 8.01-43 to 44 (1984)	1960	No	500	No	No	No	Yes
WASH. REV. CODE ANN. 4.24.190 (West Supp. 1983)	1961	No	3,000	Yes	No	No	Yes
W. VA. CODE 55-7A-1 to 2 (Michie Supp. 1984)	1957	No	2,500	Yes	Yes	Yes	Yes

TABLE 1

**Parent Liability Statutes, as of 1984, Dealing with the
General Destruction of Property by Minors**

<u>Statute</u>	<u>Date of Enactment</u>	<u>Statute is Original Version</u>	<u>Recovery Limit</u>	<u>Personal Injury Covered</u>	<u>Stolen Property/ Shoplifting Covered</u>	<u>Allows for Court Costs</u>	<u>Allows for other Legal Remedies</u>
WIS. STAT. ANN. 895.035 (1983)	1957	No	\$ 1,000	Yes	No	Yes	Yes
WYO. STAT. ANN. 14-2-203 (1978)	1965	No	300	No	No	Yes	Yes

property damage. Some states, such as Kansas, have equal amounts of recovery determined for either personal injury or property damage. Kansas, for example, states that this recovery ". . . shall not exceed two thousand five hundred dollars for each tort of the minor."¹¹ California, on the other hand, is like most other states that declare, ". . . in the case of injury to a person, imputed liability shall be further limited to medical, dental, and hospital expenses by the injured person, not to exceed ten thousand dollars (\$10,000)."¹² The amount of recovery for personal injury, then, is generally limited to the medical, dental, or hospital costs or to a specified amount, regardless of the actual costs of medical treatment.

Ten states allow recovery for property that is stolen or shoplifted. Arizona's statute typifies the wording for these offenses, "Any act of malicious or willful misconduct of a minor which results in any injury to the person or property of another, to include theft or shoplifting. . . ."¹³ Ohio's statute, on the other hand, has its own particular phrasing to describe what it terms a "theft offense."¹⁴ In

¹¹Arizona, Revised Statutes Annotated (1982), art. 7, sec. 12-661.

¹²California, Civil Code Annotated (Deering, 1984), sec. 1714.1.

¹³Arizona, Revised Statues Annotated (1982), art. 7, sec. 12-661.

¹⁴Ohio, Revised Code Annotated, (Page 1980), Title 31, sec. 3109.09.

addition, Oklahoma's statute identifies this tort as larcency.¹⁵

Specific Statutory Requirements for Recovery

Table 2 contains the various limitations which are specified in most of the statutes. Almost all of the parental responsibility laws contain similar specific conditions which must be met before a plaintiff can obtain any recovery under these statutory laws. These requirements are classified as (1) willful, malicious, or intentional act, (2) minor is subject to parental control, (3) parental neglect is required, and (4) age limit of minor. Some statutes do not contain their own particular requirements in their wording, yet most are quite uniform in the conditions that they require.

Forty-five states specify that the destructive acts or injury to person or property must be the result of a willful, malicious, or intentional act. The Idaho statute allows that recovery can be obtained from the parents of any minor under eighteen years of age "who shall maliciously or wilfully destroy property. . . ."¹⁶ The statutory law for Indiana, however, omits the willful and malicious criteria, in order to stress the intent of the child. It reads, "A parent is liable for not more than two thousand five hundred dollars (\$2,500) in actual damages arising from harm to a person or property intentionally caused by his child. . . ."¹⁷

¹⁵Oklahoma, Statutes Annotated (West, 1983), Chap. 23, art. 10.

¹⁶Idaho Code Vol. 2 (1979), sec. 6-210.

¹⁷Indiana, Statutes Annotated (1984), Title 34, Chap. 31, sec. 34-4-31-1.

The wording of two state statutes differs from these forty-nine that address the willful, malicious, or intentional acts of a minor. Iowa's statute declares that the parent is liable for the "unlawful acts" of his child.¹⁸ On the other hand, Maryland's statute stipulates that parents are liable ". . . in any case in which the court finds a child has committed a delinquent act. . . ."¹⁹

Although most statutes contain the specific wording of willful, malicious, or intentional, and two states declare the acts must be either unlawful or delinquent, only two states are without any requirements as to the intent of the act by the child. Hawaii and Louisiana are the only states which make the parent liable whether the child's act was intentional or accidental. Hawaii's statute provides the following:

The father and mother of unmarried minor children shall jointly and severally be liable in damages for tortious acts committed by their children and shall be jointly and severally entitled to prosecute and defend all actions in which the children or their individual property may be concerned.²⁰

Louisiana's statute reads as follows:

The father, or after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons.²¹

¹⁸Iowa, Code Annotated (West 1983), Vol. 41, sec. 613.16.

¹⁹Maryland, Annotated Code (1984), sec. 3-829.

²⁰Hawaii, Revised Statutes (1976), sec. 577-3.

²¹Louisiana, Civil Code (West, 1979), art. 2318.

Maryland is the only state that does not require the child to be in the custody or control of the parent in order for recovery. All of the other states with parental responsibility laws maintain this condition and the wording of Alabama's statute is typical of that found in these other states:

The parent or parents of any minor under the age of 18 years with whom such minor is living and ²²who have custody of such minor shall be liable. . .

Table 2 also illustrates that every state with a parental responsibility law except Kansas, Kentucky, New Jersey, Tennessee, and Utah places liability on parents without regard to fault or negligence. Each of the exceptions listed require that the parent be liable only because of neglect or be charged a higher amount of damages if neglect is found. As discussed earlier in the chapter, Kansas places no limit on the damages that can be recovered from a parent who has been found to be negligent. Kentucky's statute stipulates that a parent may be liable for damages up to twenty-five hundred dollars, "if the parent or guardian has been joined as a party defendant in the original action."²³

In a subsection of that statute, the following is provided:

(2) Nothing in this section is intended to or shall limit to twenty-five hundred dollars (\$2500) the liability of a person to whom the negligence of a minor is imputed by

²²Alabama, Code (1975), Title 6, art. 21, sec. 6-5-380.

²³Kentucky, Revised Statutes (1982), sec. 405.025.

KRS 186.590, nor shall this section limit the liability set forth in any other statute to the contrary.²⁴

New Jersey's statute, also discussed earlier in this chapter, requires that parental neglect or failure to supervise and control a child be a condition for recovery. Tennessee is explicit in its statutory provisions for the circumstances under which a parent is liable.

- (a) A parent or guardian shall be liable for the tortious activities of a minor child that causes injuries to property where the parent or guardian knows, or should know, of the child's tendency to commit wrongful acts which can be expected to cause injury to property, and where the parent or guardian has an opportunity to control the child but fails to exercise reasonable means to restrain the tortious conduct.
- (b) A parent or guardian shall be presumed to know of a child's tendency to commit wrongful acts, if the child has previously been charged and found responsible for such actions.²⁵

Utah attempts to protect the parent from liability if certain efforts have been made by the parent of a child who has damaged property:

No parent or guardian shall be liable if he or she made a reasonable effort to supervise and direct their minor child, or in the event the parent knew in advance of the possible taking, injury or destruction by their minor child,²⁶ he or she made a reasonable effort to restrain it.

Finally, in Table 2, twenty-one states with parental responsibility laws identify the age limit of the young

²⁴Ibid.

²⁵Tennessee, Code Annotated (1983), chap. 10, sec. 37-1003.

²⁶Utah, Code Annotated (1977), sec. 78-11-20.

TABLE 2

Conditions Specified for Recovery

<u>State</u>	<u>Willful, malicious, or intentional Act</u>	<u>Subject to Parental Control</u>	<u>Parent Neglect Required</u>	<u>Age Limit</u>
Alabama	Yes	Yes		18
Alaska	Yes	Yes		18
Arizona	Yes	Yes		Minor
Arkansas	Yes	Yes		18
California	Yes	Yes		Minor
Colorado	Yes	Yes		18
Connecticut	Yes	Yes		Minor
Delaware	Yes	Yes		18
Florida	Yes	Yes		18
Georgia	Yes	Yes		18
Hawaii	No	Yes		Minor
Idaho	Yes	Yes		18
Illinois	Yes	Yes		Over 11 Under 19
Indiana	Yes	Yes		Child
Iowa	Unlawful	Yes		18
Kansas	Yes	Yes		18
Kentucky	Yes	Yes		Minor
Louisiana	No	Yes		Minor
Maine	Yes	Yes		Between 7 and 17
Maryland	Delinquent Act	No		Child
Massachusetts	Yes	Yes		Over 7 Under 18
Michigan	Yes	Yes		Minor

TABLE 2

Conditions Specified for Recovery

<u>State</u>	<u>Willful, malicious, or intentional Act</u>	<u>Subject to Parental Control</u>	<u>Parent Neglect Required</u>	<u>Age Limit</u>
Minnesota	Yes	Yes		18
Mississippi	Yes	Yes		Over 10 Under 18
Missouri	Yes	Yes		18
Montana	Yes	Yes		18
Nebraska	Yes	Yes		Minor
Nevada	Yes	Yes		Minor
New Hampshire	-	-		-
New Jersey	Yes	Yes		18
New Mexico	Yes	Yes		Child Over 10
New York	Yes	Yes		Under 18
North Carolina	Yes	Yes		Minor
North Dakota	Yes	Yes		Minor
Ohio	Yes	Yes		18
Oklahoma	Yes	Yes		18
Oregon	Yes	Yes		Minor
Pennsylvania	Yes	Yes		18
Rhode Island	Yes	Yes		Minor
South Carolina	Yes	Yes		17
South Dakota	Yes	Yes		18
Tennessee	Yes	Yes	Yes	18 Over 12
Texas	Yes	Yes		Under 18
Utah	Yes	Yes	Yes	Minor

TABLE 2

Conditions Specified for Recovery

<u>State</u>	<u>Willful, malicious, or intentional Act</u>	<u>Subject to Parental Control</u>	<u>Parent Neglect Required</u>	<u>Age Limit</u>
Vermont	Yes	Yes		17
Virginia	Yes	Yes		Minor
Washington	Yes	Yes		18
West Virginia	Yes	Yes		Minor
Wisconsin	Yes	Yes		Minor Over 10
Wyoming	Yes	Yes		Under 17

person to be 18 years of age. Two states have 17 as the limit. Sixteen states declare no limit but specify the term "minor," while three states use the term "child." Both Mississippi and New York identify the minimum and maximum age limit to over 10 and under 18. On the other hand, Illinois limits the age from over 11 to under 19; Maine's limit is between 7 and 17; Massachusetts is over 7 and under 18; while Texas sets the limit at over 12 but under 18; and Wyoming's age limit is over 10 but under 17.

Statutes Dealing Specifically with the
Destruction of School Property

Altogether there are twenty-four statutes that address the specific destruction of school property. Some of these statutes do not have the topic of student vandalism as their major purpose but instead, they give destruction of school property as one of the grounds for suspension or expulsion of students. However, several states do contain statutes whose purpose is to present the legal aspects involved in recovery for the damage to or destruction of school property. These particular statutes detail the liability of parents and sometimes the liability of the students who commit such vandalism. Tables 3 and 4 help to illustrate some of the important aspects of these statutes as they are presented in this section of the chapter.

Table 3 indicates that nine states have statutory laws that enumerate the grounds for suspension or expulsion of students. One of these grounds for such punishment is each of these

Table 3

**Statutes Containing Provisions for Suspension
or Expulsion on Grounds of Destruction
of School Property**

<u>Statute</u>	<u>Date of Enactment</u>	<u>Statute in Original Version</u>
IND. BURNS STAT. 20-8.1-5-4 (Michie, 1984)	1973	No
KY. REV. STAT. 158.150 (1980 Replacement)	1978	Yes
LA. STAT. ANN. R.S. 17:416 (1984)	1983	No
MINN. STAT. ANN. 127.29 (West, 1976)	1978	No
MONT. CODE ANN. 20-5-201 (1983)	1971	No
NEB. REV. STAT., 1943 79-4-180 (Reissue/1981)	1976	Yes
N. J. STAT. ANN. 18A:37-2 (West, 1984)	1969	No
TENN. CODE 49-6-3401 (1983)	1977	No
WYO. STAT. 21-4-305 to 21-4-306 (1977)	1969	No

statutes is the damaging or destruction of school property. Indiana's statute, "Grounds for expulsion or suspension," has the provisions similar to many of the ten other statutes.²⁷ The statute lists the student conduct that would warrant suspension or expulsion, and it includes the following:

(b) Causing or attempting to cause substantial damage to school property, stealing or attempting to steal school property of substantial value, or repeated damage²⁸ or theft involving school property of small value.

In the Kentucky statute, suspension or expulsion might result from ". . . stealing or destruction or defacing of school property or personal property. . . ."²⁹ However, such punishment is given in the Minnesota statute for the "willful conduct which endangers the pupil or other pupils or the property of the school."³⁰

The statutes identified in Table 3, then, provide for suspension or expulsion of those students who vandalize school property. Table 4, however, illustrates information regarding the fifteen specific statutes that pertain to the liability of parents and/or students for school vandalism. The table provides the statutory references, the date of passage, and information regarding revision, pupil punishment and the maximum amount of parental liability stipulated in these fifteen statutes.

²⁷ Indiana, Statutes (Supp. 1984), sec. 20-8.1-5-4.

²⁸ Ibid.

²⁹ Kentucky, Revised Statutes (1980 Replacement), sec. 158.150.

³⁰ Minnesota, Statutes Annotated, Title 10A, sec. 127.29.

Table 4 reveals that fifteen states not only have statutes dealing with general property destruction in their statutory law, but each also has passed a statute dealing with specific school property destruction. Six of these states had enacted the original version of these specific statutes in the early 1900's. As mentioned previously in the chapter, most of the parental responsibility laws for general destruction of property were passed after 1950. Yet, California enacted a statute for specific destruction of school property in 1901. Arizona passed its statute dealing specifically with school vandalism in 1912; Louisiana enacted its statute in 1922; Arkansas passed its law in 1931; Mississippi passed its statute in 1942; and Vermont enacted its statute in 1947. Hawaii has been the last state to acquire the particular type of statute and it originally passed its law in 1978. Of all fifteen statutes, only the Arkansas statute is in its original version.

Whereas the statutes for general destruction of property are found to contain several similar elements (limits of recovery, age limit specified, etc.), the statutes for specific destruction of school property contain fewer common elements. The two major characteristics that these statutes share are that generally the student is suspended or expelled and the parent or the student is held liable for damages.

Arizona's statute typifies several of the other statutes:

A. A pupil who cuts, defaces, or otherwise injures any school property may be suspended or expelled.

B. Upon complaint of the governing board, the parents or guardians of minors who have injured school property shall be liable for all damages caused by their children or wards.³¹

Disciplinary action against students who damage, destroy, or steal school property generally may include not only suspension or expulsion, but a variety of other measures as well. For example, Table 4 reveals that the students may be responsible for paying for damages. The Arkansas statute states that any person "shall be fined in a sum double the value of such buildings, furniture, fixtures, or apparatus so destroyed or damaged, and shall be fined in a sum not less than ten dollars (\$10.00), nor more than fifty dollars (\$50.00) for each offense. . . ."³² The Hawaii statute requires that:

(a) Any pupil found to be responsible for an act of vandalism against any public school, building, facility, or ground shall make restitution in any manner including monetary restitution by ³³the pupil or pupil's parents, or guardian, or both.

Pupils or the parents may be responsible for maximum restitution of \$3,500; damages that exceed this amount are referred to the attorney general or the state for further action.

Table 4 also indicates that the pupil must pay for damage or grades, diplomas, and transcripts may be withheld.

³¹ Arizona, Revised Statutes Annotated (1983), Title 15, chap. 8, sec. 15-842.

³² Arkansas, Statutes Annotated (1980), Title 7, sec. 80-1903.

³³ Hawaii, Revised Statutes (Supp. 1983), sec. 298-27.

³⁴ Ibid.

Table 4

**Pupil/Parent Liability Statutes Dealing
with the Specific Destruction
of School Property by Minor**

Statute	Date of Enactment	Statistic is original Version	Pupil Punishment	Liability of Parent
Ariz. Rev. Stat. Ann. 1912 15-842 (1983)		No	Suspension or Expulsion	All Damages
Ark. Stat. Ann. 80-1903 to 80-1904 (1980)	1931	Yes	Any person (1) Double the sum destroyed or damaged (2) Fine no less than \$10.00, no more than \$50 for each offense.	
Cal. Edu. Code 48904 (1984)	1901	No	Grades, diploma, transcripts withheld until damages paid, or voluntary work in lieu of pay- ment	\$5,000 maximum plus \$5,000 maximum paid for any reward
Fla. Stat. Ann. 235.09 (West, 1984)	1977	No	Any person (not k-12) is guilty of misdemeanor	
Haw. Rev. Stat 298.27 (1983)	1978	No	Restitution, in- cluding maximum \$3,500	Restitution, including monetary maximum of \$3,500
Me. Rev. Stat. 6805 70 6807 (1983)	1954	No		Double the damage, maximum fine of \$10 for defacing with obscenity taxed for value .

Table 4

**Pupil/Parent Liability Statutes Dealing
with the Specific Destruction
of School Property by Minor**

Statute	Date of Enactment	Statistic is original Version	Pupil Punishment	Liability of Parent
Miss. Code Ann. 37-11-19 (1972)	1942	No	Suspension or expulsion	All damages
Nev. Rev. Stat. 393.070 (1979)	1956	No	Charged with no less than a mis- demeanor damages charged	
N.J. Stat. Ann. 18A:37-3	1983	No		
N.C. Gen. Stat. 115C-398 to 115C-399 115C-523 (1983)	1981 1955	Yes No		All damages
Ore. Rev. Stat. 339.260, 339.270 (1977)	1965, 1971	No	Pupil is disciplined Suspension or expulsion	Assessed damages not to exceed \$5,000
S.D. Codified Laws 13-32-5 (1982)	1931	No	Suspension or expulsion	No reference to parent
Vt. Stat. Ann 3744 (1968)	1947	No		All damages
Va. Code 22.1-276 to 22.1-277	1950	No	Reimbursement for breakage or destruction	No reference to parents
Wash. Rev. Code Ann	1969	No	Suspension or punishment, diploma, grades, trans- cript may be withheld until payment. May pay or may work in lieu of payment	All damages

Both the California statute³⁵ and the Washington statute³⁶ provide this punishment until restitution is made. Both statutes, however, do allow the pupil to make restitution through voluntary work: "When the pupil and parent or guardian are unable to pay for the damages, the school district shall provide a program of voluntary work for the pupil in lieu of monetary damages."³⁷

Table 4 also reveals that the liability of the parent varies greatly among the states. The parent is definitely responsible for paying for all damages in many states. Mississippi's statute reads as several of the fifteen states when it stipulates that a pupil's "parents or person or persons in loco parentis shall be liable for all damages."³⁸ Oregon, however, qualifies the amount, to cover the assessed damages and if the parent does not pay, then the district school board, ". . . in addition to any other remedy provided by law . . . may bring action . . . for the amount of the assessed damages not to exceed \$5,000 plus costs."³⁹ Maine, on the other hand, declares that the school administrative unit ". . . may recover from the minor's parent, in a civil

³⁵ California, Deering's Education Code Annotated (Supp. 1984), sec. 48904.

³⁶ Washington, West's Revised Code Annotated, (1984), Title 28A, Chap. 28A.87, sec. 120.

³⁷ Ibid.

³⁸ Mississippi, Code Annotated (1972), sec. 37-11-19.

³⁹ Oregon, Revised Statutes, (1977 Replacement), sec. 339.260.

action, double the damage."⁴⁰ If a student loses, destroys, or unnecessarily injures a school book or appliance and if the parent refuses to pay the assessed amount of damage, the Maine statute provides that, "the municipal assessors shall include in the next municipal tax of the delinquent parent the value of the book or appliance to be assessed and collected as other municipal taxes."⁴¹

In summary, these fifteen statutes pertaining to the liability of the parent or the pupil for destruction of school property have some similar elements, but they also contain a wide variation in the provisions for pupil punishment and maximum liability of the parent. These statutes are also in addition to the statutory laws which pertain to the vicarious liability of parents for the general destruction of property by their children. The North Carolina statute deserves particular attention because it not only asserts that parents are liable for their children's acts of vandalism, but this statute also requires that teachers and principals face liability for damages to school property if they have not exercised proper supervision of students. This portion of the statute reads as follows:

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school

⁴⁰ Maine, Revised Statutes Annotated, (1981), Title 20, chap. 20-A, sec. 6805.

⁴¹ *Ibid.*

property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all damages, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers⁴² to repair the damage for which they are responsible.

⁴²North Carolina General Statutes (1983), sec.
115C-523.

CHAPTER IV

LEGAL ASPECTS OF PARENTAL RESPONSIBILITY LAWS

Overview

A variety of legal issues have emerged concerning parental responsibility laws since the 1950's when many states first enacted such statutes. Although the legislatures of forty-nine states have responded to the public's demand that parents be held legally responsible for damage to property by their children, various aspects of these state acts have prompted many court cases. Therefore, the purpose of this chapter will be to identify and to analyze the major legal issues concerned with selected court cases that deal with the liability of parents for the torts of their minor children.

One major issue that has been addressed in several court cases has been the question of the constitutionality of parental responsibility laws. Challengers have generally claimed that the statutes are violative of the equal protection clauses of the Fourteenth Amendment. They have charged, too, that these statutes allow the deprivation of the parents' property without due process as guaranteed in both the Fifth and Fourteenth Amendments of the United States Constitution. Finally, challengers have also claimed that these statutory laws are unconstitutional because they interfere with the

fundamental rights of parents to bear and raise children. This issue of the constitutionality of parental responsibility acts will be the first examined in this chapter.

Two important legal issues stem from the fact that general property statutes are in derogation to common law and must be strictly construed. One issue involves the requirements of most property statutes that destruction of property must be the result of willful and malicious intent. Destruction of property that is due to the carelessness on the part of a minor is not included in the parental responsibility statutes. A second legal issue involves the requirement that a parent is liable only if the minor is in his custody or control. Both of these issues have been the subject of litigation and they, too, will be examined in this chapter.

There are two other important issues related to the general property statutes which are discussed: (1) the maximum amount of recovery that can be charged to parents under statutory law; and (2) whether parents can seek financial relief from insurance policies. Another issue related to insurance is that of the insurance company in the role of subrogee. Selected court cases are presented to illustrate aspects of these various issues, which in different situations produce different findings from the courts.

The final section of this chapter focuses on those statutes which pertain specifically to the destruction of school property. The issue of whether statutory law applies

to damages during or after school hours is related to the fact that statutes must be strictly construed. Whether parents are liable for their children's careless and negligent acts is discussed, along with a specific court ruling regarding indefinite school suspension until restitution is made. The issue of the maximum amount of recovery is also presented as it relates to damages that result from more than one incident. Finally, the issue of having an insurance company serve as subrogee completes this section regarding statutes pertaining specifically to school property.

The United States Supreme Court has yet to hear a case directly involving these parental responsibility laws. Instead, all of the issues discussed in this chapter have been determined in no court higher than various state supreme courts and state courts of appeals. Therefore, with no United States Supreme Court decisions, there are no binding rulings throughout the United States.¹ Rather, the issues presented in this chapter come from the different state courts whose decisions have affected primarily the courts within those states, although some state supreme court decisions have resulted in decisions that have been influential in cases in other states or areas of the country.

Yet, in spite of the fact that legal precedents have been established by these particular courts, a plaintiff may

¹Alan Aberson, "Litigation," Public Policy and the Education of Exceptional Children, ed. Frederick J. Weintraub (Reston, Virginia: The Council for Exceptional Children, 1976), p. 254.

still present a grievance in court because, even in United States Supreme court decisions, "There is really little absolute or 'apolitical' law that remains immutable as time passes, as public policies change and interests of society shift."² Laws are not static but ever-changing; different circumstances and facts may yield different decisions in different courts. The legal aspects of the parental liability statutes which are discussed in this chapter illustrate these characteristics of legal precedents.

Constitutionality of Parental Responsibility Laws

The major challenge to parental responsibility laws has been legislative in their constitutionality. Several court cases in various states have addressed this issue since the first such case, Kelly v. Williams, was held in Texas.³ Since 1961, the defendant parents have presented the belief that the parental liability statutes violate the equal protection clause of the Forteenth Amendment; deprive the parent of property without due process, which is guaranteed in both the

²Ibid.

³See Kelly v. Williams, 346 S.W. 2d 434 (Tex. Civ. App. 1961); General Ins. Co. of Am. v. Faulkner, 259 N.C. 317, 130 S.E. 2d 645 (1963); Mahaney v. Hunter Enterprises, 426 p. 2d 442 (Wyo. 1967); corley v. Lewless, 227 Ga. 745, 182 S.E. 2d 766 (1971); In re: Sorrell 20 Md. App. 179, 315A 2d 110 (1974), cert. denied, 271 Md. 740, 744 (1979); Watson v. Gradzik, 34 Conn. Sup. 7, 373 A. 2d 191 (C.P. 1977); Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E. 2d 171 (1977); Vanthournout v. Burge, 69 Ill. App. 3d 193, 387 N.E. 2d 341, cert. denied, 79 Ill. 2d 618 (1979); Hayward v. Ramick, 248 Ga. 841, 285 S.E. 2d 697 (1982); Stang v. Waller, Fla. App. 415 So. 2d 123 (1982).

Fifth and Fourteenth Amendments; and interfere with their fundamental right to bear and raise children. Only one of these cases, Corley v. Lewless, has found a parental liability statute to be unconstitutional.⁴

One reason why all but one case have been unsuccessful in their constitutional challenge is "It is well settled that a defendant who attacks a statute on constitutional grounds has no easy burden."⁵ In addition, the following remarks highlight the difficulty of such challenges:

When the constitutionality of legislation is in question, it is the duty of the court to sustain it unless its invalidity is beyond a reasonable doubt. . . . It is a rule of statutory construction . . . that the courts are bound to assume that the legislature, in enacting a particular law, did so upon proper motives and to accomplish a worthy objective. . . . Furthermore, courts must, if possible, construe a law so that it is effective. . . . It is to be presumed that legislatures do not deliberately enact ineffective and unconstitutional laws.⁶

Although defendant parents have had the burden of proof, they have attempted for over twenty years to challenge the constitutionality of different general liability statutes. The equal protection clause has often been cited as one of the grounds for unconstitutionality. This particular argument is espoused by parents who believe they are unfairly

⁴Corley v. Lewless, 227 Ga. 745, 182 S.E. 2d 766 (1971).

⁵Watson v. Gradzik, 34 Conn. Sup. 7, 373 A. 2d 191 (C.P. 1977).

⁶Amsel v. Brooks, 141 Conn. 288, 294, 106A. 2d 152, 156,

singled out for being liable for the torts of their children. However, this issue has become one of fairness as perceived by the state courts. For example, the Court of Civil Appeals of Texas in Kelly v. Williams expressed its agreement with a statement from the Villanova Law Review, (vol. 3, p. 529) that declares, "in all fairness, it is better that the parents of these young tort feasors be required to compensate those who are damaged, even though the parents be without fault, rather than to let the loss fall upon the innocent victims."⁷

This aspect of fairness was reiterated in another court case involving a pupil's damaging of school property: "If it would be unfair to assess the parents of the wrongdoer, how could it be fair to assess the parents of the other 499 innocent students. . . . This would exemplify charity but not justice.⁸ Still another case rejected the equal protection argument by finding that restricting the liability to the natural parent was reasonable and that all those within the class were treated equally.⁹

The Appellate Court of Appeals in Vanthournout v. Burge cited the following reasoning for upholding the Illinois Parental Responsibility Act:

If there is a reasonable basis for differentiating between the class to which the law is applicable and the class to which it is not, the General Assembly

⁷ Kelly v. Williams, 346 S.W. 2d 434 (Tex. Civ. App. 1961).

⁸ Palmyra Bd. of Education, Burlington Co. v. Hansen, 56 N.J. Super 567, 153 A. 2d 393 (1959).

⁹ Mahaney v. Hunter Enterprises, Inc., Wyo., 426 P. 2d 442 (1967).

may constitutionally classify persons and objects for the purpose of legislative regulation or control and may pass¹⁰ laws applicable only to such persons or objects.

Therefore, the issue of fairness in consideration of the general welfare and the requirement for having a reasonable basis for statutory inequality have been replies of state courts to charges by defendant parents that they have received unequal protection from parental responsibility laws.

Most constitutional challenges have focused on the charges of depriving the parent of property without due process of law by imposing liability without fault of the parent. However, as one case states, "Vicarious liability without fault is not a new concept. It has been upheld against due process challenges in a number of other situations."¹¹ A prominent example of the imposition of liability without fault includes the provision under the workmen's compensation act in which the employer is held liable for injuries to employees.¹² Other examples include the liability without fault of a municipality to a property owner for damages caused by a rioting mob and the vicarious liability of the owner of an aircraft for ground damages caused by the operation of the aircraft.¹³

¹⁰ *Vanthournout v. Burge*, 69 Ill. App. 3d 193, 387 N.E. 2d 341, Cert. denied, 79 Ill. 2d 618 (1979)

¹¹ *Piscataway Tp. Bd. of Education v. Caffiero*, 86 N.J. 308, 431 A. 2d 799 (1981).

¹² *Ibid.*

¹³ *Ibid.*

The courts have also answered defendant parents who cite inadequate due process as grounds for declaring parent liability statutes unconstitutional by citing from Nebbia v. New York:

The guaranty of due process . . . demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be obtained.¹⁴

Central to this aspect has been the additional challenge that due process is violated because the general liability statutes require unreasonable exercise of the police power of the state.

Repeatedly, however, the courts have considered the goals of the parental liability statutes to be within the police powers of the state; primarily because they hold the welfare of the state above that of the individual.¹⁵ Indeed, courts have expressed belief that the state has a legitimate interest in the objective of controlling or reducing juvenile delinquency and of compensating innocent victims of the torts caused by minors by imposing liability upon parents of those children who wilfully or maliciously damage property.¹⁶ Therefore, as the court declared in Rudnay v. Corbett, such statutory law "bears a rational relation to the object sought to be attained".¹⁷ Based on these requirements, the courts have

¹⁴ Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E. 2d 311, 174 (1977).

¹⁵ General Insurance Company of America v. Faulkner, 259 NC 317, 130 S.E. 2d 645 (1963).

¹⁶ Stang v. Waller, Fla. App. 415 So. 2d 123 (1982).

¹⁷ Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E. 2d 171 (1977).

declared that parental liability statutes do not violate due process.

Another constitutional challenge has been the contention of defendant parents that parental liability statutes interfere with the fundamental right to bear and raise children. The courts have not supported this contention, either. Various courts have taken the firm position that the right to bear and raise children is accompanied by the responsibility to see that one's children are properly raised so that the rights of other people are protected.¹⁸ Judicial findings in Watson v. Gradzik¹⁹ concerning this challenge have also been cited in Vanthournout v. Burge²⁰ and Piscataway Bd. of Ed. v. Caffiero.²¹ In fact, in the Piscataway Bd. of Ed. v. Caffiero case, the court found, "The effect of the vicarious liability statute on the decision of individuals to bear or beget children is speculative, at best."²²

In summary, the courts have thus far largely rejected all three contentions of parent defendants who would challenge the constitutionality of parental liability statutes. The societal norm pervades the findings in judicial decisions

¹⁸Watson v. Gradzik, 34 Conn. Sup. 7, 373 A. 2d 191 (C.P. 1977).

¹⁹Ibid.

²⁰Vanthournout v. Burge, 69 Ill. App. 3d 193, 387 N.E. 2nd 341, Cert. denied, 79 Ill. 2d 618 (1979).

²¹Piscataway Tp. Bd. of Education v. Caffiero, 86 N.J. 308, 431 A. 2d 799 (1981).

²²Ibid., p. 806.

presented in this section: Parents hold a unique relationship with their children and should bear a moral responsibility for their behavior. Although many other people--teachers, friends, relatives--influence children, the courts see the parents as having a primary role which makes them ultimately responsible for their children's wrongdoings. "Because parents do have the authority to compel obedience of their children, it would not seem unreasonable to hold them responsible for exercising that authority."²³ In addition, the courts have weighed the general welfare against the individual interest and this concern for the public has permeated many of the findings.

In only one case have defendant parents successfully challenged the constitutionality of a parental liability statute.²⁴ In Corley v. Lewless, the Georgia Supreme Court declared the Act of 1966 to be unconstitutional based on distinctions that this general liability statute had versus those of statutes which had been uniformly upheld until 1961. In Corley v. Lewless, the court declared the general liability statute unconstitutional primarily because there was no limitation on the liability of the parent.²⁵

In reaching its decision, the court researched the issue and found that until that time (1961), only three other such

²³Watson v. Gradzik, 34 Conn. Sup. 7, 373 A. 2d 191 (C.P. 1977).

²⁴Corley v. Lewless, 227 Ga. 745, 182 S.E. 2d 766 (1971).

²⁵Ibid., p. 769.

statutes had been subjected to constitutional challenge. The statutes of Texas, North Carolina, and Wyoming had all successfully met constitutional challenges, but the Georgia Supreme Court found that these three statutes were distinguishable from the Georgia statute.²⁶ In all three cases, the statutes covered only property damages and each statute had a limitation of recovery of \$300 or \$500.²⁷ Therefore, the court reasoned that recovery was in the nature of a penalty rather than for the purpose of compensating the injured parties.²⁸ After stating that the statute "imposes vicarious tort liability solely on the basis of the parent-child relationship,"²⁹ the court declared the statute unconstitutional.

In 1976 the Georgia legislature enacted a new general liability statute with a \$500 limit of recovery for the expressed intent of providing for aid in controlling juvenile delinquency and not for compensating victims. A due process attack was made on the 1976 statute in the case of Hayward v. Ramick; the defendant parents appealed to the Supreme Court of Georgia in 1982.³⁰ The Georgia Supreme Court affirmed the decision of the Superior Court and therefore upheld the constitutionality of Georgia's revised parental liability statute.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid., p. 770.

³⁰ Hayward v. Ramick, 248 Ga. 841, 285 S.E. 2d 697 (1982).

Issues Related to General Property Statutes

Generally, the mere relationship of parent and child does not impose on the parent liability for the torts of the child. Yet, there are circumstances in which a parent may be held liable even under common law. The case of Steinberg v. Cauchois is often cited as providing the most widely accepted ground upon which a parent can be found liable for the torts of his child at common law.³¹ However, under statutory law, a parent may be vicariously liable for the torts of his child. Yet, because such statutory law is in derogation to common law, it must be strictly construed. Statutory law, therefore cannot alter the common law in any way not specifically stated in the wording of the statute itself.

Careless and Negligent Acts

Most general parental liability statutes specify that parents are liable only for their children's "willful" and "malicious" destruction acts. Certainly, several court cases have held that pupils and their parents are not liable for injury to property where the injury stems from any acts of neglect or carelessness. In Lutteman v. Martin, a nine-year-old boy set fire to a barn by lighting the paper he had stuffed into a coffee can.³² His father was sued for damages, but the Connecticut Court of Common Pleas found for the defendant

³¹ Steinberg v. Cauchois, 249 App. Div. 518, 293 N.Y.S. 147 (1937).

³² Lutteman v. Martin, 20 Conn. Sup. 371, 135 A. 2d 600 (1957).

father on grounds that evidence failed to disclose the youngster's act had been willful. Instead, the court characterized the act as simple negligence and cited the following:

Negligence may take on a variety of forms and partake of all manner of degrees. The shortcoming may be slight, or it may be a grievous one. It may result from omission or from commission; from pure inadvertence or from voluntary action. It may be characterized by needlessness, or by a persistence in ill-chosen conduct. But whatever its form or degree, it is something quite apart from wilful or malicious injury, whose characteristic element is the desire to injure, either actually entertained³³ or to be implied from the conduct and circumstances.

Many court cases have yielded decisions in favor of parent defendants whose children have been found guilty of negligent acts.³⁴ Although plaintiffs in these cases had hoped to present their action under authority of parent liability statutes, the decisions were not in their favor because of the absence of any substantial evidence of the willful and malicious acts which were specified in the statutes.

Willful and Malicious Acts

The terms "willful" and "malicious" are of general and widespread legal usage and have accepted meanings.³⁵ In Ortega v. Montoya, the Supreme Court of New Mexico reversed the decision of the Court of Appeals and reinstated the

³³ Ibid., p. 602.

³⁴ See McKinney v. Caball, 40 Mich. App. 389, 198 N.W.2d 713 (1972); Town of Groton v. Medberry, 6 Conn. Cir. 671, 301 A. 2d 270 (1972); Walker v. Kelly, 6 Conn. Cir. 715, 314 A. 2d 785 (1973); Crum v. Groce, Colo., 556 P. 2d 1223 (1976); Sutherland v. Roth, Ala. Civ. App., 407 So. 2d 139 (1981).

³⁵ Sutherland v. Roth, Ala. Civ. App., 407 So. 2d 139 (1981).

decision of the trial court which had found the parent liable for the willful and malicious act of an eight-year-old.³⁶ The court characterized the act based on the generally accepted definition of these legal terms which denote the intentional doing of a harmful act without any rightful course of excuse and without any regard for the consequences.³⁷ The court also found no difficulty in attributing the acts to the eight-year-old because "it is for the trier of fact to determine, based upon the child's age, experience and mental capacity, whether the child acted in a willful and malicious manner."³⁸

Custody and Control

Another commonly required bar to recovery under parental liability statutes is that the minor must be in the custody and control of the parents. Again, the statutes are strictly construed as court cases centering around this issue have demonstrated. For example, two cases resulted in opposite findings for the different defendant parents because of this bar to recovery. In re: James D., the parents of a minor were not held liable for the destruction of a model home which the son and others had set fire to and completely destroyed.³⁹ At the time of this incident, the son had been removed from

³⁶Ortega v. Montoya, 97 N.M. 159, 637 P. 2d 841 (1981).

³⁷Ibid., p. 843.

³⁸Ibid., p. 842.

³⁹re: James D., 295 Md. 314, 455 A. 2d 966 (1983).

the care and custody of the mother and father by a court order. The son had been placed in a particular school by the juvenile services and the youngster had escaped and was absent without leave at the time of the incident. The parents had not seen their son from the time he had escaped until his arrest for the incident. Since the parents did not have actual control and custody of the child at the time of the incident, the Court of Appeals of Maryland did not require them to pay for their son's damages.

However, in the 1965 Repko v. Seriana⁴⁰ case, the parents were held liable for their son's damage to an automobile, even though the youngster was technically under the care of the state. The son had been sent home on an experimental basis from a school for boys and had run away from home after having been there for a week. The court concluded that even if the state had technical custody of the son, the father was responsible for the damages because he had control of his son. The court cited the following as a basis for their ruling: "The duties of a parent belong to the parent while the child is in his control."⁴¹

Even if statutory law does not require either custody or control by the parent, then he may still be liable for the child's willful and malicious damages. In Alber v. Noble, the parents of a youngster under eighteen were held liable for

⁴⁰Repko v. Seriani, 3 Conn. Cir. 374, 214 A. 2d 843 (1965).

⁴¹Ibid.

such damages by their daughter who was living in the home of a boyfriend during the time of her assault on Carole Alber.⁴² The parents of Monika Noble were made financially responsible for actions primarily because at the time of the assault, the 1972 parental liability statute in New Mexico required only that the child be unemancipated and under eighteen years of age and that the damages be the result of willful and malicious activity.⁴³ The court cited the definition of emancipation as ". . . the severance of the parental relationship so far as legal rights and liabilities are concerned."⁴⁴

The issue of legal custody was an important aspect in at least two other cases. In Davis v. Shaw, an aunt was not liable for damages caused by her nephew who had lived with her since the death of his parents.⁴⁵ Although the aunt was generally thought of as the guardian of the nephew, she was not the legally qualified guardian as required by the parental liability statute in Louisiana.⁴⁶ Another case demonstrated that even if the minor marries, moves away from home, and is self-supporting, the parent may be liable.⁴⁷ In Alber v. Ellis, the father was held financially responsible for his son's

⁴² Alber v. Nolle, 98 N.M. 100, 655 P. 2d 456 (1982).

⁴³ Ibid., p. 459.

⁴⁴ Ibid.

⁴⁵ Davis v. Shaw, LA. App., 142 So. 301 (1932).

⁴⁶ Ibid., p. 303.

⁴⁷ Alber v. Ellis, Ohio Com. Pl., 359 N.E. 2d 1022 (1977).

willful and malicious damages because the custody and control of his son had not been taken from the parent by a domestic relations court.⁴⁸

Maximum Amount of Liability

Another legal issue related to parental responsibility statutes involves the maximum amount that parents may be ordered to pay, per malicious incident. One case which illustrates that parents may be charged with the maximum liability arising from different tortious acts is Buie v. Longspaugh.⁴⁹ In this particular case, the defendant parents' minor daughter and her friend entered three homes, each owned by a separate plaintiff, and after plugging the drains, turned on water which resulted in extensive flood damage to each house.⁵⁰ The Texas Court of Civil Appeals affirmed the lower court's decision which held the state's parental liability statute to a \$5,000 limit per tortious act, not \$5,000 for a series of tortious acts in a single episode.⁵¹ Therefore, the defendant parents paid a judgment total of \$15,000 plus interest and attorney's fees. One reason for the court's decision was to allow the property owners to receive the greatest recovery possible.⁵²

⁴⁸Ibid., p. 1036.

⁴⁹Buie v. Longspaugh, Tex. Civ. App., 598 S.W. 2d 673 (1980).

⁵⁰Ibid.

⁵¹Ibid.

⁵²Ibid.

Relief from Insurance for Liability

Parents who seek insurance coverage for any liability brought about by the action based on a parental responsibility statute may find that such coverage may very well depend upon the interpretation of the different policy provisions.⁵³ Although some insurance policies are often liberally construed to cover parents who are sued under parental responsibility laws, others have been more narrowly construed and parent-defendants have been denied such coverage. Two cases illustrate the contrasting judgments by the courts.

In Walker v. Lumbermen's Mutual Casualty Company, the parent who had been refused coverage when he had lost his case involving a suit under a parent liability statute brought action against the insurance company.⁵⁴ Because the policy had defined the term "insured" as including every member of the family, the Texas Court of Civil Appeals ruled that the definition was intended to broaden the coverage of the policy.⁵⁵ Therefore, the parent received coverage under the insurance policy because the policy provision had been liberally construed by the court.

However, in Randolph v. Grange Mutual Casualty Company, the coverage for parental liability according to statutory law

⁵³ Michael A. Axel, "Statutory Vicarious Parental Liability: Review and Reform," Case Western Reserve Law Review, 32 (1981-82): 584.

⁵⁴ Walker v. Lumbermen's Mutual Casualty Co., Tex. Civ. App., 491 S.W. 2d 696 (1973).

⁵⁵ Ibid., p. 699.

was denied.⁵⁶ In this case, the policy provisions were strictly construed. The parent who had been found liable for his son's property damage had asked for coverage because his son's act was unexpected and therefore, an accident.⁵⁷ The Ohio Supreme Court upheld the denial of coverage:

From the fact that liability may have been unexpected or 'accidental' to appellant, it does not follow that the damage was unexpected or accidentally caused. Indeed, appellant concedes that the damage was not the product of an ⁵⁸accident, but of willful and intentional misconduct.

These two cases illustrate that judicial findings may differ on the issue of insurance coverage for parents held liable for damages by their children.

Insurance Company as Subrogee

At least two court cases have concluded that a tort victim's subrogated insurance company is entitled, as subrogee, to bring suit in its own name against the tortfeasor's parent.⁵⁹ These cases have established the right of the insurance company that has paid the claim submitted by the tort victim, to seek direct recourse under its own company name. In Motorists Mutual Insurance Company v. Bill, the Ohio

⁵⁶ Randolph v. Grange Mutual Casualty Co., 57 Ohio St. 2d 25, 385 N.E. 2d 1305 (1979).

⁵⁷ Ibid., p. 1306.

⁵⁸ Ibid.

⁵⁹ See General Insurance Company of America v. Faulkner, 259 N.C. 317, 130 S.E. 2d 645 (1963); Motorists Mutual Insurance Company v. Bill, 56 Ohio St. 2d 258, 383 N.E. 2d 880 (1978).

Supreme Court declared that the insurance company could seek liability under the Ohio parental responsibility law.⁶⁰ The court provided the following reason:

. . . the foresighted insured who has provided insurance coverage for his own damages . . . should not provide an escape hatch for parents who would have otherwise been held accountable to the owner for the damaging acts of their minor children.⁶¹

Conclusions

Since statutory law is in derogation to common law, it must be strictly construed. Parental liability laws pertaining to general property damage are examples of statutory laws that have certain requirements that must be met before liability can be imposed. The bars to recovery are specified within the statutes and must be strictly applied before restitution is granted to victims. The exact wording and conditions must be met before parental liability is upheld by the courts. The most commonly stated bars to recovery demand that the destruction be "willful" and "malicious" and that the parents have "custody and control" of the child. The circumstances of a particular case must adhere to these requirements in the opinion of the court before parent defendants are made to assume any financial responsibility for damages. Those damages may also include the maximum liability for each incident of destruction rather than for a limit based on a series of acts

⁶⁰Motorists Mutual Insurance Company v. Bill, 56 Ohio St. 2d 258, 383 N.E. 2d 880 (1978).

⁶¹Ibid., p. 885.

88

involved in one episode. The issue of insurance coverage for parents who are held liable under statutory law is dependent upon the circumstances of each case and whether the policy provisions are strictly construed by the court. Finally, three court cases have allowed insurance companies to serve as subrogees in bringing suit against the parents of a tortfeasor under the parental responsibility laws.

Issues Related to School Property Statutes

Certainly, when minors damage school property restitution can be sought under the parental liability statutes for destruction of general property. However, several states have also enacted specific statutory laws to cover vandalism of school property. Just as the parental responsibility laws have particular provisions barring recovery from parents, so do these school-related statutes. Since the pupil/parent liability statutes for destruction are also in derogation to common law, they must also be strictly construed.

Damages During/After School Hours

The exact wording of the liability statutes pertaining to destruction of school property must be strictly construed. One case in particular illustrates this requirement by the courts. In the 1955 Lamro Independent Consolidated School District v. Cawthorne case, the Supreme Court of South Dakota reversed the judgment of the Circuit Court and did not require the liability of the parents for damages caused by their son.⁶²

⁶² Lamro Independent Consolidated School District v. Cawthorne, 76 S.D. 106, 73 N.W. 2d 337 (1955).

Althought the sixteen-year-old student had broken into the school and damaged school property, he and another boy had done so at night. According to the statute upon which the plaintiff had based its claim, the parents were liable only for those acts "upon complaint of a teacher to any member of the school board."⁶³ In the opinion of the South Dakota Supreme Court, the statutory language did not cover those acts which were done at night when the pupil would not be under the supervision of the teacher. Therefore, the parents could not be held liable for the damages which he had actually helped to do.

Ironically, four years after the South Dakota Supreme Court issued its ruling in the Cawthorne case, the Superior Court of New Jersey heard a case with similar circumstances. However, in the New Jersey case of Board of Education v. Hansen, the ruling was against the defendant parents.⁶⁴ They were held liable for their son's damages to school property even though this vandalism occurred after school hours. The counsel for the parents had argued that the language of the statute pertaining to the destruction of school property implied that the liability was applicable only during school hours.⁶⁵ Although the words, "on complaint of the teacher" had formerly been a part of the New Jersey statute dating

⁶³ Ibid.

⁶⁴ Palymra Bd. of Education, Burlington Co. v. Hansen, N.J. Super, 567, 153 A. 2d 393 (1959).

⁶⁵ Ibid., p. 395.

back to 1867, those words were omitted in subsequent enactments of the statute.⁶⁶ The court concluded, therefore, that

The New Jersey statute omits this phrase 'on complaint of the teacher,' and . . . it is reasonable to assume that the New Jersey Legislature did not intend to so restrict or qualify the liability of the parents. Statutes should be interpreted by giving their words used therein their words and ordinary meanings.⁶⁷

The parents were held liable in Board of Education v. Hansen, then, because the statute was strictly construed and there were no bars to recovery limiting liability only during school hours.

Careless or Negligent Acts

Not only do statutes for parental liability for damages to general property require that such damages be the result of "willful" and "malicious" activity, but those statutes relating to vandalism of school property do, also. The courts have generally been in agreement that pupils and their parents cannot be required to pay for damages to school property where the damages have been the result of carelessness or neglect.⁶⁸ In the late 1800's, three court cases termed unreasonable any rule that would suspend or expel students for careless acts until damages could be paid. In 1880, the Supreme Court of Iowa ruled in the case of Perkins v. Board of Directors of the Independent School District of West Des Moines that a youngster

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Newton Edwards, The Courts and the Public Schools (Chicago: University of Chicago Press, 1940), p. 532.

who had accidentally batted a ball through a window be reinstated because he "was guilty of no breach of discipline or of any offense against good order."⁶⁹ In 1888, the Supreme Court of Indiana also decided in favor of the child's reinstatement in State v. Vanderbilt and the court concluded that "carelessness on the part of children is one of the most common, and yet one of the least blameworthy of their faults."⁷⁰ The Supreme Court of Michigan in 1889 ruled in Holmes v. School Trustees of Avon that such a rule was unreasonable because all children are careless and poor children could be denied the common-school education which the state had guaranteed to them.⁷¹

The requirement that destruction of school property actually qualify as vandalism before a pupil be expelled or suspended or the pupil and/or his parents held liable for damages has been addressed by the courts since the 1800's. For example, in 1981, the court in Piscataway Township Board of Education v. Caffiero, reviewed the dual purposes of such statutory law which were not only to help recover from the expense of damages, but also to deter delinquent behavior.⁷² Therefore, the New Jersey statute could not serve as the base for a claim against any action other than for damages caused by willful and

⁶⁹Perkins v. Independent School District of Des Moines, 56 Iowa 476, 9. N.W. 356 (1880).

⁷⁰State v. Vanderbilt, 116 Ind. 11, 18 N.E. 266 (1888).

⁷¹Holman v. Trustees of School District No. 5, 77 Mich. 605, 43 N.W. 996, 6 L.R.A. 534 (1889).

⁷²Piscataway Township Board of Education v. Caffiero, 86 N.J. 308, 431 A. 2d 799 (1981).

malicious acts.⁷³

In a related aspect involving an indefinite suspension until all damages for willful and malicious injuries could be paid for, the Texas Court of Civil Appeals ruled in Allen v. Chacon that the student be allowed to return to school before restitution was made.⁷⁴ A youngster had served one year of an indefinite suspension for allegedly setting fire to his junior high school before the parents successfully secured a temporary injunction restraining the school officials from refusing to re-admit their son.⁷⁵ The Court of Civil Appeals upheld the District Court's temporary injunction against suspension for two major reasons: (1) it was the policy of the school district to take into account the financial condition of parents requiring payments for vandalism; and (2) the Chacons were experiencing financial difficulties since they were "persons of very slender means financially."⁷⁶ The youngster was allowed to return to school before any damages were paid to the school district, even on an installment basis, and before the case came before a trial court.

Maximum Amount of Recovery

Another issue involved in applying statutory laws to

⁷³Ibid., p. 803.

⁷⁴Allen v. Chacon, Tex. Civ. App., 449 S.W. 2d 289 (1969).

⁷⁵Ibid., p. 290.

⁷⁶Ibid., p. 292.

school vandalism involves restitution for damages that result from more than one incident. The case of In re John H.⁷⁷ found that the parents be given maximum liability for two separate incidents of vandalism which resulted in \$200,000 to \$400,000 in damages to an elementary school and to a junior high school. The Court of Appeals in Maryland spoke to several aspects of this case in affirming the decision of the Court of Special Appeals. A major aspect was that although the damages occurred during the same evening, the vandalism was determined to be from two separate incidents because (1) they were two different schools which were more than a block apart; and (2) the vandalism of the schools did not take place at the same time.⁷⁸ Therefore, the parents were assessed \$10,000, or the maximum amount allowed under Maryland's general parental liability law which set a limit of \$5,000 for all acts arising out of a single incident.⁷⁹

Insurance Company as Subrogee

There has been one school-related case in which the court has allowed an insurance company to serve as subrogee and therefore to bring suit under the parental liability statute. In 1963, the Supreme Court of North Carolina in General Insurance Company of America v. Faulkner allowed the insurance

⁷⁷re: John H., 49 Md. App. 595, 433 A. 2d 1239 (1981), aff'd 293 Md. 295, 443 A. 2d 594 (1982).

⁷⁸Ibid., p. 598.

⁷⁹Ibid., p. 669.

company to sue parents of a minor who had set fire to the curtains and drapes of a school auditorium.⁸⁰ The damages totaled \$2,916.50 and the insurance company paid this amount to the Kinston City Board of Education.⁸¹ The North Carolina Supreme Court allowed the insurance company then to bring suit against the parents of the minor under the parental liability statute which allowed \$500 as maximum recovery. One reason the court supported the subrogated claim of the insurance company was because it reasoned that otherwise, "the defendants would receive the benefit of the insurance without having to pay a cent for it."⁸²

Conclusion

The legal issues related to school property statutes are similar to those that pertain to general property statutes. Clearly, these statutes must also be strictly construed and court cases have been determined on the exact wording of those statutes. For over a century, the courts have not supported the suspension and expulsion of pupils or the liability of pupils and their parents for damages incurred as the result of carelessness. The courts have required that in order for liability to be pursued, the pupil should have performed "willful" and "malicious" acts. Parents may also be charged with individual incidents of

⁸⁰General Insurance Company of America v. Faulkner, 259 N.C. 317, 130 S.E. 2d 645 (1963).

⁸¹Ibid., p. 647.

⁸²Ibid., p. 652.

vandalism and, therefore, the total maximum amount of recovery can depend on the number of separate incidents. Finally, a board of education can maintain insurance coverage for acts of vandalism, and after paying a claim, an insurance company can serve as subrogee under its own name in an action under statutory law against the parents of a tortfeasor.

Chapter V
REVIEW OF COURT DECISIONS
Overview

A review of the major court decisions related to parental responsibility laws reveals a variety of issues which have been brought before the courts of the forty-nine states that have enacted such statutory legislation. The decisions have been concerned with the liability of parents for their children's destruction of general property and the specific destruction of school property. The majority of the court decisions presented in this chapter have been since the 1950's. It was during the late 1950's that many states responded to the public's reaction to rising rates of juvenile delinquency by making parents vicariously liable for the destructive acts of their children. Since vandalism of both general and school property has continued to be a costly problem, the courts have had to continue to settle controversies concerning the application of the parental liability statutes from the 1950's to the present.

As a review of the court decisions indicates, all of the statutes have been found to be constitutional, except for one. Even this statute, since its revision, has passed constitutional muster according to the 1982 decision of its state supreme court. The courts have decided consistently, too, that the statutes must be strictly construed and these decisions, depending on the specific facts and circumstances of individual cases, have been both for and against the defendant parents. The courts have also made pertinent decisions regarding the

amount of recovery and the practice of allowing insurance companies to serve as subrogee and the parent's use of his homeowner's policy in order to seek financial relief from liability payments.

Organization of Cases Selected for Review

The first category of cases selected for review are those cases in which the constitutionality of various parental liability statutes has been challenged. Parent defendants have claimed in these cases that the parental responsibility laws either deny them equal protection, due process, or interfere with their fundamental right to bear and raise children. The following cases are included in this category:

1. Kelly v. Williams (1961)
2. Mahaney v. Hunter Enterprises, Inc. (1967)
3. Corley v. Lewless (1971)
4. Watson v. Gradzik (1977)
5. Rudnay v. Corbett (1977)
6. Vanthournout v. Burge (1979)
7. Board of Education of Piscataway Township v. Caffiew (1981)
8. Hayward v. Ramick (1982)
9. Stang v. Waller (1982)

The second grouping of cases reviewed in this chapter contains those cases which illustrate the fact that the parental liability statutes are in derogation of common law and, therefore, must be strictly construed. Not only must the exact wording be adhered to, but the requirements for recovery must also be

strictly applied before action can be taken against defendant parents. Two of the major conditions for recovery are that the destruction is willful and malicious and that the parents are liable if they have custody and control of the child. The selected cases in this category, then, are the following:

1. Lamro Independent Consolidated School District v. Cawthorne (1955)
2. Lutteman v. Martin (1957)
3. Board of Education of Borough of Palmyra in County of Burlington v. Hansen (1959)
4. Lamb v. Randall (1980)
5. In re James D. (1983)

The third category of selected cases are those that relate (1) to the limits on the amount of recovery that might be obtained under certain conditions, (2) to the issue of whether an insurance company can serve as subrogee, and (3) to the issue of whether a defendant parent can seek relief for liability from his homeowner's insurance policy. The cases included in this category are the following:

1. General Insurance Company of America v. Faulkner (1963)
2. Walker v. Lumbermens Mutual Casualty Company (1973)
3. Buie v. Longspaugh (1980)
4. In re John (1982)

Cases Related to Constitutional Challenges to Statutes

Kelly v. Williams

346 S.W. 2d 434 (Texas 1961)

Facts

The Court of Civil Appeals of Texas received this case on appeal from the County Court, Dallas County. The case involved a recovery for damages to the appellee's car after it had been stolen by the appellant's minor son. A judgment from a non-jury trial had been obtained by W.M. Williams against Warner M. Kelly, the father of the fifteen-year-old Warner S. Kelly. The minor had stolen Williams' car in Dallas, and en route to Denton, Texas, had refused to stop at the direction of a state highway patrolman. A high-speed chase, with the minor driving at speeds in excess of 100 miles an hour, resulted in the youngster's driving the car into a ditch. Although he was unharmed, there were extensive damages to the car. The County Court, Dallas County, issued a judgment against the minor's father under the provisions of the state's act which allowed recovery from the parents of minors for damages due to malicious and willful destruction of property. The limit of recovery at that time in Texas was for \$300. The appellant then appealed on the assertion that the statute was unconstitutional. The constitutional challenge rested on the following three contentions:

1. The caption of Article 5923-1, Vernon's Annotated Civil Statutes, did not clearly declare the purpose of the act because it made no direct reference to the liability of parents for the torts of their minors.

2. The act was in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States, primarily because it denied parents equal protection and was violative of due process.

3. The act was unenforceable because it was so vague, general, and indefinite.¹

Decision

The Court of Civil Appeals of Texas dismissed each of the three challenges to the statute's constitutionality. It ruled that even though the title did not include "liability of parents" its omission did not violate any requirements for titling acts as determined by the Texas Constitution.² The Court of Civil Appeals also maintained that there are reasonable grounds for restricting the statute's liability to parent(s) of minors who commit property damages in contrast to holding others responsible.³ As to the third contention, the points were found to have no basis when applied to this and they were, also, over-ruled. Therefore, the judgment of the trial court was affirmed.

Discussion

This case was the first one that presented a constitutional challenge to a parental liability statute, although twenty-four

¹Kelly v. Williams, 346 S.W. 2d 434 (Texas, 1961).

²Ibid., p. 436.

³Ibid., p. 437.

other states had such legislation by 1961. The Court of Civil Appeals of Texas took note of this fact in offering its decision in this case. It also referred to the numerous law review articles which had supported such law and it specifically cited a passage from the Villanova Law Review, vol. 3, p. 529.⁴ This passage stressed the fact that the concept of parental liability for the torts of children was not a new one to such areas of the world as Europe, Central and South America, Quebec, Louisiana, Hawaii, and Puerto Rico. It also stated the widely held belief that it is more fair for parents of tortfeasors to pay for their damages than for innocent victims to do so. This line of reasoning and the grounds on which the constitutional challenges were over-ruled in this case have been echoed in other such cases since 1961.

Mahaney v. Hunter Enterprises, Inc.

426 P. 2d 442 (Wyoming 1967)

Facts

This case came on an appeal from a judgment rendered by the District Court of Campbell County, Wyoming, which had been in favor of the plaintiff. The plate-glass store window of Hunter Enterprises, Inc. had been broken and property had been stolen by the thirteen and sixteen-year-old sons of Mr. and Mrs. Claude Mahaney. The defendant-parents had

⁴Ibid., p. 437.

unsuccessfully asked for a dismissal of the case on the basis of "a failure to state a claim upon which relief could be granted and of the unconstitutionality of the statute under which the action was brought."⁵ The defendant-parents appealed on the following specific grounds:

1. The subject of the 1965 act was not clearly expressed in its title as required by the Wyoming Constitution.
2. The statute deprived them of property without due process of law.
3. The statute deprived them of equal protection of law.
4. The statute was penal in nature and attempted to fix vicarious liability on them which was contrary to common-law principles of liability for tort damages.⁶ However, judgment was made in the amount stipulated by the state's parental liability statute and, therefore, an appeal was presented to the Supreme Court of Wyoming.

Decision

The trial court's decision was affirmed by Wyoming's Supreme Court. Each of the defendant's points was over-ruled and the statute was declared constitutional. The court took particular note, especially in regard to the contentions that the defendant parents were denied equal protection and deprivation of property without due process, that their challenge

⁵ Mahaney v. Hunter Enterprises, Inc., 426 P. 2d 442 (Wyo., 1967).

⁶ Ibid., p. 443-444.

to the statute's constitutionality was really without favorable precedent since "only twice in the Nation have constitutional questions been raised against some twenty-six state statutes which seek to accomplish a similar result and in each instance the statute was held constitutional.⁷

Discussion

The Supreme Court of Wyoming relied heavily in this case on the findings of two other cases which had contained constitutional challenges to the parent liability statutes of two other states. It cited the findings in a North Carolina case which will be discussed later in this review, General Insurance Company of America v. Faulkner,⁸ as well as the first case discussed in this chapter, Williams v. Kelly. To answer the question of whether there was deprivation of property without due process, the Supreme Court of Wyoming stressed the North Carolina court's findings that such statutory law was within the police power of the state. To address the issue of equal protection, the court reiterated the Texas court's ruling, including the belief that the statute operated equally upon all of the class involved. This particular case revealed the pattern of citing the findings of other decisions regarding the constitutionality of parental liability statutes as these

⁷Ibid., p. 437.

⁸General Insurance Company of America v. Faulkner, 130 S.E. 2d 645 (North Carolina, 1963).

challenges began to emerge by the 1960's. The reasonings of one state court, especially in regard to the guarantees of the Fifth and Fourteenth Amendments to the Constitution, began to be cited as the basis for another state court's decision.

Corley v. Lewless

182 S.E. 2d 766 (Georgia 1971)

Facts

In this particular case, twelve-year-old Bruce Brady was charged with striking another youngster named Clark Lewless with a brick and causing serious personal injuries to the ten-year-old. The father of the injured youngster brought suit for damages against Bruce Brady and his mother, Mrs. Doris Brady. His uncle Edward Corley was also included because Bruce and his mother were temporarily living in Mr. Corley's home since the mother's separation from Bruce's father.

After the trial court found for the plaintiff in this case, the defendant mother and the uncle who stood in loco parentis appealed to the Superior Court, Richmond County, Georgia. The Superior Court over-ruled the motion for summary judgments and the defendant mother and uncle then appealed to the Supreme Court of Georgia. At issue was the constitutionality of the revised Georgia statute passed in 1966 which declared the liability of parents or other persons in loco parentis having custody and control over a minor child. Under this statute, these parents or persons in loco parentis were held vicariously liable for the child's willful and wanton acts.

Decision

In its review of the case, the Supreme Court of Georgia emphasized that at common law vicarious liability could not be grounded solely on the parent-child relationship, but nevertheless, a suit could be brought under the provisions of the statutory law. On the issue of the statute's constitutionality, however, all of the justices concurred that the state's parental liability statute was unconstitutional.

The Supreme Court of Georgia maintained the statute to be different from other state statutes because it was not limited to property damage and it contained no limit for the liability of parents. These features distinguished the 1966 Georgia statute from other statutes, according to this court. The unlimited amount for recovery "seeks to provide compensation in full for property damage or for personal injury."⁹ The court reasoned that limiting the maximum amount of recovery resulted in the penal nature of the other state statutes. However, Georgia's revised statute created a tort liability without fault which would otherwise not exist.¹⁰

Discussion

Prior to this case, three cases had been brought before state courts in order to challenge the constitutionality of the parental liability statutes of Texas, North Carolina, and Wyoming. All three of these statutes had been declared

⁹ Corley v. Lewless, 182 S.E. 2d 766 (Georgia, 1971).

¹⁰ Ibid., p. 770.

constitutional. In this case, the issue of compensation in full to innocent victims versus financial penalties to defendant parents was the primary consideration. The court cited the following from the North Carolina court cases.

G.S. § 1-538.1 and similar statutes, appear to have been adopted not out of consideration for providing a restorative compensation for the victim of injurious or tortious conduct of children,¹¹ but as an aid in the control of juvenile delinquency.

Ironically, since this case, several states have enacted statutes with increased amounts as limits for recovery and some have provisions for the full amount of damages to be recovered. The question of compensation versus penalty has yet to be successfully challenged in cases involving these statutes. The parental liability statutes of Louisiana and Hawaii are obviously compensatory in nature. One significant aspect of this case, then, is the illustration it presents that the rulings of state courts are not binding throughout the United States.

Watson v. Gradzik

373 A. 2d 191 (Connecticut 1977)

Facts

After action for damages was brought against the parents of an unemancipated minor for wrongful conversion of the plaintiff's property, the defendants demurred to the complaint on the ground that the parental liability statute on which the action was based was unconstitutional. The defendants

¹¹General Insurance Company of America v. Faulkner, 130 S.E. 2d 645 (North Carolina 1963).

claimed that the parental liability statute restricted their fundamental right to bear and raise children and this was the primary challenge to Connecticut's general statute in this case.

Decision

The Court of Common Pleas maintained that the parental liability statute was constitutional and over-ruled the defendant's demurrer. It refused the argument by the defendants that their fundamental right to bear and raise children was interfered with solely because they were held responsible for their child's wrongdoings. Instead, the court issued the following reasoning for its decision:

1. With the right to bear and raise children comes the responsibility to see that one's children are properly raised so that the rights of other people are protected.
2. Because parents do have the authority to compel obedience of their children, it would not seem unreasonable to hold them responsible for exercising that authority.
3. The defendants failed to prove that the statute did not serve the public health, safety, and morals in a reasonable manner.
4. Similar statutes of other states had been declared constitutional.
5. The statute had a rational relationship to its objectives.¹²

Discussion

Several statements in this case have been frequently cited in similar cases since 1977. In this case, the role

¹²Watson v. Gradzik, 373 A. 2d. 191 (Connecticut, 1977).

of the parent is viewed as most influential upon the child, and the parent is assigned the primary responsibility for the actions of the child. These views echo the public's sentiments regarding the parent-child relationship which were initially responsible for the enactment of parental responsibility laws in the 1950's. The statements by the Court of Common Pleas reiterated these views in 1977. They also weighed the welfare of the public against the interests of the individual in this decision.

Rudnay v. Corbett

374 N.E. 2d 171 (Ohio 1977)

Facts

This case was received from the Cleveland Municipal Court which had dismissed a suit brought by John R. Rudnay for damages to his automobile. The plaintiff-appellant had filed this suit pursuant to Ohio's Revised Code 3109.09 on August 10, 1973. He had wanted to recover for damages that allegedly two eighteen-year-olds, Charles Holt and Lawrence Corbett, did willfully do to his car, and on each count, Mr. Rudnay asked for judgment of \$2,000 for compensatory loss and for court costs. The parents of the two minors answered the suit separately.

In this case, the defendant-appellee Holt had answered the suit by denying the allegations and by claiming that the statute of limitations barred any such action Mrs. Shirley Corbett, the other parent who was a defendant-appellee in this case, had also answered separately by issuing a general denial of the

allegations but not raising an affirmative defense. Both defendant-appellees orally moved for summary judgment based on the defenses of lack of jurisdiction over the subject matter and the running of the statute of limitations.¹³ After briefs in support of and in opposition to the motions had been filed, the trial court over-ruled appellee's motion for summary judgment. However, on December 10, 1975, the trial court dismissed appellant Rudnay's complaint. The trial court did decide that R. C. 3109.09, the statutory law providing for the liability of parents for the willful damages caused by their children, was penal in nature, and was therefore subject to the one-year statute of limitations as called for in R. C. 2305.11.¹⁴ As a result of this decision, John Rudnay appealed to the Court of Appeals of Ohio, Cuyahoga County.

Decision

The Court of Appeals of Ohio agreed with the appellant's claim that the two-year statute of limitations set forth in Ohio Revised Code 2305.10 applied to actions brought under R. C. 319.09.¹⁵ The court based this decision on their determination that the legislature intended R. C. 3109.09 to be compensatory in nature rather than punitive in nature. The court examined both the language and the legislative

¹³Rudnay and Corbett, 374 N.E. 2d 171 (Ohio, 1977).

¹⁴Ibid., p. 172.

¹⁵Ibid., p. 173.

history of the parental liability statute in order to support its decision.

The court did not agree with the appellee parents (Corbett and Holt) that the findings of the statute to be compensatory in nature would declare it to be unconstitutional. Although the appellees cited the previously discussed case of Corley v. Lewless to support their claim, the court characterized the Ohio parental liability statute as being distinguishable from the 1966 Georgia statute. While the Georgia statute provided for unlimited liability, the Ohio statute did have a ceiling of \$2,000 for recovery.¹⁶ Therefore, the Court of Appeals of Ohio reversed the judgment of the lower court and remanded the case for further proceedings according to law.

Discussion

This case provided another important example of the constitutional challenge of a parental liability statute on the basis of its being punitive or compensatory. The Ohio statute at issue in this case had been revised in 1969 to allow a maximum recovery of \$2,000, which the court concluded that the legislature had "intended this section to provide an up-dated, realistic ceiling on recovery."¹⁷ Although the increased amount was deemed more helpful and practical to

¹⁶Ibid., p. 174.

¹⁷Ibid.

victims, the fact that there was a limit imposed supported its constitutionality in the view of this state court.

Vanthournout v. Burge

387 N.E. 2d 341 (Illinois 1979)

Facts

In the trial court case, the plaintiff, John Vanthournout, filed a small claims complaint against Don Burge, the defendant parent whose eleven-year-old son had stolen the plaintiff's car and had damaged the car by driving it off the road. The trial court found for the plaintiff and entered judgment against the defendant father for \$498.72 plus court costs. The appeal from this case was based on the constitutional challenge to the Illinois Parental Responsibility Law (Illinois Revised Statutes, 1977, ch. 70, pars. 51-59). The contentions upon which this constitutional challenge rested were the following:

1. The parent was deprived of property without due process by the imposition of liability without regard to fault, and this was an irrational and unfair imposition.
2. The Parental Responsibility Act created an unreasonable classification through this vicarious liability when sociologists and task force reports have declared that many factors contribute to juvenile delinquency, especially since the traditional role of the family has been eroded by new institutions.
3. The Act was not a valid exercise of the police power of the state and it did not have a reasonable relationship to the objectives that it purported to obtain.¹⁸

¹⁸ Vanthournout v. Burge, 387 N.E. 2d 341 (Illinois, 1979).

Decision

In reaching its decision, the Appellate Court of Illinois first cited six major court cases in which various state statutes had withstood constitutional challenges based on similar contentions. The court pointed out that only in Corley v. Lewless was a parental responsibility law found to be unconstitutional and this was only because no limitations had been placed on the amount of recovery.¹⁹ Then, the court cited those cases in which the Illinois courts of review had analyzed the due process and equal protection requirements. The court cited the following from Anderson v. Wagner:

It is, however, generally true that, in order for a statute to pass constitutional muster in terms of the due process clause, the statutory means selected by the legislature must bear a real and substantial relation to the objective sought to be regulated for the health, morals, welfare, and safety of the community....The traditional test for equal protection is not whether a statute results in unequal treatment, but whether the statutory inequality ²⁰ of treatment has a reasonable basis in facts.

In answering the second contention, the court reviewed the dual purpose of the Parent Responsibility Act: "(1) to compensate innocent victims of juvenile misconduct that is willful and malicious; and (2) to place upon the parents the obligation to control a minor child so as to prevent intentional harm to others."²¹ According to the

¹⁹ *Ibid.*, p. 343.

²⁰ *Ibid.*

²¹ *Ibid.*

court, these were legitimate goals and placing the burden on the parent-child relationship seemed to the court to be reasonably related to such goals.

Building on this reasoning, the court decided that the statute was a fair and reasonable exercise of police power of the state. Therefore, the defendants had not, in the opinion of the court, met the burden of showing the unconstitutionality of the Parent Responsibility Law.

The Appellate Court affirmed the decision of the lower court and declared the statute to be constitutional.

Discussion

This case is particularly significant because it demonstrates that the court hearing the case found the role of the parent and the parent-child relationship itself still to be of prime importance in determining juvenile delinquency. This decision came in 1979, but this same view, that parents are mainly responsible for how their children behave, was the overwhelming public sentiment that brought about what some termed "punish the parent laws" in the late 1950's and early 1960's when juvenile delinquency rates were increasing. The arguments of sociologists and the findings of task forces were rejected by this court. No other influences were considered as great as the parent's role. The court also reiterated the responsibility assigned to the parent in the child's upbringing. It stated clearly that parents have an obligation to control their children in the interests of the general public.

Board of Education of Piscataway Township
v. Caffiero and Board of Education of
the Borough of Roselle v. Monagas

431 A. 2d 799 (New Jersey 1981)

Facts

The Board of Education of Piscataway Township filed a civil complaint against three students alleging that the students broke into Piscataway High School on May 9, 1976. Extensive damage was done to the high school by these minors who were enrolled in the school system. The plaintiffs filed against the defendants and each of the parents in order to seek recovery for damages on the grounds of either negligent supervision of the minors under the New Jersey statute 2A: 53A-15 or on the grounds of vicarious liability under the New Jersey statute 18A: 37-3.²² Two families, the Caffieros and the O'Donnells, denied the allegations and raised separate defenses which included the unconstitutionality of the vicarious liability statute. A default judgment, however, was entered against the Martones after presentation of proof by the plaintiff.²³ When the plaintiff asked the trial court for a summary judgment against the parents for the damages caused by their sons, the court held the vicarious liability statute (N.J. S.A. 18A: 37-3) unconstitutional. It declared the statute to be violative of due process. When the plaintiff made a motion for leave

²²Piscataway Township Board of Education v. Caffiero, 431 A. 2d 799 (New Jersey 1981).

²³Ibid., p. 801.

to appeal, the court granted the motion and consolidated the appeal with Board of Education of Roselle v. Monogas.²⁴

The Roselle case was quite similar to that of Piscataway. The Board of Education had filed suit against Angel Monagas and his parents pursuant to N.J.S.A. 18A:37-3. Not only did the defendants deny the allegations, but they also raised as a separate defense the unconstitutionality of the vicarious liability statute. When the parents successfully moved for a dismissal of the claim against them, the trial court granted the Board of Education leave to appeal, in consolidation with Piscataway.²⁵

Decision

Both trial court orders were reversed by a divided Appellate Division which declared the statute to be constitutional and, therefore, the parents were vicariously liable under the statute for the damages done to the school by their sons.²⁶ The defendants then filed a motion to appeal to the New Jersey Supreme Court which affirmed the decision of the Appellate Division in declaring the statute constitutional. The statute which is part of New Jersey's education laws reads as follows:

The parent or guardian of any pupil who shall injure any school property shall be liable for damages for the amount of the injury to be collected

²⁴Ibid., p. 802.

²⁵Ibid.

²⁶Ibid.

by the board of education of the district in any court of competent jurisdiction, together with costs of suit.²⁷

Before the New Jersey Supreme Court discussed its reasoning for declaring the statute constitutional, it outlined the issues pertaining to the scope of the statute. The court presented the following:

1. The statute was not applicable to parents generally for damages caused by their children, but the term "pupil" limited it to parents of public school children.
2. Since one purpose of the statute was to help discipline students, the words "parents or guardian" referred to the person(s) who were legally responsible for the pupil.
3. The damages must have resulted from willful or malicious acts.²⁸

All of the members of the court, except one, supported the constitutionality of the statute on the following grounds:

1. Although the defendants believed that they should be held liable for their own deeds, the concept of vicarious liability was not a new one and has been upheld against due process challenges in numerous situations when the means has had a rational relationship to obtaining an objective.
2. The parent-child relationship provides a rational basis for imposing liability and is a reasonable means for accomplishing the purpose of compensation for innocent victims and for deterrence of juvenile delinquency.
3. The fundamental right to bear and raise children is not infringed upon by this statute.
4. The right to a free public education as protected by the New Jersey State Constitution is not burdened by this statute because the liability is imposed on parents, not the children who should be subjected to

²⁷Ibid.

²⁸Ibid., p. 803.

reasonable measures designated to promote discipline in the schools.

5. The statute meets the requirement of equal protection because it rationally furthers a legitimate governmental purpose.²⁹

The New Jersey Supreme Court upheld the constitutionality of the statute that required vicarious liability of parents for the willful damages to school property by their children. However, one justice dissented and in the process, declared the statute a "statutory relic, created but a few short years after the Civil War, prior even to the adoption of the Fourteenth Amendment, in the 'spare-the-rod' era."³⁰ He believed the statute not only promoted questionable policy, but it would adversely affect the poor and be used against "parents of children who have remained immune to their parents' best efforts at the world's most difficult job, parenting."³¹

Discussion

Clearly illustrated in this case is the continuing argument over the issue of whether it is fair to assign vicarious liability to parents. The contentions presented in this rather recent case indicate that there are still two sharply different views on this matter since the parental responsibility laws were first enacted. On the one hand, there is the opinion that many factors and influences contribute to juvenile delinquency, and therefore it is wrong to place the responsibility

²⁹Ibid., pp. 803-807.

³⁰Ibid., p. 808.

³¹Ibid.

squarely on the shoulders of the parents, regardless of their own lack of wrongdoing. This view has been espoused by many of the defendant parents who suggest that such vicarious responsibility is inherently wrong and unconstitutional.

On the other hand, in this case and the others before it, the different state courts have consistently upheld the parental liability statutes as being constitutional, except for what some have termed an aberration, the Corley v. Lewless case, which was discussed earlier in this section. The courts have seen the parent-child relationship as providing a rational basis for imposing liability and as a reasonable means for achieving the legitimate objectives of compensating victims and deterring juvenile delinquency.

One distinguishing aspect of this case is the vivid contrast between the views of the majority ruling in this case and the one dissenting justice. The majority's views indicate an understanding of the difficulties involved in parenting. Yet, the justices strongly agreed with the Supreme Court's stance that "parents have an important guiding role to play in the upbringing of their children."³² The justices not only upheld the constitutionality of the statute but endorsed its emphasis on requiring parents to take responsibilities for their children's activities.

The dissenting opinion is clearly representative of an opposing attitude regarding such statutory law and the role

³²Ibid., p. 805.

of parents. The blunt language indicates a widely held concern that parents who have attempted to perform their roles may still have to answer for the wrongdoing of children.

Haywood v. Ramick

285 S.E. 2d 697 (Georgia 1982)

Facts

In a successful suit, Mr. Drayton Ramick had alleged that two fifteen-year-old boys, Mark Haywood and Tony Wheat, had burglarized his home and in the process caused certain property damage. Mr. Ramick had sought damages from the teenagers and from the parents of the two boys under Georgia's parental liability statute. This statute in Code Annotated § 105-113 provided for the vicarious liability of parents having custody and control of children under the age of eighteen who commit willful and malicious acts which result in damage to property. After finding in favor of Mr. Ramick, the jury awarded him damages against the boys and a sum against each parent within the \$500 limit stated in the statute.³³ The parents then appealed to the Superior Court which affirmed the judgment of the jury verdict in favor of the plaintiff. The parents then brought an appeal to the Georgia Supreme Court declaring the statute to be unconstitutional because it deprived them due process. They also asserted that an error was committed when the investigating

³³ Haywood v. Ramick, 285 S.E. 2d 697 (Georgia 1982).

officer had related to the trial jury certain statements made by the boys during the investigation.

Decision

The Supreme Court of Georgia took note of the fact that a prior version of the parental liability statute had been declared unconstitutional in Corley v. Lewless. However, the statute under constitutional challenge in this case was the 1976 statute which contained a \$500 limit of liability and its expressed intent was to provide aid in controlling juvenile delinquency, not to compensate fully victims for the conduct of children.³⁴ The court upheld the constitutionality of Georgia's 1976 statute based on the following:

We hold that this statute, intended to aid in reducing juvenile delinquency by imposing liability upon parents who control minors is neither unreasonable, arbitrary nor capricious. We further hold that the state has a legitimate interest in the subject (controlling juvenile delinquency), and that there is a rational relationship between the means used (imposing of liability upon parents of children who willfully or maliciously damage property) and this object. Furthermore, the General Assembly has enacted legislation incorporating those distinguishing features pointed to in Corley, supra, and thereby overcame any objections which Corley found to exist in the former statute. The statute violates neither due process nor Corley.³⁵

In a unanimous decision, the Supreme Court of Georgia affirmed the judgment of the Superior Court, Gwinnett County. It also over-ruled the second point of contention

³⁴ Ibid., p. 698.

³⁵ Ibid., p. 699.

regarding the investigating officer's testimony declaring the provisions of the code cited had not intended "to insulate a child from the effect of testimony of those investigating crimes."³⁶ A re-hearing was denied on January 6, 1982.

Discussion

Although the 1966 Georgia parental responsibility law had been declared unconstitutional in Corley v. Lewless, the revised 1976 statute passed constitutional muster in the state courts with Haywood v. Ramick.

The aspect of limiting the liability of parents was deemed critical by the courts. The Supreme Court of Georgia believed the 1976 revised statute successfully met the objections to the 1966 statute; therefore, Georgia's parental liability statute was declared constitutional in 1982.

Stang v. Waller

415 So 2d. 123 (Florida 1982)

Facts

Although the trial court had found that the plaintiff, Mr. Dorian H. Stang, had proved "a perfect case"³⁷ against the defendant parents for recovery of damages under Florida's parental liability statute, the court ruled the statute unconstitutional. It acknowledged that other statutes had

³⁶Ibid.

³⁷Stang v. Waller, 415 So. 2d 123 (Florida 1982).

been found to be constitutional but it found persuasive arguments against such constitutionality in Corley v. Lewless, the dissent in Board of Education of Piscataway Township v. Caffiero. and an article in the June 1972 Notre Dame Lawyer.³⁸ Mr. Stang then appealed to the District Court of Appeal of Florida, Fourth District.

Decision

The District Court of Appeal maintained that "a majority of the states have similar statutes and that the weight of authority supports constitutionality."³⁹ The court did not neglect the decision in Corley v. Lewless, 227 Ga. 745, 182 S.E. 2d 766 (1971), but recognized that Georgia's revised statute had recently withstood another constitutional challenge in Haywood v. Ramick, 248 Ga. 841, 285 S.E. 2d 697 (1982). In addition, the court set aside the due process contention with the approach established in other cases containing this constitutional challenge.⁴⁰ As a result, the court reversed the trial court's decision and remanded the case for further proceedings.

Discussion

Following on the heels of Georgia's Haywood v. Ramick, this case was added to the growing list of those decisions

³⁸Ibid., p. 124.

³⁹Ibid.

⁴⁰Ibid.

which upheld the constitutionality of parental responsibility laws in various states. Indeed, the decision of Haywood v. Ramick gave added impetus to the decision of Florida's Court of Appeal. Certainly, this court noted considerable support for constitutionality in the fact that similar statutes had been upheld in at least nine other state courts.

Cases Related to Statutes Being Strictly Construed and Requirements for Recovery

Lamro Independent Consolidated School District v. Cawthorne

73 N.W. 2d 337 (South Dakota 1955)

Facts

In an attempt to recover damages from the parents of Duane Cawthorne, sixteen years old, the public school district brought suit in the Circuit Court, Tripp County. The pupil and another youngster who did not attend the school entered the building one evening and did extensive damage by turning on a drinking fountain and throwing cement on the floors. The plaintiff based its claim against Duane's parents upon SDC 15.3009, which reads as follows:

Any pupil, who cuts, defaces, or otherwise injures any schoolhouse, apparatus, or outbuilding thereof, is liable to suspension or expulsion; and on the complaint of the teacher to any member of the school board, the parents or guardians of such pupil shall be liable for all damages.⁴¹

⁴¹ Lamro Independent Consolidated School District v. Cawthorne, 13 N.W. 2d 337 (South Dakota 1955).

The trial court entered a judgment against the defendants and they then appealed.

Decision

In its examination of the statute upon which the claim was based, the Supreme Court of South Dakota noted that it had been a part of the state law since 1893 and until the present case, no action based on this statute had been presented to this particular court.⁴² The court also took note that California had had a similar statute which had contained the phrase "on complaint of the teacher" but it had omitted the wording in a 1931 revision.⁴³ Unlike the California statute, the South Dakota statute had not been amended and consequently, the court concluded:

The words disclose a definite purpose when the application of the statute is limited to the time the child is under the immediate supervision of the teacher and we do not believe the language of the statute should be further attended.⁴⁴

Since the pupil had broken into the school during the middle of the night and was not under the supervision of any teacher, the court could not apply the statutory law. In addition, the court felt it could not find the parents liable for their son's acts under general law, either. Therefore, the Supreme Court of South Dakota in a unanimous decision, reversed the judgment of the Circuit Court, Tripp County.

⁴² Ibid.

⁴³ Ibid., p. 338.

⁴⁴ Ibid.

Discussion

This case vividly illustrates the fact that statutory law is in derogation of common law and must be strictly construed. Since the specific phrasing qualified the time and situation under which action for recovery of damages could be based, the parents were not held liable for the considerable damage that their son and his friend did to the school.

Lutteman v. Martin

135 A. 2d 600 (Connecticut 1957)

Facts

On January 28, 1956, a nine-year-old boy and two friends were playing within a building which was the property of the plaintiff. The youngster, Glen McKnight, filled a coffee can with paper that he found in the building and set fire to the paper. This was the first time that he had had matches in his possession according to the evidence given and when the fire spread from the can to the old tires stored within the building, all of the frightened youngsters ran from the structure. The fire caused damage to the building owned by the plaintiff, Selma Luttemann, who sued Glen McKnight's father for the damages under the Connecticut parental liability statute. The plaintiff based this action upon the assertion that the igniting of the fire constituted a willful act which was covered by provisions of the statute.

Decision

The Court of Common Pleas of Connecticut entered its

judgment in favor of the defendant. The court did not find the act to be malicious, as required by the statutory law. In examining the second requirement for recovery, i.e., that the destructive act had to be willful, the court declared that for an act to be willful, it had to be intentional. "An intentional injury results from an act done for the purpose of causing the injury or with knowledge that the injury is substantially certain to follow."⁴⁵ In this case, however, the court found the youngster guilty of negligence, which it judged to be quite different from intentional wrong-doing.

Discussion

Every parental responsibility statute has as a requirement for recovery the willful, malicious, intentional, or unlawful destructive act by the minor. In this case, although there was considerable damage done to the building, the court declared the youngster's act to be an example of negligence. In its deliberation of the case, the court carefully considered the boy's age, intelligence, and experience and applied a standard of conduct which it said one could reasonably expect of other children of similar age, intelligence, and experience.⁴⁶ When it could not declare that the damages had been willfully and maliciously done in this case, it found for the defendant father. Courts have generally refused to find parents liable

⁴⁵ Luttemann v. Martin, 135 A. 2d 600 (Connecticut 1957).

⁴⁶ Ibid., p. 603.

for their children's acts of carelessness or negligence. This case is a primary example of this practice.

Board of Education of Borough of Palmyra
in County of Burlington v. Hansen

153 A. 2d 393 (New Jersey 1959)

Facts

According to the allegations of the plaintiff, Daryl Lee Hansen and another student went to their high school on the evening of December 8, 1957, to steal examination papers. The charges also were that Daryl Hansen set fire to the school while he was there that evening. The plaintiff then brought suit against the parents, Mr. and Mrs. Russell Clayton Hansen, in order to recover damages to the school. The board of education brought this action under the provisions of R.S. 18:14-51, New Jersey's Statutes Annotated, which stated:

Any pupil who shall cut, deface, or otherwise injure any schoolhouse, furniture, fences, outbuildings, or other property of the school district shall be liable to suspension and punishment, and his parents or guardian shall be liable for damages to the amount of the injury to be collected by the board of education in any court having jurisdiction, together with the costs of the action.⁴⁷

The defendant parents asked the Superior Court of New Jersey for a summary judgment which would dismiss the plaintiff's complaints on the following grounds:

1. The statutory provision on which the plaintiff relied did not apply to the facts of the case.
2. The statute was unconstitutional because the title of the act failed to state the objective of imposing absolute liability on the parents for the torts of their children.

⁴⁷ Board of Education of Borough of Palmyra in County of Burlington v. Hansen, 153 A. 2d 393 (New Jersey 1959).

3. The statute was unconstitutional because it deprived parents of their property without due process.⁴⁸

Decision

The Superior Court denied the defendant's motion. Although the defendants had argued that the language of the statute implied that their liability was applicable only during school hours, the court rejected this contention. Even though the original version had contained the phrase, "on complaint of the teacher," subsequent enactments since 1867 had omitted those words.⁴⁹ Therefore, the court reasoned that "The New Jersey Legislature did not intend to so restrict or qualify the liability of the parents."⁵⁰ The court also determined that not only should such statutory law be strictly construed, but public schools are statutory creations. As a result, the legislature has the right to provide a free education for the public and to set up restrictions imposed on those attending public schools. When parents enroll their children in public schools, they are accepting these restrictions and accepting the liability for any destructive acts of the child.⁵¹

The court refuted the other contentions of the parents by quickly citing constitutional provisions for the titling

⁴⁸Ibid.

⁴⁹Ibid., p. 395.

⁵⁰Ibid.

⁵¹Ibid., p. 396.

of the statute and by upholding the constitutionality of the statute itself. The court emphasized its view of the unfairness of requiring other parents or students to pay for the damages incurred by one student. Although the parents had argued that they were free from fault and as a result, should not be liable, the court reasoned that "equity and moral philosophy" were part of the basis for their asserting the constitutionality of the statute.⁵²

Discussion

This case also illustrates the fact that statutory law is in derogation of common law and must be strictly construed. In this situation, however, the court allowed for recovery from damages that occurred after school hours. This decision contrasts with the case previously discussed, Lamro Independent Consolidated School District v. Cawthorne, 73 N.W. 2d 337 (South Dakota 1955), because of the wording of the New Jersey statute which did not restrict such liability. The court refused to accept the defendant's contention that the statute implied such a restriction.

Another important aspect of this case is the court turned away the constitutional challenges to the statute. The reasoning of the court proved to be similar to that in other cases in which liability of parents for their children's willful destruction of general property had been at issue.

⁵²Ibid., p. 397.

Not only did this court support the constitutionality of the statute found in New Jersey's education laws, but it also spoke to the reasonableness of requiring students to meet certain conditions if they attended public schools. The court also asserted that the parents of public school students also accepted vicarious liability for any destructive acts of their youngsters.

Lamb v. Randall

618 P. 2d 379 (New Mexico 1980)

Facts

The parents of a son under the age of eighteen were found liable by the District Court, San Juan County, for property their son stole from the home of Joyce Lamb. The property stolen was never returned because the minor pawned it for money. The plaintiff had brought suit against the parents pursuant to the New Mexico statute holding parents liable for any willful or malicious damages or destruction of property by their children. After the trial court decision, the parents appealed on the basis that the statute was not applicable in this case.

Decision

The Court of Appeals of New Mexico considered the issue before it in this case: "Does the crime of burglary committed by a child, when the stolen items are not regained by the victim, come under the purview of § 32-1-46 N.M.S.A. (1978 Comp.) making the parents liable in damages."⁵³

⁵³ In re James D., 455 A. 2d 966 (Maryland 1983).

After altering the crime from burglary to the stealing of property, which is larceny, the court considered the wording of the statute. When it found no wording within the statute to include the stealing of property, the court also noted that the property had not been damaged or destroyed. It reasoned, then, that the parents were not liable under the statute. Therefore, the judgment was in favor of the parents and the trial court decision was reversed. The court remanded the case with instructions to enter a new judgment in favor of the defendants.

Discussion

This case is notable again because a statute was strictly construed and, consequently, the parents were not found liable. Although the plaintiff had lost property as the result of the minor's act of larceny, the statute did not provide any liability of the youngster's parents for such an act. The dissenting judge took issue with the majority opinion by declaring, "Certainly, the statute should not be interpreted in a manner that will frustrate the policy goals behind its enactment. In my view the majority opinion in this case does just that."⁵⁴ Several parental liability statutes now specifically include provisions for property which is stolen or shop-lifted by minors. This case exemplifies the necessity of including these provisions in the parental liability statutes.

⁵⁴ Ibid., p. 381.

In re James D.

455 A. 2d 966 (Maryland 1983)

Facts

James D., a juvenile, broke into and set fire to a model home on August 7, 1981. On this date, James D. had been under commitment to the Juvenile Services Administration and the Montgomery County Board of Education. He had escaped from a facility where he had been placed, and he had made no contact with his father or mother from the time he escaped until his arrest for the destruction of the model home. His parents had been found liable for his destructive acts under Maryland's parental responsibility law. They appealed to the Court of Special Appeals, but a petition for a writ of certiorari was granted from the Court of Appeals before the argument was presented in that court.

Decision

The Court of Appeals of Maryland reversed the judgment of the trial court and did not require the mother and father of James D. to be financially responsible for his destruction of the model home. This was the court's decision after it examined the specific wording of Maryland's parental responsibility law.⁵⁵

Discussion

The finding in this case is significant because the Maryland statute, unlike almost every other parental

⁵⁵ In re James D., 455 A. 2d 966 (Maryland 1983).

liability statute, does not specifically state that the child should be in the care (or control) and custody of the parents. This requirement for recovery was upheld in this case, however, because the court noted that in the statutes of five states no liability is placed on a father or mother if the child is in the legal custody of others.⁵⁶ The court also declared that there would be problems with the Fourteenth Amendment to the U.S. Constitution and the Maryland Declaration of Rights Article 24 if the court were to interpret the statute as applying to a father or mother who did not have custody or control. Instead, the court decided to "take this opportunity to construe the statute more narrowly than its literal wording."⁵⁷

Cases Related to Limits of Recovery
and Insurance

General Insurance Company
of America v. Faulkner

130 S.E. 2d 645 (North Carolina 1963)

Facts

The Kinston City Board of Education was issued a policy providing insurance coverage for the Teacher's Memorial School by the General Insurance Company of America. This policy covered any loss by fire up to the amount of \$479,000.⁵⁸

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ General Insurance Company of America v. Faulkner, 130 S.E. 2d 645 (North Carolina 1963).

This policy was in full force on December 1, 1961, when allegedly an eleven-year-old Freddie Faulkner set fire to the auditorium curtains causing damages of \$2,916.50.⁵⁹ After the school system was paid for this loss by the insurance company, it then became subrogated to the rights and claims of the Kinston Board of Education against any tort-feasor responsible for the fire and subsequent damages.⁶⁰ As the plaintiff, the insurance company then brought suit against the youngster's parents, pursuant to North Carolina's parental liability statute and asked for a recovery of the \$500 limit. The parent defendants demurred to the complaint and the Superior Court, Wake County, sustained.

Decision

This case was received by the Supreme Court of North Carolina on appeal by the plaintiff from the Superior Court, Wake County. In its decision, the Supreme Court maintained that the statute was constitutional and that the insurer which had made full payments for the damages caused by the child was entitled, as subrogee, to bring suit in its own name against the youngster's parents.

Discussion

The decisions of this case have had significant impact on other cases concerned with parental liability statutes.

⁵⁹ Ibid., p. 647.

⁶⁰ Ibid.

This case represented the second constitutional challenge to a state's parental responsibility law and the court's reasoning regarding its constitutionality has been cited in similar cases in other states since 1963.

The question of an insurance company serving as subrogee was presented first in this case, also. Often quoted in other cases is the court's reasoning on this issue. In disagreeing with the interpretation of the defendants, the court stated that to deny the granting of subrogation would be illogical because "the defendants would receive the benefit of the insurance without having to pay a cent for it."⁶¹ The court ruled to accept the right of subrogation and, therefore, established a precedent for similar cases since that time.

Walker v. Lumbermens Mutual
Casualty Company

491 S.W. 2d 696 (Texas 1973)

Facts

Mr. Bill Walker had a claim issued against him for his eleven-year-old son's malicious, willful, and intentional acts which resulted in damage to the property of Mr. Harry Dugan. The claim was made under Article 5923-1, Vernon's Annotated Civil Statutes, which imposes vicarious liability on the parent of a child under eighteen and over the age of ten for such destruction of property.⁶² When Mr. Walker notified his insurance company, Lumbermens Mutual, the company refused to

⁶¹Ibid., p. 652.

⁶²Walker v. Lumbermens Mutual Casualty Company, 491 S.W. 696 (Texas 1973).

furnish a defense and refused to accept any responsibility for the claim against the parent except for the amount of \$250.00.⁶³ The parent then employed his personal attorney to defend the case.

Although the child, Terry Walker, was not sued judgment was rendered against his father who subsequently brought suit against Lumbermen's Mutual. He sought to recover benefits under a Texas Standard Homeowner's policy furnished by Lumbermens Mutual. The trial court ruled that plaintiff's claim was not covered under Section II, Coverage D of the policy and the plaintiff appealed to the Court of Civil Appeals of Texas.

Decision

The plaintiff appealed to the Court of Civil Appeals of Texas on the contention that his homeowner's insurance company was liable under Section II, Coverage D--Personal Liability which reads as follows:

To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily injury or property damage, and the Company shall defend any suit against the Insured alleging such bodily injury or property damage....⁶⁴

The court agreed and included as part of its reasoning the conditions that constituted exclusions to such coverage: "Coverage D shall not apply to bodily injury or property

⁶³Ibid., p. 697.

⁶⁴Ibid.

damage caused intentionally by or at the direction of the Insured.⁶⁵ The court maintained that the father, not the son who had committed the destructive acts, was sued for the property damage. It was not the father who had intentionally caused damage or directed it to be done. In addition, the court believed that since the policy defined the term "insured" as including all members of the family, the intention of the definition was to expand the coverage of the policy.⁶⁶ By construing the term liberally, the court maintained the father was entitled to coverage under the insurance contract.⁶⁷ The court reversed the judgment of the 101 District Court, Dallas County.

Discussion

This case indicates that a parent's right to coverage for liability imposed under a parental responsibility law depends to a great degree on how the court interprets the various policy provisions. If homeowner's insurance policies are liberally construed, the court will require companies to provide coverage. In this case, the court took an expansive view of the provisions of the plaintiff's policy and declared that he was entitled to the coverage.

⁶⁵ Ibid.

⁶⁶ Ibid., p. 699.

⁶⁷ Ibid.

Buie v. Longspaugh

598 S.W. 2d 673 (Texas 1980)

Facts

Two minors between twelve and eighteen years old caused considerable damage to three houses. The youngsters unlawfully entered the houses on November 30, 1975, turned on the water in various sinks which they had plugged and caused extensive flood damage to each house in the amount of \$5,000 or more.⁶⁸ The three different owners then brought suit against the parents of the minors under the Texas parental liability statute. The Tarrant County District Court maintained a judgment against the parents, jointly and severally, and awarded each plaintiff \$5,000 plus interest for recovery for a total of \$15,000 plus interest and attorney's fees.⁶⁹

Decision

The only defendant to appeal to the Texas Court of Civil Appeals was Mr. Clifford Buie, who appealed only the part of the judgment related to the amount of the recovery. The defendant contended that the statute should be construed as limiting recovery to \$5,000 per episode of willful and malicious conduct. The defendant cited the following portion of the statute:

Recovery for damage caused by willful and malicious conduct is limited to actual damages, not to exceed \$5,000 plus court costs and reasonable attorney's fees.⁷⁰

⁶⁸ Buie v. Longspaugh, 598 S.W. 693 (Texas 1980).

⁶⁹ Ibid.

⁷⁰ Ibid., p. 675.

The Court of Civil Appeals, however, affirmed the judgment of the lower court. It gave as its major reasons the following:

1. The Court determined the purpose of the parental liability provisions was to protect and to compensate property owners for the willful and malicious damages to their property by minors.
2. The provisions should be construed in a way to make them most effective in protecting property owners.
3. Although the court appreciated the financial hardship imposed by allowing \$5,000 to be recovered for each act, it was the legislature's, not the court's role to change the statute's provisions.
4. The court refused to characterize the provisions as either penal or compensatory but felt compelled only to uphold them for the purposes intended by the legislature.
5. The parental liability statute was constitutional.⁷¹

Discussion

In recent years, parental liability statutes have been revised with limits of recovery being increased. This increase in amount of recovery has been to help property owners obtain a more realistic amount for damages that prove costly. Also, to protect property owners, the courts have begun to look at the limit for recovery as being for each act, rather than for a series of tortious acts. While this increase in recovery for each destructive incident may be helpful to the property owner, it certainly brings more of a financial responsibility to the minor's parents. One

⁷¹Ibid., p. 675-676.

result may also be that more property owners may bring suit against parents for the destructive acts of their children because of this increased amount of recovery for each incident by the child. There is added impetus in many statutes, too, which allow for the amount of recovery to include court costs and reasonable attorney's fees.

In re John H.

443 A. 2d 594 (Maryland 1982)

Facts

In a juvenile proceeding, the following facts were agreed upon: John H. and another youngster sometime during the evening of November 10, 1979 or early morning of November 11, 1979, unlawfully entered an elementary school. They ransacked and extensively damaged the interior of the building. Between 2:00 a.m. and 3:00 a.m. on November 11, 1979, the same two youngsters entered a junior high school in another location of the city and caused excessive amounts of damage to it. The total damage estimates of their acts were from \$200,000 to \$400,000.⁷²

After these incidents, John H. was adjudged a delinquent because of these and other acts. The board of education brought suit against the parents in order to obtain restitution from them for their son's destructive acts. The Circuit Court of Baltimore County found in favor of the board of education and entered a judgment of \$10,100 against

⁷² In re John H., 443 A. 2d 594 (Maryland 1982).

the parents. The parents then appealed the judgment to the Court of Special Appeals, which affirmed the lower court's decision.

Decision

The Court of Appeals received this case on certiorari and it affirmed the decision by asserting the following:

1. The board of education qualified as the statute's stipulated "wrong person" and therefore vicarious liability could be imposed upon the parents.
2. The trial judge was correct in imposing the maximum liability upon the parents for each separate incident, since there were two separate incidents at two different schools.
3. The statute is constitutional because the defendants failed in the burden of proof to demonstrate otherwise.⁷³

Discussion

This case features several important aspects, including the decision to allow property owners to recover the maximum amount of recovery for each separate incident of destruction. Each court in this case agreed that the circumstances warranted maximum recovery from the parents. This decision is exemplary of a trend in recent cases which allows the maximum liability of parents under statutory law in order to provide more protection to property owners. In addition, since the amount of recovery has been increased in currently revised statutes, the liability of parents for the willful destruction of property by their children has greatly increased for each incident.

⁷³Ibid.

CHAPTER VI

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

This study was designed to provide educators with important information regarding the legal aspects of parental responsibility laws. A major purpose for this compilation of data was to help public school officials determine whether such statutory law offers a realistic strategy for obtaining compensatory damages and for reducing the number of incidents of vandalism. In order to accomplish this purpose, pertinent facts related to the parental liability statutes were analyzed. The statutes concerned with parental liability for the destruction of general property, as well as statutes dealing with the specific destruction of school property, were examined. In addition, selected court cases presented the critical legal issues regarding vicarious liability of parents. A general review of the literature was presented in order to determine the causes and types of vandalism, the scope and cost for public schools, and the various strategies employed to combat the destruction of school property.

Summary

In Chapter I, several key questions were given to serve as a basis for the educational and legal research of the study. The first question listed in the introductory chapter asked for the identity of those states which have passed statutes

providing for the liability of parents for the willful and wanton destruction to general property by their children. Two states, Hawaii and Louisiana, have maintained such statutory law since the 1800's. Forty-seven other states, beginning with Nebraska in 1951, have enacted parental responsibility laws since the 1950's. Only New Hampshire is without statutory law requiring vicarious liability of parents for the destructive acts of their children. Even this state, however, has a statutory provision for a parent to be fined for a child's wrongdoing.

The second question in the introductory chapter related to those states which have specific statutes pertaining to the destruction of school property. Fifteen states have such statutory law, although an additional nine states have statutory provisions for suspension and/or expulsion of students who vandalize school property. Altogether, then, these twenty-four states have attempted to focus on the destruction of school property with this statutory law, along with their statutes for general destruction of property by minors. One interesting aspect regarding the statutes involving suspension and/or expulsion of students for school vandalism is the fact that six states passed such legislation in the early 1900's. The great majority of states did not see passage of statutes for general property destruction until the 1950's.

The third question posed was the intended purposes of the parental responsibility laws passed by the state legislatures. Although only three states have legislated statutes declaring

the specific intent for parental liability there are generally two intended purposes for these statutes as determined by judicial decisions and legislative histories.

1. To obtain compensatory damages to victims of property destruction.
2. To aid in reducing juvenile delinquency by making parents more financially responsible for the child's destructive acts.

These intended purposes have proved to be controversial issues, which were discussed in Chapters II and IV, especially. Particular court decisions, as presented in Chapter V, have also addressed these purposes.

The review of the literature in Chapter II provides considerable evidence that vicarious parental liability has not proved to be a deterrent to the rising rate of juvenile crimes. However, a review of judicial decisions reveals that the courts have placed more emphasis on declaring that the statutes do provide a reasonable means to a rational objective. Also, as states have increased the amount of recovery to be allowed, much debate has swirled around the issue of compensation. In fact, one state statute was declared unconstitutional primarily because there was no limit to recovery in its parental liability statutes. Needless to say, the dual purposes of the statutes have been much debated in the general literature and in litigation. The "Conclusions" and "Recommendations" sections of this final chapter present other aspects of these intended purposes of parental responsibility laws.

The fourth question presented a vital consideration when it asked for the circumstances under which parents can be held liable for their children's torts according to common law as opposed to civil or statutory law. Generally, parents cannot be held liable for their children's wrongdoing merely on the basis of the parent-child relationship. Only under the narrow circumstances detailed in Chapter II and defended in the courts as revealed in Chapter IV can a parent be required by common law to bear any financial responsibility for his child's destructive acts. On the other hand, statutory law can require liability without fault as substantiated by several court cases. However, there are definite requirements for recovery which must be met since statutory law is in derogation to common law and, as a result, statutory law must be strictly construed. In addition, some state statutes allow for recovery under common law as well as statutory law if circumstances justify both avenues for recovery to be pursued. Chapters III and V present an examination of the requirements for recovery under civil law by analyzing the statutes and various court decisions which have unsuccessfully contended that no-fault liability established by legislatures is unconstitutional.

The fifth question required an account of the pros and cons for having parents be vicariously liable for the torts of their children. As discussed in Chapter II, many arguments have been made for and against parental responsibility laws. The arguments in favor of these laws are often based on the belief that a parent has a special responsibility in determining

the child's behavior. However, those arguments against parental responsibility laws cite the spectrum of factors that can also be influential on the child's behavior. While the debate continues, however, the parental responsibility laws remain within the legislation of forty-nine states.

The final three questions in the introductory chapter were related to specific issues determined by court cases reviewed in Chapters IV and V. These three questions involved the constitutional challenges to the parental liability statutes, the issue of whether parent-defendants can utilize their homeowner's insurance policies for financial relief for court-ordered payments of compensation, and the identification of any trends and directions for parental responsibility for student vandalism. These questions are answered in the "Conclusions" and "Recommendations" sections of this chapter.

Conclusions

Drawing particular conclusions from legal research can be difficult, especially when varying circumstances in vandalism cases can produce different decisions. Yet, the following conclusions have been drawn from the court cases analyzed in the study on parental liability for student vandalism:

1. The parental liability statutes have passed constitutional muster because the courts have consistently declared that they do not violate the parent's equal protection rights of the Fourteenth Amendment, and they do not deprive the parent of due process rights of the Fifth Amendment to the

Constitution. The only exception, the Georgia statute, was revised and upheld in a later case.

2. The courts have consistently rejected the contention that the parental liability statutes interfere with the parent's fundamental right to bear and raise children. Indeed, the courts have consistently found that a parent has a duty to raise his children so that they will not interfere with the rights of others.
3. The courts have attempted to rule on the legislative intent of parental responsibility laws, but since they are in derogation to common law and must be strictly construed, the courts have been bound to base their rulings primarily on the language and provisions specifically contained within those statutes.
4. A parent may seek financial relief from his homeowner's insurance policy under certain circumstances and if the courts liberally construe the policy provisions.
5. An insurance company, after paying a victim for property loss or damage according to its policy provisions, may bring suit under its own name as subrogee against the parent of a child who has committed the damage.
6. If a court has determined that a minor has committed series of single incidents of vandalism, rather than an episodic act, it applies the maximum amount of recovery for each separate incident, in order to

afford property owners the greatest recovery possible.

7. The issue of whether parental liability statutes should be penal or compensatory in nature has continued to be debated in the courts, especially since limits of recovery are being increased as statutes are currently being revised.
8. The courts have examined the conduct of a child according to the standard of behavior that can be expected from a child of similar age, intelligence, and experience in order to determine whether a destructive act is intentional, willful, or malicious.
9. A parent is not liable for a child's destructive acts which are the result of the minor's carelessness or negligence.
10. The courts have maintained that a parent must have legal custody and actual control of the child before any action under a parental liability statute can be taken.
11. The parental liability statutes offer a helpful means to school officials in their efforts to reduce the costs and incidents of vandalism, but they are certainly no panacea to this complex problem.

Recommendations

The purpose of this study has been to provide educators with vital information regarding the issue of vandalism and

some of the strategies currently employed against the destruction of school property. The legal aspects of parental liability statutes, also called parental responsibility laws, have been examined so that school officials can determine whether they offer a realistic means for recovery of damages, as well as for deterring vandalism. Based on the results of this study, the following recommendations are made:

1. School officials should become informed about what research has found to be the causes and types of vandalism of school property and what the role of the school setting itself can be in determining the amount of vandalism that occurs.
2. School officials should attend to the strategies to reduce vandalism that are suggested in the sub-committee reports of the Safe School Study and Challenge for the Third Century.
3. School officials should review their state's parental liability statutes in order to determine whether there is any need for revision, especially in the amount of recovery.
4. Each school system should study its own problem with vandalism, utilize a uniform reporting system for incidents of vandalism, and prepare a system-wide plan for reducing destruction of school property.
5. The role of the principal and parental community involvement should be examined closely as keys to determining the amount of vandalism that occurs in any school.

6. Further study is recommended to determine those factors related to the school setting which reduce the incidents of vandalism.

SELECTED BIBLIOGRAPHY

A. PRIMARY SOURCES

1. State Court Cases

- Alber v. Nolle, 98 N.M. 100, 645 P. 2d 456 (1982).
- Albert v. Ellis, 359 N.E. 2d 1033 (Ohio, 1977).
- Alen v. Chacon, 449 S.W. 2d 289 (Texas, 1969).
- Amsel v. Brooks, 141 Conn. 288, 106 A. 2d 191 (1977).
- Buie v. Longspaugh. 598 S.W. 2d 673 (Texas, 1980).
- City of Milford v. Swarbrick, 190 A. 2d 493 (Conn., 1963).
- Corley v. Lewless, 227 Ga. 745, 182 S.E. 2d 766 (1971).
- Crum v. Groce, 556 P. 2d 1223 (Colo., 1976).
- Davis v. Shaw, 142 So. 301 (La., 1932).
- Ellis v. D'Angelo, 253 P. 2d 675 (Calif., 1953).
- General Insurance Company of America, 130 S.E. 2d 645 (N.C., 1963).
- Gossett v. Van Egmond, 155 P. 2d 304 (Ore., 1945).
- Hayward v. Ramick, 285 S.E. 2d 697 (Ga., 1982).
- Holman v. School Trustees of Avon, 77 Mich. 605, 43 N.W. 996 (1889).
- In re James D., 455 A. 2d 966 (Md., 1983).
- In re John H., 443 A. 2d 594 (Md., 1982).
- Kelly v. Williams, 346 S.W. 2d 434 (Texas, 1961).
- Lamb v. Randall, 618 P. 2d 379 (N.M., 1980).
- Lamro Independent Consolidated School District v. Cawthorne, 73 N.W. 2d 337 (S.D., 1955).
- Lutteman v. Martin, 20 Conn. Sup. 371, 135 A. 2d 600 (1957).
- McKinney v. Caball, 40 Mich. App. 389, 198 N.W. 2d 713 (1972).

Mahaney v. Hunter Enterprises, Inc., 426 P. 2d 442 (Wyo., 1967).

Maloney v. Goelz, 124 So. 606 (La., 1929).

Motorists Mutual Insurance Company v. Bill, 56 Ohio St. 2d 258, 383 N.E. 2d 880 (1978).

Ortega v. Montoya, 97 N.M. 159, 637 P. 2d 841 (1981).

Palmyra Board of Education v. Hansen, 56 N.J. Super 567, 153 A. 2d 393 (1959).

Perkins v. Independent School District of West Des Moines, 9 N.W. 356 (Iowa, 1880).

Piscataway Township Board of Education v. Caffiero, 86 N.J. 308, 431 A. 2d 799 (1981).

Randolph v. Grange Mutual Casualty Company, 57 Ohio State 2d 25, 385 N.E. 2d 1305 (1979).

Repko v. Seriani, 3 Conn. Cir. 374, 214 A. 2d 843 (1965).

Re Sorrell, 20 Md. App. 179, 315 A. 2d 110 (1974).

Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E. 2d 171 (1977).

Stang v. Waller, 415 So. 2d 123 (Fla., 1982).

State v. Vanderbilt, 18 N.E. 266 (Ind., 1888).

Steinberg v. Cauchois, 249 App. Div. 518, 293 N.Y.S. 147 (1937).

Sutherland v. Roth, 407 So. 2d 139 (Ala., 1981).

Town of Groton v. Medbery, 6 Conn. Cir. 671, 301 A. 2d 270 (1972).

Vallency v. Rigillo, 102 A. 348 (N.J., 1917).

Vanthournout v. Burge, 69 Ill. App. 3d 193, 25 Ill. Dec. 685, 387 N.E. 2d 341 (1979).

Walker v. Kelly, 6 Conn. Cir., 715, 314 A. 2d 785 (1973).

Walker v. Lumbermens Mutual Casualty Company, 491 S.W. 2d 696 (Texas, 1973).

Watson v. Gradzik, 34 Conn. Sup. 7, 373 A. 2d 191 (1977).

2. State Statutes

Alabama. Code (1975).

Alaska. Statute Annotated.

Arizona. Revised Statutes Annotated.

Arkansas. Statutes Annotated.

California. Civil Code Annotated (Deering).

Colorado. Revised Statutes.

Connecticut. General Statutes Annotated.

Delaware. Code Annotated.

Florida. Statutes Annotated.

Georgia. Code Annotated.

Hawaii. Revised Statutes (1976 Replacement).

Idaho. Code.

Illinois. Annotated Statutes (Smith-Hurd).

Indiana. Code Annotated (Burns).

Iowa. Code Annotated.

Kansas. Statutes Annotated.

Kentucky. Revised Statutes Annotated (Baldwin).

Louisiana. Civil Code Annotated.

Maine. Revised Statutes Annotated.

Maryland. Annotated Code (1984).

Massachusetts. Annotated Laws.

Michigan. Statutes Annotated.

Minnesota. Statutes Annotated.

Mississippi. Code Annotated.

Missouri. Annotated Statutes (Vernon).

Montana. Code Annotated (1983).

Nebraska. Revised Statutes (1943). Reissue of 1978.

Nevada. Revised Statutes (1979).

New Hampshire. Revised Statutes Annotated (1974).

New Jersey. Statutes Annotated.

New Mexico. Statutes Annotated.

New York. Consolidated Laws Annotated (McKinney).

North Carolina. General Statutes (1983).

North Dakota. Century Code Annotated.

Ohio. Revised Code (Page).

Oklahoma. Statutes Annotated.

Oregon. Revised Statutes (1977).

Pennsylvania. Sttutes Annotated. (Purdon).

Rhode Island. General Laws.

South Carolina. Code of Laws.

South Dakota. Codified Laws.

Tennessee. Code Annotated.

Texas. Codes Annotated (Vernon).

Utah. Code Annotated (1977).

Vermont. Statutes Annotated (1974).

Virginia. Code (1984).

Washington. Revised Code Annotated.

West Virginia. Code.

Wisconsin. Statutes Annotated (West).

Wyoming. Statutes (1978).

B. SECONDARY SOURCES

1. Books

Aberson, Alan. "Litigation." Public Policy and the Education of Exceptional Children. Edited by Frederick J. Weintraub. Reston, Virginia: The Council for Exceptional Children, 1976.

Bybee, Rodger. Violence, Values, and Justice in the Schools. Boston: Allyn and Bacon, Inc., 1982.

Casserly, Michael D; Bass, Scott A; and Garrett, John R. School Vandalism: Strategies for Prevention. Lexington, Mass.: D. C. Heath and Company, 1980.

Edwards, Newton. The Courts and the Public Schools. Chicago: University of Chicago Press, 1940.

Scrimger, Glen C., and Elder, Roy. Alternatives to Vandalism. Sacramento, Calif.: ERIC Document Reproduction Service, ED 234472, 1981.

Wenk, Ernst, and Harlow, Nora. School Crime and Disruption. Davis, Calif.: Responsible Action, 1978.

Wilson, James L. "Parental Liability for Student Vandalism." In School Law Update--1982. Edited by Thomas N. Jones and Darel P. Semier. Topeka, Kansas: NOLPE, 1983.

2. Educational Periodicals and Journals

Bayh, Birch. "Seeking Solutions to School Violence and Vandalism." Phi Delta Kappan 59 (January 1978): 299-301.

Brickman, William H. "Vandalism and Violence in School and Society." Intellect 104 (April 1976): 503.

Clement, Stanley L. "School Vandalism: Causes and Cures." NASSP Bulletin 59 (January 1975): 17-21.

Faily, Anwar, and Roundtree, George A. "Combatting Violence and Vandalism in Schools." NASSP Bulletin 63 (December 1979): 100-104.

"Four Alternatives for School Security." American School and University 45 (June 1973): 43-44.

- Furno, F., and Wallace, L. B. "Vandalism: Recovery and Prevention." American School and University 44 (July 1972): 19-22.
- Gottesman, Roberta. "Kids Damages: Should Parents Be Held Responsible?" Principal 61 (May 1982): 49-50.
- Grealy, Joseph I. "School Violence: What Can Be Done About It?" American School and University 47 (June 1975): 25-29.
- Howard, James L. "Factors in School Vandalism." Journal of Research and Development in Education 11 (1978): 53-63.
- Ianni, Francis A. J., and Rauss-Ianni, Elizabeth. "What Can Schools Do About Violence?" Today's Education 69 (April-May 1980): 20G-27G.
- Koch, E. L. "School Vandalism and Strategies of Social Control." Urban Education 10 (April 1975): 54-72.
- Mayer, G. Roy, and Butterworth, Thomas W. "Evaluating a Preventive Approach to Reducing School Vandalism." Phi Delta Kappan 62 (March 1981): 498-499.
- Maynard, William. "Basic Approaches to Violence and Vandalism." Phi Delta Kappan 59 (January 1978): 359-360.
- Kratcoski, P. C., Kratcoski, L. D., and Peterson, D. "The Crisis of Vandalism in Our Schools." U.S.A. Today 107 (July 1978): 15-16.
- Neill, Shirley Boes. "Violence and Vandalism: Dimensions and Correctives." Phi Delta Kappan 5 (January 1978): 302-306.
- Nicholson, George. "Pursuing School Safety in the 80's: An Opinion from the Attorney General's Office." Thrust, October 1981, pp. 26-27.
- Olson, John R. "Curbing Vandalism and Theft." Educational Horizons, Summer 1981, pp. 195-197.
- Patsy, Richard L. "Curbing Violence and Vandalism in Our Schools: A Judicial View of What Must Be Done," Thrust, October 1981, pp. 11, 36.
- Richardson, Don H. "Combatting Vandalism in the Schools." NASSP Bulletin, May 1976, pp. 60-65.
- Severino, Michael. "Who Pays--or Should Pay When Young Vandals Smash Things Up in Your Schools?" American School Board Journal 159 (June 1972): 33-34.

Venturini, Joseph L. "A Survey on the Causes of School Vandalsim." The High School Journal 66 (October-November 1982): 7-9.

3. Legal Journals and Periodicals

Adams, Carl David. "Has the Family Code Made Any Changes in the Liability of a Parent for His Child's Conduct?" Baylor Law Review 26 (Fall 1974): 687-693.

Axel, Michael A. "Statutory Vicarious Parental Liability: Review and Reform." Case Western Reserve Law Review 32 (1981-82): 559-593.

Clute, Penelope D. "Parental Responsibility Ordinances: Is Criminalizing Parents When Children Commit Unlawful Acts A Solution to Juvenile Delinquency?" Wayne Law Review 19 (1972-73): 1551-1577.

Fish, Deborah J. "Constitutional Law/Parental Responsibility." Illinois Bar Journal 68 (March 1980): 474-479.

Frankel, Bruce D. "Parental Liability for a Child's Tortious Acts." Dickenson Law Review 81 (Summer 1977): 755-773.

Freer, Alice B. "Parental Liability for Torts of Children." Kentucky Law Journal 53 (1965): 254-265.

Goldman, Jeri J. "Restitution for Damages to Public School Property." Journal Law and Education 11 (April 1982) 147-170.

Jordan, G. McGregor. "Constitutional Law: Due Process--Parental Tort Liability Solely on Basis of Parent-Child Relation Held Unconstitutional." 23 (1972): 681-689.

Kenny, James A., and Kenny, James V. "Shall We Punish the Parents?" American Bar Association Journal 47 (August 1961): 804-808.

Laven, Stuart A. "Liability of Parents for the Willful Torts of their Children Under Ohio Revised Section 3109.09." Cleveland State Law Review 24 (Winter 1975): 1-17.

Levin, Burton H. "Constitutional Law: Constitutionality of Legislative Imposition of Vicarious Parental Liability for Delinquent Acts of Juveniles." University of Baltimore Law Review 12 (Fall 1982): 171-178.

Menyuk, Gail L. "New Jersey Developments." Rutgers Law Review 34 (1981-82): 220-241.

O'Connor, John V. "Torts: The Constitutional Validity of Parental Liability Statutes." Marquette Law Review 55 (1972): 584-590.

- Puig, John J. "Parental Responsibility in New York for an Infant's Willful Property Damage." Albany Law Review 44 (July 1980): 943-958.
- Reagan, Paul V. "A Constitutional Caveat of the Vicarious Liability of Parents." Notre Dame Law (1972): 1321-1334.
- Sawyer, Kimberly A. "The Right to Safe Schools: A Newly Recognized Inalienable Right." Pacific Law Journal 14 (1983): 1309-1341.
- Scheutzw, Susan J. "A Limitation on Parental Liability and Willful Acts." Capital University Law Review 9 (Summer 1980): 749-774.
- Speck, Nancy L. "The Pennsylvania Parental Liability Statute." University of Pittsburgh Law Review 29 (1968): 518-598.
- "The Iowa Parental Responsibility Act." Iowa Law Review 55 (1969-70): 1037-1048.

4. Legal Research Aids

- American Digest System. St. Paul, Minnesota: West Publishing Company.
- Sixth Decennial Digest, 1946-1956.
- Seventh Decennial Digest, 1956-1966.
- General Digest, Fourth Series, 1966-1977.
- American Jurisprudence. Second Edition, Vol. 68. Rochester, New York: Lawyers Co-operative Publishing Co., 1973.
- Black's Law Dictionary. Edited by Henry C. Black. Fourth Edition. St. Paul: West Publishing Co., 1951.
- Constitution of the United States, National and State. Dobbs Ferry, New York: Oceana Publications, Inc., 1975.
- Corpus Juris Secundum. Vol. 78. St. Paul, Minnesota: West Publishing Co., 1952.
- National Reporter System. St. Paul, Minnesota: West Publishing Co.
- The Atlantic Reporter
- The New York Supplement

The Northeastern Reporter
The Northwestern Reporter
The Pacific Reporter
The Southeastern Reporter
The Southern Reporter
The Southwestern Reporter

Shepard's Reporter Citations. Colorado Springs: Shepard's Citations, Inc.

5. Other Sources

Bayh, Birch. Challenge for the Third Century: Education in a Safe Environment--Final Report on the Nature and Prevention of School Violence and Vandalism. Washington, D.C.: United States Government Printing Office, 1977.

United States Department of Health, Education, and Welfare. National Institute of Education. Violent Schools: Safe Schools. Washington, D.C.: United States Government Printing Office, 1977.

APPENDIX A

STATE ACTS RELATED TO LIABILITY OF PARENTS
FOR TORTS OF MINORS, PARTICULARLY
DESTRUCTION OF PROPERTY

Alabama

§ 6-5-380. Liability of parents for destruction of property by minor.

(a) The parent or parents of any minor under the age of 18 years with whom such minor is living and who have custody of such minor shall be liable for the actual damages sustained, but not exceeding the sum of \$500.00, plus the court costs of action, to any person, firm, association, corporation and the state of Alabama and its political subdivision for all damages proximately caused by the injury to, or destruction of, any property, real, personal or mixed, by the intentional, willful or malicious act or acts of such minor.

(b) Nothing in this section shall be construed to limit the liability of any such parent or parents as the same may now otherwise exist under the laws of the state of Alabama. (Acts 1965, 2nd Ex. Sess., No. 99, p. 132.)

Alaska

Sec. 34.50.020. Liability for destruction of property by minor.

(a) A person, municipal corporation, association, village, school district or religious or charitable organization, incorporated or unincorporated may recover damages in a civil action in an amount not to exceed \$2,000 and court costs, from either parent or both parents or the legal guardian or person having legal custody of an unemancipated minor under the age of 18 years, who maliciously or wilfully destroys real or personal property belonging to the person, municipal, corporation, association, village, school district or religious or charitable organization.

(b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home or children's institution, is not liable for the acts of unemancipated minors in its charge or custody. (§ 1 ch 98 SLA 1957; am § 1 ch 107 SLA 1967)

Arizona

§ 12-661. Liabilities of parents or legal guardians for malicious or wilful misconduct of minors

A. Any act of malicious or wilful misconduct of a minor which results in any injury to the person or property of another, to include theft or shoplifting, shall be imputed to the

parents or legal guardian having custody or control of the minor whether or not such parents or guardian could have anticipated the misconduct for all purposes of civil damages, and such parents or guardian having custody or control shall be jointly and severally liable with such minor for any actual damages resulting from such malicious or wilful misconduct.

B. The joint and several liability of one or both parents or legal guardian having custody or control of a minor under this section shall not exceed two thousand five hundred dollars for each tort of the minor. The liability imposed by this section is in addition to any liability otherwise imposed by law.

Added by Laws 1956, Ch. 59, § 1. Amended by Laws 1978, Ch. 136, § 1, eff. Oct. 1, 1978; Laws 1980, Ch. 27, § 1.

Arkansas

50-109. Destruction of property by minors--Liability of parents.

The State, or any county, city, town or school district, or any person, corporation or organization shall be entitled to recover damages in an amount not in excess of Two Thousand Dollars (\$2,000.00) in a court of competent jurisdiction from the parents of any minor under the age of eighteen (18), living with the parents, who shall maliciously or willfully destroy property, real, personal or mixed, belonging to the State or any such county, city, town or school district, or any person, corporation or organization. [Acts 1959, No. 45, § 1, p. 163; 1975, No. 283, § 1, p. 702; 1977, No. 201, § 1, p. 267.]

California

§ 1714.1. [Civil liability of parents for minor's acts of wilful misconduct resulting in death, personal injury, or property damage]

(a) Any act of willful misconduct of a minor which results in injury or death to another person or in any injury to the property of another shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct.

The joint and several liability of the parent or guardian having custody and control of a minor under this subdivision shall not

exceed ten thousand dollars (\$10,000) for each tort of the minor, and in the case of injury to a person, imputed liability shall be further limited to medical, dental and hospital expenses incurred by the injured person, not to exceed ten thousand dollars (\$10,000). The liability imposed by this section is in addition to any liability now imposed by law.

(b) Any act of willful misconduct of a minor which results in the defacement of property of another with paint or a similar substance shall be imputed to the parent or guardian having custody and control of the minor for all purposes of civil damages, including court costs, and attorney's fees, to the prevailing party, and the parent or guardian having custody and control shall be jointly and severally liable with the minor for any damages resulting from the willful misconduct, not to exceed ten thousand dollars (\$10,000) for each tort of the minor.

Amended by Stats 1972 ch 442 § 1; Stats 1974 ch 340 § 1; stats 1979 ch 127 § 1; Stats 1983 ch 981 §1.

Colorado

13-21-107. Damages for destruction or bodily injury caused by minors.

(1) The state or any county, city, town, school district, or other political subdivision of the state, or any person, partnership, corporation, association, or religious organization, whether incorporated or unincorporated, is entitled to recover damages in an amount not to exceed three thousand five hundred dollars in a court of competent jurisdiction from the parents of each minor under the age of eighteen years, living with such parents, who maliciously or willfully damages or destroys property, real, personal, or mixed, belonging to the state, or to any county, city, town, or other political subdivision of the state, or to any person, partnership, corporation, association, or religious organization or who maliciously or willfully damages or destroys any such property belonging to or used by a school district. The recovery shall be the actual damages in an amount not to exceed three thousand five hundred dollars, in addition to court costs and reasonable attorney fees.

(2) Any person is entitled to recover damages in an amount not to exceed three thousand five hundred dollars in a court of competent jurisdiction from the parents of each minor under the age of eighteen years, living with such parents, who knowingly causes bodily injury to that person, including bodily injury occurring on property belonging to or used by a school

district. The recovery shall be the actual damages in an amount not to exceed three thousand five hundred dollars, in addition to court costs and reasonable attorney fees.

Source: Amended, L. 77, p. 802, § 1; amended, L. 79, p. 766, § 1; amended, L. 83, pp. 617, 618, §§ 1, 1.

Connecticut

§ 52-572. Parental liability for torts of minors. Damage defined

(a) The parent or parents or guardian of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, or, having taken a motor vehicle without the permission of the owner thereof, cause damage to the motor vehicle, shall be jointly and severally liable with the minor or minors for the damage or injury to an amount not exceeding three thousand dollars, if the minor or minors would have been liable for the damage or injury if they had been adults.

(b) This section shall not be construed to relieve the minor or minors from personal liability for the damage or injury.

(c) The liability provided for in this section shall be in addition to and not in lieu of any other liability which may exist at law.

(d) As used in this section, "damage" shall include depriving the owner of his property or motor vehicle or of the use, possession or enjoyment thereof.

(1969, P.A. 326; 1971, P.A. 314; 1972, P.A. 127, § 75; 1979, P.A. 79-58; 1982, P.A. 82-160, § 236.)

Delaware

§ 3922. Destruction of property by minors; recovery of damages from parents.

Any municipal corporation, county, town, school district and agency of the State or any person, partnership, corporation or association, or any religious organization whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate civil action in an amount not to exceed \$5,000 in a court of competent jurisdiction from the parents or guardians of any minor under the age of 18 years, living with the parents, who shall intentionally or recklessly destroy or damage property, real, personal or mixed, belonging to such municipal

corporation, county, town, school district or agency of the State, or person, partnership, corporation or association or religious organization. However, if any such minor shall be charged with any act of delinquency as a result of such destruction or damage and thereafter be found delinquent of such charge, whether by trial or by admission, the appropriate court, as part of its sentence, may assess an amount not to exceed \$5,000 against the parents or guardians of the child if the child was living with his parents or guardians at the time of such destruction or damage. (10 Del. C. 1953, § 3923; 51 Del. Laws, c. 321; 59 Del. Laws, c. 112, § 1; 62 Del. Laws, c. 166, § 1; 62 Del. Laws, c. 315, § 2.)

Florida

741.24 Civil action against parents; willful destruction or theft of property by minor

(1) Any municipal corporation, county, school district, or department of Florida; any person, partnership, corporation, or association; or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate action at law in an amount not to exceed \$2,500, in a court of competent jurisdiction, from the parents of any minor under the age of 18 years, living with the parents, who shall maliciously or willfully destroy or steal property, real, personal, or mixed, belonging to such municipal corporation, county, school district, department of the state, person, partnership, corporation, association, or religious organization.

(2) The recovery shall be limited to the actual damages in an amount not to exceed \$2,500, in addition to taxable court costs.

Renumbered as 741.24 and amended by Laws 1967, c. 67-254, § 40, eff. June 26, 1967; Laws 1967, c. 67-404, § 1, eff. July 25, 1967; Laws 1977, c. 77-366, § 1, eff. June 27, 1977; Laws 1979, c. 79-400, § 280, eff. Aug. 5, 1979.

Georgia

51-2-3. Liability for malicious acts of minor child.

(a) Every parent or guardian having the custody and control over a minor child or children under the age of 18 shall be liable in an amount not to exceed \$5,000.00 plus court costs for the willful or malicious acts of the minor child or children resulting in damage to the property of another.

(b) This Code section shall be cumulative and shall not be restrictive of any remedies now available to any person, firm, or corporation for injuries or damages arising out of the acts, torts, or negligence of a minor child under the "family-purpose car doctrine" or any statutes now in force and effect in this state.

(c) The intent of the legislature in passing this Code section is to provide for the public welfare and aid in the control of juvenile delinquency, not to provide restorative compensation to victims of injurious or tortious conduct by children. (Ga. L. 1956, p. 699, § 1; Ga. L. 1966, p. 424, § 1; Ga. L. 1976, p. 511, § 2; Ga. L. 1982, p. 849, §§ 1,2.)

Hawaii

§577-3 Natural guardian; liability for torts of child.

The father and mother of an unmarried minor child are jointly the natural guardians of his person and property. They shall have equal powers and duties with respect to him and neither shall have any right superior to that of the other concerning his custody or control or any other matter affecting him; provided, that if either parent dies or abandons the family or is incapable for any reason to act as guardian, the guardianship devolves upon the other parent, and that when the parents live apart, the court may award the guardianship to either of them, having special regard to the interests of the child. The father and mother of unmarried minor children shall jointly and severally be liable in damages for tortious acts committed by their children, and shall be jointly and severally entitled to prosecute and defend all actions in which the children or their individual property may be concerned. [CC 1859, § 1288; RL 1925, § 3033; am L 1931, c 77, §1; RL 1935, §4511, RL 1945, §12262; RL 1955, §330-3; HRS §577-3; am L 1972, c 144, §1]

Idaho

6-210. Recovery of damages for wilful destruction of property by minor.

Any municipal corporation, county, city, village, school district, or any person, partnership, corporation or association, or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an amount not to exceed one thousand five hundred dollars (\$1,500) in a court of competent jurisdiction from the parents of any minor, under the age of eighteen (18) years, living with the parents, who shall maliciously or wilfully destroy property,

real, personal, or mixed, belonging to such municipal corporation, county, city, village, school district, or person, partnership, corporation, association, or religious organization. [1957, ch. 32, § 1, p. 51; am. 1977, ch. 55, § 1, p. 106.]

Illinois

PARENTAL RESPONSIBILITY LAW

51. Short title and citation

§ 1. This Act shall be known and may be cited as the Parental Responsibility Law.

P.A. 76-1679, § 1, eff. Octo. 6, 1969.

52. Definitions

§ 2. As used in this Act, unless the context otherwise requires, the terms specified have the meanings ascribed to them:

(1) "Legal guardian" means a person appointed guardian, or given custody, of a minor by a circuit court of the State, but does not include a person appointed guardian, or given custody, of a minor under the "Juvenile Court Act", approved August 5, 1965, as now or hereafter amended.

(2) "Minor" means a person who is above the age of 11 years, but not yet 19 years of age.

P.A. 76-1679, § 2, eff. Oct. 6, 1969.

53. Parent or legal guardian--Liability--Wilful or malicious acts of minor

§ 3. The parent or legal guardian of an unemancipated minor who resides with such parent or legal guardian is liable for actual damages for the wilful or malicious acts of such minor which cause injury to a person or property.

P.A. 76-1679, § 3, eff. Oct. 6, 1969.

54. Persons or entities entitled to enforce Act

§ 4. Any municipal corporation, county, township, village or any other political subdivision or department of the State of Illinois, or any person, partnership, corporation, association or any incorporated or unincorporated religious, educational or charitable organization is entitled to enforce the liability imposed by this Act.

P.A. 76-1679, § 4, eff. Oct. 6, 1969.

55. Limitation on damages--Damages allowable

§ 5. No recovery under this Act may exceed \$1000 actual damages for each person, or legal entity as provided in Section 4 of this Act, for each occurrence of such wilful or malicious acts by the minor causing injury, in addition to taxable court costs. In determining the damages to be allowed in an action under this Act for personal injury, only medical, dental and hospital expenses and expenses for treatment by Christian Science practitioners and nursing care appropriate thereto may be considered.

P.A. 76-1679, § 6, eff. Oct. 6, 1969. Amended by P.A. 81-588, §1, eff. Jan. 1, 1980.

56. Common law damages

§ 6. This Act shall not affect the recovery of damages in any other cause of action where the liability of the parent or legal guardian is predicated on a common law basis.

P.A. 76-1679, § 6, eff. Oct. 6, 1969.

57. Judgments--Applicability of other Act

§ 7. Section 12-107 of the Code of Civil Procedure, as now or hereafter amended, is not applicable to judgments obtained under this Act.

P.A. 76-1679, § 7, eff. Oct. 6, 1969. Amended by P.A. 81-267, § 2, eff. Aug. 28, 1979; P.A. 82-783, Art. XI, § 121, eff. July 13, 1982.

Indiana

34-4-31-1. Limited liability imposed for damages caused by child.

A parent is liable for not more than two thousand five hundred dollars [\$2,500] in actual damages arising from harm to a person or property intentionally caused by his child if:

- (1) He has custody of the child; and
- (2) The child is living with him. [IC 34-4-31-1, as added by Acts 1978, P.L. 136, § 55; P.L. 326-1983, § 2.]

Iowa

613.16. Parental responsibility for actions of children

1. The parent or parents of an unemancipated minor child under the age of eighteen years shall be liable for actual damages to person or property caused by unlawful acts of

such child. However, a parent who is not entitled to legal custody of the minor child at the time of the unlawful act shall not be liable for such damages.

2. The legal obligation of the parent or parents of an unemancipated minor child under the age of eighteen years to pay damages shall be limited as follows:

- a. Not more than one thousand dollars for any one act.
- b. Not more than two thousand dollars, payable to the same claimant, for two or more acts.

3. The word "person" for the purpose of this section shall include firm, association, partnership or corporation.

4. When an action is brought on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall remove any requirements that a guardian ad litem be required.

Acts 1969 (63 G.A.) ch. 291, § 1, eff. July 1, 1969.

Kansas

38-120. Recovery from parents for malicious or willful acts by certain children; limitations.

Any person receiving bodily injury or any person, partnership, corporation, political subdivision or other entity whose property has been damaged or destroyed shall be entitled to recover damages in an appropriate action at law in a court of competent jurisdiction from the parents of any child, living with the parents, who maliciously or willfully injured such person or damaged or destroyed such property while under the age of eighteen (18) years. Such recovery shall be limited to the actual damages in an amount not to exceed one thousand dollars (\$1,000), in addition to taxable court costs, unless the court or jury finds that the malicious or willful act of such minor causing such injury, damage or destruction is the result of parental neglect, in which event the one thousand dollars (\$1,000) limitation does not apply. Recovery under this section for bodily injury shall be limited to actual medical expenses.

History: L. 1959, ch. 203, § 1; L. 1965, ch. 275, § 1; L. 1978, ch. 156, § 1; July 1.

Kentucky

405.025. Parent or guardian liable for wilful damage to property caused by minor.

(1) The parent or guardian of any unemancipated minor, in their care and custody, against whom judgment has been rendered for the wilful marking upon, defacing or damaging any property, shall be liable for the payment of that judgment up to an amount not to exceed twenty-five hundred dollars (\$2500), if the parent or guardian has been joined as a party defendant in the original action. The judgment provided herein to be paid shall be paid to the owner of the property damaged but such payment shall not be a bar to any criminal action or any proceeding against the unemancipated minor committing such damage for the balance of the judgment not paid by the parent or guardian. No parent shall be liable under the provisions of this subsection in a cumulative amount in excess of ten thousand dollars (\$10,000) for the wilful marking upon, defacing or damaging of any property by any child.

(2) Nothing in this section is intended to or shall limit to twenty-five hundred dollars (\$2500) the liability of a person to whom the negligence of a minor is imputed by KRS 186.590, nor shall this section limit the liability set forth in any other statute to the contrary. (Enact. Acts 1968, ch. 44, §§ 1, 2; 1976, ch. 235, § 1.)

Louisiana**Art. 2318. Acts of minors**

Art. 2318. The father, or after his decease, the mother, are responsible for the damage occasioned by their minor or unemancipated children, residing with them, or placed by them under the care of other persons, reserving to them recourse against those persons.

The same responsibility attaches to the tutors of minors.

Maine

§ 217. Liability of parents or legal guardians for damages by children.

The parents or legal guardians of any minor who is between 7 and 17 years of age and is living with his parents or legal guardians, which minor willfully or maliciously causes damage to any property or injury to any person, shall be jointly and severally liable with the minor for that damage

or injury in an amount not exceeding \$800, if the minor would have been liable for the damage or injury if he had been an adult. Nothing in this section shall be construed to relieve the minor from personal liability for that damage or injury.

1959, c. 321; 1979, c. 15.

Maryland

§ 3-829. Liability for acts of a child.

(a) The court may enter a judgment of restitution against the parent of a child, or the child in any case in which the court finds a child has committed a delinquent act and during the commission of that delinquent act has:

- (1) Stolen, damaged, or destroyed the property of another;
- (2) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, or funeral expenses.

(b) Considering the age and circumstances of a child, the court may order the child to make restituion to the wronged party personally.

(c) (1) A judgment rendered under this section may not exceed:

(i) As to property stolen or destroyed, the lesser of the fair market value of the property or \$5,000;

(ii) As to property damaged, the lesser of the amount of damage not to exceed the fair market value of the property damaged or \$5,000; and

(iii) As to personal injuries, inflicted, the lesser of the reasonable medical, dental, hospital, funeral, and burial expenses incurred by the injured person as a result of the injury or \$5,000.

(2) As an absolute limit against any one child or his parents, a judgment rendered under this section may not exceed \$5,000 for all acts arising out of a single incident.

(d) A restitution hearing to determine the liability of a parent or a child, or both, shall be held not later than 30 days after the disposition hearing and may be extended by the court for good cause.

(e) A judgment of restitution against a parent may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in his behalf. A hearing under this section may be held as part of an adjudicatory or disposition hearing for the child.

(f) The judgment may be enforced in the same manner as enforcing monetary judgments.

(g) The Juvenile Services Administration is responsible for the collection of restitution payments when the restitution order provides that restitution is to be made in periodic or installment payments, as part of probation, or pursuant to a work plan. (An. Code 1957, art. 26, § 71A; 1973, 1st Sp. Sess., ch. 2, § 1; 1974, ch. 691, § 8; 1975, ch. 554, §§ 1, 3; 1976, ch. 457; 1977, ch. 301; 1978, ch. 814; 1980, ch. 409; 1981, ch. 389; 1982, chs. 16, 388, 478.)

Massachusetts

§ 85G. Civil Liability of Parents for Injuries or Damages Resulting from Wilful Acts of Certain Minor Children; Exception; Limit of Recovery.

Parents of an unemancipated child under the age of eighteen and over the age of seven years shall be liable in a civil action for any willful act committed by said child which results in injury or death to another person or damage to the property of another, damage to cemetery property, or damage to any state, county or municipal property. This section shall not apply to a parent who, as a result of a decree of any court of competent jurisdiction, does not have custody of such child at the time of the commission of the tort. Recovery under this section shall not exceed two thousand dollars for any such cause of action. (Amended by 1975, 189, approved May 8, 1975, effective 90 days thereafter; 1979, 172, approved May 15, 1979, effective 90 days thereafter; 1983, 97, approved May 17, 1983, effective 90 days thereafter.)

Michigan

§ 27A.2913 Actions for malicious destruction of property or bodily injury by minors. Sec. 2913.

A municipal corporation, county, township, village, school district, department of the state, person, partnership, corporation, association, or an incorporated or unincorporated religious organization may recover damages in an amount not to exceed [\$2,500.00] in a civil action in a court of competent jurisdiction against the parents or parent of an unemancipated minor, living with his [or her] parents or parent, who has maliciously or wilfully destroyed real, personal, or mixed property which belongs to the municipal corporation, county, township, village, school district, department of the state, person, partnership, corporation, association, or religious organization incorporated or

unincorporated or who has maliciously or wilfully caused bodily harm or injury to a person.

(MCL § 600.2913.)

History.

As amended by Pub Acts 1978,
No. 577, imd eff January 2, 1979.

Minnesota

540.18. Damage by minor; responsibility of parent, guardian, and minor

Subdivision 1. The parent or guardian of the person of a minor who is under the age of 18 and who is living with the parent or guardian and who willfully or maliciously causes injury to any person or damage to any property is jointly and severally liable with such minor for such injury or damage to an amount not exceeding \$500, if such minor would have been liable for such injury or damage if he had been an adult. Nothing in this subdivision shall be construed to relieve such minor from personal liability for such injury or damage. The liability provided in this subdivision is in addition to and not in lieu of any other liability which may exist at law. Recovery under this section shall be limited to special damages.

Subdivision 2. This section shall not apply to persons having custody or charge of any minor under the authority of the welfare or corrections department of the state.

Laws 1967, Ex.Sess., c. 41, §§ 1 to 3, eff. June 3, 1967.
Amended by Laws 1969, c. 803, § 1; Laws 1980, c. 580, § 22, eff. Aug. 1, 1980.

Mississippi

§ 93-13-2. Civil liability of parents for damages resulting from malicious and willful acts of certain minor children.

(1) Any property owner shall be entitled to recover damages in an amount not to exceed two thousand dollars (\$2,000.00), plus necessary court costs, from the parents of any minor under the age of eighteen (18) years and over the age of ten (10), who maliciously and willfully damages or destroys property belonging to such owner. However, this section shall not apply to parents whose parental custody and control of such child have been removed by court order or decree.

(2) The action authorized in this section shall be in addition to all other actions which the owner is entitled to maintain and nothing in this section shall preclude recovery in a greater amount from the minor or from any person, including the parents, for damages to which such minor or other person would otherwise be liable.

(3) It is the purpose of this section to authorize recovery from parents in situations where they are not otherwise liable and to limit the amount of recovery. The provisions of this section shall apply only to acts committed on and after July 1, 1978.

Sources: Laws, 1978, 1978, ch. 492, § 1; 1981, ch. 370, § 1, eff from and after July 1, 1981.

Missouri

537.045. Parent or guardian liable for damages by minor--when--limitation--work accepted in lieu of payment.

1. The parent or guardian, excluding foster parents, of any unemancipated minor, under eighteen years of age, in their care and custody, against whom judgment has been rendered for purposely marking upon, defacing or in any way damaging any property, shall be liable for the payment of that judgment up to an amount not to exceed two thousand dollars, provided that the parent or guardian has been joined as a party defendant in the original action. The judgment provided herein to be paid shall be paid to the owner of the property damaged, but such payment shall not be a bar to any criminal action or any proceeding against the unemancipated minor for such damage for the balance of the judgment not paid by the parent or guardian.

2. The parent or guardian, excluding foster parents, of any unemancipated minor, under eighteen years of age, in their care and custody, against whom judgment has been rendered for purposely causing personal injury to any individual, shall be liable for the payment for that judgment up to an amount not to exceed two thousand dollars, provided that the parent or guardian has been joined as a party defendant in the original action. The judgment provided herein to be paid shall be paid to the person injured, but such payment shall not be a bar to any criminal action or any proceeding against the unemancipated minor for such damage for the balance of the judgment not paid by the parent or guardian.

3. Upon rendering a judgment in any proceeding under this section, the judge may order the parent or guardian, or the minor who damaged the property or caused the personal injury, to work for the owner of the property damaged or the person

injured in lieu of payment, if the parent, minor and the owner of the property damaged or the person injured are agreeable.

(L. 1965, p. 661, § 1. Amended by L. 1979, p. 629, § 1.)

Montana

40-6-237. Destruction of property by minor--liability of parents.

Any municipal corporation, county, city, town, school district, or department of the state of Montana, any person, or any religious organization whether incorporated or unincorporated is entitled to recover damages in a civil action in an amount not to exceed \$2,500 in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, department of the state of Montana, person, or religious organization.

History: En. Sec. 1, Ch. 195, L. 1957; amd. Sec. 1, Ch. 227, L. 1977; R.C.M. 1947, 61-112.1; amd. Sec. 1, Ch. 560, L. 1981.

40-6-238. Limitation on amount of recovery.

The recovery shall be limited to the actual damages in an amount not to exceed \$2,500 in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed \$100. The right to recover attorney fees as provided by this section is limited to a person bringing an action under 40-6-237.

History: En. Sec. 2, Ch. 195, L. 1957; amd. Sec. 1, Ch. 178, L. 1971; amd. Sec. 2, Ch. 227, L. 1977; R.C.M. 1947, 61-112.2; amd. Sec. 2, Ch. 560, L. 1981.

Nebraska

43-801. Destruction of property by infants; infliction of personal injury; liability of parents; limitation.

The parents shall be jointly and severally liable for the willful and intentional infliction of personal injury to any person or destruction of real and personal property occasioned by their minor or unemancipated children residing with them, or placed by them under the care of other persons; *Provided*, that in the event of personal injuries willfully and intentionally inflicted by such child or children, damages

shall be recoverable only to the extent of hospital and medical expenses incurred but not to exceed the sum of one thousand dollars for each occurrence.

Source: Laws 1951, c. 126, § 1, p. 545; Laws 1969, c. 347, § 1, p. 1217.

Nevada

41.470 Civil liability of parents, guardians for minor's act of willful misconduct resulting in injury, death, property damage.

1. Any act of willful misconduct of a minor which results in any injury or death to another person or injury to the private property of another or to public property is imputed to the parents or guardian having custody and control of the minor for all purposes of civil damages, and the parents or guardian having custody or control are jointly and severally liable with the minor for all damages resulting from the willful misconduct.

2. The joint and several liability of one or both parents or guardian having custody or control of a minor under this section shall not exceed \$10,000 for any such act of willful misconduct of the minor.

3. The liability imposed by this section is in addition to any liability now imposed by law.

(Added to NRS by 1957, 8; A 1967, 419; 1975, 652; 1979, 461)

New Hampshire

592-A:16 Judgment Against Parent

A warrant against a minor may require the parent or guardian of the minor to be summoned to attend the examination or trial, by delivering to him an attested copy of the warrant, and of the complaint, if annexed thereto, and the parent or guardian, being so summoned, may be adjudged to pay the fine imposed, and execution may issue against him therefor.

Source. RS 113:20. CS 119:22. GS 362:15. RL 421:15. RSA 592:17. 1957, 234:16. GL 252:15. PS 248:15. PL 244:8, eff. Sept. 23, 1957.

New Jersey

2A:53A-14. Legislative findings

The Legislature finds that malicious acts of vandalism by youths are increasing at an alarming rate; that such acts are frequently attributable to lack of care, custody and control exercised by the parent; that parents should have some responsibility for the conduct of their children; that while there is a reluctance to charge a child with juvenile delinquency there should be some legal deterrent to juvenile acts of vandalism and to parental neglect of child supervision. The Legislature therefore finds it desirable to establish a civil procedure for the recovery of damages for such acts from the neglectful parent, guardian or other person having legal custody of the child who caused such damage.

L. 1965, c. 111, § 1, eff. June 15, 1965.

2A:53A-15. Liability of parent or guardian for willful destruction of property by infant under 18

A parent, guardian or other person having legal custody of an infant ~~16~~ under 18 years of age ~~or~~-under who fails to exercise reasonable supervision and control of the conduct of such infant, shall be liable in a civil action for any willful, malicious or unlawful injury or destruction by such infant of the real or personal property of another, ~~provided-that-ne-re-every-may-be-had-in-sueh-action-against-sueh-parent,-guardian~~ ~~or-other-person-in-excess-of-\$250.00.~~

L. 1965, c. 111, § 2. Amended by L. 1979, c. 318, § 2, eff. Jan. 18, 1980.

2A:53A-16. Liability of parent for willful injury to public transportation utility by infant

The parents of any infant who shall maliciously or willfully injure any property of a railroad, street railway, traction railway or autobus public utility shall be liable for damages in the amount of the injury to a limit of \$1,000.00, to be collected by the public utility in any court of competent jurisdiction, together with costs of suit.

L. 1970, c. 246, § 1, eff. Oct. 28, 1970.

2A:53A-17. Application to parents without parental custody and control

This act shall not apply to parents whose parental custody and control of such infant has been removed by court

order, decree, judgment, military service, or marriage of such infant.

L. 1970, c. 246, § 2, eff. Oct. 28, 1970.

New Mexico

32-1-46. Damages for damage or destruction of property by child; parents liable; costs and attorney's fees; provisions for damages and restitution.

A. Any person may recover damages not to exceed four thousand dollars (\$4,000) in a civil action in a court or tribunal of competent jurisdiction from the parent, guardian or custodian having custody and control of a child when the child has maliciously or willfully injured a person or damaged, destroyed or deprived use of property, real or personal, belonging to the person bringing the action.

B. Recovery of damages under this section is limited to the actual damages proved in the action, not to exceed four thousand dollars (\$4,000), taxable court costs and, in the discretion of the court, reasonable attorney's fees to be fixed by the court or tribunal.

C. Nothing contained in this section limits the discretion of the court to issue an order requiring damages or restitution to be paid by the child when he has been found to be within the provisions of the Children's Code.

D. Nothing contained in this section shall be construed so as to impute liability to any foster parent.

History: 1953 Comp., § 13-14-44, enacted by Laws 1972, ch. 97, § 44; 1973, ch. 125, § 1; 1977, ch. 76; § 1, 1981, ch. 36, § 33; 1983, ch. 40, § 1.

32-1-47. Parental responsibility.

A. In any complaint alleging delinquency, a parent of the alleged delinquent child may be made a party in the petition. If a parent is made a party and if a child is adjudicated a delinquent, the court may order the parent or parents to submit to counseling, participate in any probation or other treatment program ordered by the court and, if the child is committed for institutionalization, participate in any institutional treatment or counseling program including attendance at the site of the institution. The court shall order the parent to support the child committed for institutionalization by paying the reasonable costs of support,

maintenance and treatment of the child that the parent is financially able to pay.

B. If a fine is imposed against the child by a court of this state, the parent of the child is not liable to pay the fine.

C. The court shall order the parent to pay the reasonable costs of support and maintenance of the child that the parent is financially able to pay if:

- (1) a child is adjudicated to be neglected or abused; and
- (2) the court orders the child placed with an agency or individual other than the parent.

D. The court may enforce any of its orders issued pursuant to this section by use of its contempt power.

History: 1953 Comp., § 13-14-44.1, enacted by Laws 1977, ch. 192, § 1; 1981, ch. 36, § 34.

New York

§ 3-112. Limited liability of parents or certain legal guardians having custody of an infant for malicious and destructive acts of such infant

Except as otherwise provided for in section seventy-eight-a of the general municipal law, section one hundred seventy-one of the executive law and sections sixteen hundred four, seventeen hundred nine, twenty-five hundred three, twenty-five hundred fifty-four and twenty-five hundred ninety-g of the education law the parent or legal guardian, other than the state or a local social services department or a foster parent, having custody of an infant over ten and less than eighteen years of age, shall, if such infant willfully, maliciously or unlawfully damages or destroys real or personal property or who with intent to deprive the owner of property or to appropriate the same to himself or to a third person he knowingly enters or remains unlawfully in a building and wrongfully takes, obtains or withholds personal property from such building which personal property is owned or maintained by another, be held liable for such damage or destruction in a civil action brought in a court of competent jurisdiction. For the purposes of this section the terms "enters or remains unlawfully" and "building" shall have the same meaning as ascribed to such terms in section 140.00 of the penal law. In no event, shall such liability under this section be in excess of the sum of one thousand five hundred dollars. It shall be a defense to any action brought hereunder that restitution has been made pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act or

paragraph (f) of subdivision two of section 65.10 of the penal law. It shall also be a defense to an action brought under this section that such child has become emancipated from his parent or legal guardian prior to the occurrence of such damage.

As amended L. 1979, c. 138, § 2; L. 1981, c. 896, § 2; L. 1981, c. 1045, § 2; as amended L. 1982, c. 920, § 50.

North Carolina

§ 1-538.1. Strict liability for damage to person or property by minors.

Any person or other legal entity shall be entitled to recover actual damages suffered in an amount not to exceed a total of one thousand dollars (\$1,000) from the parent or parents of any minor who shall maliciously or willfully injure such person or destroy the real or personal property of such person. Parents whose custody and control have been removed by court order or by contract prior to the act complained of shall not be liable under this act. This act shall not preclude or limit recovery of damages from parents under common law remedies available in this State. (1961, c. 1101; 1981, c. 414, s. 1.)

North Dakota

32-03-39. Parental responsibility for minor children--Recovery limitations.

Any municipal corporation, county, township, school district, or department of the state of North Dakota, or any person, partnership, corporation, association, or religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in a civil action in an amount not to exceed one thousand dollars in a court of competent jurisdiction from the parents of any minor, living with a parent, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal, corporation, county, township, school district, or department of the state of North Dakota, or person, partnership, corporation, association, or religious organization.

Recovery shall be limited to actual damages in an amount not to exceed one thousand dollars, in addition to taxable court costs.

Source: S. L. 1957, ch. 224, §§ 1,2; R. C. 1943, 1957 Supp., § 32-0339; S. L. 1973, ch. 120, § 34; 1975, ch. 293, § 1.

32-03-09.2. Liability for willful damages to property.

Any person convicted of criminal mischief shall be responsible for the actual damages to real and personal property and such damages may be recovered in a civil action in a court of competent jurisdiction. Additionally, any minor against whose parents a judgment may be entered pursuant to section 32-03-39 for damages resulting from action of the minor, shall be jointly and severally liable with his parents for such action up to the maximum amount provided in section 32-03-39 and solely liable for any damages over that amount. Any judgment rendered pursuant to this section shall not be discharged in bankruptcy and shall not be subject to the statutes of limitations provided in chapter 28-01, nor shall such judgment be canceled pursuant to section 28-20-35.

Source: S. L. 1977, ch. 302, § 1.

Ohio

§ 3109.09 [Liability of parents for destructive acts or theft by their children.]

Any owner of property may maintain a civil action in a court of competent jurisdiction to recover compensatory damages not exceeding three thousand dollars and costs of suit from the parents having the custody and control of a minor under the age of eighteen years, who willfully damages property belonging to such owner or who commits acts cognizable as a "theft offense," as defined in section 2913.01 of the Revised Code, involving the property of such owner. Such an action may be joined with an action under Chapter 1919. or 2737. of the Revised Code against the minor, or the minor and his parents, to recover the property regardless of value, but any additional damages recovered from the parents shall be limited to compensatory damages not exceeding three thousand dollars, as authorized by this section. A finding of willful destruction of property or of committing acts cognizable as a theft offense is not dependent upon a prior finding of delinquency of such minor, or upon his conviction of any criminal offense.

For the purposes of this section, a minor is not within the custody and control of his parents, if the minor is married.

Such actions shall be commenced and heard as other civil actions.

History: 131 v 689 (Eff 10-6-65); 132 v H 257 (Eff 10-24-67); 133 v S 10 (Eff 9-15-69); 137 v H 456. Eff 5-23-78.

Oklahoma

§ 10. Recovery of damages by political subdivisions from parents of minors

The state or any county, city, town, municipal corporation or school district, or any person, corporation or organization, shall be entitled to recover damages in a court of competent jurisdiction from the parents of any minor under the age of eighteen (18) years, living with the parents at the time of the act, who shall commit any criminal or delinquent act resulting in bodily injury to any person or damage to or larceny or any property, real, personal or mixed, belonging to the state or a county, city, town, municipal corporation, school district, person, corporation or organization. The amount of damages awarded shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00).

Laws 1957, p. 19, § 1, emerg. eff. June 1, 1957. Amended by Laws 1971, c. 62, § 1, emerg. eff. April 7, 1971; Laws 1977, c. 212, § 1, eff. Jan. 1, 1978; Laws 1979, c. 238, § 1; Laws 1982, c. 19, § 1, operative Oct. 1, 1982.

Oregon

30.765 Liability of parents for tort by child; effect on foster parents.

(1) In addition to any other remedy provided by law, the parent or parents of an unemancipated minor child shall be liable for actual damages to person or property caused by any tort intentionally committed by such child. However, a parent who is not entitled to legal custody of the minor child at the time of the intentional tort shall not be liable for such damages.

(2) The legal obligation of the parent or parents of an unemancipated minor child to pay damages under this section shall be limited to not more than \$5,000, payable to the same claimant, for one or more acts.

(3) When an action is brought under the section on parental responsibility for acts of their children, the parents shall be named as defendants therein and, in addition, the minor child shall be named as a defendant. The filing of an answer by the parents shall not move any requirement that a guardian ad litem be required.

(4) Nothing in subsections (1) to (3) of this section applies to foster parents.

[1975 c. 712 §§ 1,4; 1977, c. 419 § 1]

Pennsylvania

§ 2001. Definitions

As used in this act:

(1) "Person" includes natural persons, partnerships, associations, private and public corporations, authorities, fiduciaries, the United States and any governmental agency thereof, and the Commonwealth of Pennsylvania and any agency or political subdivision thereof.

(2) "Parent" includes natural or adoptive parents.

1967, July 27, P. L. 186, § 1.

§ 2002. Parents' liability

Any parent whose child under the age of eighteen years is found liable or is adjudged guilty by a court of competent jurisdiction of a wilful, tortious act resulting in injury to the person, or theft, destruction or loss of property of another, shall be liable to the person who suffers the injury, theft, destruction or loss to the extent hereinafter set forth.

1967, July 27, P. L. 186, § 2.

§ 2003. Reimbursement in criminal or juvenile court proceeding; civil judgment

(a) In any proceeding of a criminal nature against a child under the age of eighteen years and in any proceeding against a child in a juvenile court, the court shall ascertain the amount sufficient to fully reimburse any person who has suffered injury to the person, or theft, destruction or loss of property because of the wilful, tortious act of the child, and direct the parents to make payment in the amount not to exceed the limitations set forth in section 4 hereof. If the parents fail to comply with the direction of the court, the amount may be recovered in an action of assumpsit against the parents or either of them.

(b) If a judgment has been rendered against the child for injury to the person, or theft, destruction, or loss of property because of the wilful, tortious act of the child in a civil proceeding and such judgment has not been satisfied within a period of thirty days, the injured person may petition the court for a rule to show cause why judgment should not be entered against the parent. A parent shall have the right to file an answer to said petition and if there is any dispute as to unlitigated facts, the case shall be set down for trial. If there is no dispute as to the unlitigated facts, the court shall

authorize the entry of a judgment against the parent. In no case shall the judgment against the parent exceed the limitations set forth in section 4 hereof.

1967, July 27, P. L. 186, § 3.

§ 2004. Limit of liability; distribution; costs; fees; joint tort

(a) Liability of the parents shall be limited to three hundred dollars (\$300) for injuries to the person, or theft, destruction, or loss of property suffered by any one person as a result of one wilful, tortious act or continuous series of wilful, tortious acts.

(b) Liability of the parents shall be limited to one thousand dollars (\$1000) regardless of the number of persons who suffer injury to the person, or theft, destruction, or loss of property as a result of one wilful, tortious act or continuous series of wilful, tortious acts. In the event that actual loss as ascertained by the court or the judgment against the child exceeds one thousand dollars (\$1000), the parents shall be discharged from further liability by the payment of one thousand dollars (\$1000) into court. The court shall cause all aggrieved parties to submit itemized statements of loss in writing and shall make distribution proportionately, whether the claims be for injuries to the person, or theft, destruction, or loss of property. The court shall have the power to take testimony to assist it in making proper distribution and may appoint a master to accomplish this purpose. All costs and fees thus incurred shall be paid from the one thousand dollars (\$1000) paid into court.

(c) The limitations on liability set forth in subsections (a) and (b) of this section shall be applicable when two or more children of the same parent engage jointly in the commission of one wilful, tortious act or series of wilful, tortious acts.

1967, July 27, P. L. 186, § 4.

§ 2005. Common law liability; child's liability; custody; emancipation; desertion; indemnity; double recovery

The liability imposed upon parents by this act shall not limit the common law liability of parents for damages caused by a child and shall be separate and apart from any liability which may be imposed upon the child. No liability shall be imposed upon a parent by this act if at the time of commission of the wilful, tortious act, such parent has neither custody of the child, nor is entitled to custody of the child, or if the child is institutionalized or emancipated. No parent shall be absolved of liability due to the parents' desertion

of a child. Any judgment against a child resulting from a wilful, tortious act for which a parent makes payment under this act shall be reduced by the amount paid by the parent. The parent shall have no right of indemnity or contribution against the child. In no case shall there be a double recovery for one injury.

1967, July 27, P.L. 186, § 5.

Rhode Island

9-1-3. Liability of parents for torts of minors.

The parent or parents of any unemancipated minor or minors, which minor or minors wilfully or maliciously cause damage to any property or injury to any person, shall be jointly and severally liable with such minor or minors for such damage or injury to an amount not exceeding fifteen hundred dollars (\$1,500) if such minor or minors would have been liable for such damage or injury if they had been adults; provided nothing herein shall be construed to relieve such minor or minors from personal liability for such damage or injury. The liability herein provided for shall be in addition to and not in lieu of any other liability which may exist at law.

History of Section.

P.L. 1956, ch. 3749, § 1; G.L. 1956, § 9-1-3; P.L. 1974, ch. 137, § 1; P.L. 1981, ch. 296, §1.

South Carolina

§ 20-7-340. Malicious injury to property by minor.

When any unmarried minor under the age of seventeen years and living with his parent shall maliciously and intentionally destroy, damage or steal property, real, personal or mixed, the owner of such property shall be entitled to recover from such parent of such minor actual damages in a civil action court of competent jurisdiction in an amount not exceeding one thousand dollars; *provided, however,* that nothing herein contained shall in any way limit the application of the family purpose doctrine.

History: 1981 Act No. 71, § 1, eff May 19, 1981.

South Dakota**25-5-15. Parental liability for willful acts of child--
Limitation of recovery--Motor vehicle cases
excepted.**

Any person, firm, association, private or public corporation, including the state of South Dakota and its political subdivisions, suffering damages to real, personal or mixed property, or personal injury, through the malicious and willful act or acts of a minor child or children under the age of eighteen years while residing with their parents, shall have therefor a cause of action against and recover of the parents of such child or children. In each case the amount of recovery against one or both of the parents shall be limited to actual damages of seven hundred fifty dollars and the taxable court costs, and shall not apply to damages proximately caused through the operation of a motor vehicle by said minor child or children.

Source: SL 1957, ch 41; SDC Supp 1960, § 14.0309-1; SL 1979, ch 166; 1980, ch 188.

Tennessee**37-1001. Property damage by juvenile--Recovery against
parents or guardian.**

Any municipal corporation, county, township, village, school district or department of the state of Tennessee, or any person, or any religious organization, whether incorporated or unincorporated, shall be entitled to recover damages in an action in assumpsit in an amount not to exceed ten thousand dollars (\$10,000) in a court of competent jurisdiction from the parents or guardian of the person of any minor under the age of eighteen (18) years, living with the parents or guardian of the person who shall maliciously or willfully destroy property, real, personal or mixed, belonging to such municipal corporation, county, township, village, school district or department of the state of Tennessee or persons or religious organizations. [Acts 1957, ch. 76, § 1; 1969, ch. 170, § 1; 1976 (Adj. S.), ch. 408, § 1; 1981, ch. 161, § 1]

37-1002. Limitation on amount of recovery.

The recovery shall be limited to the actual damages in an amount not to exceed ten thousand dollars (\$10,000) in addition to taxable court costs. [Acts 1957, ch. 76, § 2; 1969, ch. 170, § 2; 1976 (Adj. S.), ch. 408, § 2; 1981, ch. 161, § 2.]

37-1003. Circumstances under which parent or guardian liable.

(a) A parent or guardian shall be liable for the tortious activities of a minor child that cause injuries to property where the parent or guardian knows, or should know, of the child's tendency to commit wrongful acts which can be expected to cause injury to property, and where the parent or guardian has an opportunity to control the child but fails to exercise reasonable means to restrain the tortious conduct.

(b) A parent or guardian shall be presumed to know of a child's tendency to commit wrongful acts, if the child has previously been charged and found responsible for such actions. [Acts 1957, ch. 76, § 3; 1981, ch. 161, § 3.]

Texas

Section 33.01 Liability

A parent or other person who has the duty of control and reasonable discipline of a child is liable for any property damage proximately caused by:

(1) the negligent conduct of the child if the conduct is reasonably attributable to the negligent failure of the parent or other person to exercise that duty; or

(2) the wilful and malicious conduct of a child is at least 12 years of age but under 18 years of age.

Historical Note

Prior Law: Acts 1957, 55th Leg., p. 783, ch. 320, § 1. Acts 1965, 59th Leg., p. 430, ch. 217, § 1. Vernon's Ann. Civ. St. art. 5923-1, § 1.

§ 33.02. Limits of Recovery

Recovery for damage caused by wilful and malicious conduct is limited to actual damages, not to exceed \$15,000 per act, plus court costs and reasonable attorneys' fees.

Amended by Acts 1981, 67th Leg., p. 915, ch. 331, § 1, eff. June 10, 1981.

§ 33.03. Venue

A suit under this chapter may be brought in the county where the conduct of the child occurred or in the county where the defendant resides.

Historical Note

Prior Law: Acts 1957, 55th Leg., p. 783, ch. 320, § 2. Acts 1965, 59th Leg., p. 430, ch. 217, § 1. Vernon's Ann. Civ. St. art. 5923-1, § 2.

Utah

78-11-20. Property damage caused by minor--Liability of parent or guardian.

The parents or legal guardian having legal custody of such minor, as the case may be, are liable for damages sustained to property not to exceed \$1,000 when:

(1) The minor intentionally damages, defaces, destroys, or takes the property of another; or

(2) The minor recklessly or willfully shoots or propels a missile, or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car or caboose, whether moving or standing; or

(3) The minor intentionally and unlawfully tampers with the property of another and thereby recklessly endangers human life or recklessly causes or threatens a substantial interruption or impairment of any public utility service.

History: L. 1977, ch. 181, § 1.

78-11-21. Property damage caused by minor--When parent or guardian not liable.

No parent or guardian shall be so liable if he or she made a reasonable effort to supervise and direct their minor child, or in the event the parent knew in advance of the possible taking, injury or destruction by their minor child, he or she made a reasonable effort to restrain it.

History: L. 1977, ch. 181, § 2.

Vermont

§ 901. Parents' liability for damages

(a) When an unemancipated minor under the age of seventeen years wilfully or maliciously causes damage to any property, public or private, or injury to a person, either of his parents shall be liable to the owner of such property or to the person injured, in an action on this statute, for the damage

to property, injury to person, or either, in an amount not to exceed \$250.00 provided such minor would be liable had such minor been an adult. If the damage or injury is caused by two or more such minors, a parent shall be liable for each of his children subject to the provisions of this section in an amount not exceeding \$250.00. The remedy herein provided shall be in addition to, and not in lieu of, any other remedy which may exist at law, except, however, that any judgment subsequently recovered in any action brought for money damages on account of the damage or injury herein contemplated shall be reduced by the extent of any previous judgment recovered in any other such action.

(b) The provisions of subsection (a) of this section shall not apply to a parent legally deprived or relieved of the custody of said minor prior to the commission of the act complained of.

1959, No. 124, §§ 1,2.

Virginia

§ 8.01-43. Action against parent for damage to public property by minor.

The Commonwealth, acting through the officers having charge of the public property involved, or the governing body of a county, city, town, or other political subdivision, or a school board may institute an action and recover from the parents or either of them of any minor living with such parents or either of them for damages suffered by reason of the willful or malicious destruction of, or damage to, public property by such minor. No more than \$500 may be recovered from such parents or either of them as a result of any incident or occurrence on which such action is based. (Code 1950, § 8-654.1; 1960, c. 132; 1972, c. 825; 1977, c. 617; 1983, c. 330.)

§ 8.01-44. Action against parent for damage to private property by minor.

The owner of any property may institute an action and recover from the parents, or either of them, of any minor living with such parents, or either of them, for damages suffered by reason of the willful or malicious destruction of, or damage to, such property by such minor. No more than \$500 may be recovered from such parents, or either of them, as a result of any incident or occurrence on which such action is based. Any such recovery from the parent or parents of such minor shall not preclude full recovery from such minor except to the amount of the recovery from such

parent or parents. The provisions of this statute shall be in addition to, and not in lieu of, any other law imposing upon a parent liability for the acts of his minor child. (Code 1950, § 8-654.1:1; 1966, c. 532; 1972, c. 825; 1977, c. 617; 1984, c. 48.)

Washington

4.24.190. Action against parent for wilful injury to person or property by minor--Monetary limitation--Common law liability preserved.

The parent or parents of any minor child under the age of eighteen years who is living with the parent or parents and who shall wilfully or maliciously destroy property, real or personal or mixed, or who shall wilfully and maliciously inflict personal injury on another person, shall be liable to the owner of such property or to the person injured in a civil action at law for damages in an amount not to exceed three thousand dollars. This section shall in no way limit the amount of recovery against the parent or parents for their own common negligence.

Amended by Laws 1967, Ex. Sess., ch. 46, § 1; Laws 1977, Ex. Sess., ch. 145, § 1.

West Virginia

§ 55-7A-1. Legislative findings; declaration of legislative intent.

The legislature hereby finds and declares that there are now and have been repeated and widespread acts of vandalism, willful and malicious destruction of property and other injury to persons and property occasioned by the willful, malicious and sometimes criminal acts of children under the age of eighteen years; that the great majority of such children are living with a parent or parents; that there arises or should arise out of such relationship, a responsibility to recompense persons injured by such acts of vandalism and willful and malicious injury to persons and property. Therefore, it is the intent of the legislature to make parents responsible for the torts of their minor children by reason of the parent-child relationship, and to impose on said parent or parents for such acts of their children, who live with them and who commit acts of vandalism or willful and malicious injury to persons and property, liability in accordance with the provisions hereinafter set forth. (1957, c. 1; 1981, c.3.)

West Virginia

§ 55-7A-2. Parental liability for willful, malicious or criminal acts of children.

The custodial parent or parents of any minor shall be liable in an amount not to exceed twenty-five hundred dollars for damages which are the proximate result of any one or a combination of the following acts of such minor:

- (a) The malicious and willful injury to the person of another; or
- (b) The malicious and willful injury or damage to the property of another, whether such property be real, personal or mixed; or
- (c) The malicious and willful setting fire to a forest or wooded area belonging to another; or
- (d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" shall mean the parent or parents with whom the minor is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor at the time of the minor's act.

Persons entitled to recover damages under this article shall include, but not be limited to, the State of West Virginia, any municipal corporation, county commission and board of education, or other political subdivision of this State, or any person or organization of any kind or character. The action may be brought in magistrate or other court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this article.

The provisions of this article shall be applicable to causes of action arising on and after the effective date of this article [June 14, 1981]. Causes of actions arising before the effective date of this article [June 14, 1981] and proceedings thereon shall be governed by the previously

enacted provisions of this article in force at the time such cause arose. (1957, c. 1; 1959, c. 4; 1981, c. 3).

Wisconsin

895.035. Parental liability for acts of minor child

(1) The parent or parents having legal custody of an unemancipated minor child, in any circumstances where he or they may not be otherwise liable under the common law, shall be held liable for damages to property or for personal injury attributable to a wilful, malicious or wanton act of the child not to exceed \$1,000, in addition to taxable costs and disbursements directly attributable to any wilful, malicious or wanton act of the child.

(2) Maximum recovery from any parent or parents of any child may not exceed the limitation provided in sub. (1) for any one wilful, malicious or wanton act of such child and if 2 or more children of the same parent or parents having legal custody commit the same act the recovery may not exceed in the aggregate \$1,000, in addition to taxable costs and disbursements.

(3) This section shall not limit the amount of damages recoverable by an action against the child or children except that any amount so recovered shall be reduced and apportioned by the amounts received from the parent or parents under this section.

Source: L. 1957, c. 208. L. 1959, c. 562, § 2m. St. 1963, § 331.035. L. 1965, c. 66, § 2. L. 1967, c. 245, eff. Dec. 23, 1967. L. 1969, c. 328, eff. Jan. 21, 1970.

Wyoming

§ 14-2-203. Parental tort liability for property damage of certain minors; exception; action cumulative.

(a) Any property owner is entitled to recover damages from the parents of any minor under the age of seventeen (17) years and over the age of ten (10) years who maliciously and willfully damages or destroys his property. The recovery is limited to the actual damages in an amount not to exceed three hundred dollars (\$300.00) in addition to taxable court costs. This section does not apply to parents whose parental custody and control of the child has been removed by court order.

(b) The action authorized in subsection (a) of this section is in addition to all other actions which the owner is entitled to maintain and nothing in this section precludes recovery in a

amount from the minor, parents or any person for damages for which the minor or other person would otherwise be liable. The purpose of this section is to authorize recovery from parents in situations where they would not otherwise be liable. (Laws 1965, ch. 73, §§ 1 to 3; 1978, ch. 25, § 1.)

APPENDIX B

STATE ACTS PERTAINING TO THE SPECIFIC
DESTRUCTION OF SCHOOL PROPERTY
BY PUPILS

Arizona

§ 15-842. Damage to school property; suspension or expulsion of pupil; liability of parent

A. A pupil who cuts, defaces or otherwise injures any school property may be suspended or expelled.

B. Upon complaint of the governing board, the parents or guardians of minors who have injured school property shall be liable for all damages caused by their children or wards.

Amended by Laws 1981, Ch. 1, § 2, eff. Jan. 23, 1981.

Source:

Laws 1912, Ch. 77, § 88.	Code 1939, § 54-504.
Civ. Code 1913, § 2801.	A.R.S. former § 15-446.
Rev. Code 1928, § 1032.	Laws 1960, Ch. 127, § 33.

Arkansas

80-1903. Destruction of property--Penalty.

Any person who shall wilfully destroy, or injure any building used as a schoolhouse, or for educational purposes, or any furniture, fixtures, or apparatus thereto belonging, or who shall deface, mar, or disfigure any such building, furniture or fixtures, by writing, cutting, painting, or pasting thereon any likeness, figure, words, or devise [device], without the consent of the teacher or other person having control of such house, furniture, or fixtures, shall be fined in a sum double the value of such building, furniture, fixtures, or apparatus so destroyed or damaged, and shall be fined in a sum not less than ten [\$10.00], nor more than fifty dollars [\$50.00] for each offense, to be recovered by civil action in any court of competent jurisdiction; and the punishment provided in this section is in addition to and not in lieu of the punishment by other statutes for such offenses. [Acts 1931, No. 169, § 177, p. 476; Pope's Dig. §§ 3592, 11619.]

80-1904. Injury to schoolhouse or fixtures--Penalties.

To cut, write upon, deface, disfigure, or damage any part or appurtenance or enclosure of any schoolhouse, shall be a misdemeanor punishable by a fine not exceeding one hundred dollars [\$100]. Any fine collected under this act for injury to any schoolhouse or other school property shall be paid into the school funds of the district where the crime was committed. [Acts 1931, No. 169, § 178, p. 476; Pope's Dig., §§ 3593, 11620.]

California

§ 48904. Liability of parent for personal injuries of property damages; Withholding of grades, diplomas, or transcripts

(a) Notwithstanding Section 1714.1 of the Civil Code, the parent or guardian of any minor whose willful misconduct results in injury or death to any pupil or any person employed by or performing volunteer services for a school district or private school or who willfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district or private school, or personal property of any school employee shall be liable for all damages so caused by the minor. The liability of the parent or guardian shall not exceed five thousand dollars (\$5,000). The parent or guardian shall also be liable for the amount of any reward not exceeding five thousand dollars (\$5,000) paid pursuant to Section 53069.5 of the Government Code. The parent or guardian of a minor shall be liable to a school district or private school for all property belonging to the school district or private school loaned to the minor and not returned upon demand of an employee of the district or private school authorized to make the demand.

(b) Any school district or private school whose real or personal property has been willfully cut, defaced, or otherwise injured, or whose property is loaned to a pupil and willfully not returned upon demand of an employee or the district or private school authorized to make the demand may, after affording the pupil his or her due process rights, withhold the grades, diploma, and transcripts of the pupil responsible for the damage until the pupil or the pupil's parent or guardian has paid for the damages thereto, as provided in subdivision (a).

The school district or private school shall notify the parent or guardian of the pupil in writing of the pupil's alleged misconduct before withholding the pupil's grades, diploma, or transcripts pursuant to this subdivision. When the minor and parent are unable to pay for the damages, or to return the property, the school district or private school shall provide a program of voluntary work for the minor in lieu of the payment of monetary damages. Upon completion of voluntary work, the grades, diploma, and transcripts of the pupil shall be released.

The governing board of each school district or governing body of each private school shall establish rules and regulations governing procedures for the implementation of this subdivision. The procedures shall conform to, but are not

necessarily limited to, those procedures established in this code for the expulsion of pupils.

Added Stats 1983 ch 498 § 91, effective July 28, 1983.

Prior Law: Former § 48909, as amended by Stats 1979 ch 127 § 2, Stats 1982 ch 222 § 1.

Former Section: Former § 48904, similar to present § 48914, was repealed by Stats 1983 ch 498 § 90, effective July 28, 1983.

Florida

235.09. Obscenity on education buildings or vehicles

Whoever willfully cuts, paints, pastes, marks, or defaces by writing or in any other manner any educational building, furniture, apparatus, appliance, outbuilding, ground, fence, tree, post, vehicle, or other educational property with an obscene word, image, or device is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.084. This section shall not apply to any student in grades K-12 subject to the discipline of a district school board.

Amended by Laws 1977, c. 77-458, § 7, eff. July 1, 1977; Laws 1981, c. 81-223, § 13, eff. June 30, 1981.

Hawaii

§ 298-27 Vandalism damage to public school property.

(a) Any pupil found to be responsible for an act of vandalism against any public school, building, facility, or ground shall make restitution in any manner including monetary restitution by the pupil or pupil's parents, or guardians, or both.

For the purpose of this section, "vandalism" shall include, but not be limited to, mischievous or malicious destruction of property, such as breakage of windows, lockers, and doors. The provisions of this section shall be in addition to and shall in no way limit the provisions of any other law concerning offenses against property rights.

(b) No pupil, parent, or guardian shall be required to make restitution in any manner unless the pupil and the parents or guardian have been notified and have been given an opportunity to be heard, on any report of vandalism involving the pupil, and the pupil, parent, or guardian have executed a written agreement to make such restitution.

(c) The principal of the school in which the vandalism occurred shall make or order an investigation of the vandalism. If after such investigation, the principal has reasonable cause to believe that a specific pupil is responsible for the vandalism, the principal shall schedule a conference with such pupil and his or her parents or guardian. Except for the principal of the school in which the vandalism occurred, the pupil and the parents or guardian, no other person shall be permitted to be in the conference for any reason.

(d) At the conference, the principal of the school in which the vandalism occurred shall present the findings of the investigation and the requirements of restitution to the pupil and parents or guardian.

If the pupil and the parents or guardian agree with the findings of the principal and the manner in which restitution is to be made, the principal and the pupil and parent or guardian shall execute a written agreement which shall specify the manner in which restitution is to be made.

Agreements shall be made only for damages that do not exceed \$3,500.

If restitution is made in this fashion, then all records and documents regarding the investigation and conference shall be destroyed. No information about the investigation, conference and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the findings made by the principal, the principal shall preserve all the records and documents regarding the investigation and conference and shall report the findings to the district superintendent who shall review the findings and may refer the matter to the attorney general for any further action pursuant to section 577-3.

(e) If the damages exceed \$3,500, the principal shall report the matter to the district superintendent who shall refer the matter to the attorney general for any further action pursuant to section 577-3.

(f) Notwithstanding any provisions herein to the contrary, the State may elect to bring any appropriate action for the recovery of all damages to school properties. Nothing in this section shall limit the right of the State to bring an action against any person to recover such damages. [L 1978, c 216, § 1; am L 1982, c 138, § 1; am L 1983, c 169, § 1]

Maine**§ 6805. Injuries by minor; damages**

If a minor injures or aids in injuring a schoolhouse or school outbuildings, utensils or appurtenances; defaces the walls, benches, seats or other parts of school buildings by marks, cuts or otherwise; or injures or destroys school property belonging to a school administrative unit, the unit may recover from the minor's parent, in a civil action, double the damage.

1981, c. 693, § 5, eff. July 1, 1983.

Laws 1957, c. 364, § 94.

R.S. 1954, c. 41, § 233. Former § 3772 of title 20.

§ 6806. Defacing schoolhouses; outbuildings.

A person who defaces the walls, benches, seats, blackboards or other parts of a schoolhouse or school outbuildings, by obscene pictures, language, marks or descriptions, commits a civil offense and shall pay a fine of not more than \$10.

1981, c. 693, § 5, eff. July 1, 1983.

R.S. 1954, c. 41, § 234.

Former § 3773 of title 20.

§ 6807. Liability for injury to books or appliances

If a public school student loses, destroys or unnecessarily injures a schoolbook or appliance furnished to him at the expense of the school administrative unit, his parent shall be notified. If the loss or damage is not made good to the satisfaction of the school board within a reasonable time, they shall report the case to the assessors of the municipality in which the student resides. The municipal assessors shall include in the next municipal tax of the delinquent parent the value of the book or appliance, to be assessed and collected as other municipal taxes.

1981, c. 693, § 5, eff. July 1, 1983.

Mississippi**§ 37-11-19. Damaging school property.**

If any pupil shall wilfully destroy, cut, deface, damage, or injure any school building, equipment or other school property he shall be liable to suspension or expulsion and his parents or person or persons in loco parentis shall be liable for all damages.

Source: Codes, 1942 § 6216-04; Laws, 1953, Ex Sess, ch. 26, § 4, eff. from and after July 1, 1954.

Nevada

393.070. Damage to school property; loitering; disturbances; penalty.

1. It is unlawful for any person:

(a) Willfully and maliciously to injure, mark or deface any public schoolhouse, its fixtures, books or appurtenances; or

(b) To commit any nuisance in any public schoolhouse; or

(c) To loiter on or near the school grounds; or

(d) Purposely and maliciously to commit any trespass upon the grounds attached to a public schoolhouse, or any fixtures placed thereon, or any enclosure or sidewalk about the same.

2. Any person violating any of the provisions of this section shall be guilty of a public offense, as prescribed in NRS 193.155, proportionate to the value of the property damaged or destroyed and in no event less than a misdemeanor.

[415:32:1956]--(NRS A 1967, 567)

New Jersey

18A:37-3. Liability of parents or guardian of minor for damage to property

The parents or guardian of any minor who shall injure any public or nonpublic school property shall be liable for damages for the amount of injury to be collected by the board of education of the district or the owner of the premises in any court of competent jurisdiction, together with costs of suit.

Amended by L. 1983, c. 302, § 1, eff. Aug. 11, 1983.

North Carolina

§ 115C-398. Damage to school buildings, furnishings, textbooks.

Students may be liable for damage to school buildings,

furnishings and textbooks pursuant to the provisions of G.S. 115C-523, 115C-100 and 14-132. (1981, c. 423, s. 1.)

§ 115C-399. Trespass on or damage to school bus.

Any person who willfully trespasses upon or damages a school bus may be liable pursuant to the provisions of G.S. 14-132.2. (1981, c. 423, s. 1.)

§ 115C-523. Care of school property.

It shall be the duty of every teacher and principal in charge of school buildings to instruct the children in the proper care of public property, and it is their duty to exercise due care in the protection of school property against damage, either by defacement of the walls and doors or any breakage on the part of the pupils, and if they shall fail to exercise a reasonable care in the protection of property during the day, they may be held financially responsible for all such damage, and if the damage is due to carelessness or negligence on the part of the teachers or principal, the superintendent may hold those in charge of the building responsible for the damage, and if it is not repaired before the close of a term, a sufficient amount may be deducted from their final vouchers to repair the damage for which they are responsible.

If any child in school shall carelessly or willfully damage school property, the teacher or principal shall report the damage to the parent, and if the parent refuses to pay the cost of repairing the same, the teacher or principal shall report the offense to the superintendent of schools.

It shall be the duty of all principals to report immediately to their respective superintendents any unsanitary condition, damage to school property or needed repair. (1955, c. 1372, art. 17, s. 7; 1981, c. 423, s. 1.)

Oregon

339.260 Injury to school property by pupil.

(1) No pupil shall wilfully damage or injure any school property or threaten or wilfully injure any fellow pupil or faculty member.

(2) A pupil who violates subsection (1) of this section may be disciplined, suspended or expelled.

[1965 c. 100 § 290; 1971 c. 561 § 4]

339.270 Assessment of costs of school property damage against responsible pupil or his parents; action to recover; limitation.

(1) The amount of damage to any school property shall be determined by procedures established by the district school board and they may be assessed against the pupil wilfully causing the injury or damage and against the parent or parents having legal custody of the pupil.

(2) If the assessed damages are not paid as demanded, the district school board, in addition to any other remedy provided by law, may bring an action under this section against the pupil and the parent or parents having legal custody of the pupil in a court of competent jurisdiction for the amount of the assessed damages not to exceed \$5,000 plus costs.

[1971 c. 561 § 5; 1975 c. 712 § 2; 1977 c. 419 § 2]

South Dakota

13-32-5. Injury to school property as ground for suspension or expulsion.

Any student, who cuts, defaces, or otherwise injures any schoolhouse, equipment, or outbuilding thereof, is liable to suspension or expulsion.

Source: SL 1931, ch 138, § 257; SDC 1939, § 15.3009; SL 1955, ch 41, ch 12 § 19; SDC Supp 1960, § 15.3019; SL 1975, ch 128, § 210.

Vermont

§ 3744. Liability for damage to textbook or appliance

A person having the control of a pupil shall be liable to the town district for damage occasioned by the loss, destruction or unnecessary injury or detention by such pupil of a textbook or appliance loaned such pupil, to be recovered in an action of tort on this statute, in the name of such district.

Source: V.S. 1947, § 4411. P.L. § 4333. G.L. § 1328. 1915, No. 64, § 138. P.S. § 1107. R. 1906, § 1019. V.S. § 771. 1894, No. 13, § 3.

Virginia**§ 22.1-276. Liability of pupils for destruction of property.**

Each pupil shall be required to reimburse the school board for any actual breakage or destruction of property owned by or under the control of the school board done by such pupil in pursuit of his studies. (Code 1950, § 22-200; 1980, c. 559.)

Washington**28A.87.120 Defacing or injuring school property--Liability of pupil, parent or guardian--Voluntary work program as alternative--Rights protected**

(1) Any pupil who shall deface or otherwise injure any school property, shall be liable to suspension and punishment. Any school district whose property has been lost or wilfully cut, defaced, or injured, may withhold the grades, diploma, and transcripts of the pupil responsible for the damage or loss until the pupil or the pupil's parent or guardian has paid for the damages. When the pupil and parent or guardian are unable to pay for the damages, the school district shall provide a program of voluntary work for the pupil in lieu of the payment of monetary damages. Upon completion of voluntary work the grades, diploma, and transcripts of the pupil shall be released. The parent or guardian of such pupil shall be liable for damages as otherwise provided by law.

(2) Before any penalties are assessed under this section, a school district board of directors shall adopt procedures which insure that pupils' rights to due process are protected.

Amended by Laws 1982, ch. 38, § 1.

APPENDIX C

State Acts Related to the Grounds for Suspension
or Expulsion of Pupils, Including Punishment
for Destruction of School Property
by Pupils

Indiana

20-8.1-5-4 [28-5390c]. Grounds for expulsion or suspension:

The following types of student conduct shall constitute grounds for expulsion or suspension subject to the procedural provisions of this chapter.

(a) Use of violence, force, noise, coercion, threat, intimidation, fear, passive resistance or other comparable conduct, constituting an interference with school purposes, or urging other students to engage in such conduct. The following enumeration is illustrative of the type of conduct prohibited by this subsection: (1) occupying any school building, school grounds, or part thereof with intent to deprive others of its use; (2) blocking the entrance or exits of any school building or corridor or room therein with intent to deprive others of lawful access to or from, or use of the building or corridor or room; (3) setting fire to or substantially damaging any school building or property; (4) firing, displaying, or threatening use of firearms, explosives or other weapons on the school premises for any unlawful purpose; (5) prevention of or attempting to prevent by physical act the convening or continued functioning of any school or educational function, or of any lawful meeting or assembly on school property; and (6) continuously and intentionally making noise or acting in any manner so as to interfere seriously with the ability of any teacher or any of the other school personnel to conduct the educational function under his supervision. This subsection shall not, however, be construed to make any particular student conduct a ground for expulsion where such conduct is constitutionally protected as an exercise of free speech or assembly or other under the Constitution of Indiana or the United States.

(b) Causing or attempting to cause substantial damage to school property, stealing or attempting to steal school property of substantial value, or repeated damage or theft involving school property of small value.

(c) Intentionally causing or attempting to cause substantial damage to valuable private property or stealing or attempting to steal valuable private property, on school grounds or during an educational function or event off school grounds; or repeatedly damaging or stealing private property on school grounds, or during an educational function or event off school grounds or when such student is traveling to or from school or such educational function or event.

(d) Intentionally causing or attempting to cause physical injury or intentionally behaving in such a way as could reasonably cause physical injury to any person:

(1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by a school group; or (3) off the school grounds at an educational function or event. Self defense or reasonable action undertaken on the reasonable belief that it was necessary to protect some other person does not, however, constitute a violation of this provision.

(e) [Omitted by 1980 amendment].

(f) Threatening or intimidating any student for the purpose of, or with the intent of, obtaining money or anything of value from such student.

(g) Knowingly possessing, handling or transmitting any object that can reasonably be considered a weapon:

(1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by a school group; or (3) off the school grounds at any educational function or event sponsored by the school.

(h) Knowingly possessing, using, transmitting or being under the influence of any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, alcoholic beverage, or intoxicant of any kind: (1) on the school grounds during and immediately before or immediately after school hours; (2) on the school grounds at any other time when the school is being used by any school group; or (3) off the school grounds at a school activity, function or event.

Use of a drug authorized by a medical prescription from a physician is not a violation of this rule.

(i) Engaging in the unlawful selling of narcotics or other violation of criminal law which constitutes a danger to other students, or constitutes an interference with school purposes or an educational function.

(j) Failing in a substantial number of instances to comply with directions of teachers or other school personnel during any period of time when he is properly under their supervision, where such failure constitutes an interference with school purposes or an educational function.

(k) Engaging in any activity forbidden by the laws of the state of Indiana which constitutes an interference with

school purposes or an educational function.

(1) A violation, or repeated violation, of any rules validly adopted under sections 2 and 3 [20-8.1-5-2, 20-8.1-5-3] of this chapter.

[IC 20-8.1-5-4, as added by Acts 1973, P. L. 218, § 1; Acts 1980, P. L. 146, § 10.]

Kentucky

158.150 Suspension or expulsion of pupils.

(1) All pupils admitted to the common schools shall comply with the lawful regulations for the government of the schools. Wilful disobedience or defiance of the authority of the teachers or administrators, use of profanity or vulgarity, assault or battery or abuse of other students or school personnel, the threat of force or violence, the use or possession of alcohol or drugs, stealing or destruction or defacing of school property or personal property, the carrying or use of weapons or dangerous instruments, or other incorrigible bad conduct on school property as well as off school property at school sponsored activities constitutes cause for suspension or expulsion from school.

(2) A pupil shall not be suspended from the common schools until after at least the following due process procedures have been provided:

(a) The pupil has been given oral or written notice of the charge or charges against him which constitute cause for suspension;

(b) The pupil has been given an explanation of the evidence of the charge or charges if the pupil denies them; and

(c) The pupil has been given an opportunity to present his own version of the facts relating to the charge or charges.

These due process procedures shall precede any suspension from the common schools unless immediate suspension is essential to protect persons or property or to avoid disruption of the ongoing academic process. In such cases, the due process procedures outlined above shall follow the suspension as soon as practicable, but no later than three (3) school days after the suspension.

(3) The superintendent, principal or head teacher of any school may suspend a pupil but shall report such action in writing immediately to the superintendent and to the parent, guardian or other person having legal custody or control of the pupil. The board of education of any school district may expel any pupil for misconduct as defined in subsection (1), but such action shall not be taken until the parent, guardian or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board. The decision of the board shall be final.

(4363-9: amend. Acts 1978, ch. 271, § 1, effective June 17, 1978.)

Louisiana

R. S. 17:416 Discipline of pupils; suspension; expulsion

A. (1) [a] Every teacher is authorized to hold every pupil to a strict accountability for any disorderly conduct in school or on the playgrounds of the school, on the street or road while going to or returning from school, or during intermission or recess. A school principal may suspend from school any pupil who:

- (i) Is guilty of willful disobedience;
- (ii) Treats with intentional disrespect a teacher, superintendent, member, or employee of the local school board;
- (iii) Makes against any one of them an unfounded charge;
- (iv) Uses unchaste or profane language;
- (v) Is guilty of immoral or vicious practices, or of conduct or habits injurious to his associates;
- (vi) Uses tobacco or who possesses alcoholic beverages or any controlled dangerous substance governed by the Uniform Controlled Dangerous Substance Law, in any form, in school buildings, on school grounds, or on school buses owned by, contracted to, or jointly owned by any city or parish school board;
- (vii) Disturbs the school and habitually violates any rule;
- (viii) Cuts, defaces, or injures any part of public

school buildings, any property belonging to the buildings, or any school buses owned by, contracted to, or jointly owned by any city or parish school board;

(ix) Writes any profane or obscene language or draws obscene pictures in or on any school material or on any public school premises, or on any fence, pole, sidewalk, or building on the way to or from school;

(x) Is found carrying firearms, knives, or other implements which can be used as weapons, the careless use of which might inflict harm or injury;

(xi) Throws missiles on the school grounds liable to injure other pupils;

(xii) Instigates or participates in fights while under school supervision;

(xiii) Violates traffic and safety regulations;

(xiv) Leaves the school premises without permission;

(xv) Leaves his classroom during class hours or detention without permission;

(xvi) Is habitually tardy or absent; or

(xvii) Commits any other serious offense.

(b) Prior to any suspension, the school principal, or his designee, shall advise the pupil in question of the particular misconduct of which he is accused as well as the basis for such accusation, and the pupil shall be given an opportunity at that time to explain his version of the facts to the school principal or his designee. A student whose presence in or about a school poses a continued danger to any person or property or an ongoing threat of disruption to the academic process may be immediately removed from the school premises without the benefit of the procedure described hereinabove; however, the necessary procedure shall follow as soon as is practicable.

(c) Notice in writing of the suspension and the reasons therfor shall be given to the parent or parents of the pupil suspended. Any parent, tutor, or legal guardian of a pupil suspended shall have the right to appeal to the city or parish superintendent of schools or his designee, who shall conduct a hearing on the merits. The decision of the superintendent of schools on the merits of the case, as well as the term of suspension, shall be final, reserving to the superintendent of schools the right to remit any portion of the time of suspension.

(d) A pupil suspended for damages to any property belonging to the school system or to property contracted to the school system shall not be readmitted until payment in full has been made for such damage or until directed by the superintendent of schools. If the property damaged is a school bus owned by, contracted to, or jointly owned by any parish or city school board, a pupil suspended for such damage shall not be permitted to enter or ride any school bus until payment in full has been made for such damage or until directed by the superintendent of schools.

(2) Each city and parish school board shall adopt such rules and regulations as it deems necessary to implement the provisions of this Subsection, provided that such rules and regulations shall include, but not be limited to provisions under which:

(a) Any teacher or other school employee may report any violation of the provisions of this Subsection;

(b) Each principal who receives such report shall be required to review and act upon it; and

(3) Any principal who fails to act upon such report in some manner shall explain his reasons for such inaction to the local superintendent of the school system by which he is employed or to such superintendent's designee.

Amended by Acts 1982, No. 847, § 1; Acts 1983, No. 587, § 1.

B. (1) Any student after being suspended for committing any of the offenses enumerated in this Section may be expelled, upon recommendation by the principal of the public school in which said student is enrolled, which recommended expulsion shall be subject to the provisions of Subsection C hereof.

(2) Any student after being suspended on three occasions for committing any of the offenses enumerated in this Section, during the same school year, shall on committing the fourth offense, be expelled from all the public schools of the parish or city school system wherein he resided until the beginning of the next regular school year, subject to the review and approval of the local school board.

(3) No student who has been expelled pursuant to the provisions of this Section shall be admitted to any public school in any other parish or city school system in the state except upon the review and approval of the school board of the school system to which he seeks admittance.

Amended by Acts 1983, No. 140, § 1.

Minnesota

127.29 Grounds for dismissal

Subdivision 1. No school shall dismiss any pupil without attempting to provide alternative programs of education prior to dismissal proceedings, except where it appears that the pupil will create an immediate and substantial danger to himself or to persons or property around him. Such programs may include special tutoring, modification of the curriculum for the pupil, placement in a special class or assistance from other agencies.

Subdivision 2. A pupil may be dismissed on the following grounds:

(a) Willful violation of any reasonable school board regulation. Such regulation must be clear and definite to provide notice to pupils that they must conform their conduct to its requirements;

(b) Willful conduct which materially and substantially disrupts the rights of others to an education;

(c) Willful conduct which endangers the pupil or other pupils, or the property of the school.

Laws 1974, c. 572, § 4. Amended by Laws 1978, c. 764, § 93, eff. April 6, 1978.

Montana

20-5-201. Duties and sanctions.

(1) Any pupil shall:

(a) comply with the policies of the trustees and the rules of the school which he attends;

(b) pursue the required course of instruction;

(c) submit to the authority of the teachers, principal, and district superintendent of the district; and

(d) be subject to the control and authority of the teachers, principal, and district superintendent while he is in school or on school premises, on his way to and from school, or during his intermission or recess.

(2) Any pupil who continually and willfully disobeys the provisions of this section, shows open defiance of the

authority vested in school personnel by this section, defaces or damages any school building, school grounds, furniture, equipment, book belonging to the district, or harms or threatens to harm another person or his property shall be liable for punishment, suspension, or expulsion under the provisions of this title. When a pupil defaces or damages school property, as defined above, his parent or guardian shall be liable for the cost of repair or replacement upon the complaint of the teacher, principal, superintendent, or any trustee and the proof of such damage.

(3) In addition to the sanctions prescribed in this section, the trustees of a high school district may deny a high school pupil the honor of participating in school activities. Such action shall not be taken until the incident or infraction causing such consideration has been investigated and the trustees have determined that the high school pupil was involved in such incident or infraction.

History: En. 75-6310 by Sec. 123, Ch. 5, L. 1971; R.C.M. 1947, 75-6310.

Nebraska

79-4,180. Student conduct constituting grounds for long-term suspension, expulsion, or reassignment; enumerated.

The following student conduct shall constitute grounds for long-term suspension, expulsion, or mandatory reassignment, subject to the procedural provisions of sections 79-4, 170 to 79-4, 205, when such activity occurs on school grounds or during an educational function or event off school grounds:

(1) Use of violence, force, coercion, threat, intimidation, or similar conduct in a manner that constitutes a substantial interference with school purposes;

(2) Willfully causing or attempting to cause substantial damage to private or school property, stealing or attempting to steal private or school property of substantial value, or repeated damage or theft involving private or school property of small value;

(3) Causing or attempting to cause physical injury to a school employee or to any student. Physical injury caused by accident, self-defence, or other action undertaken on the reasonable belief that it was necessary to protect some other person shall not constitute a violation of this subdivision;

(4) Threatening or intimidating any student for the purpose of, or with the intent of, obtaining money or anything of value from such student;

(5) Knowingly possessing, handling, or transmitting any object or material that is ordinarily or generally considered a weapon;

(6) Engaging in the unlawful possession, selling, dispensing, or use of a controlled substance or alcoholic liquor;

(7) Engaging in any other activity forbidden by the laws of the State of Nebraska which activity constitutes a danger to other students or interferes with school prupose; or

(8) A repeated violation of any rules validly established pursuant to section 79-4, 176 if such violations constitute a substantial interference with school purposes.

Source: Laws 1976, LB 503, § 11.

New Jersey

18A-37-2. Causes for suspension or expulsion of pupils

Any pupil who is guilty of continued and willful disobedience, or of open defiance of the authority of any teacher or person having authority over him, or of the habitual use of profanity or of obscene language, or who shall cut, deface or otherwise injure any school property, shall be liable to punishment and to suspension or expulsion from school.

Conduct which shall constitute good cause for suspension or expulsion of a pupil guilty of such conduct shall include, but not be limited to, any of the following:

- a. Continued and willful disobedience;
- b. Open defiance of the authority of any teacher or person, having authority over him;
- c. Conduct of such character as to constitute a continuing danger to the physical well-being of other pupils;
- d. Physical assault upon another pupil;
- e. Taking, or attempting to take, personal property or money from another pupil, or from his presence, by means of force or fear;
- f. Willfully causing, or attempting to cause, substantial damage to school property;

g. Participation in an unauthorized occupancy by any group of pupils or others of any part of any school or other building owned by any school district, and failure to leave such school or other facility promptly after having been directed to do so by the principal or other person then in charge of such building or facility;

h. Incitement which is intended to and does result in unauthorized occupation by any group of pupils or others of any part of a school or other facility owned by any school district;

i. Incitement which is intended to and does result in truancy by other pupils; and

j. Knowing possession or knowing consumption without legal authority of alcoholic beverages or controlled dangerous substances on school premises, or being under the influence of intoxicating liquor or controlled dangerous substances while on school premises.

Amended by L. 1969, c. 156, § 1, eff. Sept. 5, 1969; L. 1979, c. 189, § 1, eff. Sept. 11, 1979; L. 1981, c. 59, § 1, eff. March 3, 1981.

Tennessee

49-6-3401. Suspension of students.

(a) Any principal or principal-teacher of any public school in this state is authorized to suspend a pupil from attendance at such school, including its sponsored activities, or from riding a school bus, for good and sufficient reasons. Good and sufficient reasons for such suspension may include, but shall not be limited to:

(1) Willful and persistent violation of the rules of the school or truancy;

(2) Immoral or disreputable conduct or vulgar or profane language;

(3) Violence or threatened violence against the person of any personnel attending or assigned to any public school;

(4) Willful or malicious damage to real or personal property of the school, or the property of any person attending or assigned to the school;

(5) Inciting, advising, or counseling of others to engage in any of the acts hereinbefore enumerated;

- (6) Marking, defacing or destroying school property;
- (7) Possession of a pistol, gun or firearm on school property;
- (8) Possession of a knife, etc., as defined in § 39-6-1701 on school property;
- (9) Assaulting a principal or teacher with vulgar, obscene or threatening language;
- (10) Unlawful use or possession of barbital or legand drugs, as defined in § 53-10-101;
- (11) Any other conduct prejudicial to good order or discipline in any public school.

(b) (1) Any principal or principal-teacher may suspend any pupil from attendance at a specific class, classes, or school-sponsored activity without suspending such pupil from attendance at school pursuant to an in-school suspension policy adopted by the local board of education. Good and sufficient reasons for such in-school suspension shall include, but not be limited to:

- (A) Behavior which adversely affects the safety and well-being of other pupils;
- (B) Behavior which disrupts a class or school sponsored activity; or
- (C) Behavior prejudicial to good order and discipline occurring in class, during school-sponsored activities or on the school campus.

(2) In-school suspension policies shall provide that pupils given an in-school suspension in excess of one (1) day from classes shall attend either special classes attended only by students guilty of misconduct or be placed in an isolated area appropriate for study. Students given in-school suspension shall be required to complete academic requirements.

Wyoming

§ 21-4-306. Same; grounds.

(a) The following shall be grounds for suspension or expulsion of a child from a public school during the school year:

- i) Continued willful disobedience or open defiance of the authority of school personnel;

- (ii) Willful destruction or defacing of school property.
- (iii) Any behavior which in the judgment of the local board of trustees is clearly detrimental to the education, welfare, safety or morals of other pupils;
- (iv) Torturing, tormenting, or abusing a pupil or in any way maltreating a pupil or a teacher with physical violence.

(Laws 1969, ch. 111, § 62; 1977, ch. 16, § 1.)