

PARENT LIABILITY FOR THE INTENTIONAL TORTIOUS ACTS OF THEIR CHILDREN: A U.S. PERSPECTIVE

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Should parents be required to pay for personal injuries and property damage caused by the intentional torts of their children? The most recent government statistics in the United States reveal 1,466,000 incidents of serious crime (rape, sexual battery other than rape, physical fights with or without a weapon, and robbery with or without a weapon) reported as occurring in 71 per cent of all schools, although only 2 per cent of the schools account for 50 per cent of these incidents. In addition to personal injuries, schools also face monumental financial costs resulting from damage to school property. When children are the victims of violence in schools in the United States of America (U.S.), who should be legally culpable for their injuries? To what extent should parents be financially responsible for the consequences of the intentional actions of their children? If they are liable, what limitations, if any, should be imposed on that liability? Should parents be equally liable for damage to school property as for injuries caused to students? Where the students causing injury or property damage have a disability, to what extent, if any, should the disability affect parent financial responsibility for the intentional acts of their children? The purpose of this article is to discuss generally the liability of parents for their children's actions under U.S. common law claims and under state parental responsibility statutes with special attention to actions involving public schools.

I INTRODUCTION

U.S. public schools have become violent places with a total of 1,466,000 incidents of serious crime (rape, sexual battery other than rape, physical fights with or without a weapon, and robbery with or without a weapon) reported as having occurred in 71 per cent of the schools,¹ with only 2 per cent of the schools, however, accounting for 50 per cent of the violent incidents.² Although these violent incidents tended to be concentrated in urban high schools with large enrollments and numerous serious disciplinary problems, these incidents have occurred as well in rural and suburban schools.³ In addition, schools face monumental financial costs resulting from damage to school property.⁴

When children are the victims of violence in schools, a legal question arises as to who, if anyone, should be legally culpable for injuries to students. Under U.S. common law, schools were generally not liable in civil damages for the intentional intervening actions of injuries to students and, even with the trend toward finding liability for schools and school officials in certain contexts,⁵ maintaining the burden of proof imposed on plaintiffs to find school district liability for the intentional intervening actions of other persons on school property has not been an easy task.⁶

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While possible school district liability is an obvious, and probably preferable, choice for persons injured on school district premises, it is not the only choice. Parents of students injured at school or school events by other students may seek recovery from the parents of those students responsible for personal injuries or property damage, whether or not a school district is liable.⁷ In addition, school districts may seek recovery from parents for the cost of intentional damage to school property.⁸

To what extent should parents be financially responsible for the consequences of the intentional actions of their children and, if they are liable, what limitations, if any, should be imposed on that liability? Should parents be equally liable damage to school property as for injuries caused to students? Where the students causing injury or property damage have a disability, to what extent, if any, should the disability affect parent financial responsibility for the intentional acts of their children?⁹

The purpose of this article is to discuss generally the liability of parents for their children's actions under common law claims and under parental responsibility statutes with special attention to actions involving public schools.

II PARENTAL COMMON LAW LIABILITY FOR THEIR CHILDREN'S INTENTIONAL TORTS

Generally, state courts have held that, in the absence of a statute, the mere fact of paternity is not sufficient to sustain an action at common law for parental liability for the injury or damage intentionally inflicted by their children.¹⁰ At common law vicarious liability for torts of a child could be imposed on a parent only where there was an agency relationship,¹¹ where the parents themselves were guilty in the commission of the tort,¹² or where a 'child ha[d] a tendency to engage in vicious conduct that might endanger a third party, and the child's parents [were] aware of such propensities'.¹³ In essence, while not being willing to find parents liable vicariously for a child's intentional actions, courts have been willing to consider parental liability at common law where intentional injuries resulted from lack of parental supervision¹⁴ or from entrustment to the child of dangerous instrumentalities.¹⁵

This connection of parent liability to parent responsibilities of supervision and control found their way into two sections of the Restatement of Torts. Section 316 provides that,

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

- (a) knows or has reason to know that he has the ability to control his child, and
- (b) knows or should know of the necessity and opportunity for exercising such control.¹⁶

Section 319 of the Restatement of Torts provides as follows:

Duty of Those in Charge of Person Having Dangerous Propensities: One who takes charge of a third person whom he knows or should know to be likely to cause bodily harm to others if not controlled is under a duty to exercise reasonable care to control the third person to prevent him from doing such harm.¹⁷

Framing parental liability for the intentional actions of their children under negligent supervision and entrustment theories served to change the legal perspective of parent responsibility. Although courts continued to give lip service to the common law principle that parents were not vicariously liable for their children's actions, the Restatement of Torts reflected a change

in legal focus from parental vicarious liability to parent liability for their own actions in failing to adequately supervise and control their children. Thus, parents' responsibility for controlling their children has been viewed through a larger social and cost-sharing lens¹⁸ as courts have been tasked with the obligation of applying negligence concepts of duty of care, proximate cause, reasonableness person, and foreseeability to the conduct of parents.¹⁹

A fairly large body of case law has developed in the U.S. regarding claims of parental lack of supervision or dangerous entrustment of which only a minority concern lawsuits against parents for their children's damage to school property or injury to other persons at schools.²⁰ In lawsuits involving the taking of another person's life, the kind of sensational act likely to generate litigation, claims against parents for negligence supervision generally fail because, regardless of a child's disruptive and unruly behavior at home, parents rarely have knowledge that their minor children's behaviors will manifest themselves in killing others.²¹

The relative infrequency of lawsuits against parents for their children's intentional acts at school reflects in a large sense the fact that school enforcement of their discipline and zero tolerance policies operate independently from questions of parent responsibility. Injuries and property damage at school prompt an initial concern among plaintiffs about the school's legal responsibility to protect students and property. Popular substantive and procedural constitutional or statutory claims against school districts under section 1983 of the *Civil Rights Act of 1964*²² do not apply to parents since they are not state actors.²³ Some claims that fail against school districts for jurisdictional reasons would fail as well against parents.²⁴ In effect, while legal claims against the parents of minors committing intentional acts maintain common law legal viability in all states, the issue of parent liability largely remains secondary to that of the school districts.

Civil claims against parents for damages under negligence theories (supervision or entrustment) frequently find parents not liable under a negligent entrustment theory for damages where they did not know their child possessed a dangerous weapon, and under negligent supervision where '[t]here [was] [no] evidence from which it could reasonably be inferred that they knew [their child] was armed when he left the house'.²⁵ Even where parents have notice of their child's history of violence towards others, they are still not liable for negligent supervision where they have 'respond[ed] appropriately to specific prior violent acts, ... their subsequent general efforts to control [their child has] been reasonable, ... they [could not] have foreseen the need to prevent [the] specific incident [that was the basis for the lawsuit], and ... [even they could have foreseen the incident], ... they [made] reasonable efforts to do so'.²⁶ Similarly, absent parental knowledge that a child had a dangerous propensity to misuse weapons, courts have been reluctant to find parents liable even if children had ready access to weapons.²⁷ An action for negligent entrustment will not lie where a child takes a pistol from a parent's unlocked dresser drawer where the parent is not aware of the theft,²⁸ although some states have enacted legislation setting guidelines for the storage of firearms in the home that may have civil liability implications for parents.

When injuries or deaths result from children using weapons belonging to their parents, state legislatures have augmented remedies available under civil law with statutes imposing criminal liability. New Hampshire has enacted a statute providing that,

Any person who stores or leaves on premises under that person's control a loaded firearm, and who knows or reasonably should know that a child is likely to gain access to the firearm without the permission of the child's parent or guardian, is guilty of a violation if a child gains access to a firearm and: (a) The firearm is used in a reckless or threatening manner; (b) The firearm is used during the commission of any misdemeanor or felony; or (c) The firearm is negligently or recklessly discharged.²⁹

A violation of this criminal statute carries a fine not to exceed \$1,000, but the penalty does not apply where ‘[t]he firearm is kept secured in a locked box, gun safe, or other secure locked space, or in a location which a reasonable person would believe to be secure, or is secured with a trigger lock or similar device that prevents the firearm from discharging’.³⁰ The criminal statute provides that parents can be prosecuted for a violation of the statute where a child is injured or dies from an accidental shooting.³¹ A criminal statute in the U.S. normally does not form the basis for a private cause of action for civil damages against parents who violate it.

Another approach to minor’s access to firearms is reflected in a North Dakota statute that,

Any parent, guardian, or other person having charge or custody of any minor under fifteen years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a class B misdemeanor.³²

As for the New Hampshire statute, one could reasonably expect that the North Dakota statute would not support a private civil cause of action for damages.

However, while state criminal statutes will not themselves form the basis for civil liability, they do invite a discussion as to how the parental exemption from criminal responsibility for a minor under a parent’s ‘direct supervision’ might relate to a civil action for damages. Presumably, parents with a child under their ‘direct supervision’ could still be civilly liable where the parents’ supervision was not reasonable if parents had knowledge of the child’s past dangerous proclivity to commit intentional harm to third parties.

Nonetheless, some U.S. courts have restricted parent liability to ‘the children [having] previously committed the *same* tortious act as that which ultimately injured the [current] victim’,³³ a significant restriction on parent notice triggering damages liability. Similarly, courts are reluctant to hold parents of children with special education emotional behaviors negligent for injuries resulting violent behavior unless specific instances of prior conduct is alleged, and, even then, parents would be liable only where the child is in their supervision.³⁴ However, the Supreme Court of Wisconsin upheld, in *Nieuwendorp v American Family Ins. Co. (Nieuwendorp)*,³⁵ a judgment against parents who decided to take their child (diagnosed ADHD) off medication (Dexedrine) and their child shortly thereafter pulled the hair of a special education teacher, resulting in an injury to her neck. In upholding parent common law liability for the act of their child at school, the *Nieuwendorp* court observed that while ‘the [parents’] decision to take their son off medication [did] not constitute negligence’, the parents were liable for ‘not ... notify[ing] [their child’s] school that the medication was discontinued so that, in conjunction with the [parents], a plan to manage [the child’s] behavior could have been developed’.³⁶

Nieuwendorp reflects the complicated reality in public schools where intentional actions against persons and property are committed by children with disabilities. Parents are an integral part of process under the *Individuals with Disabilities Education Act* (IDEA) and, as part of that process, the nature of a child’s behaviors that might represent risks to school property or other persons becomes widely known among special educators and teachers, especially where parents are litigating for the school to provide services to address those behaviors.³⁷ A school district’s visibility under IDEA to provide services also serves to expose its vulnerability where inadequate supervision furnishes the opportunity for an intentional tort. In an exemplar case, *Guidry v Rapides Parish School Board (Guidry)*,³⁸ a state appeals court upheld a damages award in excess of \$16,000 for a sexual assault committed by a severely mentally disabled child against

their daughter (also mentally disabled). Observing that ‘schools offering training for mentally, emotionally, or socially handicapped young people have a duty to use reasonable care to protect their students from harm’,³⁹ the *Guidry* court opined that this reasonable care encompassed ‘the risk of sexual behavior by students whose bodies have developed beyond their mental ability to understand or control their urges’,⁴⁰ which meant in this case, that, since the duty of the standard of care owed was framed by knowledge that the students required ‘constant supervision’, a teacher’s failure to provide the level of supervision constituted a breach of duty.⁴¹ In other words, because the propensities of children receiving special education services for violent behavior generally tend to be known by school personnel as part of the construction of an Individualized Education Program (IEP), the duty to exercise reasonable care in protecting students is transferred from parents to the school district.⁴² This transfer is reflected as well in litigation by employees against their school districts (not against the parents) claiming that their districts had not responded to complaints about physical injuries suffered at the hands of students with behavioral disabilities.⁴³

III PARENTAL RESPONSIBILITY STATUTES: A BREAK WITH THE COMMON LAW

The difficulty with finding parent liability for the intentional acts of their minor children under common law negligence theories has influenced state legislatures in the U.S. to enact parent responsibility statutes. Generally, these statutes have eliminated the requirement that parents have knowledge or awareness of their child’s dangerous propensity and have imposed civil liability upon parents for their children’s intentional acts as long as the parents had control or custody of the child.⁴⁴ Whether parent liability is based on a child’s chronological or mental age, is not clear,⁴⁵ parent liability might not attach where a minor child has been emancipated.⁴⁶ Although the statutes differ somewhat, all states except New Hampshire have enacted one⁴⁷ and almost all impose a dollar limit for parent liability.⁴⁸ In general, this change from common law to statutory liability has been explained as ‘society’s first line of defense against destructive-minded delinquents’.⁴⁹

The projection that a shift in responsibility to the parent would ‘strengthen the influence of the home and encourage a sense of responsibility on the part of the parents with respect to their children’⁵⁰ has not met with universal agreement. Concern has been expressed that children might use the law as a weapon against their parents⁵¹ and that parental liability would not only disrupt domestic tranquillity because of the strain of litigation, but would do little to eliminate tragedies such as Columbine.⁵²

To the extent that litigation has a disruptive effect on the home, such disruption would seem to strengthen rather than to weaken the factors causing delinquency.⁵³ Parental responsibility statutes have existed in common law states for over a half-century and a fairly large number of cases involving these statutes have been reported, although most do not concern schools. Even though granting judgments against parents for their children’s intentional acts may have a deteriorating effect on the already unstable American family,⁵⁴ imposing liability on parents is preferable to asking the victim to bear the costs of delinquent acts. Because ‘[a] minor is, in almost all cases, judgment proof and without personally acquired insurance’, a federal district court in *Bryan v Kitamura*⁵⁵ reasoned that the preferable alternative to ‘the child’s victim [bearing] the entire cost of the injury suffered ... is [t]he child’s parents ... spread[ing] the cost of the injury to the public at large through the purchase of liability insurance’.⁵⁶ Parents have a unique relationship with their children and, as an Illinois appeals court observed in *Vanthournout v Burge* (*Vanthournout*),⁵⁷ creating civil damages liability for parents should not be abolished as unfair simply because ‘[other] groups in society such as schools, policemen or other relatives of the

child are also responsible for juvenile conduct'.⁵⁸ A New Jersey appeals court philosophised, in upholding the constitutionality of the state's parent responsibility statute in *Board of Education of Borough of Palmyra, Burlington County v Hansen*,⁵⁹ that if a student caused \$50 in damage in a school with 500 pupils, 'Would it be morally just to assess the parents of each ten cents rather than to assess the full amount against the parents of the culprit?'.⁶⁰

However, this parental responsibility is subject to civil, not criminal, restraints. In *Doe v City of Trenton (City of Trenton)*,⁶¹ a New Jersey appeals court declared unconstitutional the city's ordinance imposing criminal vicarious liability on parents whose child 'twice within one year [was] adjudged guilty of acts defined as violations of the public peace',⁶² observing that '[t]he family is just one of the numerous interrelated forces, including schools, housing, recreation, community life, employment and the juvenile justice system itself which influence a juvenile toward or away from a life of delinquency'.⁶³ *Vanthournout* and *City of Trenton* mirror the broadly accepted social viewpoint that, while parents should not have to bear vicarious criminal responsibility in fines or incarceration for their children's intentional acts, the imposition of statutory vicarious parental liability in civil damages is a cost of parenthood that is both reasonable and acceptable.

The assumption underlying parent responsibility statutes is that the threat of imposition of civil damages on parents will result in closer parental supervision and the reduction in injuries and property damage caused by the intentional acts of minors.⁶⁴ Such an assumption, though, has practical limitations. To the extent that intentional acts are performed by children of poor parents who lack assets to satisfy a judgment under a parent responsibility statute, the awarding of damages and the statutory assumption would seem to have minimal impact.⁶⁵ While many poor parents do exercise close supervision over their children, such supervision, arguably, is for reasons other than potential vicarious liability. Indeed, close supervision of children by poor parents, as well as by more solvent parents with assets or insurance policies,⁶⁶ is more likely to be driven as much, if not more, by concerns about their children's safety and criminal liability than about vicarious civil liability under a statute concerning which many parents may be unaware. In any case, since parent responsibility statutes do not affect '[the] rights [of children] to a free public education',⁶⁷ the viability of these statutes rests on the public policy assumption that the parents' control over their children is a critical integral factor for a safe and orderly society. Even though these statutes 'impose liability even where parents have exercised due care in supervising their children', the judicial approach is that responsibility lies with state legislatures, not the courts, to determine 'the best method for deterring juvenile delinquency'.⁶⁸

Generally parental responsibility statutes among the various states have several features in common. First, as indicated in *City of Trenton*, they are limited to vicarious civil, and not criminal, liability. The New Jersey court in *City of Trenton* reasoned that, because the causes of juvenile delinquency are so complex, the court was not willing to assume that imposing a fine against parents after a child's second juvenile delinquency offense was more likely than not the result of 'passive or active wrongdoings on the part of the minor's parent or parents'.⁶⁹ Similarly, in *State v Akers*⁷⁰ the New Hampshire Supreme Court had occasion to consider whether parents could be held criminally liable for acts of a minor child in violation of the state's Off-Highway Recreational Vehicles Code. As a result of the minors in this case being found guilty of operating snowmobiles on a public way at more than a reasonable speed, their fathers were subsequently found guilty. The New Hampshire Supreme Court had no difficulty declaring the imposition of vicarious criminal liability to be in violation of the New Hampshire Constitution.⁷¹ Such liability, according to the court, penalized the status of parenthood and struck 'at the very foundation of our civilization'.⁷²

A second common feature among the statutes is that they apply only to those persons with the legal status of parents or guardians of minor children,⁷³ without also precluding claims directly against the minor children as well.⁷⁴ As noted in the leading case, *Piscataway Township Board of Education v Caffiero (Piscataway)*,⁷⁵ parenthood is not considered to be a suspect class that would require a strict scrutiny analysis under the equal protection clause of the Fourteenth Amendment⁷⁶ nor do the parental responsibility statutes burden the right to bear children.⁷⁷ Imposition of liability only on parents or guardians has a rational basis, without the courts having to consider whether such statutes would pass a strict scrutiny test.⁷⁸ Although the status of parenthood is not sufficient to sustain vicarious criminal liability it is generally adequate to invoke civil liability.

The eradication of vandalism in public schools will require more than a parental liability statute. But the starting point for a solution could be a resurgence of the belief that parents should take responsibility for their children's activities.⁷⁹

However, a minority view regarding parental vicarious liability is reflected in *Owens v Ivey*⁸⁰ where a New York trial court, in dismissing a complaint against a parent under a parent responsibility statute, observed that,

while legislating a monetary penalty for a parent on account of damage caused by the deliberate and malicious acts of his child may have a sound rational basis in history, and in logic, as an effective deterrent, or preventive threat, and thereby pass muster in the face of a constitutional challenge on due process or equal protection grounds, such a statute does pose, at once, the question of whether it is, in essence, a forbidden bill of attainder—particularly where, as here, the *sole basis* for the liability is the blood relationship, or its legal equivalent, of parent and child.⁸¹

The overwhelming general trend, though, has been to follow *Piscataway* rather than *Owens* reflecting

the overthrow of the doctrine of never any liability without fault, even in the legal sense of a departure from reasonable standards of conduct. [This change] has seen a general acceptance of the principle that in some cases the defendant may be held liable, although he is not only charged with no moral wrongdoing, but has not even departed in any way from a reasonable standard of intent or care⁸²

A third common feature among parental responsibility statutes is that they are limited to intentional, willful, or malicious acts of a child. The parental responsibility laws do not impose vicarious liability for negligent actions but instead leave any liability to the common law development of vicarious responsibility within the various states. For example, in *Anello v Savignec*⁸³ parental liability for the vandalism of their child was assessed at the full statutory limit of \$1,000 but the negligence claim against the parents was dismissed on the grounds that the child's actions were not foreseeable.⁸⁴

A fourth similarity among the statutes is that almost all provide a remedy for property damage,⁸⁵ with some minor variations existing as to property damage recoveries. For example, the Commonwealth of Virginia has two separate sections devoted to property damage, one granting a remedy to officers of the Commonwealth for damage to 'public property'⁸⁶ and the other to 'the owner of any property',⁸⁷ although the recovery limit is the same under both statutes (\$2,500). In a rather bizarre lawsuit upholding the constitutionality of New Jersey's parent responsibility statute, *Piscataway Township Board of Education v Caffiero (Piscataway)*,⁸⁸ the Supreme Court of New Jersey held that the state's statute created parent liability for their children's damage done

to public, but not nonpublic, school property, an inconsistency that was promptly remediated by the state's legislature.⁸⁹

IV DIFFERENCES AMONG PARENTAL RESPONSIBILITY STATUTES

The differences among the parental responsibility statutes generally deal with the nature and extent of remedies available. A significant difference is that, while most states impose parent liability for property damage, not all states like Illinois,⁹⁰ Minnesota,⁹¹ and South Dakota⁹² impose liability equally on injury to persons and damage to property.

Most, but not all, states impose dollar limitations on damages recover. The maximum dollar recovery varies considerably with \$1,000 in Minnesota⁹³ and North Dakota,⁹⁴ \$1,500 in South Dakota,⁹⁵ \$2,500 in Virginia⁹⁶ and Wisconsin,⁹⁷ \$3,500 in Colorado,⁹⁸ \$4,000 in New Mexico,⁹⁹ \$5,000 in West Virginia,¹⁰⁰ \$7,500 in Oregon,¹⁰¹ \$10,000 in Ohio¹⁰² and Tennessee,¹⁰³ and \$20,000 in Illinois.¹⁰⁴ Other variations exist. Nebraska has an unlimited recovery for destruction of real or personal property but a \$1,000 limit on 'willful and intentional infliction of personal injury to any person'.¹⁰⁵ States such as Louisiana,¹⁰⁶ Hawaii¹⁰⁷ and New Jersey¹⁰⁸ set no dollar limits on damages recoveries.

Parent responsibility statutes permit parents to recover compensatory damages but the nature of personal injuries for damages are available may depend on statutory language.¹⁰⁹ In Illinois, only medical, dental and hospital expenses and expenses for treatment by Christian Science practitioners and nursing care can be used in calculating damages,¹¹⁰ while in Minnesota, recovery is limited to 'special damages'.¹¹¹ In *Garrett v Olsen*,¹¹² an Oregon appeals court interpreted the term, for 'actual damages to person or property',¹¹³ to include emotional distress as well as pecuniary damages. At least two jurisdictions have interpreted their statutes to allow for recovery of punitive damages.¹¹⁴ Because parental responsibility statutes generally impose liability for willful or malicious acts of the child, the awarding of punitive damages should not be surprising.¹¹⁵ Finally, a number of states allow for the awarding of attorney fees or costs to successful plaintiffs.¹¹⁶

V CONCLUSION

The concept of parent liability for the intentional acts of their children has garnered widespread support throughout the U.S., first under negligence theories and more recently under parent responsibility statutes. This concept, however, has been difficult to translate into the awarding of damages. Recovery of damages under negligent supervision or entrustment has been hampered by problems of proof connected especially to whether parents had the requisite knowledge of their child's dangerous propensities.

The more recent reliance on parent responsibility statutes has not been without its own problems. In most states, parent vicarious liability under parent responsibility statutes has been mollified by limitations on the amount of dollar recovery. What is readily apparent is that parent responsibility is very much a matter of geography; those parents who live in states with high, or no, dollar limits stand to lose far more than their counterparts in states with very low recovery limits. Thus, while the concept of parent responsibility is universally accepted among the states, the reality of liability is quite different.

A more interesting problem, though, is the relatively limited number of reported cases involving schools. Considering the ready availability of damages recovery under parent responsibility statutes, one can only speculate why there are not more cases. Some suggestions

are: if attorney fees are not available, the cost of recovering damages may not be worth the expense; schools would prefer to cover losses through their own insurance coverage rather than litigation; parents may be perceived as judgment-proof; or, demands for parent damages are met through homeowner's insurance and complaints are never filed. Whatever the reasons, the notion that parents should be responsible for the tortious acts of their children would be validated, it would seem, only to the extent that parents are compelled to contribute towards the damage or injury that their children have caused.

Keywords: intentional torts; damages; parent responsibility statutes; vicarious liability; delinquency; student disabilities.

ENDNOTES

1. See Amanda K. Miller, 'Violence in U.S. Public Schools: School Survey on Crime and Safety, NCES 2004-314 Revised, p. iv. (U.S. Dep't of Educ.Nat'l Center for Educational Statistics, Wash. D. C. 2005) <<http://nces.ed.gov>> at 24 March 24 2008 (Cited hereafter as *Amanda Miller, NCES*).
2. The Strengthening and Improvement of Elementary and Secondary Schools 2002 amendments to the *Elementary and Secondary Education Act of 1965*, otherwise known as *No Child Left Behind Act* (NCLB), require that each state report public schools that are 'persistently dangerous', although NCLB leaves the definition of a 'persistently dangerous' school to state law: 20 U.S.C. 7912.
3. Miller, above n 1, v. (Rural schools (12%) were less likely than schools in cities (27%), urban fringe areas (22%) and towns (20%) to experience a serious violent incident).
4. See Kelly Johnson, 'School Vandalism and Break-Ins' (Center for Problem-Oriented Policing, 2005) <www.cops.usdoj.gov> at 24 March 2008 (vandalism damage to schools has increased in a linear fashion from \$200 million in 1970 to \$600 million in 1990).
5. See, eg, *Davis v Monroe Cty. Board of Education*, 526 U.S. 629 [134 *Education Law Reporter* 477] (U.S., 1999) (upholding private cause of action under Title IX for student peer harassment where the school district exercises substantial control over both the harasser and the context in which the known harassment occurs).
6. See generally, *Niziol v Pasco County District School Board*, 240 F Supp 2d 1194 [174 *Education Law Reporter* 208] (M D Fla, 2002) (dismissing parents' claims against school resulting their son being killed by a gun at school, the federal district court finding that the Gun Free Schools Act did not create a right of private enforcement, compulsory attendance did not create a special relationship, and the inaction of the school resource officer did not create or increase a risk of injury and did not shock the conscience); *Ireland v Jefferson County Sheriff's Dept.*, 193 F Supp 2d 1201 [163 *Education Law Reporter* 824] (D Colo, 2002) (rejecting claim by student injured in Columbine shooting that school district had special relationship with student for purposes of constitutional tort claim, that school district was not liable to wounded student under state-created or enhanced danger doctrine, and that the 'moving force' behind the injuries was the two gunmen not the lack of training of school personnel); *Castaldo v Stone*, 192 F Supp 2d 1124 [163 *Education Law Reporter* 688] (D Colo, 2001) (in claims by parents of student killed at Columbine, court ruled that school teachers and administrators were immune from claim of willful and wanton conduct; (7) school defendants' conduct was not cause of victims' injuries; (8) school defendants had no special relationship with victims; (9) school defendants did not create or enhance any danger to victims; and (10) school defendants were entitled to qualified immunity).
7. See, eg, *Shoels v Stone*, 375 F 3d 1054 (10th Cir, 2004) (upholding settlement agreement resulting from the Columbine High School shooting holding parents of two students responsible for killing students financially responsible for those deaths).
8. See *General Ins. Co. of America v Faulkner*, 130 S E 2d 645 (N C, 1963) (school district successfully recovering maximum amount of statutory damages under state parent responsibility statute).

9. See, eg, *Midwestern Indemn. Co. v Wiser*, 760 N E 2d 62, 66 (Ohio Ct App, 2001) (finding no liability for child who burned a house after playing with matches, the court observing in part that the child had not yet been diagnosed with Attention Deficit Hyperactivity Disorder which meant that ‘he could not be held to the same standard as the average eight year old’ and finding no liability in negligence for parent because incident was nor foreseeable).
10. See, eg, *Parsons v Smithey*, 504 P 2d 1272 (Ariz, 1973) (upholding directed verdict for parents where evidence was insufficient for jury on issue whether parents should have had knowledge of boy’s propensity to commit an assault on another student); *Spector v Neer*, 262 So 2d 689 (Fla Ct App, 1972) (upholding dismissal of complaint for damage to building started by child playing with matches where there was lack of evidence that child had habit of doing type of wrongful act alleged or had ever set fire to anything and for lack of connection between alleged failure of parental control and resultant injuries); *J.L. v Kienenberger*, 848 P 2d 472 (Mont, 1993) (parents not liable for rape by their 13-year-old child of another where parents owed no duty to plaintiff to supervise their child); *Shaw v Roth.*, 282 N Y S 2d 844 (N Y Sup, 1967) (upholding dismissal of complaint against parents for assault and battery of their child in the absence of showing that adult defendants had knowledge that their child had a vicious and malicious disposition and had the habit of assaulting, mauling and mistreating other children when they were lawfully on the streets, and that they nevertheless permitted their child to go unsupervised and neglected to reasonably control him so as to prevent the likelihood of such conduct).
11. See *DeRosa v Smith*, 729 N Y S 2d 191 (N Y App Div, 2001) (parent’s willingness to pay for dental injury from tortious actions of her child did not amount to ratification of the child’s actions).
12. See *Corley v Lewless*, 182 S E 2d 766, 768 (Ga, 1971) (stating the common law rule that ‘parents were not liable in damages for the consequences of the torts of their minor children solely because of the existence of the parent-child relationship ... [u]nless the parent participated in the minor’s tort, or through negligence caused or permitted the tort to occur ... [or] unless some other relationship, such as that of principal and agent, or master and servant, existed between parent and child’).
13. *Feinerman v Kaplan*, 736 N Y S 2d 680, 681 (N Y App Div, 2002).
14. See *Harris v Traini*, 759 N E 2d 215 (Ind Ct App, 2001) (refusing to dismiss complaint and remanding for trial where parents knew that their son who had drug problems had invited friends on to the family boat which contained alcohol without providing supervision).
15. See *Goldhirsch v Majewski*, 87 F Supp 2d 272 (S D N Y, 2000) (remanding for trial as to whether parents who permitted their son to store paint ball guns in their house should be liable under an entrustment theory where their son, during a paintball game, shot another person in the eye).
16. Restatement (Second) of Torts, § 316 (ALI 1965),.
17. Restatement (Second) of Torts, § 319. See *Ventura v Picicci*, 592 N E 2d 368 (Ill App Ct, 1992) (dismissing wrongful death action against parent of adult child, following death from gunshot, where parent’s permitting child to live in her house did not constitute ‘tak[ing] charge’ for purposes of § 319).
18. See *Crisafulli v Bass*, 38 P 3d 842 (Mont, 2001) (in applying Restatement of Torts, § 316, the state supreme court observed that,

§ 316 does not make a parent liable for the torts of a child. It imposes liability on the parent for his or her own failure to exercise reasonable care and then carefully and narrowly defines the circumstances under which that duty arises. It requires that the parent first know that he or she has the ability to control the child and, secondly, that the parent understands the necessity for doing so. It furthermore conditions liability on a finding that the parent’s failure under these circumstances created an *unreasonable* risk of harm to a third person.).

Ibid 846 (emphasis in original).
19. See *J.H. ex rel. Hoffman v Pellak*, 764 A 2d 64 (Pa Super Ct, 2000) (shared custody of mother did not impose liability for her child injuring another with an air pistol where parent was unaware of pistol in her child’s possession and could not supervise child when pistol was kept, used and maintained at

father's house); *K.H. v J.R.*, 826 A 2d 863 (Pa, 2003) (holding as a matter of law that a noncustodial parent cannot be liable for negligent supervision); *Hugenberg v West American Ins. Company/Ohio Cas. Group*, 2006 WL 891074 (Ky Ct App, 2006) (drinking and driving by teenager was not foreseeable such that his parents had a duty to control, for purposes of negligent supervision claim). But see, *Danielle A. ex rel. Darryl A. v Christopher P.*, 776 N Y S 2d 446 (NY Sup Ct, 2004) (injuries suffered by plaintiff when she was shot in the eye with a paintball fired by a 13-year-old child who owned a paintball gun were foreseeable, under a negligent entrustment theory, by child's parents, who were aware that child owned the gun and allowed him to use it); *Morella v Machu*, 563 A 2d 881 (N J Super Ct, 1989) (material issues of fact existed as to whether parents exercised reasonable care in providing for supervision of their teenage sons while the parents were away from home, precluding summary judgment for parents in personal injury action brought by motorist who was injured in accident with car driven by intoxicated teenager who had been at party at parents' home).

20. For a comprehensive listing of parent liability litigation, see 'Parents' liability for injury or damage intentionally inflicted by minor child,' 54 A L R 3d 974 (2007).
21. See, eg, *Robertson v Wentz*, 232 Cal Rptr 634 (Cal Ct App, 1986) (a mother not liable under negligent supervision theory for her son's killing of another person where the mother had no knowledge of her son's propensity to commit violent crimes). See also, *Shoels v Stone*, 375 F 3d 1054 (10th Cir, 2004) (upholding settlement agreement of the homeowners' insurers of the parents of the boys responsible for the Columbine High School shootings, but the case never went to trial so whether the parents would have been liable under a negligent supervision or entrustment theory is not known).
22. Applies to 'Every person who, under color of any statute ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights ... secured by the Constitution and laws.'
23. See *Doe v Todd County School Dist.*, 2006 WL 3025855 (D S D, 2006) (upholding plaintiff's section 1983 claims against school district for alleged procedural constitutional violations as well as alleged violations under IDEA in not convening a manifestation hearing).
24. See, eg, *Niziol v Pasco County Dist. School Bd.*, 240 F Supp 2d 1194 (M D Fla, 2002) (dismissing claim against school under the *Gun Free Zone Act* [20 U.S.C. § 7151] by parents of child accidentally killed at school by gun he had brought to school because the Act did not create a right of private enforcement; while the parent plaintiffs in this case would not have sued themselves, the case does illustrate that in another set of facts with two different sets of parents, the result would be the same.). See *J.M. v Webster County Bd. of Educ.* 534 S E 2d 50 [147 *Education Law Reporter* 351] (2000) (upholding constitutionality of *Gun Free Zone Act's* requirement that a student bringing a gun to school be expelled for at least a year).
25. See *Barth v Massa*, 558 N E 2d 528, 535 (Ill App Ct, 1990) (parents not liable for their child shooting a policeman with a stolen pistol where the parents were not aware their child had the weapon).
26. *Dinsmore-Poff v Alvord*, 972 P 2d 978, 985 (Alaska,1999) (upholding verdict for parents of 17-year-old who killed a person where the parents could not have foreseen child's assault on victim with stolen gun, and thus parents owed no duty to protect victim).
27. See *Robertson v Wentz*, 232 Cal Rptr 634 (Cal Ct App, 1986) (parent not liable for 17-year-old child's murder of sales person during a robbery, despite child receiving first 22 caliber gun at age 5 and having 2 rifles, 2 pellet guns and shotgun at the time of the murder, where parent had no awareness that child would misuse weapons).
28. *Brahm v Hatch*, 609 N Y S 2d 956 (N Y App Div,1994).
29. N.H. Rev. Stat. § 650-C:1, III.
30. N.H. Rev. Stat. § 650-C:1, V. Among other exceptions are: (e) 'The person who keeps a loaded firearm on any premises which are under such person's custody or control has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises. (f) The child obtains the firearm as a result of an illegal entry of any premises by any person or an illegal taking of the firearm from the premises of the owner without permission of the owner.'
31. N.H. Rev. Stat. § 650-C:1, VI.
32. NDCC, 62.1-02-07.

33. See *Barrett v Pacheco*, 815 P 2d 834, 837 (Wash Ct App, 1991) and other cases cited in *Barrett*. (emphasis in original). See also, *Pesek v Discepolo*, 475 N E 2d 3 [23 *Education Law Reporter* 633] (Ill Ct App, 1985) (dismissing damages claim for rape against parents of a 15-year-old where parents' knowledge their son was frequently truant did not constitute notice that he would rape plaintiff at her home while he was truant from school).
34. See *Campbell by Donnellan v Haiges*, 504 N E 2d 200 (Ill App Ct, 1987) (dismissing complaint for damages where injuries caused by emotionally disabled child failed to state specific instances in the past).
35. 529 N W 2d 594 [98 *Education Law Reporter* 412] (Wis, 1995).
36. *Ibid* 599.
37. Cf *Springer v Fairfax County School Bd.*, 134 F 3d 659 [123 *Education Law Reporter* 478] (4th Cir, 1998) (rejecting parents' claim that their child satisfied the IDEA's criteria to qualify for services as a seriously disturbed child) with *Johnson v Metro Davidson County School System*, 108 Supp 2d 906 (M D Tenn, 2000) (upholding parent claim that their child was seriously emotionally disturbed and, thus, eligible for special education services).
38. 560 So 2d 125 [60 *Education Law Reporter* 262] (La Ct App, 1990).
39. *Ibid* 127.
40. *Ibid* 128.
41. *Ibid*. Teachers and aides testified at trial that students were supposed to be under constant supervision, but the case does not indicate the source of that standard of care. Presumably, the school established this standard, but, had the school not created this measure of responsibility, it seems likely that the court could have created the same standard at common law, based on the nature of students being served.
42. See generally, Ralph Mawdsley, 'Standard of Care and Students with Disabilities', (2001) 148 *Education Law Reporter* 553 (discussing from different perspectives how the reasonable duty of care applies to public schools in working with students with disabilities).
43. See *Stenger v Stanwood School Dist.*, 977 P 2d 660 [134 *Education Law Reporter* 1036] (Wash Ct App, 1999) (reversing summary judgment for school district as to teachers' aides who had suffered 1,316 and 1,347 injuries by one student where '[g]iven the frequency of [the student's] outbursts, the number of injuries he inflicted, and the claims filed with the District, a jury could reasonably conclude that the District had actual knowledge that the staff would continue to be injured by [the student] in the future'); *Ross v Maumee City Schools*, 658 N E 2d 800, 805 [105 *Education Law Reporter* 689] (Ohio Ct App, 1995) (reversing summary judgment for school district as to teacher aide's claim that injuries suffered at the hands of a student in a multihandicapped unit fit within the intentional tort exception under the state's worker's compensation act allowing for an action in civil damages where '[school district officials] had actual knowledge of a dangerous condition in the multihandicapped unit'). See also, *Brady v Board of Educ. of City of New York*, 602 N Y S 2d 892, 893 [86 *Education Law Reporter* 338] (N Y App Div, 1993) (upholding summary judgment for school district as to negligence claim of teacher injured while intervening to stop a fight involving a student with violent propensities where the school's keeping the student in school was considered a discretionary act for purposes of statutory immunity; however, the court recognized that a teacher might have a claim where the school district 'owed her a special duty upon which she justifiably relied to her detriment').
44. See, eg. Cal.Civ.Code § 1714.1 ('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 ...').
45. Cf *Mayeux v Madden*, 520 So 2d 1005 (LA Ct App, 1987) (holding that an injured plaintiff had no claim against parent of a mentally retarded child who had reached his age of majority) with *Brisco v Fuller*, 623 So 2d (1993) (La App 2 Cir, 1993) (suggesting that parent liability could be imposed where a child is minor or mentally retarded or emotionally deranged).

46. See *MVG v Lucas*, 590 So 2d 1322 (La Ct App, 1991) (parent had no duty to control a child who had reached the age of majority); *Nichols v Atnip*, 844 S W 2d 65 (Tenn Ct App, 1992) (holding that parent had no parent responsibility liability for 18-year-old child with emotional age of 15-year-old who, while intoxicated, killed another person while driving a car).
47. Andrew C. Gratz, 'Increasing the Price of Parenthood: When should Parents Be Held Civilly Liable for the Torts of their Children?' (2002) 39 *Houston Law Review* 169, 191.
48. See Cal.Civ.Code § 1714.1. (imposing \$25,000 liability limit 'for each tort of the minor.').
49. *Rudnay v Corbett*, 374 N E 2d 171, 174 (Ohio Ct App, 1977).
50. Joseph de Nicola, William Wise & Robert Casad, 'Note', (1957) 55 *Michigan Law Review* 1205, 1207.
51. *Ibid.*
52. Gratz, above n 47, 171-72 (referencing sources questioning whether parental responsibility statutes could prevent such tragedies as Columbine).
53. See Sheldon and Eleanor Glueck, *Predicting Delinquency and Crime* (1959) 28.
54. For a discussion of the state of the American home, see generally, Christopher Lasch, *Haven in a Heartless World: The Home Beseiged* (1977).
55. 529 F Supp 394 (D C Hawaii, 1982).
56. *Ibid* 400.
57. 387 N E 2d 341 (Ill App Ct, 1979).
58. *Ibid* 343.
59. 153 A 2d 393 (N J Super Ct, 1959).
60. *Ibid* 397.
61. 362 A2d 1200, 1203 (N J Super Ct, App Div 1976), *aff'd* without opinion, 362 A 2d 1200 (N J, 1977) (court of appeals cited to Sol Rubin, *Crime and Juvenile Delinquency* (1970) 22 to support its conclusion that lax parents are not a sufficient cause of juvenile delinquency to justify parent liability).
62. *Ibid* 1202 (ordinance imposed a maximum fine of \$500 on parents).
63. *Ibid* 1203.
64. See, eg, N.J.S.A. 2A: 53A-14

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.

See also, Cornelius J. Peck, 'Parental Liability for Willful and Malicious Acts of Children' (1961) 36 *Washington Law Review* 327, 328 and supporting footnotes cited therein presenting different authorities as to whether a substantial correlation exists between lax standards of discipline and delinquency.

65. See *Board of Ed. of Piscataway Tp. v Caffiero*, 431 A 2d 799, 808 (N J, 1981) (Clifford, J, dissenting) (opining that the state's parent responsibility statute imposing vicarious civil liability on parents is unconstitutional and speculating broadly that 'the [parent responsibility] statute will, I suspect, impact largely on the poor' with the dissenting justice, however, not really considering how realistic that impact might be).
66. Some courts have permitted compensation by innocent parties from a homeowners' liability policy on the ground that the policy provision excluding the carrier's liability for intentional torts does not apply to the parents. See *Arenson v National Auto and Gas Insurance Co.*, 286 P 2d 816 (Cal, 1955) (upholding school district recovery of damages from parent's personal liability policy for damage caused by child's setting fire at school); *White v Le Gendre*, 359 So 2d 652 (La App, 1978) (holding that while the intentional acts of a child would be excluded from homeowner's coverage as to the

child, that exclusion did not apply to the mother as an insured); *Unigard Mut. Co. v Argonaut Ins Co*, 579 P 2d 1015, 1018 (Wash Ct App, 1978) (holding that while homeowner’s insurer was not obligated to defend or reimburse 11-year-old child who caused property damage at a school, the insurer was obligated to defend the parents because where ‘there was no evidence of [their] negligence, ... the policy of excluding intentional acts from liability insurance coverage would be seriously undermined if coverage was provided to the parents of minors who have committed intentional acts.’). See also, *Williamson v Vanguard Underwriters Ins. Co.*, 1998 WL 831476 (Tex Ct App, 1998) (upholding recovery of \$290,000 against parents’ homeowner’s policy, rejecting insurance company’s claim that the intentional action of minor child came within the policy’s exclusion for the intentional acts of the ‘insured,’ reasoning that to accept the company’s argument, ‘parents would never be able to purchase coverage to protect themselves from the intentional actions of their minor children although they can be held legally accountable.’). See also, *Shoels v Stone*, 375 F 3d at 1057 (settlement agreement involving \$2.4 million under the homeowners’ insurance policies of parents of students responsible for Columbine murders). But see, *Randolf v Grange Mut. Cas. Co.*, 385 N E 2d 1305 (Ohio, 1979) (holding that homeowner’s policy did not obligate the insurer to pay the claim of a parent insured who incurs liability under the state’s parent responsibility statute for intentional damage caused by another separately insured minor child under the same policy).

67. *Board of Ed of Piscataway Tp v Caffiero* , 431 A 2d 799, 806 (N J, 1981).
68. *Bryan*, 529 F Supp, 400.
69. *City of Trenton*, 362 A 2d, 1203.
70. 400 A 2d 38 (N H, 1979).
71. *N H Constitution* pt 1, art 15 (describing the rights of accused, including that ‘No subject shall be held to answer for any crime, or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse or furnish evidence against himself.’)
72. *State v Akers*, 400 A 2d 38, 40. See generally, Lisa Lockwood, ‘Where are the Parents? Parental Criminal Responsibility for the Acts of Children’ (2000) 30 *Golden Gate Law Review* 497, 529-30; Tami Scarola, ‘Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding Of Justice’ (1997) 66 *Fordham Law Review* 1029.
73. However, states distinguish between legal guardians appointed by circuit courts generally and those appointed under the state’s juvenile courts or social services acts, with parent responsibility statute liability applying only to the former. See, eg, 740 ILCS 115/2 (Illinois); M.S.A. § 540.18 (Minnesota).
74. See, eg, Va. Code Ann. § 8.01-44 (‘Any 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.’).
75. 431 A 2d 799 (N J, 1981).
76. Three standards have been developed by the U.S. Supreme Court in assessing the level of protection accorded a particular classification. Thus, classifications based on race are entitled to strict scrutiny and will be sustained only if a compelling government interest is at stake. A middle ground of protection is accorded classifications based on gender that can be overcome if an exceedingly persuasive justification exists. In the lowest level of protections, eg, disability, classifications will be upheld if based on a rational basis.
77. *Piscataway Township Board of Education v Caffiero (Piscataway)* 806 (‘It can hardly be contended that judicial recognition of this fundamental right [to bear children] was meant to prevent the states from imposing financial obligations on parents.’).
78. *Ibid* 805, 807 (‘the classification of public school parents is rationally related to a legitimate governmental objective, maintaining discipline in the public schools’).
79. *Ibid* at 807. For other cases upholding the constitutionality of parent responsibility statutes where damages had been awarded against parents for the intentional acts of their children, see *In re William George T.*, 599 A 2d 886 (Md Ct App, 1992) (upholding \$4,000 damages award against parent); *Stang v Waller*, 415 So 2d 123 (Fla Dist Ct App, 1982) (upholding constitutionality of statute permitting recovery from parents of damages up to \$2,50); *Bryan v Kitamura*, 529 F Supp 394 (D Hawaii,

- 1982) (denying parents' motion to dismiss and remanding for a trial on the amount of damages) ; *Watson v Gradzik*, 373 A 2d 191 (Conn Ct Com Pl, 1977) (upholding statutory damages up to \$1,500); *Vanhourmout v Burge*, 387 N E 2d 341 (Ill App Ct, 1979) (upholding judgment of \$498 plus costs); *Distinctive Printing and Packaging Co. v Cox*, 443 N W 2d 566 (Neb, 1989) (upholding \$178,000 judgment against parents); *Alber v Nolle*, 645 P 2d 456 (N M Ct App, 1982) (upholding \$1,910 damages award plus \$350 in attorney fees); *In re D M*, 191 S W 3d 381 (Tex Ct App, 2006) (upholding judgment that parents pay \$25,000 in restitution).
80. 525 N Y S 2d 508 (N Y City Ct, 1988). The first case striking down a parent responsibility statute on constitutional grounds is *Corley v Lewless*, 182 S E 2d 766 (Ga, 1971) (holding state statute a violation of the Fourteenth Amendment's prohibition against the taking of property without due process of law).
 81. *Ibid* 514 (emphasis in original).
 82. W. Prosser, *Handbook of the Law of Torts* (4th ed, 1971) 494.
 83. 342 N W 2d 440 [14 *Education Law Reporter* 556] (Wis Ct App, 1983).
 84. A judgment of \$6,000 in compensatory damages and \$23,000 in punitive damages was upheld against the student for his attack on a teacher at school. *Ibid* 4442.
 85. See, eg, Ohio Rev. Code § 3109.10 (permitting recovery for personal injury only).
 86. Va. Code Ann. § 8.01-43 (specifically referencing a 'school board').
 87. Va. Code Ann. § 8.01-44.
 88. 86 N J 308 (1981).
 89. See N.J. Stat. Ann. 18A:37-3 (changing statute to refer to students as 'minors' rather than 'pupils' so as to eliminate the application of other statutes that defined public school students as 'pupils.').
 90. 740 ILCS 115/3 ('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'); 740 ILCS 115/4 (permitting civil claims by government units).
 91. Minn. Stat. Ann. § 540.18 ('The parent or guardian 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').
 92. S.D. Codified Laws § 25-5-15.
 93. Minn. Stat. Ann. § 540.18.
 94. N.D. Stat. 32-03-39 .
 95. S.D. Codified Laws § 25-5-15.
 96. Va. Code Ann. § 8.01-44.
 97. Wis. Stat. Ann. 895.035(4).
 98. Colo. Rev. Stat. Ann. § 13-21-107.
 99. N.M. Stat. Ann. § 32A-2-27.
 100. W.Va. Code, § 55-7A-2.
 101. Or. Rev. Stat. § 30.765.
 102. Ohio Rev. Code § 3109.10.
 103. Tenn. Code Ann. § 37-10-102.
 104. 740 ILCS 115/5.
 105. Neb. Rev. Stat. § 43-801.
 106. La. Stat. Ann.-C.C. Art. 2318.
 107. Hi. Rev. Stat. § 577-3.
 108. N.J. Stat. Ann. 2A: 53-14. See *Piscataway*, 431 A 2d 799, 799 (upholding a \$28,450 default judgment against a parent).
 109. See *N.E.M. by Kryshak v Strigel*, 559 N W 2d 256 (Wis, 1997) (setting damages, for parents of minor child who had 20 incidents of sexual conduct with plaintiff's minor daughter, at statutory maximum of \$2,500 for each incident, for a total of \$50,000).
 110. 740 ILCS 115/5.
 111. Minn. Stat. Ann. § 540.18.
 112. 691 P 2d 123 [21 *Education Law Reporter* 729] (Or Ct App, 1984).

113. Or. Rev. Stat. § 30. 765.
114. *Garrett v Olsen*, 691 P2d 123 (Or Ct App, 1984); *Anello v Savignac*, 342 N W 2d 440 (Wis Ct App, 1983).
115. See *Rogue Federal Credit Union v Phillips*, 855 P 2d 1146 (Or Ct App, 1993) (while acknowledging that punitive damages might be available in Oregon, the court held that the trial court had improperly awarded them on summary judgment).
116. See, eg, 740 ILCS 115/3 (attorney fees only but not for governmental units); Colo. Rev. Stat. Ann. § 13-21-107 (both attorney fees and court costs); Fla. Stat. Ann. § 741.24 (court costs only); Miss. Code Ann. § 93-13-2 (court costs only); N. M. Stat. Ann. § 32A-2-27 (taxable court costs only); N.D. Stat. 32-03-39 (taxable court costs); Ohio Rev. Code § 3109.10 (attorney fees and court costs); S.D. Codified Laws § 25-5-15 (taxable court costs); Tenn. Code Ann. § 37-10-102 (taxable court costs); W. Va. Code, § 55-7A-2 (direct out-of-pocket loss and taxable court costs); Wis. Stat. Ann. 895.035 (court costs and attorney fees, plus for schools the loss of instructional time); Wyo. Stat. § 14-2-203 (taxable court costs).