

SPECIAL REPORT

ARE PARENTS LIABLE FOR THE ACTS OF THEIR CHILDREN?

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Many clients want to know if they are liable for the acts of their children. The purpose of this Special Report is to explain the various exposures related to parental liability as well as the grounds on which such claims can be brought.

I. INTRODUCTION

Parents can be held liable for the acts of their children based on statutes, common law, or contractual agreements.

II. STATUTES, LAWS AND ORDINANCES

A. Parental Liability Statute - Civil

Under Michigan law, parents are strictly liable in a civil action for the willful or malicious acts of their children that result in property damage or physical injury, not to exceed \$2,500. Even though the parent might not have done anything wrong, they are still accountable for the damages merely by virtue of their parental status.

MCL 600.2913 provides in pertinent part as follows:

600.2913 Minor maliciously or willfully destroying property or causing bodily harm or injury to person; recovery of damages from parents.

A person...or other legal entity... 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 willfully destroyed real, personal, or mixed property which belongs to that [complaining party] or who has maliciously or willfully caused bodily harm or injury to a person.

In order for the statute to apply, the plaintiff must establish a number of elements.

First, the act must be *willful and malicious*, which means that the child must have specific intent to cause the damage. Courts have held that a mere act of negligence on the other hand is not necessarily willful and malicious. In *Thelbert McKinney v Edward Caball*, 40 Mich App 389, 391 (1972), the Michigan Court of Appeals held that, with respect to vehicle accidents, a teenage driver must be driving at a high rate of speed, or in any manner other than that which might have been ordinary and usual in order for their actions to be willful and malicious; merely taking the family car without permission does not qualify.

Second, the statute only applies to physical harm or injury. Injury to reputation or other non-physical injuries are not recoverable. In *Guerrero v Farmer*, 2004 WL2389453 (Mich App), a child falsely accused her stepfather of abuse. After recanting her accusation, the stepfather brought suit against the child for defamation. The stepfather then attempted to collect a portion of the judgment from the child's biological mother under MCL 600.2913. In an unpublished opinion, the court ruled that MCL 600.2913 did not apply to the stepfather's non-physical injuries and that he was ultimately unable to collect from the biological parent.

Finally, the statute points out that parents are only liable for those children that are living with them. For example, if a 17-year-old child moves out of his or her parent's house to live with a friend, arguably the parents are no longer liable under this provision of the statute. We should note that although MCL 600.2913 creates statutory parental liability, it also serves to limit that liability to \$2,500.

B. Parental Restitution Statute – Criminal

The Michigan Probate Code governs criminal actions involving minors. MCL 712A.30, allows a court to impose restitution on a juvenile in addition

to any other penalties including confinement. Section 30 states in pertinent part as follows:

712A.30 “Offense” and “victim” defined; order of restitution.

- (2)...at the dispositional hearing for a juvenile offense, the court *shall* order that the juvenile make full restitution to any victim of the juvenile's course of conduct that gives rise to the disposition or to the victim's estate.
- (3)If a juvenile offense results in damage to or loss or destruction of property...the order of restitution may require that the juvenile ...pay an amount equal to the value of the property as of the date of the damage, loss, or destruction.
- (4)If a juvenile offense results in physical or psychological injury to a victim, the order of restitution may require that the juvenile do 1 or more of the following, as applicable:
 - (a)Pay an amount equal to the cost of actual medical and related professional services and devices relating to physical and psychological care.
 - (b)Pay an amount equal to the cost of actual physical and occupational therapy and rehabilitation.
 - (c)Reimburse the victim or the victim's estate for after-tax income loss suffered by the victim as a result of the juvenile offense.
 - (d)Pay an amount equal to the cost of psychological and medical treatment for members of the victim's family that has been incurred as a result of the juvenile offense.
 - (e)Pay an amount equal to the costs of actual homemaking and child care expenses incurred as a result of the juvenile offense.
- (5)If a juvenile offense resulting in bodily injury also results in the death of a victim, the order of restitution may require that the juvenile pay an amount equal to the cost of actual funeral and related services.
- (7)If the victim is deceased, the court shall order that the restitution be made to the victim's estate.
- (15) *If the court determines that the juvenile is or will be unable to pay all of the restitution ordered, after notice to the juvenile's parent and an opportunity for the parent to be heard, **the court may order the parent or parents having supervisory responsibility for the juvenile at the time of the acts upon which an order of restitution is based to pay any portion of the restitution ordered that is outstanding.***

It is important to note that this juvenile restitution statute only applies to a “juvenile offense” which is defined as a violation by a juvenile of a penal law of the State of Michigan or a violation by a juvenile of an ordinance of a local unit of government of this state punishable by imprisonment or by a fine that is not a civil fine. Note that the statute does not apply to civil proceedings or tort liability.

In *People v McEvoy*, 267 Mich App 55 (2005), the Michigan Court of Appeals held that the juvenile restitution statute can be enforced against a child’s parents. During the early morning hours of April 8, 2002, 15-year-old Sean McEvoy broke into Howell High School, vandalized the school and set several fires. The fires activated the automatic sprinkler system, which extinguished the fires, but the sprinkler system was on for several hours before the police and fire department arrived, which caused extensive water damage in the school. Within a matter of days, Sean was arrested in connection with the fire and charged with various criminal offenses. Under a plea agreement, Sean admitted several charges against him, including arson of non-dwelling real property, MCL 750.73, and malicious destruction of personal property, MCL 750.377a(1).

Following the fire, the school district hired contractors to clean up and refurbish or replace damaged equipment and furniture. The property insurer for Howell Public Schools paid out \$744,195.47 in claims to compensate the school district for its costs related to the fire. The insurance carrier then filed a petition for restitution in the Livingston County Circuit Court (family division), seeking reimbursement from Sean and his parents for the property damage paid under its policy with the school district. The court ordered that Sean pay restitution of \$715,581.49. The court further determined that under MCL 712A.30(15) the parents were also liable for full payment of restitution to the insurance company.

III. COMMON LAW CAUSES OF ACTION

Parents are exposed to a host of other lawsuits arising out of their acts and omissions as a parent. Under the *Parental Liability Statute* and the *Parental Restitution Statute* described above, parents are “vicariously” liable for the acts of their children. This means that the parents do not necessarily have to do anything wrong in order to be held liable. Common law causes of action can be distinguished in that the parental liability arises from the parent’s act or omission rather than the child’s action.

Negligent Supervision

In the simplest form, an injured party could bring a suit against a child's parents under a theory of common law negligence. The plaintiff would have to show that the parent had a duty to monitor their child, that the parent failed to monitor that child, that as a result of that failure the child caused injury or damage, and that the plaintiff suffered injury. This is sometimes referred to as the negligent parental supervision theory.

In *Zapalski v Benton*, 178 Mich App 398, 402-403 (1989) a teenage girl was assaulted by a boy. She brought suit against the boy's parents alleging negligent supervision. She argued that the parents had the ability to foresee the boy's assaultive conduct.

In *Amer States Ins Co v Albin*, 118 Mich App 201, 206 (1982), following a fight between two minors, one of the children brought suit against the other boy's parents alleging negligent supervision of their violent son.

The court has explained the negligent parental supervision theory, as follows:

"The law in Michigan is that a parent is under a duty to exercise reasonable care so to control his minor children as to prevent them from intentionally harming others or from so conducting themselves as to create an unreasonable risk of bodily harm to them if the parent knows or has reason to know that he has the ability to control his children and knows or should know of the necessity and opportunity for exercising such control." *Dortman v Lester*, 380 Mich 80, 84 (1968)

In *Muma v Brown*, 378 Mich 637 (1967), the 3-year-old plaintiff sustained injuries when he was struck by automobile driven by a 14-year-old. The plaintiff brought suit against the minor's parents arguing negligent supervision.

Thus, a parent is liable if the parent fails to exercise reasonable care to prevent their minor child from intentionally harming others when the parent knows or has reason to know that this care is necessary with their child, and the parent has had an opportunity to exercise control over the situation. A parent is not liable where supervision would not have made the parent aware of the child's tortious propensities.

Parents could also face claims related to negligent entrustment.

Negligent Entrustment

A negligent entrustment claim has three elements: (1) a person relinquishes control of a dangerous instrumentality to another; (2) the first person knows or should have known that the trustee (the child) is likely to use the instrumentality involving an unreasonable risk of harm to others; and (3) the injury must be caused by the trustee.

Similar to claims of negligent supervision, a negligent entrustment claim might involve a gun entrusted to a child or an automobile entrusted to an inexperienced driver which poses an unreasonable risk of physical harm to the child or inexperienced driver and to others.

In *May v Goulding*, 365 Mich 143 (1961), a local sheriff brought a lawsuit against the parents of a mentally ill child who used a rifle given to him by parents to shoot the sheriff after holding up a grocery store.

IV. CONTRACTUAL AGREEMENTS

Parents can also assume contractual liability for the acts of their children. In today's society, it is common for parents and guardians to sign waivers of liability and hold harmless agreements pertaining to their children's activities. Many of these agreements require the parent to indemnify some other party for the acts of their children which cause injury or damage. For example, assume a local sports club requires that all parents sign a waiver before allowing their minor children to use the club's pool, playground, or other facility. This agreement likely contains at least two separate provisions that create contractual liability for the parents.

First, the parent is usually required to indemnify the facility for any property damage caused by their child. If the child throws a baseball through a glass window, it is the parent's responsibility to pay for the damages.

Second, what most parents do not know is that these agreements also include an indemnification provision with respect to lawsuits brought by their child against the facility for their injuries. For example, if the child slips and hits their head on the bottom of the pool, that child could bring a

lawsuit against the facility. Since a parent cannot legally waive their child's right to file a lawsuit and the child is not of sufficient age to enter into a binding contract, there is no way for the facility to prevent a child from bringing a claim. As a result, most facilities have included a provision which states that the parent will indemnify, defend, and hold the facility harmless for all claims *brought by any of their children or guests*. In essence, the child ends up suing their own parent for the injuries.

V. CONCLUSION

Parents can be held liable for the acts of their children based on statutes, common law, or contracts. Since most, if not all, of these exposures fall within the purview of most insurance exclusions, parents need to consider the potential consequences, both financial and otherwise, arising out of the acts of their children.

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