2004

Appellate Mediation—A Mediator's Perspective

L. Wayne Scott
St. Mary's University School of Law, wscott@stmarytx.edu

LIABILITY OF PARENTS FOR CONDUCT OF THEIR CHILD UNDER SECTION 33.01 OF THE TEXAS FAMILY CODE: DEFINING THE REQUISITE STANDARDS OF "CULPABILITY"

L. WAYNE SCOTT*

I. INTRODUCTION

Under section 33.01 of the Texas Family Code, a party may look to

---

* L. Wayne Scott, Prof. of Law, St. Mary's University, Editor *Texas Lawyer's Civil Digest*, Board Certified Civil Appellate Law Practice.

The author gratefully acknowledges the research assistance of Vicki Pierson, Jodi McMaster, and Troy Martin, III.

the parents of a child for redress when a child inflicts property damage.[1] This statute has survived constitutional attack in an intermediate Texas court[2] and provides an expansive statutory avenue for recovering damages previously unavailable at common law from the parent for a child's acts.[3] This article will analyze the extent of parental liability under both of the available statutory provisions: negligence and strict liability. The particular problems of culpability will be reviewed in depth. The analysis will concentrate on the traditional tort concepts of duty, breach, and causation as applied to this statute.

II. PARENTAL NEGLIGENCE: BACKGROUND

A. *Common Law*

At common law, the parent is generally not liable for the tortious acts of a minor child.[4] Courts have repeatedly stressed that liability

---

1. TEX. FAM. CODE ANN. § 33.01 (Vernon 1986). Liability extends also to "other person[s] . . . who [have] have the duty of control and reasonable discipline of a child." However, the statute fails to delineate what level of control over a child these "other persons" must possess to premise liability. *Id.* Under the Family Code, the duty of control and discipline is imposed upon a managing conservator, a parent, and a possessory conservator in possession of a child. *See* TEX. FAM. CODE ANN. § 14.02(b)(2)(Vernon Supp. 1988); *see also* TEX. FAM. CODE ANN. § 14.04(a)(1) (Vernon 1986). A managing conservator may be a court appointed agency, or an adult, other than a parent. *See* TEX. FAM. CODE ANN. § 14.01(a) (Vernon Supp. 1988). Thus, liability may be imposed outside the traditional, natural parent-child relationship. *See generally* Note, *Has the Family Code Made Any Changes in the Liability of a Parent for His Child's Conduct?*, 26 BAYLOR L. REV. 687, 690-91 (1974).

2. Buie v. Longspaugh, 598 S.W.2d 673, 676 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e. (sections 33.01-.03 of Family Code did not deny equal protection or due process of law). The basis of the lawsuit, however, was malicious and willful conduct on the part of the minor. *See id.* at 674. The purpose of subsection (1) of section 33.01 of the Texas Family Code may therefore be different, or at least subject to, further interpretation. *See also* Kelly v. Williams, 346 S.W.2d 434, 437 (Tex. Civ. App.—Dallas 1961, writ ref'd n.r.e.)(held previous statute, article 5923-1, constitutional).

3. *See* TEXAS FAM. CODE ANN. §§ 33.01-.03 (Vernon 1986). Section 33.01 states:

> 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 willful and malicious conduct of a child who is at least 12 years of age but under 18 years of age.

Id. § 33.01.

4. *See* Parsons v. Smithey, 504 P.2d 1272, 1274 (Ariz. 1973). The *Parsons* court held that, at common law, parents will not be liable for their children's tortious acts, based on the mere parental relationship. *See id.*; *see also* National Dairy Prod. Corp. v. Fresch, 393 S.W.2d 48, 53 (Mo. Ct. App. 1965)(liability of parent not based on relationship but on negligence);

does not exist simply because of the parent-child relationship.[5] However, exceptions to the general rule exist, and the parent may be held liable if:

1. the child is an agent of the parent;[6]
2. the parent negligently intrusts a dangerous instrumentality to the child;[7]
3. the parent ratifies the conduct of the child by acceptance or consent;[8]
4. the parent directs the child in the commission of the tort;[9]
5. the tort is committed in the scope of duties the parent imposes on the child.[10]

These limited instances of parental liability at common law require

---

Hackley v. Robey, 195 S.E. 689, 693 (Va. 1938)(absent master-servant or principal-agent relationship paternity alone does not impose liability).

5. *See, e.g., Parsons*, 504 P.2d at 1274; Zeeb v. Bahnmaier, 176 P. 326, 327 (Kan. 1918); *Fresch*, 393 S.W.2d at 53; *Hackley*, 195 S.E. at 693.

6. *See Hackley*, 195 S.E. at 693 (principal-agent relationship will impose parental liability); Hopkins v. Droppers, 198 N.W. 738, 739 (Wis. 1924)(no presumption of agency in domestic relations).

7. *See, e.g.*, Herrin v. Lamar, 126 S.E.2d 454, 457 (Ga. Ct. App. 1962)(parents liable for injuries sustained by plaintiff when foot run over by power lawn mower operated by defendant's daughter); Lanterman v. Wilson, 354 A.2d 432, 435 (Md. 1976)(parents liable for plaintiff's injuries based upon allowing reckless son to drive automobile); Moore v. Crumpton, 285 S.E.2d 842, 843 (N.C. Ct. App. 1982)(parents failed to prevent access of son to deadly weapon); McGinnis v. Kinkaid, 437 N.E.2d 313, 318 (Ohio Ct. App. 1981)(parents' acquiescence to possession of shotgun by minor with record of delinquency negligence). *See generally* Comment, *Torts-Parents' Liability for Child's Torts*-Hopkins v. Droppers, 19 ILL. L. REV. 202, 204 (1924)(father delivered motorcycle to 15 year-old son, knowing law requires 16 years of age).

8. *See, e.g.*, Langford v. Shu, 128 S.E.2d 210, 212-13 (N.C. 1962)(parent only liable if consents or ratifies minor's conduct); Vinson v. McManus, 316 S.E.2d 98, 99 (N.C. Ct. App. 1984)(if plaintiff proves consent or ratification parent liable for tortious conduct of minor). *See generally* Prescott & Kundin, *Toward a Model Parental Liability Act*, 20 CAL. W.L. REV. 187, 191-92 (1984)(discussing common law of parental liability); Comment, *Liability of Negligent Parents for the Torts of Their Minor Children*, 19 ALA. L. REV. 123, 131 (1966)(doctrine of parental neglect may be considered extension of doctrine of dangerous instrumentality in that child could be considered dangerous instrumentality); Comment, *Parental Tort Liability*, 1 LAND & WATER L. REV. 299, 300 (1966)(listing five common law doctrines as exceptions to general rule).

9. *See* Trahan v. Smith, 239 S.W. 345, 347 (Tex. Civ. App.—Beaumont 1922, no writ)(parent held liable for instructing sons to kill hog); Harrington v. Hall, 63 A. 875, 876 (Del. Super. Ct. 1906)(parent liable for directing son to kill plaintiff's dog). *See generally*, W. PROSSER, LAW OF TORTS 871-73 (4th ed. 1971)(discussing liability for family torts).

10. *See* Klapproth v. Smith, 144 S.W. 688, 688 (Tex. Civ. App.—Fort Worth 1912, no writ)(to hold parent liable tort must be committed at parent's direction or within duties imposed on child by parent).

parental knowledge of the child's propensity to engage *in the conduct which caused the damage* in question.[11] However, some courts have refused to find a parent liable merely because the parent knew of the child's vicious tendencies, although this knowledge is an important factor in determining liability.[12] This knowledge element is required, even when the parent's own negligence was the proximate cause of the damage.[13] Thus, the negligent parent who knew, or should have known that the child could or would act in such a manner as to cause damage would be held liable for failing to restrain the child.[14]

B. *The Reform Movement*

In the 1930's, Louisiana began a movement towards statutory imposition of liability upon parents for the torts of their minor children.[15] Under the Louisiana statute, the parents could be held liable, regardless of whether they had knowledge of the child's vicious tendencies.[16] Critics of this vicarious liability pointed out that the Louisiana statute created a no-fault situation in civil law, which had been

---

11. *See, e.g.*, Singer v. Marx, 301 P.2d 440, 444 (Cal. Dist. Ct. App. 1956)(parent not liable unless opportunity to correct dangerous propensity); Martin v. Barrett, 261 P.2d 551, 552-53 (Cal. Dist. Ct. App. 1953)(liability of parent upheld when parent has knowledge of previous conduct but fails to warn plaintiff and child has disposition to do act); Norton v. Payne, 281 P. 991, 993 (Wash. 1929)(held parent liable for child's dangerous habit of which they had knowledge and failed to correct).

12. *See* Snow v. Nelson, 450 So.2d 269, 272 (Fla. Dist. Ct. App. 1984) (Court broadens the rule of parental liability, based upon knowledge of his child's vicious tendencies to include factors such as ability and opportunity to control the child); Condel v. Savo, 39 A.2d 51, 53 (Pa. 1944)(mere knowledge not enough).

13. *See, e.g.*, Dickens v. Barnham, 194 P. 356, 357 (Colo. 1920)(father negligent for son's shooting since father knew child could not manage rifle but rifle accessible to son); Vallency v. Rigillo, 102 A. 348, 349 (N.J. 1917)(dynamite cartridges left within easy reach of infant son but parent still had to have knowledge of child's propensities); Moore v. Crumpton, 285 S.E.2d 842, 843 (N.C. Ct. App. 1982)(parent failed to prevent son from having access to deadly weapon, but knowledge of child's propensities still required).

14. *See, e.g.*, Robertson v. Wentz, 232 Cal. Rptr. 634, 639 (Cal. Dist. Ct. App. 1986)(parent's liability depends upon knowledge and ability to control child's dangerous habit); *Dickens*, 194 P. at 357 (father proximate cause even though son fired shot since father knew son could not manage rifle and did not make unaccessible); Massapequa Free School Dist. No. 23 v. Regan, 405 N.Y.S.2d 308, 309 (N.Y. App. Div. 1978)(knowledgable negligent parent liable for failure to restrain child).

15. *See* Note, *Torts: Parent and Child: Liability of Parent for the Torts of Minor Child*, 19 CORNELL L.Q. 643, 646 (1933)(citing line of Louisiana cases from 1930's holding parents liable for children's torts).

16. *See* LA. CIV. CODE ANN. art. 2318 (West 1932); *see also* Johnson v. Butterworth, 152 S. 166, 169 (La. Ct. App. 1934)(to hold parent liable for minor's negligence not necessary to show parent's knowledge of minor's conduct). *See generally* Note, *Torts-Liability of a Parent*

expressly rejected at common law.[17] Despite this criticism, legislatures began enacting parental liability statutes.[18] Several states enacted these parental liability statutes to curb juvenile delinquency.[19] Apparently, some of these statutes were enacted to expand the common law, which originally left innocent victims with no way to recover for their injuries caused by a child.

Because parental liability statutes were in derogation of the common law, courts have tended to interpret them strictly.[20] Some courts have reasoned that liability must be based on willful and malicious conduct, and specifically reject the notion that liability is imposed on parents for negligent control of their children.[21] Other states have held that the parents must have knowledge of the child's propensity for the tortious activity in order to incur liability.[22] Some of the jurisdictions requiring knowledge, sometimes described as "foreseeabil-

---

for Act of Infant, 32 MICH. L. REV. 872, 873 (1934)(discussing parent's liability under La. Civ. Code Ann. art. 2318).

17. *See* Note, *Torts: Parent and Child: Liability of Parent for the Torts of Minor Child*, 19 CORNELL L.Q. 643, 646 (1933).

18. *See, e.g.*, ALA. CODE § 113(1) (Supp. 1967)(enactment 1965); CONN. GEN. STAT. ANN. § 52-572 (1958)(enactment 1955); IDAHO CODE ANN. § 6-210 (Supp. 1969)(enactment 1957); MICH. COMP. LAWS ANN. § 600.2913 (1968)(enactment 1953); PA. STAT. ANN. tit. ii, §§ 2001-05 (1969)(enactment 1967). For a summary of parental liability statutes in all jurisdictions, see appendix. *See generally* Note, *Parental Liability for a Child's Tortious Acts*, 81 DICK. L. REV. 755, 762 (1977)(parental liability has been expanded in forty-six states).

19. *See* Stang v. Waller, 415 So. 2d 123, 124 (Fla. Dist. Ct. App. 1982)(intent of statute imposing liability on parents to curb juvenile delinquency); Hayward v. Ramick, 285 S.E.2d 697, 698 (Ga. 1982)(intent of statute to control juvenile delinquency not to compensate victims).

20. *See, e.g.*, Arnold v. State, 353 So. 2d 524, 526 (Ala. 1977)(statute in derogation of common law presumed not to alter common law unless expressly declared); Sutherland v. Roth, 407 So. 2d 139, 140 (Ala. Ct. App. 1981)(statute contrary to common law strictly construed).

21. *See* Laterman v. Wilson, 354 A.2d 432, 436 (Md. 1976)(negligence in controlling one's child not reason for holding parent liable); Bell v. Hudgins, 352 S.E.2d 332, 334 (Va. 1987)(held not to establish blanket rule imposing liability on parents who fail to control conduct of their child).

22. *See, e.g.*, Robertson v. Wentz, 232 Cal. Rptr. 634, 639 (Cal. Dist. Ct. App. 1986)(two prerequisites to imposition of liability on parent are knowledge of dangerous habits and ability to control child); Snow v. Nelson, 450 So. 2d 269, 270-271 (Fla. Dist. Ct. App. 1984)(parents liable where son had propensity to be rough and one parent had seen minor play game before); Clark v. McKerley, 497 A.2d 846, 847 (N.H. 1985)(parents not liable when no evidence that parent knew child would set fire to another person's barn); Massapequa Free School Dist. No. 23 v. Regan, 405 N.Y.S.2d 308, 309 (N.Y. App. Div. 1978)(where parent negligent in failing to restrain child plaintiff must further show knowledge element towards child's propensity to be liable for child's tort).

ity," additionally require negligence on the part of the parent in failing to exercise reasonable control over their child to prevent damage.[23]

In jurisdictions requiring a parent's negligence in controlling the child, custody becomes an important issue.[24] Liability has been imposed in situations where there has been merely legal custody of the child, but many states require actual custody before imposing liability.[25] The reason for imposing liability only in cases where there was actual custody is based on an application of general principles of negligence.[26] First, to find the parent negligent in controlling the child, a plaintiff must prove that the parent was, or should have been, aware that there was a probability that the child would commit the tort.[27] If the parent did not have actual custody of the child, then he could not observe and control the child to prevent the probable damage that the child might inflict.[28] Therefore, it appears that the imposition of liability on parents who were not in actual custody of the child would not deter negligent parental control. The difficulty of this view is that parents may avoid liability by not maintaining custody of a child known to have tortious propensities. This may be why other jurisdictions have held that mere absence of the child from the parent's custody does not relieve the parent of liability.[29] However, the

---

23. *Robertson*, 232 Cal. Rptr. at 637 (primary consideration in establishing element of duty under negligence concept is foreseeability of risk); National Dairy Prod. Corp. v. Fresch, 393 S.W.2d 48, 53 (Mo. Ct. App. 1965)(liability of parents based on ordinary negligence and what was reasonably foreseen).

24. *See Robertson*, 232 Cal. Rptr. at 641 (under common law crucial factor in determining negligence liability is parents' ability to control child).

25. *See, e.g., id.* at 643; *In re* James D., 455 A.2d 966, 972 (Md. 1983)(parent not liable when actual custody and control removed); Albert v. Ellis, 392 N.E.2d 1309, 1311 (Ohio Ct. App. 1978)(parent not relieved of liability of minor child unless child marries, reaches age of majority, or custody removed by court).

26. *See* Weisburt v. Flohr, 67 Cal. Rptr. 114, 120 (Cal. Dist. Ct. App. 1968)(parent's duty of care is dependent upon foreseeable dangers of child within parent's custody); *see also In re James D.*, 455 A.2d at 972 (discussing policy of actual custody requirement); Poston v. U.S. Fidelity & Guarantee Co., 320 N.W.2d 9, 14 (Wis. Ct. App. 1982)(father not liable without legal or actual custody of son).

27. *See Weisburt*, 67 Cal. Rptr. at 120 (parent's duty of care dependent upon foreseeable dangers of child within parent's custody); Singer v. Marx, 301 P.2d 440, 444 (Cal. Dist. Ct. App. 1956). In both *Weisburt* and *Singer*, recovery was denied on the ground that there was no showing that the parent knew of any dangerous tendency. *See Weisburt*, 67 Cal. Rptr. at 122; *Singer*, 301 P.2d at 445.

28. *In re* James D., 445 A.2d at 972.

29. *See* Pisso v. Graves, 453 So.2d 592, 596 (La. Ct. App. 1984)(parent liable for seventeen year old son's tort even though son moved from mother's home two months prior to

constitutionality of this position is questionable, as statutes imposing liability, regardless of custody and control, have been both upheld and struck down when attacked on due process grounds.[30]

C. *Texas Common Law*

Like other states, Texas common law recognized parental liability for the torts of minor children only in a few limited situations.[31] Generally, Texas common law only imposed liability on a parent for the tort of a child when:

(1) a master/servant relationship existed between the parent and child,[32]

(2) the parent had directed the child in the commission of the tortious act,[33] or

(3) the parent had negligently permitted this child to engage in conduct likely to harm another.[34]

Further, the usual exceptions to the general rule of no parental liability found in other states can be found in Texas.[35]

---

accident). *In re James D.*, 455 A.2d at 972 (parent liable even though juvenile had been committed to juvenile facility). The court states that Texas is one of five states that requires legal custody and control. *Id.*

30. *Compare* Alber v. Nolle, 645 P.2d 456, 461 (N.M. Ct. App. 1982)(held constitutional) *with* Corley v. Lewless, 182 S.E.2d 766, 770 (Ga. 1971)(declared unconstitutional). The Texas statute only imposes liability, not full compensation. *See* TEX. FAM. CODE ANN. § 33.01 (Vernon 1986). Therefore, it more easily passes constitutionally required standards. *See* Buie v. Longspaugh, 598 S.W.2d 673, 676 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.)(upholding statute on equal protection and due process grounds).

31. Aetna Ins. Co. v. Richardelle, 528 S.W.2d 280, 285 (Tex. Civ. App.—Corpus Christi 1975, writ ref'd n.r.e.).

32. *Id.*; *see also* De Anda v. Blake, 562 S.W.2d 497, 499 (Tex. Civ. App.—San Antonio 1978, no writ)(minor operating car at instance of her mother for mother's benefit established relationship of principal and agent). *But see* Lessoff v. Gordon, 58 Tex. Civ. App. 213, 214, 124 S.W. 182, 183 (1909, no writ)(citing to *Ritter v. Thibodeaux*, 41 S.W. 492, 493 (Tex. Civ. App.—Galveston 1897, no writ)(American rule that father not liable in course of employment of child).

33. *Richardelle*, 528 S.W.2d at 285.

34. *Id.*

35. *See, e.g.*, Amarillo Nat'l Bank v. Terry, 658 S.W.2d 702, 704 (Tex. App.—Amarillo 1983, no writ)(parents liable for sons conduct only if willful and malicious); Moody v. Clark, 266 S.W.2d 907, 912 (Tex. Civ. App.—Texarkana 1957, writ ref'd n.r.e.)(parent liable when own negligence proximately causes injury). Such negligence is shown when the parent entrusts the child with a dangerous instrumentality, or carelessly fails to restrain a child when he knows he has dangerous tendencies. *See id. But see Lessoff*, 124 S.W. at 183 (parent not liable for torts of child committed without parent's knowledge, consent or participation).

III. THE TEXAS STATUTE

A. *Section 33.01 of the Texas Family Code*

According to the Texas Court of Civil Appeals in Fort Worth, section 33.01 of the Texas Family Code was enacted in order to protect and compensate property owners when their property is destroyed by minors.[36] Under the old statute, article 5923-1 of the Texas Revised Civil Statutes of 1962,[37] there was no parental liability due to a breach of the duty of control and reasonable discipline, as found in the introductory paragraph of section 33.01.[38]

B. *Section 33.01(1) — Negligence of Parents*

Section 33.01 has no express requirement that the parent have knowledge of the dangerous propensities of the child before the parent can be held liable.[39] However, the statute does require that both the parent and the child be negligent before liability is imposed.[40] This requirement seems to indicate that the proof of the parent's negligence would necessitate the parents' knowledge of the child's tortious tendencies. The circumstances of a particular case may allow a fact finder to determine that there was evidence of the propensity toward the conduct in question, and that the parent should have been aware of it. The statute does contain the word "control,"[41] which may indicate a requirement for an opportunity to control the child, as well as the need for the parent to have knowledge of the child's propensities. However, it is not possible to know with certainty that the requirement of knowledge and notice will be within the court's interpretation of the statute, as no case directly based on the introductory paragraph to section 33.01 has arisen since its enactment.

The constitutionality of the Texas statute, however, has been con-

---

36. *See* Buie v. Longspaugh, 598 S.W.2d 673, 675 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.)(basis of lawsuit was minor's malicious and willful conduct).

37. TEX. REV. CIV. STAT. ANN. art. 5923-1 (Vernon 1962).

38. *Compare* TEX. REV. CIV. STAT. ANN. art. 5923-1 (Vernon 1962)(no liability for breach of duty to control) *with* TEX. FAM. CODE ANN. § 33.01 (Vernon 1986)(liability for breach of duty to control).

39. *See* TEX. FAM. CODE ANN. § 33.01 (Vernon 1986).

40. *Id.* § 33.01(1).

41. *See id.* Such a dual requirement would constitute a severe restriction on the effectiveness of the first paragraph of Section 33.01. If the dual requirement is read into the statute, consideration should be given to the elimination of the "control" language.

firmed since the enactment of the new section.[42] In *Buie v. Longspaugh*,[43] the Texas Court of Civil Appeals in Fort Worth upheld sections 33.01 through 33.03 of the Texas Family Code as constitutional, stating that these sections did not deny litigants equal protection or due process.[44]

C. *Section 33.01(2) — Strict Liability of Parents*

Under section 33.01(2) of the Texas Family Code, a parent is vicariously, or strictly liable, for property damage caused by the "willful and malicious conduct of a child who is at least 12 years of age but under 18 years of age."[45] Prior knowledge of "willful and malicious conduct of the child" by the parent was not a condition for the application of the previous provision of the statute.[46]

---

42. *See* Buie v. Longspaugh, 598 S.W.2d 673, 676 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.).

43. 598 S.W.2d 673 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.).

44. *See id.* at 676. Cases tracing the constitutionality and history of this type of legislation include: *Bryan v. Kitmura*, 529 F. Supp. 394, 399-402 (D. Hawaii 1982)(held constitutional); *Watson v. Gradzik*, 373 A.2d 191, 193 (Conn. App. Ct. 1977)(constitutional); *Corley v. Lewless*, 182 S.E.2d 766, 770 (Ga. 1971)(held unconstitutional); *Vanthournout v. Burge*, 387 N.E.2d 341, 343-344 (Ill. 1979)(constitutional); *In re James D.*, 455 A.2d 966, 972 (Md. 1983)(constitutional); *General Ins. Co. of Am. v. Faulkner*, 130 S.E.2d 645, 650 (N.C. 1963)(constitutional); *Piscataway Township Bd. of Educ. v. Caffiero*, 431 A.2d 799, 804 (N.J. 1981)(constitutional), *appeal dismissed*, 454 U.S. 1025 (1981); *Rudnay v. Corbett*, 374 N.E.2d 171, 174-75 (Ohio Ct. App. 1977)(constitutional); *Mahaney v. Hunter Enterprises, Inc.*, 426 P.2d 442, 444 (Wyo. 1967)(constitutional). *See also In Re* John H., 443 A.2d 594, 598 (Md. 1982)(issue discussed generally but error not preserved since parents did not argue issue of constitutionality).

45. TEX. FAM. CODE ANN. § 33.01(2) (Vernon 1986). Again, a person other than a parent may be liable for the conduct of a child, if such "other person" has the duty of control and reasonable discipline of the child. *Id.* Section 33.02 of the Family Code limits recovery under section 33.01(2) "to actual damages, not to exceed $15,000.00 per act, plus court costs and reasonable attorneys' fees." *Id.* § 33.02. Section 33.02 was amended in 1981, increasing the amount recoverable under section 33.01(2) from $5,000.00 per act to $15,0000.00 per act. *See id.* (Historical Note).

46. *See id.* § 33.01(2) (Vernon 1986). Although subsection one clearly requires negligence on the part of the parent, subsection two notably omits any requisite of negligence on the part of a parent to impose liability, which would include prior knowledge. *See id.* The courts and commentators are in agreement on this point. *See Buie*, 598 S.W.2d at 676 (nothing in analysis of [now] section 33.01(2) implies element of knowledge or opportunity for correction as requirement for liability); *accord* Kelly v. Williams, 346 S.W.2d 434, 437 (Tex. Civ. App.—Dallas 1961, writ ref'd n.r.e.)(prior knowledge of parent should not be read into previous statute article 5923-1). *See generally* W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEETON ON TORTS 912-14 (5th ed. 1984) (vicarious liability for torts of family); Note, *Torts, Parent and Child-Parent Liable for the Malicious and Willful Torts of Child Under Tex. Rev. Civ. Stat. Ann. Article 5923-1* (Vernon Supp. 1958), 37 TEX. L. REV. 924, 924-928

To premise liability under section 33.01(2), it must be established that the actions of the child entailed willful and malicious conduct.[47] The courts of Texas, however, have yet to define with clarity what level of culpability satisfies the "willful and malicious conduct" standard of section 33.01(2). This author concludes that the gross negligence of a child, which proximately causes an accident or damage, will suffice as willful and malicious conduct. Under this standard, if a child acts with gross negligence in undertaking an act which subsequently causes damages, the child is imputed by law to have intended the result, therefore satisfying the willful and malicious standard of section 33.01(2).

1. Meaning of "Willful and Malicious" Generally

The meaning of "willful and malicious" under the statute must be put in the context of the varying degrees of requisite mental states necessary to impose liability. These mental states range from intent to strict liability, which imposes liability even in the absence of intent. The Restatement (Second) of Torts, equates "willful and malicious" conduct with recklessness (or gross negligence), a mental state which requires something more than negligence, yet not the conscious desire implied by intent.[48] Even in intentional torts, a finding of intent is not conditioned on the existence of a subjective intent to bring about harm, but an intent to do the act which results in harm.[49] To impose on the phrase "willful and malicious," the requirement of specific intent to bring about the desired harm would make the required mental state under section 33.01(2) something more than intent. This would, in effect, only impose liability in cases of vandalism. If the phrase "willful and malicious" is given the meaning assigned to it by the Restatement, gross negligence, then it has the effect of broadening parental responsibility to include acts of their children which are beyond mere negligence, but not yet vandalism.

(1959)(discussing parent's liability for child's willful and malicious torts); Rogers, *Chapter 33. Liability of Parents for Conduct of Child*, 13 TEX. TECH L. REV. 1127, 1127 (1982)(commentary on section 33.01(1) and (2) of the Texas Family Code); Note, *Has the Family Code Made Any Change in Liability of a Parent for His Child's Conduct*, 26 BAYLOR L. REV. 687, 688-689 (1974)(discussing parents vicarious liability).

47. *See* TEX. FAM. CODE ANN. § 33.01(2) (Vernon 1986).

48. RESTATEMENT (SECOND) OF TORTS § 282, § 500 (1977).

49. *See* W. KEETON, D. DOBBS, R. KEETON & D. OWEN, PROSSER AND KEETON ON TORTS 36 (5th ed. 1984).

Until 1978, courts usually interpreted the phrase "willful and malicious" consistent with the Restatement meaning of recklessness, as it related to the Bankruptcy Code.[50] Under the Bankruptcy Code, a bankrupt was not discharged from obligations arising from a willful and malicious injury to a person or property.[51] Consequently, there were many decisions on what constituted willful and malicious injury. Many courts[52] followed the "reckless disregard" standard as set forth in *Tinker v. Colwell*.[53] Under that standard, acting in "reckless disregard" for the safety of persons or property could be construed as a willful and malicious action, even in the absence of a specific intent to cause the damage.[54] Moreover, to overcome this construction, the usual interpretation of "willful and malicious" was recklessness, which Congress, in 1978, specifically attached to those words in the context of the bankruptcy statute.[55] The new congressionally mandated meaning of a willful and malicious act is a deliberate action intending the resultant damage.[56] Absent such a clear legislative mandate, then the usual interpretation given to "willful and malicious" is that of recklessness or gross negligence.

a. Malice Defined Under Texas Law

"Malice" is a term of general, not specific, intent.[57] Neither the

---

50. *See, e.g.*, McIntyre v. Kavanaugh, 242 U.S. 138, 141-142 (1916)(disregard of duty constitutes willful and malicious act); Rosen v. Shingleur, 47 So. 2d 141, 146 (La. App. 1950)(driving while intoxicated was construed under bankruptcy law as constituting willful and malicious conduct); Cogswell v. Kells, 292 N.W. 483, 485 (Mich. 1940)(willful and malicious acts under bankruptcy act mean something more than accidental act).

51. 11 U.S.C. § 523(a)(6)(1982). Section 523(a)(6) states that ". . . [a] discharge under section 727, 1141, or 1328(b) of this title does not discharge an individual debtor from any debt . . . for willful and malicious injury by the debtor to another entity or to the property of another entity . . . ." *Id.*

52. *See, e.g.*, *McIntyre*, 242 U.S. at 141-42 (disregard of duty constitutes willful and malicious act); *Rosen*, 47 So. 2d at 146 (driving while intoxicated was construed under bankruptcy law as constituting willful and malicious conduct); *Cogswell*, 292 N.W. at 485 (willful and malicious acts under the bankruptcy act mean something more than accidental act). *But see, e.g., In re* Vena, 46 F.2d 81, 81 (W.D. Wash. 1930) (willful and malicious acts products of intentional evil design); Prater v. King, 37 S.E.2d 155, 158 (Ga. Ct. App. 1946)(no matter how great degree of negligence still not willful and malicious); Seward v. Gatlin, 246 S.W.2d 21, 22 (Tenn. 1952)(gross negligence not enough to constitute willful and malicious behavior).

53. 193 U.S. 473 (1920).

54. *See id.* at 475.

55. *See* 1978 U.S. CODE CONG. & ADMIN. NEWS 6320-21.

56. *Id.*

57. J. MILLER, CRIMINAL LAW § 20(b) (1934); R. PERKINS, CRIMINAL LAW 766 (2d ed. 1969).

words "malicious" nor "willful" require the proof of specific intent.[58] In *Rankin v. State*,[59] the court held that "the words 'willful' and 'malicious' have the same legal meaning . . . as do the words 'malice aforethought' in murder cases."[60] Malice includes all states of mind which cause a result which would exculpate or mitigate.[61] Malice includes a willful disregard for the rights of others, which results in injury to another.[62] In at least one case, *Cockrell v. State*,[63] the Texas Court of Criminal Appeals sustained a murder with malice conviction on the basis of the defendant's disregard for the rights of others, evidenced by the defendant's reckless driving.[64] Whether the *Cockrell* case was limited to its facts is not significant here. What is important is the recognition that the term "malice" changes its meaning from crime to crime, just as modern concepts of intent change from crime to crime.[65] In the context of this civil statute, the term "malicious" seems to indicate that form of intent now covered by the concepts of intentional, knowing, and reckless conduct under the Texas Penal Code. However, the term does not appear to cover accidental conduct or ordinary negligence.

In the context of the civil liability of parents for the acts of minors, it seems that the cases requiring the concurrence of intent and injury take an extreme position. This is best illustrated by the Kansas case of *Hanks v. Booth*.[66] In *Hanks*, several children were found to have intended to set a fire, but not to have burned down the plaintiff's barn.[67] The Kansas Supreme Court refused to impose liability on the

---

58. *See* Rankin v. State, 139 S.W.2d 811, 812 (Tex. Crim. App. 1940)(quoting from 29 Tex. Jur. 2d *Homicide § 189).*

59. 139 S.W.2d 811 (Tex. Crim. App. 1940).

60. *See Rankin*, 139 S.W.2d at 812. *But see* Westbrook, *The Role of Specific Intent in Criminal Law*, 14 BAYLOR L. REV. 32, 38 (1962)(critizing *Rankin* decision). The passage of the 1972 Penal Code ended fruitful discussion on this question. However, *Rankin* represents the accepted trend not to require a specific intent, unless mandated by specific wording in a statute. *See Rankin*, 139 S.W.2d at 812.

61. *See* Sowell v. State, 503 S.W.2d 793, 795 (Tex. Crim. App. 1974)(explaining legal meaning of malice). *See generally* R. PERKINS, CRIMINAL LAW 767 (2d ed. 1969).

62. J. MILLER, CRIMINAL LAW 69 (1934); *see also* Ramsey v. Arrot, 64 Tex. 320, 323 (1885).

63. 135 Tex. Crim. 218, 117 S.W.2d 1105 (1938).

64. Cockrell v. State, 135 Tex. Crim. 218, 225-227, 117 S.W.2d 1105, 1108-110 (1938).

65. R. PERKINS, CRIMINAL LAW 769 (2d ed. 1969).

66. 716 P.2d 596, 598 (Kan. 1986).

67. *Id.* at 598. The Kansas court reasoned: " . . .while there was evidence that the children willfully and intentionally lit matches and small piles of hay on fire, they believed the fires

minor children absent a showing that the offending act of the children and the resulting damage were malicious and willful.[68] Cases such as *Hanks* ignore the purpose of the statute. This standard might be appropriate for determining whether the children were guilty of arson, but should not preclude the plaintiff from recovering damages for the wrongful burning of his barn from the parents of these children. Therefore, if the initiating act was intentional and malicious, or the equivalent thereof, and the damage was a foreseeable consequence of the initiating act, then statutes such as section 33.01(2) of the Family Code should be satisfied. Although there are cases to the contrary which require intent to bring about the consequences of the action, these are in the context of criminal proceedings in which a higher standard of proof is necessary in comparison to civil proceedings.[69] Therefore, the most logical standard involves an inquiry into whether the foreseeable consequences of the malicious act were caused by the act. The issue, then, is what consequences can be considered foreseeable.

In Texas, the two elements of causation are cause-in-fact and foreseeability.[70] The Texas Supreme Court, in *Nixon v. Mr. Property Management*,[71] reviewed the two requirements:

> Cause-in-fact denotes that the negligent act or omission was a substantial factor in bringing about the injury and without which no harm would have been incurred . . . .
>
> . . .
>
> . . . Foreseeability means that the actor, as a person of ordinary intelligence, would have anticipated the dangers that his negligent act created for others . . . .[72]

Under *Nixon*, an act may be held foreseeable, regardless of whether the actor specifically anticipated how the injuries would grow out of

---

were extinguished and the evidence fails to prove the children intended to burn down plaintiff's barn . . . ." *Id.*

68. *See Hanks*, 716 P.2d at 598.

69. *See* Lamb v. Peck, 441 A.2d 14, 16 (Conn. 1981)(parents liable when minor intentionally aids another in injury of person).

70. *See, e.g.*, City of Gladewater v. Pike, 727 S.W.2d 514, 517 (Tex. 1987); Missouri Pac. R. Co. v. American Statesman, 552 S.W.2d 99, 103 (Tex. 1977); Farley v. M.M. Cattle Co., 529 S.W.2d 751, 755 (Tex. 1975); East Tex. Theaters, Inc. v. Rutledge, 453 S.W.2d 466, 468 (Tex. 1970).

71. 690 S.W.2d 546 (Tex. 1985).

72. *Id.* at 549-50.

the dangerous situation.[73] Rather, if the actor "should have reasonably foreseen that the event . . . would occur," the cause-in-fact element is satisfied.[74] To hold that section 33.01(2) requires that the child intend the consequences that result from the willful or malicious act would vitiate the act and render it virtually worthless.[75]

b. Criminal Culpability

The result is not changed if the question of foreseeability is treated as a question of criminal culpability. The terms "willful and malicious" are imprecise, and have generally been abandoned in criminal matters.[76] Rather, intent is now generally discussed in terms of culpable mental states, including "intentional, knowing, reckless, and criminal negligence" under the Texas Penal Code.[77] Thus,

> A person acts intentionally, or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct *or* cause the result.[78]

Likewise,

> A person acts *knowingly*, or with knowledge, with respect to a result of his conduct when he is *aware* that his conduct is *reasonably certain* to cause the result.[79]

Further,

> A person acts *recklessly*, or is reckless, with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but *consciously disregards* a *substantial* and *unjustifiable risk* that the circumstances exist or the *result will occur*.[80]

Finally,

> A person acts with criminal negligence, or is criminally negligent with respect to circumstances surrounding his conduct or the result of his

---

73. *See id.*

74. *Id.*; *see also Missouri Pac. R.R. Co.*, 552 S.W.2d at 103.

75. The question is, really, whether the legislature intended that the statute only apply to acts of vandalism, or whether it intended the statute to apply to willful and malicious acts of children that were performed without thought about the possibility of damage. Certainly the statute should apply in the latter instance, which is this case.

76. *See* TEX. PENAL CODE ANN. § 6.02 (Vernon 1974)(excluding willful and malicious as culpable mental state).

77. *Id.*

78. TEX. PENAL CODE ANN. § 6.03 (a) (Vernon 1974).

79. *Id.* § 6.03 (b).

80. *Id.* § 6.03 (c).

> conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur.[81]

In the case of reckless conduct, there is a disregard of the risk, while criminal negligence involves the failure to perceive the risk.

2. "Willful and Malicious" Conduct of Children: Other Jurisdictions

Other jurisdictions have not been uniform in addressing the level of culpability required to hold parents liable for the willful and malicious conduct of their child.[82] In some jurisdictions, conduct recognized as reckless or grossly negligent, will satisfy the willful and malicious requirement.[83] As discussed in the New Mexico Supreme Court case of *Ortega v. Montoya*:[84]

> There is very little, if any, difference between 'willful' and 'malicious' conduct . . . and when [the statute] characterizes an act as being done 'willfully' or 'maliciously', it denotes the intentioned doing of a harmful act without just cause or excuse or an intentional act done in utter disregard for the consequences . . . and does not necessarily mean actual malice or ill will . . . ."[85]

Under the reasoning of this case and others like it, a child's specific intent to cause property damage is apparently not necessary in order to impose liability on the parent. Rather, a lesser degree of culpable conduct by the child, including reckless conduct, will suffice to confer liability upon the parent.

Another view among jurisdictions is that a finding of "willfully damaging" must be premised on findings that both the initial act, and the subsequent damage, were done intentionally.[86]

---

81. *Id.* § 6.03 (d).

82. *See* appendix (culpability ranges from willful, malicious, strict liability, intentional, delinquents, purposefully, criminal recklessly, and unlawful).

83. *See* McKinney v. Cabell, 198 N.W.2d 713, 714 (Mich. Ct. App. 1974)(minor's reckless conduct can qualify as willful or malicious destruction of property).

84. Ortega v. Montoya, 637 P.2d 841, 843 (N.M. 1981).

85. *Id.* at 842-43. The *Ortega* court relied heavily on the earlier case of *Potomac Ins. Co. v. Torres*, 401 P.2d 308, 309 (N.M. 1965), wherein the court noted that the child's act in driving at high speeds in crowded business district, trying to evade police pursuit, and hitting the plaintiff's car which was stopped at a traffic light, was more than mere negligence in trying to pass, and was clearly more than a lack of sound judgment. The child's intentional acts were undertaken without just cause or excuse, and evidenced an utter disregard for their consequences. From this conduct, the requisite malice or willfulness was inferred. *Id.* at 309.

86. *See, e.g.*, Crum v. Groce, 556 P.2d 1223, 1224 (Colo. 1976)(to support finding of

3. The Texas Interpretation

a. "Willful and Malicious" Defined as Gross Negligence

Texas has yet to articulate the requisite level of culpability required to satisfy the willful and malicious standard of section 33.01(2). An insight, however, may be obtained from the current Texas view on gross negligence. In *Burke Royalty v. Walls*,[87] the Texas Supreme Court recognized that to require the plaintiff to prove gross negligence, by direct evidence of the defendant's subjective state of mind, would leave outrageous conduct unpunished.[88] Combining the two traditional tests for gross negligence ("an entire want of care" and "reckless disregard for the rights and safety of others"), the Texas civil test is both an objective and subjective test.[89] Thus, a plaintiff may establish a defendant's gross negligence by proving that the defendant had "actual subjective knowledge that his conduct created an extreme degree of risk."[90] The plaintiff may also prove gross negligence by reference to an objective standard showing that in the same circumstances a reasonable person would realize that his conduct "created an extreme degree of risk to the safety of others."[91]

The logic of the quoted cases and the posture of Texas law require the conclusion that in Texas reckless or grossly negligent conduct will satisfy the statutory requirement for willful and malicious conduct.

"maliciousness" plaintiff must show child intentionally damaged property or motivated by mischievous purpose or design to injure); Hanks v. Booth, 726 P.2d 1319, 1322 (Kan. 1986)(to state cause of action plaintiff must prove act of child and resulting damage willful and malicious); Motorists Mut. Ins. Co. v. Bill, 383 N.E.2d 880, 884 (Ohio 1978)(willfully damaging property means intentional act which occasions resulting loss coupled with intent of causing damage).

87. 616 S.W.2d 911 (Tex. 1981).

88. *See id.* at 922.

89. *Id.*

90. W. LAFAVE & A. SCOTT, CRIMINAL LAW § 3.7 (2d ed. 1986). Lafave and Scott suggest that the existence of subjective awareness of conduct, creating a higher degree of risk, is necessary to criminal recklessness, as opposed to criminal negligence. *Id.* § 3.7(d). However, they recognize that "subject realization of risk . . . must generally be inferred from . . . words and conduct in the light of the circumstances." *Id.*

91. Williams v. Steves Indus., Inc., 699 S.W.2d 570, 573 (Tex. 1985). Cases such as *Sutherland v. Roth*, 407 So. 2d 139, 140-141 (Ala. Ct. App. 1981)(willful and malicious is subjective on part of actor) and *Farm Bureau Mut. Ins. Co. v. Henley*, 628 S.W.2d 301, 302 (Ark. 1982)(parent must actually have knowledge of child's propensity) are directly to the contrary. Most of these courts, however, mix this issue with the issue of causation, and are discussed in the next section. These cases, while not discussing causation, seem to indicate that reckless or grossly negligent conduct which leads to an injury cannot be a cause in fact, unless there was an intent to cause injury.

However, there remains the problem of satisfying the causal requirement of this statutory cause of action. The problem is whether a child, who intentionally undertakes an act, but does not intend the subsequent damage, fulfills the causal element of the statute.

D. *Causation*

Accepting that recklessness or gross negligence will satisfy the "willful and malicious" requirement, the problem of causation must be resolved. Even if the damage by the child was entirely foreseeable, it may not have been intended. In order to determine whether causation exists, two issues must be decided: first, whether the undertaking of a potentially damaging act can be considered as the cause-in-fact of the accident or damage; and second, whether an act classified either as grossly negligent, or willful and malicious, which produces a foreseeable result, can be sufficient cause under a willful and malicious standard.

The Dallas Court of Civil Appeals, in *Kelly v. Williams*,[92] did not separate the issues as just stated, but seems to have resolved both, by impliedly holding that the acts related to the theft of a car could be a legally sufficient cause of the damage to the car resulting from an accident.[93] In *Kelly*, the child stole the plaintiff's car, and was then involved in a high speed chase with the police, which resulted in damage to the stolen car.[94] The trial court entered judgment for the plaintiff against the child's father.[95] The Court of Civil appeals affirmed, reasoning that there was " but one transaction, the damaged car proximately resulting from the initial theft."[96] Because the act of taking the car was intentional and malicious, the foreseeable results flowing from that malicious activity could also be considered malicious, and the initial act was the cause of the damage sustained by the plaintiff.[97]

Other jurisdictions have reached similar results under similar fact patterns.[98] In *Crum v. Groce*,[99] however, the Colorado Supreme

92. 346 S.W.2d 434 (Tex. Civ. App.—Dallas 1961, writ ref'd n.r.e.).
93. *See id.* at 437.
94. *See id.* at 435.
95. *See id.*
96. *Id.* at 437.
97. *See id.*
98. *See, e.g.*, Tassinary v. Moore, 446 A.2d 13, 14-15 (Conn. Super. Ct. 1982)(conversion cause of action sufficiently stated in complaint without stating whether damage occurred inten-

Court reasoned that while the theft of a vehicle was willful and malicious, the injury was not.[100] There was no evidence to support a finding that the child damaged the property intentionally, and the *Crum* court chose not to see the activity as one continuous event, severing the damage to the vehicle from its theft.[101]

The reasoning of the *Crum* decision speaks in terms of the criminal concurrence of intent and injury.[102] The Texas statute in question does not require the concurrence of any specific intent and injury, unless it is implied by the use of the enigmatic term "malicious."[103] This author concludes that the term malicious is insufficient to add a specific intent, beyond the intent to willfully perform an act with the awareness that the act may foreseeably cause injury to another.

IV. CONCLUSION

Under section 33.01(1) of the Texas Family Code, a parent is liable for the ordinary negligence of the child if the parent is found, upon proper proof, to have knowledge of the child's tortious tendencies.

It would appear from history, from the better reasoned precedent, and from the controlling precedent in Texas,[104] that section 33.01(2),

---

tionally or negligently); Hyman v. Davies, 453 N.E.2d 336, 340 (Ind. App. 1983)(parents not liable for recovery of lost wages and towing charges since this portion of judgment did not arise from intentionally caused property damage); Potomac Ins. Co. v. Torres, 401 P.2d 308, 309 (N.M. 1965)(minor's intentional act of driving at excessive speed through crowded business district may readily infer required malice or willful conduct). The decision in *Amarillo Nat'l Bank v. Terry*, 658 S.W.2d 702 (Tex. App.—Amarillo 1983, no writ), that there must be proof that the child's act was both willful and malicious, is not in conflict with *Williams*. *Id.* at 704. The Amarillo court was dealing with an admitted request that the act was willful, with no admission or evidence that the act was "malicious." *See id.*

99. 556 P.2d 1223 (Colo. 1976).

100. *See id.* at 1224.

101. *See id.*; *see also* Town of Groton v. Medberry, 301 A.2d 270, 272 (Conn. Cir. Ct. 1972). The *Groton* court similarly held the proof of specific malicious or willful behavior does not establish malicious or willful injury. *See Groton*, 301 A.2d at 272.

102. *See Crum*, 556 P.2d at 1224; *accord* Motorists Mutual Ins. Co. v. Bill, 383 N.E.2d 880, 884 (Ohio 1978)(both act and subsequent damage must be intentional for parental liability); Peterson v. Slone, 383 N.E.2d 886, 888 (Ohio 1978)(term "willfully damages property" means intent of act coupled with purpose or intent of injury and resulting damage); Travelers Indem. Co. v. Brooks, 395 N.E.2d 494, 497 (Ohio Ct. App. 1977)(parents not liable when daughter's damage to automobile not willful even though taking of said automobile considered willful). W. LAFAVE & A. SCOTT, CRIMINAL LAW § 3.11 (2d ed. 1986)(concurrence of mental fault with acts and results).

103. *See* TEX. FAM. CODE ANN. § 33.01 (Vernon 1986).

104. *See* Kelly v. Williams, 346 S.W.2d 434, 436-38 (Tex. Civ. App.—Dallas 1961, writ ref'd n.r.e.)(often cited Texas case upholding constitutionality of statute which holds parents

Texas Family Code, imposes vicarious liability upon the parent of juveniles, who voluntarily undertake an act which produces an injury to another, if the minor acted in a manner that would satisfy, in a civil proceeding, the Texas Penal Code definitions of criminal recklessness or criminal negligence. While the phrases, criminal recklessness and criminal negligence, do not translate exactly into the terms of the civil law, it seems clear that gross negligence on the part of the juvenile is sufficient for parental liability under section 33.01(2), but that ordinary negligence is not.

In an age when tort liability is determined more from an insurance theory than a fault theory, section 33.01 of the Family Code will be an anachronism, unless it is construed to impose liability where fault clearly exists. The legislative limits upon parental liability for the ordinary negligence of a child, in section 33.01(1) of the Texas Family Code, while well founded in history, seem outmoded in light of the ready availability of liability insurance, and the law's imposition of a greater level of civilization upon society as a whole. Consideration should be given to an expansion of parental liability to cover, without prior parental knowledge, conduct of a child, which would fall within the definition of criminal negligence.

The use of dusty terms such as "willful" and "malicious", in section 33.01(2) of the Texas Family Code, should not mislead any interpreter. This statute was not written to cover only acts of vandalism, but also acts of gross negligence. However, for clarity, any future amendments should eliminate the terms "willful" and "malicious" in favor of "intentional" and "grossly negligent conduct".

V. APPENDIX

State	Cite	Type Liability Imposed[1]	Amount	Date Passed[2]
Alabama	ALA. CODE § 6-5-380 (1987)	Intentional, Willful or Malicious	$500 + court cost	1965 1965$

liable for minor's willful and malicious conduct); *see also Buie v. Longspaugh*, 598 S.W.2d 673, 676 (Tex. Civ. App.—Fort Worth 1980, writ ref'd n.r.e.)(upheld constitutionality of new statute and explained purpose of statute). Further, this result appears to be in line with modern Texas cases on causation.

Alaska	ALASKA STAT. § 34.50.020 (1987)	Maliciously or Wilfully	$2,000 + court cost	1957 as of 1967$
Arizona	ARIZ. REV. STAT. ANN. § 12-661 (1982)	Malicious or Wilful	$2,500 each tort	1956 1980$
Arkansas	ARK. STAT. ANN. § 9-25-102 (Supp. 1987)	Maliciously or Willfully	$5,000	1959 1987$
California	CAL. CIV. CODE § 1714.1 (Deering 1988)	Willful	$10,000 (injury to property or another) $10,000 + court cost + atty. fees (for defacement of property w/ paint)	1955 1983$
Colorado	COLO. REV. STAT. § 13-21-107 (1987)	Maliciously or Willfully	$3,500 + court cost + reasonable atty. fees	1963 1983$
Connecticut	CONN. GEN. STAT. ANN. § 52-572 (West Supp. 1988)	Maliciously or Wilfully	$3,000	1969 1979$
Delaware	DEL. CODE. ANN. tit. 10, § 3922 (Supp. 1986)	Intentionally or Recklessly	$5,000	1953 1979* 1980$
Florida	FLA. STAT. ANN. § 741.24 (West 1986)	Maliciously or Wilfully	$2,500 + taxable court cost	1956 1977$
Georgia	GA. CODE ANN. § 51-2-3 (Supp. 1987)	Malicious or Willful	$5,000 + court cost	1956 1982$
Hawaii	HAW. REV. STAT. § 577-3 (1985)	Strict Liability		1984
Idaho	IDAHO CODE § 6-210 (Supp. 1987)	Wilfully	$2,500	1957 1987$
Illinois	ILL. ANN. STAT. ch. 70, para. 53 (Smith-Hurd 1987)	Malicious or Wilful	$1,000 + taxable court cost	1969 1980$

Indiana	IND. CODE ANN. § 34-4-31-1 (Burns 1986)	Intentionally	$2,500	1978 1983$
Iowa	IOWA CODE ANN. § 613.16 (West Supp. 1988)	Unlawful Acts	$1,000 per act $2,000 maximum	1969 1969$
Kansas	KAN. STAT. ANN. § 38-119 (1986)	Malicious or Willful	$1,000 + taxable court cost (result of parental neglect $1,000 limit not apply)	1959 1959$
Kentucky	KY. REV. STAT. ANN. §§ 405-025, 405-027 (Michie/Bobbs-Merrill 1984)	Wilful	$2,500 + court cost + atty. fees may cumulate to $10,000	1968 1976$ 1980^
Louisiana	LA. CIV. CODE ANN. art. 2318 (West Supp. 1988)	Strict Liability		1984
Maine	ME. REV. STAT. ANN. tit. 19, § 217 (1981)	Maliciously or Willfully	$800	1959 1979$
Maryland	MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (Supp. 1987)	Delinquent acts	$5,000	1957 1980$
Massachusetts	MASS. ANN LAWS ch. 231, § 85G (Law. Co-op. 1988)	Wilful	$5,000	1969 1985$
Michigan	MICH. STAT. ANN. § 27A.2913 (Callaghan 1988)	Maliciously or Wilfully	$2,500	1963
Minnesota	MINN. STAT. ANN. § 540.18 (West Supp. 1988)	Maliciously or Willfully	$500 + other liab. at law	1967 1980$
Mississippi	MISS. CODE ANN. § 93-13-2 (Supp. 1987)	Malicious or Willful	$2,000 + court cost + other liab. at law	1978 1981$
Missouri	MO. ANN. STAT. § 537.045 (Vernon 1988)	Purposely	$2,000	1965 1979$

Montana	MONT. CODE ANN. §§ 40-6-237, 40-6-238 (1987)	Maliciously or Willfully	$2,500 + taxable court cost + reasonable atty. fees (not to exceed $100)	1957 1981$
Nebraska	NEB. REV. STAT. § 43-801 (1984)	Willful and Intentional	$1,000 (personal injury)	1951 1969$
Nevada	NEV. REV. STAT. § 41.470 (1985)	Willful	$10,000 + liab. imposed by law	1957 1979$
New Hampshire	No Statute			
New Jersey	N.J. STAT. ANN. § 2A: 53A-15 & 16 (West Supp. 1987)	Malicious, Willful or Unlawful (Parents must be negligent)	$250 (for real or personal property) 1,000 + court cost (for damage to prop. of railroad, autobus)	1965 1979$ 1970$
New Mexico	N.M. STAT. ANN. § 32-1-46 (1978)	Maliciously or Willfully	$4,000 + taxable court cost + Atty. fees	1972 1983$
New York	N.Y. CIV. PRAC. L. & R. 78-a (McKinney 1986)	Maliciously, Willfully or Unlawfully	$2,500 $1,500 prove financial hardship	1977 1985$
North Carolina	N.C. GEN. STAT. § 1-538.1 (1987)	Maliciously or Willfully	$1,000	1961 1961$
North Dakota	N.D. CENT. CODE § 32-03-39 (1976)	Maliciously or Willfully	$1,000 + taxable court cost	1957
Ohio	OHIO REV. CODE ANN. § 3109.09 (Baldwin 1987)	Willfully	$3,000 + cost of suit	1978 1978$
Oklahoma	OKLA. STAT. ANN. tit. 23, § 10 (West 1987)	Criminal or Delinquent Act (Willful or Tortious Act)	$2,500	1957 1977* 1982$
Oregon	OR. REV. STAT. § 30.765 (1987)	Intentional	$5,000	1975 1977$
Pennsylvania	PA. STAT. ANN. tit. 11, § 2002-4 (Purdon Supp. 1988)	Wilful or Tortious Act	$300 (one person injured) $1,000 (regardless no. injured)	1967 1967$
Rhode Island	R.I. GEN. LAWS §§ 12-19-33 & 34 (Supp. 1987)	Maliciously or Wilfully	$2,000	1978 1987$

South Carolina	S.C. CODE ANN. § 20-7-340 (Law. Co-op. 1976)	Maliciously and Intentionally	$1,000	1981 1981$
South Dakota	S.D. CODIFIED LAWS ANN. § 25-5-15 (1984)	Malicious and Willful	$750 + taxable court cost	1957 1979$
Tennessee	TENN. CODE ANN. § 37-10-101 (Michie Supp. 1987)	Maliciously or Willfully (Parents know or should know child's tendencies)	$10,000 + taxable court cost	1957 1981$
Texas	TEX. FAM. CODE ANN. §§ 33.01-02 (Vernon 1986)	Malicious and Wilful or Negligent if conduct attributable to parent	$15,000 + court cost + reasonable atty. fees	1957 1981$
Utah	UTAH CODE ANN § 78-11-20 (1987)	Intentionally Damages; Recklessly or Willfully Shoots; Intentionally and Unlawfully Tampers	$1,000	1977 1977$
Vermont	VT. STAT. ANN 1987 tit. 15, § 901 (1974 & Supp. 1987)	Maliciously or Wilfully	$250 per child	1959 1959$
Virginia	VA. CODE ANN. §§ 8.01-43, 8.01-44 (Supp. 1987)	Malicious or Willful	$750	1950 1987$
Washington	WASH. REV. CODE ANN. § 4.24.190 (Supp. 1988)	Maliciously or Wilfully	$3,000	1967 1977$
West Virginia	W. VA. CODE § 55-7A-2 (Supp. 1987)	Maliciously or Wilfully	$2,500 + taxable court cost + interest	1957 1981$
Wisconsin	WIS. STAT. ANN. § 895.035 (West Supp. 1987)	Malicious, Wilful or Wanton	$2,500 + taxable court cost + atty. fees	1957 1985$
Wyoming	WYO. STAT. § 14-203 (1986)	Maliciously or Willfully	$300 + taxable court cost	1953 as of 1978$

$ date enacted dollar amount.

* change in culpability.
^ enactment of atty. fees + court cost.

1. *See* Concise Oxford Dictionary 1231 (7th ed. 1982). **Wilful** (preferred) for which compulsion or ignorance or accident cannot be pleaded as excuse, intentional, deliberate, due to perversity or self-will. **Willful** — etymologies. form not recorded but merely inferred.
2. Date parental liability first imposed. Where date is listed "as of," the actual date or enactment may precede such date.