

## **HOLDING PARENTS LIABLE FOR THEIR CHILDREN'S CRIMES**

BY

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With all of the violence that is perpetrated by the youth of today's society, victims are often left with no redress because youthful offenders rarely have any assets or any insurance coverage. However, there are various ways in Texas that a victim potentially impose civil liability upon parents for their children's crimes.

First, there is a statute that provides for parental liability for property damage caused by their children. Under the Texas Family Code a victim can hold a parent held liable for up to \$25,000 (plus attorney's fees and costs) where the parent is negligent and his or her child's negligence causes property damage or where the child is between the age of 10 and 18 and commits a willful or malicious act that causes property damages. Importantly, where the act is willful or malicious, the parent is liable whether or not he or she was negligent in supervising the child.

Second, another potential way to recover money in less serious crimes is by seeking restitution. The district attorney's office can make restitution a term and condition of any probation or deferred adjudication plea. In other words, the child (likely the child's parent) will have to pay for the damages that he caused while on probation or deferred adjudication. The victim should inquire about this with the district attorney's office.

Third, a victim can potentially hold a parent liable for failing to control his or her child or warn of the child's dangerousness under common law. Generally, there is no legal duty in Texas to control or warn of the actions of third persons. However, under certain circumstances, where a parent has some culpability, a victim can hold him or her responsible for the child's conduct. To do this, the victim must show that the child's conduct was foreseeable to the parent. Courts have held that the child must have had very similar previous conduct in order for future conduct to be foreseeable.

For example, in *Isbell v. Ryan*, a stepmother brought an action against her husband's ex-wife claiming that the ex-wife negligently failed to warn her that her stepson was a potential danger to her two young daughters based on the stepson's reported prior sexual molestation of a cousin. Although the ex-wife had a report that her son molested his young cousin, she did not warn either her ex-husband or his new wife when the boy went to stay with his father for the summer. The court of appeals found that the plaintiff had a potentially viable claim because the ex-wife could have reasonably anticipated the danger of allowing her son to go to the ex-husband's home without giving adequate warning of the danger to the boy's half-sisters.

Fourth, a court can hold a parent liable for entrusting an object or an activity to his or her child. The law provides that person who gives a object to another or entrusts an activity to another, knowing the other person, due to youth, inexperience, or other factors, is likely to use the object or perform the activity in a manner involving unreasonable risk of harm to himself or others, may be held liable for harm caused by the use of the object or the performance of the activity. Although normally used in the context of loaning an automobile, it can be used to hold a parent liable for loaning other objects -- guns.

For example, in *Kennedy v. Baird*, the plaintiffs went to the defendant's house where the defendant's son began shooting at them and injured them. The plaintiffs sued the defendant for negligently entrusting his son with a gun. The court of appeals held that it was possible to bring an action for negligent entrustment of a firearm; however, the court affirmed the dismissal of the plaintiffs' claims where there was no evidence that the defendant knew or should have known that his son was likely to commit such a crime.

Before filing suit it is important to consider whether perpetrator's parents have any assets that the victim can recover. One important source of recovery is a parent's homeowner's policy, which usually provides limited coverage for general negligence claims.

Victims often feel that the child's parents are morally at fault for a child's conduct. To some extent, the juvenile justice system can relieve some of the victim's feelings of anger toward the child, but there is often no crime committed by and no criminal proceedings brought against the parents. Therefore, the victim may attempt to seek out justice and compensation from the parents through the civil justice system. Without avenues to seek out and recover compensation from parents who allow their children to cause others harm, victims may take measures to exact a more personal form of justice, which would be bad for our community.