

MEMORANDUM OF LAW

DATE: April 15, 1992

TO: Councilmember Tom Behr

FROM: City Attorney

SUBJECT: Hate Crimes

At the City Council meeting of March 2, 1992, you raised the issue of the adoption of a Hate Crimes Tracking Ordinance by the City of San Diego. The City's Human Relations Commission ("HRC") has begun work on such an ordinance. In conjunction with the ordinance, you have also raised two issues dealing with parental liability for acts of minor children. Generally, you have asked about the limits of parental liability for hate crimes committed by their minor children, and specifically you have asked about parental accountability for property damage and monetary costs caused by hate crimes.

Criminal Liability

Parents may be held responsible for the acts of their minor children under both criminal and civil law. However, criminal liability is severely limited. It has been said that the police power is simply the power of sovereignty, or power to govern--the inherent reserved power of the state to subject individual rights to reasonable regulation for the general welfare. 8 Witkin, Summary of California Law Section 784 (9th ed. 1988). Under this inherent reserved power, it is within the City's power to enact an ordinance which either punishes parents or requires them to pay restitution for personal injuries or property damage caused by the commission of hate crimes by their juvenile children.

For example, in *People v. Walton*, 70 Cal. App. 2d Supp. 862 (1945) the court upheld the defendant's conviction for violating a Los Angeles municipal ordinance which required parents to keep their minor children off public streets during curfew hours. The Walton court held the ordinance did not exceed the city's police powers by limiting the movement of minors and by holding their parents criminally responsible. Id. at 866.

The formulated rule seems well established
. . . that a statute having been enacted, the
presumption will be indulged not only that it
was inspired by a general intention to add
needed protection to the health, morals, or
safety of the public, but that the statute
would be corrective of some specific, if not
specified evil; . . . unless the questioned

legislation bears the unmistakable imprint of arbitrary or oppressive action on the part of the legislators . . . the statute must be deemed to have been enacted in accordance with the implied powers of the legislative body.

People v. Walton, 70 Cal App. 2d Supp. at 866-867.

Under the holding of *Walton*, The City of San Diego could conceivably pass an ordinance which places direct criminal responsibility on parents for the criminal acts of their minor children. The purpose of the ordinance would be to influence parents to exert greater control over their children regarding the commission of unlawful acts at the risk of subjecting themselves to criminal prosecution. Such legislation would be a valid constitutional exercise of the City's police powers as long as it was not arbitrary or unreasonable.

Further, there is authority which supports requiring parents to make restitution for the crimes of their minor children.

Where the constitutionality of statutes granting juvenile courts the authority to order the parents of juvenile offenders to make restitution to the victims of those acts has been challenged, the courts have upheld the statutes in response to the argument that they impose liability without fault, deeming them reasonable and non-oppressive means of furthering the proper governmental aims of promoting increased parental supervision and making whole the victim who has done no wrong.

Annotation, *Jurisdiction or Power of Juvenile Court to Order Parent of Juvenile to Make Restitution for Juvenile's Offense*, 66 ALR 4th 985, 988 (1988).

Courts held that statutory grants of authority to juvenile courts to order restitution by the parents of juveniles adjudged delinquent did not violate federal or state constitutions where they fulfilled a legitimate state interest in a matter of general welfare by means that were not shown to be arbitrary, oppressive, or unreasonable.

Id. at 990.

No California case law authorizes parental restitution under the criminal statutes for the crimes of minor children. There are, however, out of state cases and statutes which support the constitutionality of such liability. Presently, such laws are in effect in Florida, Maryland

and Pennsylvania and have withstood constitutional attacks. Each of these laws was found to be constitutional. All were, however, enacted at the state level, not the local level.

Parents have also been held criminally responsible for acts committed by their minor children under a criminal agency theory. "Under the common law courts have imposed criminal responsibility on parents for the criminal acts of their children when it has been shown that the acts of the child were done under fear of, or compulsion by, the parent." Annotation, Criminal Responsibility of Parent for Act of Child, 12 ALR 4th 673, 677 (1982). For example, some courts have held parents criminally responsible under compulsory school attendance laws or contributing to the delinquency of minor statutes, for the failure of their minor children to attend school. *Id.* The criminal agency theory might be invoked if the minor's acts were initiated or encouraged by the parent.

While it appears that the City could enact an ordinance which is facially valid, imputing criminal responsibility to parents for the acts of minor children, such an ordinance may well be barred by the doctrine of preemption by implication. California's statutory scheme is extremely pervasive in the area of criminal law. Where such pervasiveness is found preemption is always a question.

"To determine whether the Legislature intended to occupy a particular field to the exclusion of all local regulation, we may look to the 'whole purpose and scope of the legislative scheme.'" As the court said in *re Hubbard*, 62 Cal. 2d 119, 128 (1964). Three tests have been established to determine whether a subject has been preempted by the state legislature. These tests are:

1. The subject matter has been fully and completely covered by general law as to clearly indicate that it has become exclusively a matter of state concern;
2. The subject matter has been partially covered by general law couched in such terms as to indicate clearly that a paramount state concern will not tolerate further or additional local action; or
3. The subject matter has been partially covered by general law, and the subject is of such a nature that the adverse effect of a local ordinance on the transient citizens of the state outweighs the possible benefit to the municipality.

California Restaurant Assn. v. City of Los Angeles, 192 Cal. App.

3d 405, 411-412 (1987).

Whether the State has preempted an area, when it is not specifically stated, can only be determined on a case by case basis. However, in view of the completeness of the criminal statutory scheme, any ordinance the City enacts may well be duplicative and provide no greater protections than those already provided by law.

Civil Liability

In the area of civil law, courts have found parents liable for the torts of their minor children both under common law principles and modern statutes. Under the common law, traditionally, parents were not held liable in damages for the consequences of the torts of their minor children solely because of the existence of the parent-child relationship. Annotation, *Validity and Construction of Statutes Making Parents Liable for Torts Committed by Their Minor Children*, 8 ALR 3d 612, 615 (1966). Unless the parent participated in the minor's tort, or through negligence caused or permitted the tort to occur, courts often absolved parents from liability, unless some other relationship, such as that of principal and agent, or master and servant, existed between parent and child. *Id.*

In recent years, a number of states have enacted statutes intended to make parents legally responsible for the tortious acts of their minor children; presumptively enacted for the purpose of attempting to restrain juvenile delinquency, vandalism, and malicious mischief. *Id.* Almost all of these statutes enumerated the classes of individuals, corporations, and organizations that were entitled to avail themselves of the statutes benefits, as parties plaintiff. Probably without exception, the state itself, and its political subdivisions, are given the right to bring suit. *Id.*

California follows the Restatement rule (Rest. 2d Torts, Section 316), which finds a "special relationship" between parent and child, and accordingly places upon the parent

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.

Robertson v. Wentz, 187 Cal. App. 3d 1281, 1288 (1986).

California followed (the) rule of nonliability for parents absent some fault by the parent or the application of a theory of vicarious liability until enactment of section 1714.1 in 1955. *Cynthia M. v. Rodney E.*, 228 Cal. App. 3d 1040 (1991).

California Civil Code section 1714.1, subdivision (a) imposes

vicarious and strict liability upon a parent for acts of the child if the statutory requirements are met. *Robertson v. Wentz*, 187 Cal. App.3d at 1293.

Cal. Civil Code section 1714.1 reads as follows:

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

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

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

The 1983 amendment to Section 1714.1 also included the following language: "This act is part of the Crime Victim Restitution Program of 1983 in that it increases the ability of victims of juvenile crime to obtain restitution by doubling parental liability for crimes committed by minors." West's California Legislative Service, Chapter 981, Section 2 (1983).

Therefore, under Civil Code section 1714.1, there is express statutory authorization for holding parents civilly liable for the torts of their minor children. Although the City would lack standing to pursue such remedies against parents, the City could aid victims in their pursuit of damages in civil actions.

State Victim Restitution Fund

Finally, a victim of a hate crime might also be eligible to receive restitution from other sources. Under California Government Code Sections 13959-13974.1, certain crime victims may receive financial assistance from the state for losses resulting from a crime, when these losses cannot be reimbursed by other sources. The State Board of Control, Victims of Crime Program administers the Restitution Fund which, as a last resort, is available to qualified victims.

The fund covers the following losses and costs: medical, mental health, counseling, dental, income loss/loss of support, job retraining. The fund is available to: persons who sustain injury as a direct result of a crime; persons who are legally dependent upon the victim for support; persons who are related to or have a close relationship with the victim and were present during the crime; family members of the victim who incur emotional injury as a result of the crime; and persons who assume legal responsibility for the medical or burial expense of a deceased victim.

The following additional requirements must be met: the crime must be reported to the appropriate law enforcement agency; the victim must cooperate with the staff of the Board of Control in the verification of the claim and with law enforcement in the investigation and prosecution of any known suspects; the crime must have occurred in California, or if outside of California, the victim must have been a California resident at the time of the crime; all other sources of reimbursement must first be used.

Based upon the existing statutory protection offered to victims of hate crimes, it is the opinion of this office that additional ordinances at the local level would be unnecessary and duplicative. However, the City, through its Human Relations Commission, could take a proactive role in apprising the victims of such crimes of their rights under existing law and in setting up a network of attorneys, possibly pro bono, and other support groups to help educate such victims so that they might fully exercise their existing legal rights.

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