

# Parental Control

By Fred A. Fenster

Children can be financially draining for unanticipated reasons.

Consider the driver's license: The law states that a child younger than 18 cannot obtain a driver's license unless the application is signed and verified by both parents, or by the parent who has custody, or by the guardian if neither parent is living. Such an innocent deed, though, automatically makes the parents or guardian responsible for their child's negligence in causing an accident or injuring others while driving a vehicle. Vehicle Code Section 17707.

Thanks to the wisdom of the California Legislature, the maximum parental liability is \$15,000 in the event one person dies or is injured in the accident, \$30,000 if more than one person is involved and \$5,000 to cover property damage. Vehicle Code Section 17709.

The above limitations do not apply if the parent negligently supervises a child driving with a learner's permit. In these instances, liability is unlimited. Vehicle Code Section 12509.

Similarly, in the event a minor child operates an automobile on a highway with the express or implied permission of his or her parents or legal guardian, all civil liability of the minor is imposed on the persons granting the permission — with no ceiling. Vehicle Code Section 17708.

To avoid this outcome, parents have two choices: They can refuse to allow their minor children to obtain driver's licenses until they turn 18, or they can pay the heavy cost of the maximum available insurance coverage.

Parents with unruly or hard-to-manage children also face exposure for their minor's conduct if they know or have reason to believe that control must be exercised to avoid injury. In one case, a baby sitter sued a child's parents, claim-

ing that they negligently failed to warn her that their "angel" habitually had attacked people violently. As the court noted pointedly, the parents' inaction "made it possible for the child to cause the injury complained of, and probable that [he] would do so."

In another case, neighbors complained to parents that their child continually was throwing rocks at them. The court held the parents accountable on grounds that they had not exercised effective control.

In one unusual decision, a long-distance telephone carrier sued the parents of teenage boys who had used the family computer to hack the carrier's system and make excessive calls without paying. The court determined that the children's conduct was intentional and that the parents had failed to curb such willful actions.

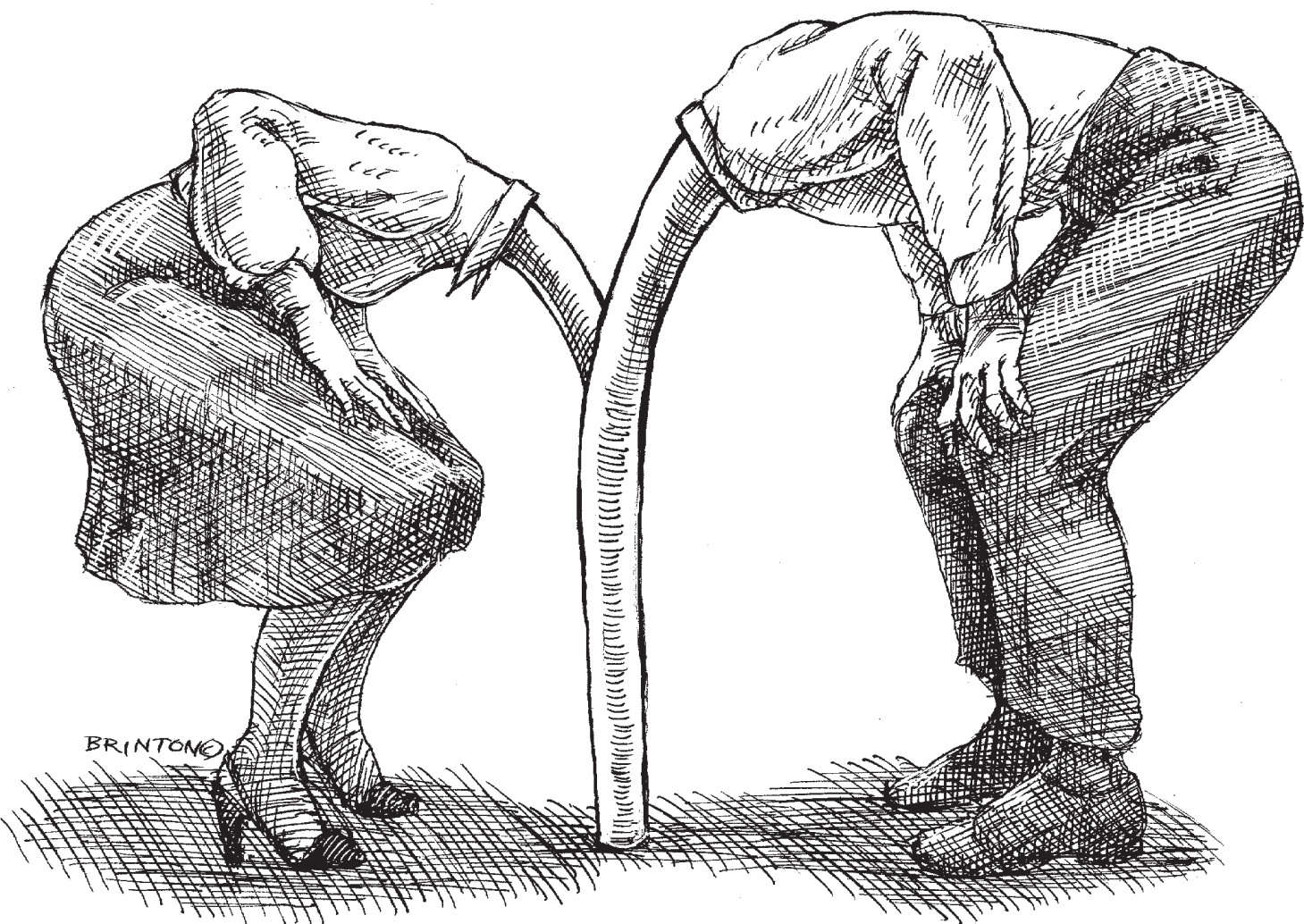
## Parents who know of their child's volatility and aggressive behavior are under a duty to warn others.

As one court explained, "The parent has a special power of control over the conduct of the child, which he is under a duty to exercise reasonably for the protection of others. He may thus be liable for failure ... to take reasonable efforts to restrain and correct [the child] when he manifests a tendency to beat other children with a stick," or engages in other dangerous behavior.

*Singer v. Marx*, 144 Cal.App.2d 637 (1956).

The key to holding parents accountable for their children's dangerous acts is whether they are aware of the minor's tendencies. As one court stated, "Parents are responsible for harm caused by their children only when it has been shown that the parents, as reasonable persons, previously became aware of habits or tendencies of the infant which made it likely that the child would misbehave so that they should have restrained him in apposite conduct and action." *Reida v. Lund*, 18 Cal.App.3d 698 (1971).

Accordingly, though parents may not be present to witness their child's conduct that leads to an injury, liability will attach where they are aware of their child's past



actions and fail to warn others to be on guard. *Costello v. Hart*, 23 Cal.App.3d 898 (1972).

Another decision focused on parental liability for a child's general incorrigibility and poor disposition: "[T]he ability to control the child ... is the basis for a finding of liability on the part of the parent. ... The absence of such ability is fatal to a claim of legal responsibility." *Robertson v. Wentz*, 187 Cal.App.3d 1281 (1986).

That is not the end of the analysis, though, because parents who know of their child's volatility and aggressive behavior are under a duty to warn others who may suffer damage from such habitual misconduct.

The law is not limited to specific situations. Rather, parents face liability for "any act of willful misconduct" by their children that "results in injury or death to another person or damage to another's property." Cali-

fornia Civil Code Section 1714.1(a).

The breadth of this code section is stunning. In *Robertson, Roy*, a minor, robbed a bookstore and in the process shot and killed Rene Robertson. Her husband filed a wrongful-death suit against Roy's mother for failing to control and properly supervise her son.

The evidence established that Roy was given a .22-caliber weapon on his fifth birthday, and that as he grew older, he acquired two rifles, a shotgun and two pellet pistols. In addition, Roy began drinking on a social basis and smoking marijuana at 13. When Roy was 16, his mother discovered that he had been using cocaine and other drugs.

No disciplinary action was taken against the minor, other than talking to him about his problems and imposing strict behavior guidelines that were not followed.

Ruling in favor of the victim's husband, the court noted that the parent of a minor child who causes damage through willful misconduct is liable to an innocent third party.

To avoid financial ruin, Civil Code Section 1714.1(a) limits parents' liability for nonvehicular-caused events to \$25,000 for each separate act of their children.

Irrespective of that statute, parents also may be liable under Education Code Section 48904 for any damage caused by their minor's willful misconduct resulting in injury or death to a student, employee or volunteer for a school district or private school, as well as for their child's willful injury to real or personal school property or the personal property of a school employee. Although liability is limited to a maximum of \$10,000, the parents also may be held accountable for any reward paid by a school district, in an amount not

to exceed \$10,000.

Should a minor child steal merchandise from a store or remove books from a library, their parents can be personally liable for damages up to \$500. This recovery is in addition to any other liability the parents might have for failing to stanch their child's criminal conduct.

These laws are designed to protect society against a child's antisocial behavior that might cause injury to others. People who disregard them not only face public embarrassment, but also their wallets might become significantly lighter.

The message: Stay involved. Otherwise, your child's actions can be hazardous to your wealth.

**Fred A. Fenster** is an attorney with Rutter Hobbs & Davidoff in Los Angeles.

# People Need to be Warned About Marriage

By Fred Silberberg

Living in California can be a dangerous undertaking. Almost every building you enter has a warning at the entry that the building contains toxic chemicals known to cause cancer. At every gas station, a warning says the same thing. Some of these dangers apparently exist only in California. Buildings in other states do not have these warnings, so one must assume that they are safe to enter.

However, it isn't only buildings that we warn people about. The U.S. surgeon general warns us about cigarettes and alcohol. The facilities we use for certain physical activities make us sign disclaimers. Drug companies warn us about the many side effects of the drugs we take. In our litigious society, there are warnings about just about everything, with the exception of one thing: marriage.

Perhaps it is time to start warning people about marriage. After all, if we warn people about every little thing they do, we certainly should be warning them about one of the biggest decisions they make, one that can affect someone's life irrevocably.

We don't warn them. We let almost any straight person who is of age apply for and get a marriage license. We make the process of getting married much easier than getting unmarried, which doesn't seem right.

We should be warning people considering marriage of all sorts of things. Not necessarily the day-to-day annoyances but the more serious things that they are getting into. We should be warning them that they live in a community-property state and that not only is everything that they acquire going to have to be shared with their spouse and divided on divorce, but also every debt that their spouse incurs is going to be their own liability.

We should be warning them



that, ungetting married, they have all kinds of fiduciary duties to their spouse that will never become an issue unless they get divorced.

We should be warning them that in California, more likely than not, they will get divorced (which makes marriage in California similar in some respects to entering a building).

We should be warning them that, if they have a change of mind, they cannot get out of the deal easily. We should be telling them that, although a divorce takes six months to be final, if the divorce is contested, they'll be lucky to be out in a year. We should be telling them that, if they move forward with the divorce, they could end up paying significant amounts of money in spousal support.

We should be telling them that, if they have children, they can look forward to paying child support in addition to the spousal support. We should tell them that they should not assume anything about the amount of time that they may be able to spend with those chil-

dren, because their spouse may not agree on this and it will become a battle in and of itself.

We should tell them that, if they go through with a divorce, it is likely that they will be unable to retire when they planned to because they won't have enough money left on which to retire after they make all of those child- and spousal-support payments. We also should point out that whatever they have accrued in retirement funds will be divided with their spouse.

If one of the parties is a professional, that person should understand that a divorce means he or she will have to buy the practice back from the spouse even though there is no one in the outside market to sell it to, because it has no real value.

Of course, an appropriate warning should not end there. As they say on TV, "wait, there's more!" We also need to make sure that they are aware that, once the divorce is final, that does not neces-

sarily mean that the case is over. They need to understand that people frequently end up back in court over such things as modifying spousal support, child support and custody arrangements. When that happens, it is as though the entire cycle begins all over again.

And at this point, we haven't even mentioned the significant amount of stress that going through this process is going to cause them; nor have we told them about the potential impact on their health.

In this day and age, it just doesn't seem right that we make a warning available to someone who is walking into a building, which they may enter for only a few minutes, but we do not make a warning available for entering into a marriage, which may last for years.

The question is not whether to give them a warning; it is how to warn them. After all, most people entering a building look at the warning sign and figure "nothing is going to happen to me." Someone entering a building, one would hope, is of a clear enough mind to enter the building intelligently. Someone entering into a marriage is often clouded by feelings of love, lust and other such emotions. Certainly, society has a responsibility to warn such individuals who are not necessarily in their right state of mind.

Yet we do not warn them. It should be our duty to warn them. One has to learn the rules of the road and take a driver's education course before one gets a license. One also should have to learn the pitfalls of marriage before getting a marriage license. Each election season, we have propositions on the ballot about just about everything imaginable. Now we need a proposition to impose warnings about marriage.

Until that gets put on the ballot, you can just pass along this article.

**Fred Silberberg** is a certified family law specialist and a partner at Silberberg & Ross in Brentwood.

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