

Restitution: Joint and Several Liability Between Children and Parents

By Art Merchant, Juvenile Durango Supervisor, Chris Phillis, Mesa Juvenile Supervisor and Suzanne Sanchez, Juvenile Appeals Attorney

Restitution raises significant issues for defendants, but it is extremely problematic for juveniles. All of us are familiar with joint and several liability for restitution between co-defendants, but in juvenile court the parents also can be held responsible for restitution. However, holding parents jointly and severally liable with their children can have dire consequence for juveniles.

There are two statutes pertaining to payment by parents for financial losses caused by their children: A.R.S. § 12-661 and A.R.S. § 8-344.

A.R.S. § 12-661(A) imposes civil liability. *In re Kory L.*, 194 Ariz. 215, 219, 979 P.2d 543, 547 (App. 1999). Parents can be held *civilly* liable for up to \$10,000.00 for monetary damages that their children cause. A.R.S. § 12-661(A) states:

Any act of malicious or willful conduct of a minor which results in any injury to the person or property of another, to include theft or shoplifting, shall be imputed to the parents or legal guardian having custody or control of the minor ... and such parents or guardian having custody or control shall be jointly and severally liable with such minor[.]

Civil liability pursuant to A.R.S. § 12-661(A) is true vicarious liability. *Kory L.*, 194 Ariz. at 219, ¶ 12, 979 P.2d at 547. Therefore, pursuant to A.R.S. § 12-661(A), parents and their children are jointly and severally liable for civil damages. *Id.*

However, A.R.S. § 8-344, the other statute authorizing payment by parents, is not a civil vicarious liability statute. *Kory L.*, 194 Ariz. at 219, 979 P.2d at 547. Accordingly, A.R.S. § 8-

344 does not authorize joint and several restitution between parents and children. Instead, A.R.S. § 8-344 contains separate provisions concerning (1) payment of juvenile-delinquency restitution awards by delinquent children, and (2) payment of juvenile-delinquency restitution awards by parents of delinquent children. The two provisions state:

(1) “[T]he court, after considering the nature of the offense and the age, physical and mental condition and earning capacity of the juvenile, shall order the juvenile to make full or partial restitution.” A.R.S. § 8-344(A).

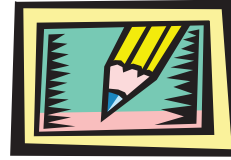
(2) “In ordering restitution pursuant to section A of this section, the court may order one or both of the juvenile’s custodial parents to make restitution[.]” A.R.S. § 8-344(C).

A.R.S. § 8-344(C) is not a true vicarious liability statute. *Kory L.*, 194 Ariz. at 219, 979 P.2d at 547. Rather, the purpose of the statute is to have the parents pick up the slack to make the victims whole if the juvenile is unable to pay full restitution within a reasonable time or before the juvenile’s eighteenth birthday. Hence, A.R.S. § 8-344(C) does not authorize joint and several restitution between parents and children. *Id.* at 219, 979 P.2d at 547. Instead, A.R.S. § 8-344(C) “contemplates that, if a parent is ordered to pay restitution, the juvenile and the parent will be ordered to pay *separate* amounts.” *Id.* at 219, 979 P.2d at 547 (emphasis added).

If a child is held jointly and severally liable with his parents, the child can suffer unintended consequences. A child must

Continued on p.6

Writers' Corner



Garner's Usage Tip of the Day: counterfeit

Editors' Note: Bryan A. Garner is a best selling legal author with more than a dozen titles to his credit, including A Dictionary of Modern Legal Usage, The Winning Brief, A Dictionary of Modern American Usage, and Legal Writing in Plain English. The following is an excerpt from Garner's "Usage Tip of the Day" e-mail service and is reprinted with his permission. You can sign up for Garner's free Usage Tip of the Day and read archived tips at www.us.oup.com/us/apps/totd/usage. Garner's Modern American Usage can be purchased at bookstores or by calling the Oxford University Press at: 800-451-7556.

counterfeit; imitation; forgery.

These words overlap to some degree. Although something "counterfeit" is always an "imitation," an "imitation" may not be "counterfeit." A counterfeit article is an illegal imitation <a counterfeit Gucci handbag>.

An "imitation" is an exact copy, or a thing made to resemble something else. It is usually identified as a copy <the label says "imitation leather">.

A "forgery" is a document made or altered in a way that harms another's rights. Before the advent of paper money, the distinction between "forgery" and "counterfeiting" was clear because "counterfeiting" referred only to the making of false coins. But once money began to grow on trees, criminals looked for ways to copy it — and this activity also came to be known as "counterfeiting." Today, the usual expressions are "counterfeit a \$20 bill" and "forge a check."



Continued from Restitution page 3

remain on probation until all restitution is paid; therefore a child may be kept on probation several additional years based solely on the parents' failure to pay. If the parents' restitution remains unpaid when the juvenile turns eighteen, the child will suffer additional consequences. The child may incur a restitution lien as a result of his parents' failure to pay restitution. The juvenile will receive an unsuccessful release from probation, which will prevent him from setting aside his adjudication and expunging his juvenile record, and from receiving a misdemeanor on an undesignated felony.

probation and enter adulthood with clean juvenile and financial records will depend on his parents' payment of restitution. The parents may be unable to pay for financial reasons, or may willfully disregard paying restitution out of spite, thereby forcing their child to suffer life-long consequences.

Courts must be made aware that A.R.S. § 8-344 precludes the parents from being held jointly and severally liable with their child. Otherwise the child may suffer life-long consequences.

Holding a juvenile jointly and severally liable with his parents places him at their mercy. The ability of a juvenile to be successful on

