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Casenotes: Constitutional Law — Constitutionality of Legislative Imposition of Vicarious Parental Liability for Delinquent Acts of Juveniles. In re John H., 293 Md. 295, 443 A.2d 594 (1982)

Burton H. Levin
University of Baltimore School of Law

CONSTITUTIONAL LAW — CONSTITUTIONALITY OF LEGISLATIVE IMPOSITION OF VICARIOUS PARENTAL LIABILITY FOR DELINQUENT ACTS OF JUVENILES. *In re John H.,* 293 Md. 295, 443 A.2d 594 (1982).

In *In re John H.,*[1] the Court of Appeals of Maryland granted certiorari primarily to decide the constitutionality of a statute which authorized the imposition of vicarious liability upon parents for the willful or malicious delinquent acts of their children.[2] The court of special appeals had upheld the act's constitutionality.[3] The court of appeals declined to decide the constitutional question, however, because it had not been preserved for appellate review.[4] The purpose of this note,

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1. 293 Md. 295, 443 A.2d 594 (1982).
2. *Id.* at 296, 443 A.2d at 594. The current version of the law, which is codified at MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (Supp. 1982), provides in full:

> § 3-829. Liability for acts of child.
>
> (a) The court [exercising juvenile jurisdiction] may enter a judgment of restitution against the parent of a child, or the child in any case in which the court finds a child has committed a delinquent act and during the commission of that delinquent act has:
>
> (1) Stolen, damaged, or destroyed the property of another;
>
> (2) Inflicted personal injury on another, requiring the injured person to incur medical, dental, hospital, or funeral expenses.
>
> (b) Considering the age and circumstances of a child, the court may order the child to make restitution to the wronged party personally.
>
> (c)(1) A judgment rendered under this section may not exceed:
>
> (i) As to property stolen or destroyed, the lesser of the fair market value of the property or $5,000;
>
> (ii) As to property damaged, the lesser of the amount of damage not to exceed the fair market value of the property damaged or $5,000; and
>
> (iii) As to personal injuries inflicted, the lesser of the reasonable medical, dental, hospital, funeral, and burial expenses incurred by the injured person as a result of the injury or $5,000.
>
> (2) As an absolute limit against any one child or his parents, a judgment rendered under this section may not exceed $5,000 for all acts arising out of a single incident.
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> (d) A judgment of restitution against a parent may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence in his behalf. A hearing under this section may be held as part of an adjudicatory or disposition hearing for the child.
>
> (e) The judgment may be enforced in the same manner as enforcing monetary judgments.

Id.

3. *In re* John H., 49 Md. App. 595, 433 A.2d 1239 (1981), *aff'd on other grounds,* 293 Md. 295, 443 A.2d 594 (1982).
4. 293 Md. 295, 303, 443 A.2d 594, 598 (1982). The facts of the case disclose that a juvenile, John H., was adjudged to be delinquent by reason of his participation in the vandalism of two Baltimore County public schools in 1979. Subsequent to the adjudication of delinquency the State's Attorney for Baltimore County filed petitions against the parents of John H., praying that they be ordered to make restitution to the Board of Education of Baltimore County pursuant to MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (1980) (current version codified at MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (Supp. 1982)). The Circuit Court for Baltimore County rendered a judgment against the parents, and they were ordered to pay

therefore, is to examine the constitutionality of statutes which authorize the imposition of vicarious parental liability for children's intentional torts,[5] and to predict how Maryland's highest court will rule on the constitutionality of Maryland's statute.

At common law parents were not liable for the torts of their children solely because of the parent-child relationship.[6] According to common law principles, in order to charge a parent with liability for the tortious acts of his minor child "it must be shown that [the parent] induced or approved the act, or that the child's relationship to the parent at the time was that of servant or agent."[7] In response to this rule, which according to Dean Prosser has resulted in "a rather serious problem of uncompensated juvenile depredation,"[8] most states have enacted statutes which make parents vicariously liable for the wrongful acts of their minor children.[9] Most of these statutes either expressly or through judicial interpretation predicate parental liability on the intentional nature of the child's act.[10] They do not, therefore, authorize recovery from parents for damage negligently inflicted. Generally some maximum amount of liability, irrespective of the extent of the damage inflicted, is specified.[11] A further condition of most of the statutes is that before parental liability may be imposed it must be shown that the child was residing with or under the control of the parent at the time

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$10,100 restitution. On appeal, among other issues raised by the parents was the constitutionality of section 3-829. That issue, as well as the others, was decided against the parents and the trial court was affirmed. *See In re* John H., 49 Md. App. 595, 433 A.2d 1239 (1981), *aff'd on other grounds,* 293 Md. 295, 443 A.2d 594 (1982). The court of appeals declined to decide the constitutional issue because the parents had failed to argue the issue before the trial judge. 293 Md. 295, 303, 443 A.2d 594, 598 (1982).

In *In re* James D., 455 A.2d 966 (Md. 1983) the court of appeals was squarely presented with the issue of section 3-829's constitutionality. Avoiding the issue, the court held only that the word parent in the statute does not include the mother and father of a child when the child is in the custody of the state at the time of the incident for which recovery is sought. *Id.*

5. *See generally* Note, *Torts: The Constitutional Validity of Parental Liability Statutes,* 55 MARQ. L. REV. 584 (1972); Note, *A Constitutional Caveat on the Vicarious Liability of Parents,* 47 NOTRE DAME LAW. 1321 (1972); Annot., 8 A.L.R.3d 612 (1966).
6. Lanterman v. Wilson, 277 Md. 364, 368, 354 A.2d 432, 434 (1976).
7. *Id.* Of course, liability for the acts of a child may be based on the negligence of the parent. A parent may be negligent in entrusting to a child a dangerous instrument or an object which the child has shown a tendency to misuse. W. PROSSER, THE LAW OF TORTS § 123 (4th ed. 1971).
8. W. PROSSER, THE LAW OF TORTS § 123 (4th ed. 1971).
9. *Id. See, e.g.,* GA. CODE ANN. § 51-2-3 (Supp. 1982); N.J. STAT. ANN. § 18A:37-3 (West 1968); OHIO REV. CODE ANN. § 3109.09 (Page 1980).
10. *See* Annot., 8 A.L.R.3d 612, 615 (1966). *But see* Turner v. Bucher, 308 So.2d 270 (La. 1975) (under Louisiana's statute making parents liable for damage caused by their minor children, parents are liable whether or not the child acted negligently or intentionally, even when the child is not of sufficient age to be capable of discerning the consequences of his acts. LA. CIV. CODE ANN. art. 2318 (1979)).
11. *See* Annot., 8 A.L.R.3d 612, 615 (1966).

the misbehavior occurred.[12]

Parental liability statutes have been attacked as violative of due process. The argument of parents is that to the extent the statute imposes liability without regard to either their participation in the illegal conduct of their child or the nature of their parental supervision, it unconstitutionally deprives them of property without due process.[13]

In passing upon the issue that parental liability without fault violates due process, courts are quick to point out that vicarious liability without fault is not a new concept.[14] Notable examples of the imposition of liability without fault include that of an employer for injuries to employees under a workmen's compensation act,[15] that of a master for the torts of his servant,[16] and that of one who causes damage as a result of engaging in abnormally dangerous activities.[17] As one court stated, "Due process does not restrict legislative imposition of liability to situations in which a defendant or his agent is at fault. Other considerations may warrant the imposition of liability. . . ."[18] Due process requires only that a statute not be unreasonable, arbitrary or capricious, and that the means selected bear a rational relation to the attainment of a valid legislative purpose.[19]

Courts have identified two legislative purposes sought to be attained by a parental liability statute: deterrence of juvenile delinquency and compensation of innocent victims for the damage caused by minor tortfeasors.[20] In all except one case the existence of the parent-child relationship was found to provide a rational basis for imposing liability without fault upon parents.[21]

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12. *Id.*
13. *See* Watson v. Gradzik, 34 Conn. Supp. 7, 373 A.2d 191 (1977); Vanthournout v. Burge, 69 Ill. App. 3d 193, 387 N.E.2d 341 (1979); *In re* Sorrell, 20 Md. App. 179, 315 A.2d 110, *cert. denied,* 271 Md. 740 (1974); Board of Educ. v. Caffiero, 86 N.J. 308, 431 A.2d 799, *appeal dismissed,* 454 U.S. 1025 (1981); General Ins. Co. of Am. v. Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963); Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E.2d 171 (1977); Kelly v. Williams, 346 S.W.2d 434 (Tex. Civ. App. 1961); Mahaney v. Hunter Enterprises, Inc., 426 P.2d 442 (Wyo. 1967).
14. *E.g. In re* Sorrell, 20 Md. App. 179, 315 A.2d 110, *cert. denied,* 271 Md. 740 (1974); General Ins. Co. of Am. v. Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963).
15. W. PROSSER, THE LAW OF TORTS § 80 (4th ed. 1971).
16. *Id.* § 70.
17. *Id.* § 78.
18. Board of Educ. v. Caffiero, 86 N.J. 308, 319, 431 A.2d 799, 804, *appeal dismissed,* 454 U.S. 1025 (1981).
19. Nebbia v. New York, 291 U.S. 502 (1934); Edgewood Nursing Home v. Maxwell, 282 Md. 422, 384 A.2d 748 (1978). Because no court has found that a parental liability statute impacts upon a fundamental right or creates a suspect classification, strict judicial scrutiny has not been applied. *E.g.*, Watson v. Gradzik, 34 Conn. Supp. 7, 373 A.2d 191 (1977).
20. *E.g.,* Vanthournout v. Burge, 69 Ill. App. 3d 193, 387 N.E.2d 341 (1979); General Ins. Co. of Am. v. Faulkner, 259 N.C. 317, 130 S.E.2d 645 (1963).
21. *See* cases cited *supra* note 13; *see also* the statement of legislative finding and declaration of legislative intent in W. VA. CODE § 55-7A-1 (Supp. 1982) ("[T]here

State courts have taken divergent positions on the question of whether the constitutionality of a parental liability statute is affected by the absence of a limitation on the amount of liability imposed. In *General Insurance Co. of America v. Faulkner,*[22] the Supreme Court of North Carolina held that a statute rendering parents liable to the extent of $500 for their children's malicious or willful destruction of property was within the police power of the state and constitutional. The court observed that the statute was "adopted not out of consideration for providing a restorative compensation for the victims of injurious or tortious conduct of children, but as an aid in the control of juvenile delinquency."[23]

In *Corley v. Lewless,*[24] however, the Supreme Court of Georgia held unconstitutional a statute which made a parent or other person in loco parentis liable, without monetary limitation, for the willful and wanton torts of his minor children. After pointing out that the statute in *Faulkner* contained a liability limitation of $500, and therefore authorized a recovery in the nature of a penalty, the court stated that the Georgia law "is not penal but seeks to provide compensation in full for property damage or for personal injury."[25] The court then stated that the statute imposed "vicarious tort liability solely on the basis of the parent-child relationship," and without further analysis held that it violated due process.[26]

The Supreme Court of Georgia had an opportunity to explain its position in a 1982 case when, "[f]ollowing the hint laid down in *Corley,*"[27] the Georgia General Assembly enacted a modified version of

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arises or should arise out of [the parent-child] relationship, a responsibility to recompense persons injured by [the child's] acts of vandalism and willful and malicious injuries to persons and property"). *Contra* Corley v. Lewless, 227 Ga. 745, 182 S.E.2d 766 (1971).

22. 259 N.C. 317, 130 S.E.2d 645 (1963).

23. *Id.* at 323, 130 S.E.2d at 650. The court went on to observe that:

> [The statute's] rationale apparently is that parental indifference and failure to supervise the activities of children is one of the major causes of juvenile delinquency; that parental liability for harm done by children will stimulate attention and supervision; and that the total effect will be a reduction in the anti-social behavior of children.

Id.

24. 227 Ga. 745, 182 S.E.2d 766 (1971).

25. *Id.* at 750, 182 S.E.2d at 770.

26. *Id.* As the Court of Special Appeals of Maryland noted, *Corley* created an inference "that limitations upon the *amount* of vicarious parental liability could affect the constitutionality of a legislative *right* to impose it." *In re* Sorrell, 20 Md. App. 179, 187, 315 A.2d 110, 115, *cert. denied*, 271 Md. 740 (1974) (emphasis in original). This inference is questionable, for if the essence of the *Corley* holding is that due process is violated when parental liability is imposed solely because of the parent-child relationship, the presence or absence of a limitation on liability would not seem to be constitutionally significant. *See* Note, *Torts: The Constitutional Validity of Parental Liability Statutes*, 55 MARQ. L. REV. 584, 590 (1972).

27. Hayward v. Ramick, 248 Ga. 841, 843, 285 S.E.2d 697, 698 (1982).

the law struck down in *Corley.* In *Hayward v. Ramick*[28] the Georgia court upheld a statute which, similar to the one in *Faulkner,* rendered parents liable to the extent of $500 for their children's malicious or willful destruction of property of another.[29] The court held that the new statute was intended to aid in reducing juvenile delinquency (a valid legislative objective), and that the means used to effect that purpose (imposing parental liability) were rational.[30] The court said, "While we do not reaffirm *Corley,* we do hold that the legislature has met the objections to *Corley* in the new statute with which we now deal."[31]

Whatever the vitality of the concept that limitations upon the amount of vicarious parental liability affect the legislative right to impose it, it is clear that statutes which seek to provide compensation in full for damage inflicted by children have been upheld.[32] In *Rudnay v. Corbett*[33] the Court of Appeals of Ohio upheld the constitutionality of a statute which authorized any owner of property willfully damaged by the child of another to maintain a civil action against the parents of the child to recover compensatory damages up to $2,000.[34] The court based its holding solely on the rationale that the imposition of liability on parents was a reasonable means to attain the valid legislative purpose of compensating innocent victims of property damage. It stated that "[W]e believe the $2,000 limit is adequate *in most cases* to compensate injured property owners for the value of their damaged property."[35] Because its holding was based on the compensatory nature of the law, the court found it "unnecessary to specifically analyze whether the statute additionally serves to curb juvenile delinquency."[36]

In *Board of Education v. Caffiero*[37] the New Jersey Supreme Court held that it is of no constitutional significance whether a parental liability statute contains a limitation on liability. In that case the court upheld a statute which imposes limitless vicarious liability without fault on the parents or guardian of any public school pupil who willfully or maliciously damages public school property.[38] After holding that the presence of the parent-child relationship establishes a rational basis for imposing liability and is a reasonable means to accomplish the purposes of deterrence and compensation, the court stated:

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28. 248 Ga. 841, 285 S.E.2d 697 (1982).
29. *Id.* at 843, 285 S.E.2d at 699; *see* GA. CODE ANN. § 51-2-3 (Supp. 1982).
30. Hayward v. Ramick, 248 Ga. 841, 843, 285 S.E.2d 697, 698 (1982).
31. *Id.*
32. *E.g.*, Board of Educ. v. Caffiero, 86 N.J. 308, 431 A.2d 799, *appeal dismissed,* 454 U.S. 1025 (1981); Rudnay v. Corbett, 53 Ohio App. 2d 311, 374 N.E.2d 171 (1977).
33. 53 Ohio App. 2d 311, 374 N.E.2d 171 (1977).
34. *See* OHIO REV. CODE ANN. § 3109.09 (Page 1980).
35. Rudnay v. Corbett, 53 Ohio App. 2d 311, 317-18, 374 N.E.2d 171, 175 (1977) (emphasis in original).
36. *Id.*
37. 86 N.J. 308, 431 A.2d 799, *appeal dismissed,* 454 U.S. 1025 (1981).
38. *Id.* at 321, 431 A.2d at 805; *see* N.J. STAT. ANN. § 18A:37-3 (West 1968).

> It is of little constitutional significance that the statutes upheld . . . contained a maximum limit on liability. A fixed dollar limit would not adequately accomplish the State's purpose of compensation. By placing a limit on liability, the remedy becomes a form of civil penalty. We see no reason to believe that the imposition of a civil penalty on parents is a constitutionally permissible means of encouraging discipline, but that vicarious liability for actual damages is not.[39]

In *In re John H.*[40] the Court of Special Appeals of Maryland, relying on its holding in *In re Sorrell*,[41] upheld the constitutionality of Maryland's parental liability act. Certiorari was granted by the court of appeals to review that holding, but because the issue had not been properly preserved the decision of the court of special appeals was affirmed on other grounds.[42] The court of appeals did note, however, that the constitutional issue was an "interesting question," to be left to another case where the issue is squarely presented.[43]

The most distinctive feature of Maryland's parental liability statute is that it does not create a private cause of action.[44] Rather, imposition of parental liability authorized by the law is dependent upon the presence of several factors which are not required in other parental liability statutes, namely: (1) institution by the state of a juvenile delinquency proceeding against the child; (2) an adjudication of delinquency; and (3) a discretionary decision by the trial judge to impose liability.[45] A judgment rendered under the statute "may not exceed $5,000 for all acts arising out of a single incident."[46] Furthermore, a judgment of restitution against a parent "may not be entered unless the parent has been afforded a reasonable opportunity to be heard and to present appropriate evidence on his behalf."[47]

In a 1974 case, *In re Sorrell*,[48] the Court of Special Appeals of Maryland upheld the constitutionality of Maryland's parental liability

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39. Board of Educ. v. Caffiero, 86 N.J. 308, 321, 431 A.2d 799, 805, *appeal dismissed,* 454 U.S. 1025 (1981). The foregoing examination of the cases in this area reveals the truth of the statement that "Courts which have addressed the constitutionality of parental responsibility statutes have, for various and often imprecise reasons, upheld the validity of those statutes." Rudnay v. Corbett, 53 Ohio App. 2d 311, 316, 374 N.E.2d 171, 172 (1977).
40. 49 Md. App. 595, 433 A.2d 1239 (1981), *aff'd on other grounds,* 293 Md. 295, 443 A.2d 594 (1982).
41. 20 Md. App. 179, 315 A.2d 110, *cert. denied,* 271 Md. 740 (1974).
42. *In re* John H., 293 Md. 295, 443 A.2d 594 (1982).
43. *Id.* at 303, 443 A.2d at 598.
44. See *supra* note 2 for the full text of Maryland's current parental liability statute.
45. MD. CTS. & JUD. PROC. CODE ANN. § 3-829(a) (Supp. 1982). "Child" means a person under the age of 18 years. *Id.* § 3-801(d).
46. *Id.* § 3-829(c)(2). The statute authorizes *restitution* for the fair market value of property damage suffered or medical expenses incurred, but does not authorize damages for pain and suffering. *Id.* (c)(1).
47. *Id.* § 3-829(d).
48. 20 Md. App. 179, 315 A.2d 110, *cert. denied,* 271 Md. 740 (1974).

statute. A notable difference between the 1974 and current version of the law is that the former had a $1,000 limit on liability.[49] In *Sorrell* the court reviewed the cases passing on the constitutional issue and identified both deterrence of delinquency and compensation of victims as possible legislative purposes for the law. The court did not, however, categorically hold that the Maryland law was based on either or both of those purposes. Rather, the court concluded: "The legislative determination here demonstrates a legitimate State interest in a matter affecting the general welfare. The remedy selected for the protection and promotion of that determination has not been shown to be arbitrary, oppressive or unreasonable."[50]

While the court appeared to question the inference suggested in *Corley v. Lewless,*[51] because of the $1,000 limitation on liability contained in Maryland's statute, it did not have to decide whether such limitations could affect the statute's validity.[52] The court did, however, quote at length from opinions demonstrating a broad view of the police power, thus giving an indication that it would have upheld the law even if there was no limitation on liability present.[53] The *Sorrell* court made no mention of the fact that restitution may only be awarded if a state's attorney has brought a juvenile cause against the child, thus implicitly finding no constitutional significance in this fact.

Because of the comparatively high $5,000 limitation on liability contained in the current law, it appears that the legislature intended for most victims to have the benefit of restitution in full for expenses incurred as a result of juvenile delinquency. It also understood, however, that parental behavior and financial means are relevant to the determination of how much restitution should be imposed. Therefore, the General Assembly provided parents an opportunity to speak in their own behalf, and rested the final decision of whether to impose parental

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49. *Compare* MD. CTS. & JUD. PROC. CODE ANN. § 3-829(c)(2) (Supp. 1982) *with* MD. CTS. & JUD. PROC. CODE ANN. § 3-839(c) (1974).

50. *In re* Sorrell, 20 Md. App. 179, 189, 315 A.2d 110, 116, *cert. denied*, 271 Md. 740 (1974).

51. 227 Ga. 745, 182 S.E.2d 766 (1971).

52. *See supra* note 26.

53. *In re* Sorrell, 20 Md. App. 179, 187-89, 315 A.2d 110, 115-16, *cert. denied*, 271 Md. 740 (1974). For example, the court quoted from Allied Am. Mut. Fire Ins. Co. v. Commissioner, 219 Md. 607, 150 A.2d 421 (1959), where it was said:

> Essentially the police power of a state is no more than the power to govern . . . . The power justifies regulations designed to promote the public convenience or the general prosperity, as well as those to promote public safety, health and morals, since it extends to the satisfying of great public needs and the promotion of the general welfare.

Id. at 616, 150 A.2d at 427 (citations omitted). The court also quoted from A & H Transp., Inc. v. Mayor and City Council, 249 Md. 518, 240 A.2d 601 (1968), where it was said: "It has long been settled in Maryland that, in the exercise of its police power, the legislature has a broad discretion in determining what the public welfare requires and what remedies are appropriate for the protection and promotion of that determination." *Id.* at 528, 240 A.2d at 606.

liability within the discretion of the trial judge.[54] In light of present notions of due process, which have little changed since *Sorrell* was decided, it is doubtful that the court of appeals would find Maryland's parental liability statute constitutionally infirm.

Indeed, the parent's status as legal guardian of the child provides a legitimate basis for the imposition of liability.[55] The status of legal guardian connotes a spectrum of rights and duties; foremost among these are the duty to protect the child and to do whatever may be necessary for his welfare, and the right to direct the child's activities and make decisions regarding his care, control, education, health and religion.[56] Granting that in some cases even the highest level of parental diligence may not prevent juvenile delinquency, the Constitution does not prohibit a legislative determination that, along with the right to bear and raise children, parents should be subject to the duty of insuring that the rights of other people are protected.

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54. *See* MD. CTS. AND JUD. PROC. CODE ANN. § 3-829(a), (d) (Supp. 1982). Although the statute authorizes a judgment of restitution against "the parent of a child," *id.* (a), the word parent is not defined. In Board of Educ. v. Caffiero, 86 N.J. 308, 431 A.2d 799, *appeal dismissed*, 454 U.S. 1025 (1981), the statute authorized liability against "the parents or guardian of any pupil who shall injure any school property. . . ." In defining the scope of the law, the court said:

> [B]ecause one purpose of the statute is to aid the disciplining of pupils, we believe that the words "parents or guardian" were intended to refer only to the person or persons who are responsible for a child . . . . The statute applies only to persons who have legal custody and control of a child and therefore can be charged on that basis with responsibility for the child's conduct.

Id. at 316, 431 A.2d at 803. Placing liability upon a parent who no longer has guardianship rights in a juvenile would be irrational and oppressive. Therefore, "parent" in the Maryland law should be construed to be limited to parents charged with legal responsibility for the child. Indeed, in *In re* James D., 455 A.2d 966 (Md. 1983), the Court of Appeals of Maryland held that the word parent in the statute does not include the mother and father of a child when the child is in the custody of the State at the time of the incident for which recovery is sought. Because the Maryland law does not mention guardians or other persons in loco parentis it is doubtful that it could be applied to them. According to an opinion of the Attorney General of Maryland, the General Assembly did not intend for the predecessor of MD. CTS. & JUD. PROC. CODE ANN. § 3-829 (Supp. 1982) to apply to foster parents. 59 Op. Md. Att'y Gen. 356 (1974).

55. MD. CODE ANN. art. 72A, § 1 (1978) provides: "The father and mother are the joint natural guardians of their child under eighteen years of age and are jointly and severally charged with its support, care, nurture, welfare and education." *Id.*

56. *See* Palmer v. State, 223 Md. 341, 164 A.2d 467 (1960).