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Williams v. Garcetti: The Constitutionality of Holding Parents Criminally Liable for the Acts of Their Children

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SUMMARY

WILLIAMS v. GARCETTI: THE CONSTITUTIONALITY OF HOLDING PARENTS CRIMINALLY LIABLE FOR THE ACTS OF THEIR CHILDREN

I. INTRODUCTION

Youth violence and crime are on the rise.¹ In an effort to curb this increase in juvenile crime many states are taking action,² including television advertisements aimed at children;³ school education programs;⁴ and new laws directed at parents.⁵ By enacting new laws directed at parents, state legislatures are attempting to increase the responsibility of parents for the acts of their children and thereby decrease juvenile crime.⁶

Laws which hold parents liable for the acts of their chil-

1. Toni Weinstein, Note, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859 (1991).

2. See, e.g., N.H. REV. STAT. ANN. § 169-B:41 (1994), MO. ANN. STAT. § 568.050 (West Supp. 1994), OHIO REV. CODE ANN. § 2151.41.1 (Anderson 1994), KY. REV. STAT. ANN. § 530.060(1) (Baldwin 1984), N.Y. PENAL LAW § 260.10(2) (West 1989), N.C. GEN. STAT. § 14-316.1 (1993), ALA. CODE § 12-15-13 (Michie Supp. 1994).

3. *For Kid's Sake* (NBC television commercial).

4. *DARE, Drug Awareness Resistance Education*. DARE is a school education program aimed at elementary, junior high, and high school students which teaches the students about the dangers and harmful effects of drugs. DARE.

5. See *supra* note 2.

6. *Liberty Mutual Ins. Co. v. Davis*, 368 N.E.2d 336, 337-38 (Ohio 1977). In *Liberty Mutual*, the court noted that one purpose of parental liability laws is to encourage continued parental supervision.

dren are not a new development in California.⁷ California has already established the legal principle of parental tort liability.⁸ Parental tort liability has been extended to require parents to reimburse schools for damage caused by their child's criminal conduct.⁹

This summary will examine California's effort to curb youth violence through the amendment of Penal Code section 272.¹⁰ California Penal Code section 272 prohibits adults from contributing to the delinquency of a minor.¹¹ The amended portion of Penal Code section 272 mandates parents be held

7. CAL. CIV. CODE § 1714.1(a) (West Supp. 1995). Section 1714.1(a) provides in pertinent part: "Any act of willful misconduct of a minor which results in injury or death to another person . . . shall be imputed to the parent or guardian having custody and control of the minor"

8. *Id.*

9. See *Curry v. Superior Court*, 24 Cal. Rptr. 2d 495 (Ct. App. 1993). In *Curry*, the court held that the parents of a minor, who allegedly molested another minor on school grounds, had to indemnify the school based on the parents negligent supervision of their child.

10. CAL. PENAL CODE § 272 (West Supp. 1995). The amended language of the statute adds the statement, "a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child." *Id.*

11. CAL. PENAL CODE § 272 (West Supp. 1995) Entitled "Causing, encouraging or contributing to delinquency of person under 18 years," provides:

Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause any such person to become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

Id.

criminally liable for failing to take reasonable care to protect and control their children.¹²

The application and enforcement of this new law has created an abundance of controversy.¹³ While many people feel that Penal Code section 272, as amended, improperly focuses on parents and thus is an inappropriate way to solve the problem of juvenile crime, others believe the converse is true, namely that it is necessary to place more of the burden of deterring juvenile crime on parents.¹⁴

As a result of the controversy surrounding Penal Code section 272, the American Civil Liberties Union (hereinafter "ACLU") brought suit on behalf of the taxpayers of Los Angeles County alleging that the amended statute was unconstitutionally vague and overbroad, and violated a parent's right to privacy.¹⁵ In *Williams v. Garcetti*, the California Supreme Court unanimously upheld the validity of Penal Code section 272.¹⁶

The first section of this summary will explain the factual background and procedural history of *Williams v. Garcetti*. The second section will examine the legislative history of the amended penal code. The final section will discuss the California Supreme Court's reasoning and holding.

12. CAL. PENAL CODE § 272 (West Supp. 1995) (as amended).

13. See *Court Voids Crime Law That Aimed at Parents*, N.Y. TIMES, Dec. 23, 1991, at A12; see also Claire Safran, *Is it a crime to be a bad parent? Holding parents responsible for their children's delinquency & crimes*, WOMEN'S DAY, May 1, 1990, at 64.; Alma E. Hill, *Crime Doesn't Wear a Watch*, NEWSDAY, April 30, 1992, at 118; Richard Whitmire, *American Trends - Parents Held Accountable for Juvenile Crime*, GANNETT NEWS SERVICE, Oct. 30, 1991; Nick Cohen, *Climbdown Over Fines for Parents of Offenders*, THE INDEPENDENT, May 11, 1991, at 3.

14. Whitmire, *supra* note 13. The article lays out the various viewpoints surrounding parental criminal liability laws. One commentator thought the new laws were emerging due to the belief that no one is taking responsibility to rear their children.

15. *Williams v. Garcetti*, 853 P.2d 507, 508-9 (Cal. 1993) (per Mosk, J., the other panel members were Lucas, C.J., Panelli, J., Kennard, J., Arabian, J., Baxter, J., and George, J.).

16. *Id.* at 517.

II. FACTS AND PROCEDURAL HISTORY

Ms. Gloria Williams was the first parent to be arrested and prosecuted under amended Penal Code section 272.¹⁷ Ms. Williams was the mother of a 17 year old boy suspected in a gang rape.¹⁸ Ms. Williams was arrested when the police found a "gang museum" in her apartment which consisted of graffiti on the walls, a photo album of family members holding guns and making gang signals, and a picture of an eight year-old's birthday cake with the child's gang name written in blue icing.¹⁹

Ms. Williams was released from jail after she obtained a certificate showing she had graduated from a parenting class.²⁰ The charges against Ms. Williams were subsequently dismissed.²¹ Nevertheless, parents feared that enforcement of Penal Code section 272 placed them at similar risk of prosecution.²² Thus, the taxpayers of Los Angeles County, outraged over the arrest of Ms. Williams, challenged the constitutionality of the amended section 272 alleging that the amended statute was unconstitutionally vague and overbroad, and violated a parent's right to privacy.²³

The ACLU brought suit on behalf of the taxpayers of Los Angeles County alleging that the amended Penal Code consti-

17. Claire Safran, *Is it a crime to be a bad parent? Holding parents responsible for their children's delinquency & crime*, WOMEN'S DAY, May 1, 1990, at 65.

18. *Id.*

19. *Id.*

20. *Id.* at 64. Ms. Williams had also taken her son for some counseling which is provided for under the Parental Diversion Program. See CAL. PENAL CODE § 1001.70 (West Supp. 1995). The Parental Diversion Program was established in continuity with section 272. Under the Parental Diversion Program the local prosecutor has the authority to review any prosecutions under Penal Code section 272 and establish a diversion program for the accused. Successful completion of the program will result in dismissal of the charges for violating Penal Code section 272.

21. *Court Rejects 'Gang Mom' Law*, THE COURIER JOURNAL, Dec. 22, 1991, at 18A.

22. See Toni Weinstein, Note, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 860 (1991).

23. *Williams v. Reiner*, 2 Cal. Rptr. 2d 472 (Ct. App. 1991), *rev'd sub nom. Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993).

tuted public waste because it was unconstitutionally vague, overbroad, and violated the taxpayers' right to privacy under the Fourteenth Amendment.²⁴ After both parties filed motions for summary judgment, the trial court entered summary judgment for the defendant, the State of California, concluding that the statute was neither unconstitutionally vague nor overbroad.²⁵

The ACLU appealed the trial court's grant of defendant's motion for summary judgment.²⁶ The court of appeal reversed on the grounds that the amendment was "impermissibly vague and incapable of being uniformly enforced or applied by law enforcement agencies and courts."²⁷ The court of appeal found that the amendment criminalized parental conduct without establishing a standard by which courts and law enforcement agencies could determine what constitutes reasonable care.²⁸ The court did not address the issue of overbreadth because it found the amendment unconstitutionally vague.²⁹

The court of appeal ordered the trial court to enter summary judgment for the plaintiffs.³⁰ The defendants appealed the court of appeals judgment to the California Supreme Court contending that amended section 272 is neither unconstitutionally vague nor overbroad.³¹

III. BACKGROUND

In 1988, in an effort to control violent criminal street gangs, the California State Legislature passed Senate Bill 1555

24. *Williams v. Garcetti*, 853 P.2d 507, 509 (Cal. 1993).

25. *Williams v. Reiner*, 2 Cal. Rptr. 2d 472, 479 (Ct. App. 1991), *rev'd sub nom. Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993). The trial court held that the duties referred to in the amended penal section 272 are "articulated in language familiar and widely used in the law." *Id.* at 479.

26. *Reiner*, 2 Cal. Rptr. 2d at 479.

27. *Id.* at 488.

28. *Id.* at 483. The court reasoned that, "the amendment leaves too much room for abuse and mischief in its enforcement because any law enforcement agency is free to decide, based on purely subjective factors, whether the parents exercised reasonable control and supervision over their child." *Id.*

29. *Id.* at 488.

30. *Id.*

31. *See Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993).

(hereinafter "SB 1555").³² A major portion of SB 1555 consisted of the Street Terrorism Enforcement and Prevention Act, which sought to reduce juvenile crime by increasing the penalty for an adult who used violent coercion to enlist a minor into a street gang.³³ SB 1555 also amended section 272 of the California Penal Code, which prohibited the causing, encouraging, or contributing to the delinquency of a minor.³⁴

The amendment to Penal Code section 272 provided that parents may be found guilty of a misdemeanor for failing to exercise reasonable care and control over their children.³⁵ Under amended Penal Code section 272, conviction is punishable by a fine not to exceed two thousand five hundred dollars, or by imprisonment for not more than one year in the county jail, or both.³⁶ The amended statute further provided that a parent may have the charges dismissed by seeking education, treatment, or rehabilitation under the Parental Diversion Program.³⁷

IV. COURT'S ANALYSIS

The California Supreme Court granted defendant's petition for review on April 3, 1992.³⁸ The supreme court unanimously reversed the court of appeal and found the amendment to be constitutionally valid.³⁹ The supreme court held that the amendment was not impermissibly vague because it incorporated definitions and limits of parental duties that had long been a part of California tort law.⁴⁰ The California Supreme

32. 11 S.B. 1555, 97th Cong., Reg. Sess. § 186.20 (1988).

33. CAL. PENAL CODE § 186.26 (West Supp. 1995). This statute is the Street Terrorism Enforcement and Prevention Act which targets adults by holding them criminally liable for any action coercing a person under 18 years of age to actively participate in any criminal street gang.

34. CAL. PENAL CODE § 272 (West Supp. 1995).

35. *Id.* The amended language reads: "a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection, and control over their minor child." *Id.*

36. *Id.*

37. *See* CAL. PENAL CODE § 1001.70 (West Supp. 1995).

38. *Williams v. Reiner*, 2 Cal. Rptr. 2d 472, 479 (Ct. App. 1991), *rev'd sub nom.* *Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993).

39. *Williams v. Garcetti*, 853 P.2d 507, 517 (Cal. 1993).

40. *Id.* at 514.

Court also held that the amendment was not overbroad.⁴¹

A. VAGUENESS

The United States Constitution and the California Constitution mandate that laws may not be impermissibly vague.⁴² The Fifth Amendment of the United States Constitution provides in pertinent part that no person be deprived of "life, liberty, or property without due process of the law."⁴³ A law violates due process if it is so vague that it does not provide a standard of conduct for those whose activities are proscribed, and if it does not provide a standard for police enforcement and ascertainment of guilt.⁴⁴ In *Kolender v. Lawson*,⁴⁵ the United States Supreme Court stated that the void-for-vagueness doctrine required that a penal statute must define the criminal offense with sufficient definiteness so that ordinary people could understand what conduct was prohibited, and must not involve arbitrary and discriminatory enforcement.⁴⁶

In *Walker v. Superior Court*, the California Supreme Court adopted the United States Supreme Court's definition of vagueness.⁴⁷ The court maintained that laws must provide people with fair notice of which acts are prohibited.⁴⁸ The

41. *Id.* at 517.

42. See U.S. CONST. amends. V, XIV; CAL. CONST. art. I, § 7; see also *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988); see generally, Amsterdam, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67 (1960).

43. U.S. CONST. amend. V.

44. See *Kolender*, 461 U.S. at 357; see also *Walker*, 763 P.2d 852.

45. *Kolender v. Lawson*, 461 U.S. 352 (1983). In *Kolender*, a California statute which required people who loitered or wandered on the streets to identify themselves and to account for their presence when requested by a peace officer, was found unconstitutionally vague. *Id.* at 361. The Court held that the statute promoted arbitrary and discriminatory enforcement because it vested virtually complete discretion in the hands of the police to determine whether the suspect has satisfied the identification requirement and should be permitted to go on his way. *Id.*

46. *Id.* at 357.

47. See *Walker v. Superior Court*, 763 P.2d 852 (Cal. 1988). In *Walker*, a mother was charged with involuntary manslaughter and felony child-endangerment of her four-year-old daughter from acute meningitis after the mother provided the child with spiritual treatment in lieu of medical care. *Id.* at 871-73. The court found that relevant statute did not infringe upon due process by failing to provide notice of illegal conduct. *Id.*

48. See *Walker*, 763 P.2d at 872-73. The court held that the statute at issue

court further stated that in order to satisfy the requirement of fair notice courts must first look to the language of the statute, then to its legislative history, and finally to decisions construing the statutory language.⁴⁹

The *Garcetti* court noted that the starting point of a vagueness analysis is the “strong presumption that legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears.”⁵⁰ A statute may not be held void for uncertainty if any reasonable and practical construction can be given to its language.⁵¹

The court next examined whether the amendment altered or clarified Penal Code section 272.⁵² The court first looked to the legislative purpose behind the amendment.⁵³ Viewed in the context of the Street Terrorism and Enforcement Act, the court stated that it appeared the amendment intended to enlist parents as active participants in the effort to eradicate gangs.⁵⁴ The court found it unnecessary to decide if the amendment clarified or changed the existing Penal Code section 272 because the only relevant question was whether the language of the amendment was sufficiently certain.⁵⁵

provided “constitutionally sufficient notice to the mother that the provision of prayer alone to her daughter would be accommodated only insofar as the child was not threatened with serious physical harm or illness.” *Id.* at 873.

49. *Walker*, 763 P.2d at 872 (providing that there is a strong presumption that legislative enactments must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears). *See also*, *Pryor v. Municipal Court*, 599 P.2d 636 (Cal. 1979); *Lockheed Aircraft Corp. v. Superior Court*, 171 P.2d 21 (Cal. 1946).

50. *Williams v. Garcetti*, 853 P.2d 507, 509 (Cal. 1993).

51. *Id.* (citing *Walker v. Superior Court*, 763 P.2d 845 (Cal. 1988)).

52. *Id.* at 510-11. The ACLU contended that the amendment changed the law by creating a new, impermissibly vague parental duty as a basis for criminal liability. Defendants contended that the amendment merely clarified the statute’s application to an existing parental duty. *Id.* at 509-10.

53. *Garcetti*, 853 P.2d at 510. The Legislature enacted the amendment and the related Parental Diversion Program as part of the Street Terrorism Enforcement and Prevention Act. The court stated that the STEP act was premised on the fact that “California is in a state of crisis which has been caused by violent street gangs whose members threaten, terrorize, and commit a multitude of crimes against the peaceful citizens of their neighborhoods.” *Id.* *See* CAL. PENAL CODE § 186.26 (West Supp. 1995).

54. *Garcetti*, 853 P.2d at 510.

55. *Id.* at 510-11. The court did not state why it was unnecessary to decide if the amendment clarified or changed the existing § 272. The court held that the

1. *Notice*

The court noted that the ACLU did not dispute the existence of a parental duty to exercise reasonable care and supervision of their children.⁵⁶ Thus, the court confined its analysis

relevant inquiry was whether a parental duty of "reasonable care, supervision, protection, and control" is sufficiently certain to withstand a vagueness challenge. *Id.* at 511.

56. *Id.* at 511. See CAL. PENAL CODE § 272 (West Supp. 1995). The pertinent part of the statute provides, "[e]very person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code . . . is guilty of a misdemeanor . . ." See also CAL. WELF. & INST. CODE § 300 (West Supp. 1995). This code section contains a lengthy list of conditions under which a minor can be removed from the custody of a parent and declared a dependent child of the court. These conditions include:

- (a) The minor has suffered . . . serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian
- (b) The minor has suffered . . . serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor . . .
- (c) The minor is suffering serious emotional damage . . . as a result of the conduct of the parent or guardian . . .
- (d) The minor has been sexually abused . . . by his or her parent or guardian or a member of his or her household . . .
- (e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor
- (g) The minor has been left without any provision for support . . .
- (i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household

Id.

CAL. WELF. & INST. CODE § 601 (West Supp. 1995) states:

- (a) Any person under the age of 18 years who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person, or who is under the age of 18 years when he violated any ordinance of any city or county of this state establishing a curfew based solely on age is within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court.
- (b) If a minor has four or more trancies within one school year as defined by Section 48260 of the Education Code or a school attendance review board or probation officer determines that the available public and private services are insufficient or inappropriate to

to the meaning of the terms "supervision and control."⁵⁷ The court analyzed the terms "supervision and control" in the context of the California Welfare and Institutions Code sections 601 and 602.⁵⁸ The court noted that sections 601 and 602 apply to delinquent behavior.⁵⁹ Thus, the court reasoned that under the amendment parents are liable only when they fail to perform a duty of supervision and control, and omission of that duty results in their child's delinquency.⁶⁰

The court next analyzed the terms "supervision and control" in the context of California tort law.⁶¹ The court stated

correct the habitual truancy of the minor, or to correct the minor's persistent or habitual refusal to obey the reasonable and proper orders or directions of school authorities, or if the minor fails to respond to directives of a school attendance review board or probation officer or to services provided, the minor is then within the jurisdiction of the juvenile court which may adjudge the minor to be a ward of the court. However, it is the intent of the Legislature that no minor who is adjudged a ward of the court pursuant solely to this subdivision shall be removed from the custody of the parent or guardian except during school hours.

Id.

CAL. WELF. & INST. CODE § 602 (West 1988) states:

Any person who is under the age of 18 years when he violates any law of this state or of the United States or any ordinance of any city or county of this state defining crime other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court.

Id.

57. *Garcetti*, 853 P.2d at 511. The court's analysis regarding the terms "supervision and control" is in the context of the Welfare and Institutions Code sections 601 and 602 and as defined by traditional notions of tort law. *See supra* note 56 (for relevant text of the statutes).

58. *See supra* note 56 for the text of CAL. CIV. CODE §§ 601, 602.

59. *Garcetti*, 853 P.2d at 511.

60. *Id.*

61. *Garcetti*, 853 P.2d at 511-12. Parents have long had a duty to supervise and control their children under California tort law. *See, e.g.*, *Singer v. Marx*, 301 P.2d 440 (Cal. Ct. App. 1956). *Singer* involved an action against a 9-year-old boy and his parents for damages for personal injury resulting from a rock thrown by the boy. The court held that 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." *Id.* Thus, a parent may become liable for an injury caused by the child where the parent's negligence made it possible for the child to cause the injury complained of, and probable that it would do so. *Id.* at 448.

that parents have long had a duty to supervise and control their children under California tort law. Thus, in amending Penal Code section 272, the legislature was not imposing a new duty on parents, rather it was incorporating the definition and limits of a traditional tort duty.⁶²

The court indicated that the scope of this tort duty was defined by the Restatement of Torts section 316.⁶³ According to the Restatement, there exists a special relationship between parent and child which creates a duty in the parent to exercise reasonable care to control the minor.⁶⁴ Accordingly, the court found that the terms "supervision and control" were consistent with the definitions and limits of the parental duty established in California tort law.⁶⁵

The court, combining its analysis of the Welfare and Institutions Code sections 601 and 602 with its analysis of the tort duty, concluded that the terms "supervision and control" "describe the duty of reasonable restraint of, and discipline for, a child's delinquent acts by parents who know or should know that their child is at risk of delinquency and that they are able to control the child."⁶⁶

62. *Garcetti*, 853 P.2d at 512. California is not the first state to adopt notions of tort law and hold parents criminally liable for the acts of their children. *See, e.g.,* COLO. REV. STAT. § 18-6-701 (1988 & Supp. 1990). Colorado enacted the first version of its present law holding parents criminally liable for juvenile delinquency in 1903. For a further discussion of other state statutes which prohibit parents from contributing to the delinquency of a minor see Kathryn J. Parsley, Note, *Constitutional Limitations on State Power to Hold Parents Criminally Liable for the Delinquent Acts of Their Children*, Note, 44 VAND. L. REV. 441, 446 (1991).

63. *Garcetti*, 853 P.2d at 512. There exists 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.

RESTATEMENT (SECOND) OF TORTS § 316 (1993).

64. *See* RESTATEMENT (SECOND) OF TORTS § 316 (1993).

65. *Garcetti*, 853 P.2d at 512.

66. *Id.*

While the court noted that neither the amendment nor prior case law set forth specific acts that a parent must perform, it concluded that this did not affect the clarity of the duty of supervision and control.⁶⁷ Rather, the court asserted that the lack of specificity was inevitable and desirable because it would be impossible to provide a statutory definition of reasonable supervision and control.⁶⁸ By defining what a parent may not do, the amendment permits flexibility, and provides "reasonableness" as a guide for parents.⁶⁹

The court next analyzed the criminal negligence requirement of the statute.⁷⁰ Because section 272 is a penal statute, parents must be criminally negligent in order to be liable under the statute.⁷¹ The court thus held that the amendment imposed criminal liability only when parents were criminally negligent in breaching their duty of supervision and control.⁷² The established rule regarding criminal negligence is that

67. *Id.* at 512-13. The court noted that in dependency cases terms similar to "supervision and control" have withstood challenge of vagueness grounds even though few cases have attempted to define proper parental care or control. *Id.* See *In re J.T.*, 115 Cal. Rptr. 553 (Ct. App. 1974) (holding that a statute authorizing any person under the age of 18 years to be adjudged a dependent child of the court "who is in need of proper and effective parental care or control and has no parent or guardian" was not unconstitutionally vague).

68. *Garcetti*, 853 P.2d at 513. See, e.g., *Go-Bart Importing Co. v. United States*, 282 U.S. 344, 357 (1931) (stating that the concept of reasonableness serves as a guide for law-abiding parents who wish to comply with the statute).

69. *Garcetti*, 853 P.2d at 513. The court stated that unlike the statute involved in *Kolender*, the amendment was not susceptible to interpretation in an "apt sentence or two." *Id.* The court also stated that statutes are not automatically invalidated as vague simply because it is difficult to determine if marginal offenses fall within the statute's language. *Id.*

70. *Id.* at 513.

71. See *Williams v. Reiner*, 2 Cal. Rptr. 2d 472 (Ct. App. 1991), *rev'd sub nom.* *Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993). See also, CAL. PENAL CODE § 20 (West 1988) providing: "[i]n every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence;" CAL. PENAL CODE § 26 (West 1988) which provides in pertinent part that one is not capable of committing a crime "who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent." Taken together, the court of appeals concluded that section 272 required an "intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty." *Id.*

72. See *Garcetti*, 853 P.2d at 513. The court stated that the requirement of criminal negligence arises from Penal Code § 20 and the Legislature's use of the term "reasonable" in the amendment which denotes criminal negligence. See CAL. PENAL CODE § 20 (West 1988).

“ordinary negligence sufficient for recovery in a civil action will not suffice; to constitute a criminal act the defendant’s conduct must go beyond that required for civil liability and must amount to a gross or culpable departure from the required standard of care.”⁷³ The court reasoned that amended Penal Code section 272 thus punishes only negligence that exceeds ordinary civil negligence.⁷⁴ A parent would therefore have to make a gross and culpable departure from the duty set forth in the amendment, to be held criminally liable.⁷⁵ The court reasoned that the heightened requirements of criminal negligence alleviate any uncertainty as to what constitutes reasonable supervision or control.⁷⁶

In addition, the court stated that there can be no criminal negligence without actual or constructive knowledge of the risk.⁷⁷ The court compared the knowledge requirement of amended Penal Code section 272 with that for involuntary manslaughter, which mandates that the act must be one which has “*knowable and apparent potentialities* for resulting death or great bodily injury.”⁷⁸ The court concluded that Penal Code section 272 as amended punishes only parents who knew or reasonably should have known that their child was at risk of delinquency, and thus provides a clear standard for determin-

73. *People v. Peabody*, 119 Cal. Rptr. 780, 786 (Ct. App. 1975). In *Peabody*, the court overturned a mother’s conviction for being criminally negligent for leaving her child with her husband whom she knew beat the child. The court held that in order to constitute criminal negligence there must be a showing of gross conduct. *Id.*

74. *Garcetti*, 853 P.2d at 513.

75. *Id.* See also *People v. Penny*, 285 P.2d 926 (Cal. 1955) where the court defined criminal negligence as “aggravated, culpable, gross, or reckless, that is . . . such a departure from what would be the conduct of an ordinarily prudent or careful person under the same circumstances as to demonstrate . . . an indifference to the consequences.” *Id.*

76. *Garcetti*, 853 P.2d at 513-14. The court found that the criminal negligence standard in regard to the breach of duty provided notice to law-abiding parents that was consistent with and reinforced the notice provided by the amendment’s incorporation of the definition and limits of the tort duty of parental supervision and control. *Id.*

77. *Id.* at 514 (citing *People v. Rodriguez*, 8 Cal. Rptr. 863 (Ct. App. 1960)) (mother’s conviction for leaving her child in a house that burned down while she was at a bar drinking was reversed for lack of proof of criminal negligence).

78. *Garcetti*, 853 P.2d at 514 (citing *People v. Rodriguez*, 8 Cal. Rptr. at 863) (emphasis added). Under the criminal negligence test, knowledge of the risk is determined by an objective standard. *Id.*

ing what conduct is prohibited.⁷⁹

2. *Enforcement*

Under the “void-for-vagueness doctrine,” the amendment must also provide standards for application and adjudication to avoid arbitrary and discriminatory enforcement.⁸⁰ The *Garcetti* court stated that the enforcement requirement was the more important aspect of the doctrine of vagueness.⁸¹ The reason for its importance was that “where the legislature fails to provide such minimal guidelines, a criminal statute may permit a standardless sweep that allows policemen, prosecutors, and juries to pursue their personal predilections.”⁸² The potential for such arbitrary or discriminatory enforcement is the basis for the courts emphasis on the enforcement prong of the vagueness doctrine.⁸³

The court stated that the amendment did not vest complete discretion in law enforcement officials because the amendment incorporated the preexisting tort law definition of parental duty.⁸⁴ In addition, the court found that application of the criminal negligence standard facilitated enforcement and adjudication by providing a measure which assessed a parent’s knowledge of, or authority over, a child’s delinquent activities.⁸⁵ A parent who does not know or have reason to know of their child’s delinquency cannot be prosecuted.⁸⁶

79. *Garcetti*, 853 P.2d at 514.

80. *Grayned v. City of Rockford*, 408 U.S. 108-09 (1972) (holding that an anti-noise ordinance prohibiting a person while on grounds adjacent to a building in which a school is in session from wilfully making a noise or diversion that disturbs the peace of the school session is not unconstitutionally vague or overbroad). *Id.*

81. *Garcetti*, 853 P.2d at 515 (citing *Kolender v. Lawson*, 461 U.S. 358 (1983)).

82. *Garcetti*, 853 P.2d at 515 (citing *Kolender*, 461 U.S. at 358).

83. *Id.*

84. *Id.* The court found that the tort duty would supply police, prosecutors, and juries with sufficient guidance and minimize the danger of arbitrary or discriminatory enforcement. *Id.*

85. *Id.* The court stated that although the criminal negligence standard does not proscribe parental conduct with specificity it still provides a measure for enforcement. *Id.*

86. *Garcetti*, 853 P.2d at 515.

The court found that the causation element of section 272 also reduced the likelihood of arbitrary or discriminatory enforcement.⁸⁷ Under section 272 “a parent will be criminally liable only when his or her criminal negligence with regard to the duty of reasonable supervision and control causes or tends to cause or encourage the child to come within the provisions of Welfare and Institutions Code sections 601 or 602.”⁸⁸ The court stated that there may be some instances in which reasonable minds could differ as to whether the parent’s inadequate supervision caused the child’s delinquency, but reasoned that the same causation question has always been an element of parental tort liability.⁸⁹ Additionally, the court found that the opportunity for parental diversion from criminal prosecution under section 272 suggested that, as a practical matter, parents will only face criminal prosecution in extreme cases.⁹⁰ The court concluded that the amendment, as construed, did not impermissibly delegate arbitrary and discriminatory enforcement power to law enforcement agencies.⁹¹ Thus, the amendment survived the vagueness challenge.

B. OVERBREADTH

An overbreadth challenge implicates the constitutional interest in “due process.”⁹² The overbreadth doctrine provides that “a governmental purpose to control or prevent activities constitutionally subject to state regulation may not be achieved by means which sweep unnecessarily broadly and thereby invade the area of protected freedoms.”⁹³ Thus, a clear and

87. *Id.* Under Penal Code § 272 a parent will be criminally liable only when their conduct “causes or tends to cause or encourage” the child to come within the provisions of Welfare and Institutions Code § 601 or § 602. CAL. PENAL CODE § 272 (West Supp. 1995).

88. *Garcetti*, 853 P.2d at 515; *see also* CAL. PENAL CODE § 272 (West Supp. 1995); CAL. WELF. & INST. CODE §§ 601, 602 (West 1984 & Supp. 1995).

89. *Garcetti*, 853 P.2d at 515. The court noted that the causation element may be harder to apply when a parent’s action does not directly cause delinquency, such as when a parent is an accomplice, but the court found that causation has always been an element of parental tort liability. *Id.*

90. *Garcetti*, 853 P.2d at 515.

91. *Id.*

92. *See* U.S. CONST. amends. V, XIV; *see also* CAL. CONST. art. I, § 7(a), 24.

93. *NAACP v. Alabama*, 377 U.S. 288, 307 (1964) (holding that a statute which requires a foreign corporation to provide member lists substantially re-

specific law may still be unconstitutionally overbroad if it infringes upon constitutionally protected conduct.⁹⁴

An overbreadth challenge, however, is difficult to sustain because courts require a showing of substantial overbreadth.⁹⁵ Consequently, to justify a conclusion of facial overbreadth, the plaintiff must be able to demonstrate from the text of the statute, and from its actual application, that there exists a substantial number of instances in which the statute cannot be applied constitutionally.⁹⁶ The United States Supreme Court has held that application of the overbreadth doctrine is "manifestly strong medicine."⁹⁷ Overbreadth is applied by the court only as a last resort.⁹⁸

Analyzing the ACLU's overbreadth challenge,⁹⁹ the court first recognized the existence of a fundamental right to raise one's children.¹⁰⁰ The court determined, however, that the ACLU's overbreadth argument lacked the particularity necessary to meet the requirements of substantial overbreadth.¹⁰¹ The overbreadth challenge as presented by the ACLU consisted only of "brief and general assertions of the amendment's limitless reach."¹⁰² The court concluded that if in fact any over-

strained the NAACP's right to freedom of association).

94. See *Grayned v. City of Rockford*, 408 U.S. 104 (1972) (holding that an anti-noise ordinance was not unconstitutionally overbroad because expressive activity was only prohibited if it materially disrupted class work).

95. See *Broadrick v. Oklahoma*, 413 U.S. 601, 612-15 (1973) (holding that a statute prohibiting employees from actively engaging in partisan political activities among their coworkers for the benefit of their superior was not substantially overbroad because the worker's conduct fell squarely within activities which the state has power to regulate).

96. See *New York State Club Ass'n v. New York City*, 487 U.S. 1 (1988) (where the United States Supreme Court declined to strike down a statute which altered the definition of private clubs for anti-discrimination purposes because the plaintiff did not show that a substantial number of instances existed in which the statute could not be applied constitutionally).

97. *Broadrick*, 601 U.S. at 613. Overbreadth claims, if entertained at all, have been curtailed when invoked against ordinary criminal laws that are sought to be applied to protected conduct. See, e.g., *Cantwell v. Connecticut*, 310 U.S. 296 (1940).

98. *Broadrick*, 601 U.S. at 613.

99. *Williams v. Garcetti*, 853 P.2d 507, 516 (Cal. 1993).

100. *Id.* (citing *Pierce v. Society of Sisters*, 268 U.S. 510 (1925)).

101. *Garcetti*, 853 P.2d at 516.

102. *Id.* at 516-17.

breadth did exist, it could be cured through case-by-case analysis.¹⁰³ Thus, the California Supreme Court reversed the judgment of the court of appeal, affirmed the judgment of the trial court, upheld the validity of Penal Code section 272.¹⁰⁴

V. CONCLUSION

In an attempt to curb youth violence and crime, the California legislature amended Penal Code section 272 so that parents could be criminally liable for failing to exercise reasonable supervision and control over their children.¹⁰⁵ The California Court of Appeal held that the amended section 272 was unconstitutionally vague.¹⁰⁶ In *Williams v. Garcetti*, the California Supreme Court unanimously held that the amendment to Penal Code section 272 was not unconstitutionally vague because it incorporated the traditional definitions of tort law and criminal negligence.¹⁰⁷ The court further held that the ACLU's challenge lacked the particularity necessary to meet a claim of substantial overbreadth.¹⁰⁸

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103. *Id.* at 517.

104. *Id.*

105. S.B. 1555, 97th Cong., Reg. Sess. § 186.20 (1988). *See also* CAL. PENAL CODE § 272 (West Supp. 1995) (as amended).

106. *Williams v. Reiner*, 2 Cal. Rptr. 2d 472 (Ct. App. 1991), *rev'd sub nom. Williams v. Garcetti*, 853 P.2d 507 (Cal. 1993).

107. *Williams v. Garcetti*, 853 P.2d 507, 517 (Cal. 1993). *See also* CAL. PENAL CODE § 272 (West Supp. 1995) (as amended).

108. *Garcetti*, 853 P.2d at 517. *See also* CAL. PENAL CODE § 272 (West Supp. 1995) (as amended).

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