§ 3-112. Liability of parents and legal guardians having custody of an infant for certain damages caused by such infant. 1. The parent or legal guardian, other than the state, a local social services department or a foster parent, of an infant over ten and less than eighteen years of age, shall be liable to any public officer, organization or authority, having by law the care and/or custody of any public property of the state or of any political subdivision thereof, or to any private individual or organization having by law the care, custody and/or ownership of any private property, for damages caused by such infant, where such infant has willfully, maliciously, or unlawfully damaged, defaced or destroyed such public or private property, whether real or personal, or, where such infant, with intent to deprive the owner and/or custodian of such property or to appropriate the same to himself or herself or to a third person, has knowingly entered or remained in a building and has wrongfully taken, obtained or withheld such public or private personal property from such building which personal property is owned or maintained by the state or any political subdivision thereof or which is owned or maintained by any individual, organization or authority, or where such infant has falsely reported an incident or placed a false bomb as defined in section 240.50, subdivision one or two of section 240.55, section 240.60 or section 240.61 of the penal law. Such public officer, organization or authority, or private individual or organization, as the case may be, may bring an action for civil damages in a court of competent jurisdiction for a judgment to recover such damages from such parent or legal guardian other than the state or a local social services department or a foster parent. For the purposes of this subdivision, damages for falsely reporting an incident or placing a false bomb shall mean the funds reasonably expended by a victim in responding to such false report, as set forth in subdivision eleven of section 60.27 of the penal law. In no event shall such damages portion of a judgment authorized by this section, as described in this subdivision, exceed the sum of five thousand dollars.

2. Notwithstanding the provisions of subdivision one of this section, prior to the entering of a judgment under this section in the sum total of five hundred dollars or more, the court shall provide such parent or legal guardian of such infant with an opportunity to make an application

to the court based upon such parent's or legal guardian's financial inability to pay any portion or all of the amount of such sum total which is in excess of five hundred dollars, and upon the return date of such application, or any adjournment thereof, the court shall, in summary fashion, hear and consider all evidence of financial hardship presented tending to establish the inability of such parent or legal guardian to pay any or all of the amount of the sum total in excess of five hundred dollars, and the court shall render its decision as to such party's inability to make such payment based upon a preponderance of the evidence presented. Upon a decision that such party has established his or her inability to make such payment, the court shall enter the judgment authorized by this section but in an amount within the financial capacity of such parent or legal guardian, provided, however, that since the original of the sum total exceeded five hundred dollars, no such judgment shall be entered for an amount which is less than five hundred dollars.

3. It shall be a defense to an action brought under this section that restitution has been paid pursuant to section seven hundred fifty-eight-a or 353.6 of the family court act, or paragraph (g) of subdivision two of section 65.10 of the penal law. It shall also be a defense to an action brought under this section that such infant had voluntarily and without good cause abandoned the home of the parent or guardian and without good cause refused to submit to the guidance and control of the parent or guardian prior to and at the time of the occurrence of such damages or destruction. In no event shall it be a defense that the parent or legal guardian has exercised due diligent supervision over the activities of such infant, provided, however, that in the interests of justice, the court may consider mitigating circumstances that bear directly upon the actions of the parent or legal guardian in supervising such unemancipated infant.

4. For the purposes of this section the following definitions shall apply:

a. The terms "enters or remains unlawfully" and "building" shall have the same meaning as ascribed to such terms in section 140.00 of the

penal law.

b. "Public officer, organization or authority" shall include but not be limited to: those having by law the care and custody of a municipal district or corporation; those having by law the care and custody of the public property of the state or of any agency, department, board, bureau, commission, division, office, council, committee of the state, or of a public benefit corporation or public authority; and the board of education or trustees of any city, union free or common school district or the city board of any New York City community school district.

c. "Private individual or organization" shall include, but not be limited to: any individual, private or public corporation or partnership or sole proprietorship, organized church, synagogue or temple, not-for-profit organization or corporation, cemetery corporation, or, if such liability is as a result of damage upon any cemetery plot or mausoleum, the next of kin of a person upon whose gravesite such damage or destruction occurred.