

UCLA

UCLA Public Law & Legal Theory Series

Title

The Dilemma of Parental Care and Control in the Era of Mass School Shootings

Permalink

<https://escholarship.org/uc/item/7376n042>

Author

Bakhshay, Shirin

Publication Date

2026-07-08

Copyright Information

This work is made available under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives License, available at

<https://creativecommons.org/licenses/by-nc-nd/4.0/>

THE DILEMMA OF PARENTAL CARE AND CONTROL IN THE ERA OF MASS SCHOOL SHOOTINGS

*Shirin Bakhshay**

UCLA LAW REVIEW (Forthcoming)

The United States is facing an epidemic of gun violence and a youth mental health crisis, which has led to a rise in mass school shootings perpetrated by adolescents. As the country struggles with how to respond, politicians have largely turned to criminal legal action against individual perpetrators instead of gun control reforms and public health efforts. In cases involving children who commit these crimes, prosecutors are increasingly extending the criminal law's reach beyond the direct perpetrator—the shooter—to their parents. Parental criminal liability is not new, but it is being pursued with more regularity and zeal as incidences of mass school shootings and other types of youth-related harm become more visible. Extending criminal culpability and punishment to parents may be a momentary salve, responding to the immediate need for justice in the wake of unspeakable tragedy, but it is contradicted by psychological science about parental attitudes, beliefs, and capacity to control their children's behavior. It is also ill-equipped to address the root causes of adolescent violence. Placing liability for children's intentional acts of violence on parents misunderstands their ability to appreciate the risk their child may pose and shifts the onus of responsibility for keeping the public, and especially schoolchildren, safe from state and institutional actors onto individual parents who lack the training, resources, and support to be effective stewards of public safety in the modern era.

This Article offers a three-part critique of parental criminal liability for the independent acts of their children, arguing that it is doctrinally problematic, normatively misguided, and empirically unsupported. It takes as its exemplar People v. Crumley, where the parents of a Michigan school shooter were convicted of four counts of involuntary manslaughter for their son's intentional criminal actions. Based on an in-depth analysis of the case, including briefing, court orders, witness testimony, and trial and sentencing transcripts, it argues that the Crumley case sets a dangerous precedent and ignores psychological research and socio-cultural parenting norms in ways that upend principles of mens rea and causation. It is the first Article to engage the social psychology literature to analyze parental

*Assistant Professor of Law, UCLA School of Law; J.D., Yale Law School; Ph.D. UC Santa Cruz; B.A., UC Berkeley. I am grateful to the organizers and participants of the 2025 Culp Colloquium, 2025 Decarceral Law Professors Works-in-Progress Series, 2025 CrimFest! Conference, 2025 Southwest Criminal Legal Scholars Workshop, and the UC Irvine School of Law faculty workshop for the opportunity to present this article and benefit from the generous feedback I received. I am also deeply thankful for feedback and suggestions from Beth Colgan, Scott Cummings, Sharon Dolovich, Trevor Gardner, Maximo Langer, Benjamin Levin, Justin Murray, Janice Nadler, Ji Seon Song, Sherod Thaxton, Tom Tyler, and Lauren Van Schilfgaard. Brayden Bell and Stephanie Milbrodt provided excellent research assistance on this article.

criminal liability based on the foreseeability of children's criminal acts and argue that this doctrinal extension is misguided.

The psychological literature has found that parents are unlikely to correctly interpret signs of mental health issues in their children and, in the absence of overt displays of aggression, are unlikely to realize that their child may act violently or pose a risk to others. The Article analyzes this doctrinal mismatch and explains how it led to an improper finding of proximate causation in the Crumley case that has the potential to exponentially expand parental liability going forward. It argues that, to the extent parental criminal liability is pursued at all, it should be guided by psychological research on parent-child relationships, not just lay intuitions. But to effectively stem the tide of serious criminal misconduct by adolescents, including school shootings, emphasis should be placed on creating support networks and educating parents rather than outsourcing policing responsibilities to families and punishing them for the independent criminal acts of their children. Ultimately, recognizing the dilemma of parental care and control and removing the specter of the criminal law from parenting decisions will better serve the interests of families and the public.

TABLE OF CONTENTS

INTRODUCTION

I. DOCTRINAL EXTENSIONS IN *PEOPLE V. CRUMBLEY*

- A. *Taking Foreseeability Too Far*
- B. *Upending Causation*
- C. *The Problem with Preventing Harm*
- D. *Extending the Parental Duty of Care to Others*

II. THE PARENTAL BIND

- A. *Mother Knows Best: Privileging Parental Autonomy*
- B. *Discretionary Parental Criminal Liability*
- C. *Socio-Cultural Norms of Parenting*

III. THE PSYCHOLOGY OF PARENTING

- A. *Predictors of Antisocial and Delinquent Behaviors*
- B. *Parental Attributions and Beliefs*
- C. *Parental Awareness and Resistance*
- D. *Legal Cudgels and Parental Surveillance*

IV. A PSYCHOLOGICALLY INFORMED APPROACH TO MASS SCHOOL SHOOTINGS

- A. *Expert Testimony and Jury Instructions Regarding Child Mental Health and Red Flag Warnings*
- B. *Mental Health Research, Education, and Awareness*
- C. *Safe Storage Gun Laws and Gun Violence Prevention Research*

CONCLUSION

On November 30, 2021, fifteen-year-old Ethan Crumbley used a nine-millimeter SIG Sauer handgun to shoot and kill four of his classmates and injure seven others at Oxford High School in Oxford Township, Michigan.¹ This horrific mass shooting was the culmination of a mental health crisis combined with access to a firearm. During the weeks leading up to the shooting, Ethan kept a diary with increasingly worrying writings, including depictions of violent shootings and statements indicating his level of mental and emotional distress, such as: “I have fully mentally lost it after years of fighting with my dark side” and “[t]he thoughts won’t stop.”² On the day of the shooting, Ethan brought the gun his father had purchased four days earlier to school in his backpack.³ During class, his teacher noticed he was drawing disturbing images of guns and gunshot victims on his worksheet and sent him to the school counselor’s office.⁴ There he met with his parents, James and Jennifer Crumbley, and the school counselor, Shawn Hopkins.⁵ The counselor expressed concern about Ethan’s mental health and suggested that his parents take him for counseling, but they said they were unable to do so that day because of work obligations, and Ethan was allowed to return to class.⁶ Several hours later, he opened fire, killing four of his classmates and injuring seven others.⁷

On October 24, 2022, in adult criminal court, Ethan pled guilty to four counts of first degree murder, one count of terrorism, seven counts of assault with intent to murder, and twelve counts of possession of a firearm in the commission of a felony.⁸ On December 8, 2023, following a *Miller* hearing to determine whether

¹ Stephanie Saul & Anna Betts, *Michigan Teenager Who Killed Four Students Is Sentenced to Life*, N.Y. TIMES (Dec. 8, 2023), <https://www.nytimes.com/2023/12/08/us/michigan-oxford-school-shooting-sentencing.html>.

² Jack Nissen, *Ethan Crumbley’s Journal Entries Laid Out Teen’s Shooting Plan, Path Toward His ‘Dark Side’*, FOX 2 DETROIT (Feb. 2, 2022, 9:53 AM), <https://www.fox2detroit.com/news/ethan-crumbleys-journal-entries-lay-out-teens-shooting-plan-path-toward-his-dark-side>; Ed White, *Prosecutor Tells Jury That Michigan School Shooter’s Dad Ignored ‘Easiest’ Opportunity to Prevent Tragedy*, PBS NEWS (Mar. 13, 2024, 5:23 PM), <https://www.pbs.org/newshour/nation/prosecutor-tells-jury-thet-michigan-school-shooters-dad-ignored-easiest-opportunity-to-prevent-tragedy>.

³ White, *supra* note 2; Lisa Miller, *A Handgun for Christmas. Why Were James and Jennifer Crumbley Found Guilty for Their Son’s Mass Shooting?*, N.Y. MAGAZINE (Apr. 10, 2024), <https://nymag.com/intelligencer/article/oxford-school-shooting-ethan-crumbley-parents.html>.

⁴ See White, *supra* note 2.

⁵ Sara Powers, *Oxford Counselor Discusses Emails from Teachers, Meeting with Parents on Day of Shooting During James Crumbley Trial*, CBS NEWS (Mar. 11, 2024, 11:22 AM), <https://www.cbsnews.com/detroit/news/james-crumbley-trial-oxford-counselor-shawn-hopkins-discusses-emails-from-teachers-meeting-with-parents-on-day-of-shooting/>.

⁶ See White, *supra* note 2.

⁷ See White, *supra* note 2.

⁸ Krystle Holleman, *Oxford School Shooter’s Motion to Withdraw Plea, Be Resentenced Denied*, (Dec. 19, 2024, 3:52 PM), <https://www.wilx.com/2024/12/19/oxford-school-shooters-motion-withdraw-plea-be-resentenced-denied/>; Ray Sanchez, Nicki Brown & Aditi Sangal, *Ethan Crumbley Sentenced to Life in Prison Without Parole for Killing 4 Students in Michigan School Shooting*, CNN (Dec. 8, 2023), <https://www.cnn.com/2023/12/08/us/oxford-shooting-ethan-crumbley-sentencing>.

any age-related factors should mitigate his sentence,⁹ he was sentenced to the harshest possible penalty, life in prison without the possibility of parole.¹⁰

On December 3, 2021, Ethan's parents were each charged with four counts of involuntary manslaughter for the deaths of the four classmates that Ethan killed.¹¹ They were both convicted on all four counts in separate trials during the winter of 2024.¹² On April 9, 2024, they were sentenced to ten to fifteen years in prison, the maximum allowable sentence and one that exceeded the advisory guidelines by eight years.¹³

Incidents of mass school shootings have become increasingly common¹⁴ in a society that does not strictly limit access to guns and has not adequately addressed the youth mental health crisis.¹⁵ Schools are underresourced to deal with students' mental health needs and lack clear protocols for identifying the warning signs that precede acts of mass violence or for taking preventative action.¹⁶ School shooters

⁹ A *Miller* hearing is a constitutionally required sentencing hearing for juveniles facing the most serious criminal outcome possible, life without the possibility of parole. In *Miller v. Alabama*, the Supreme Court held that a mandatory life sentence for juveniles violated the Eighth Amendment and required a sentencing hearing to determine if any special factors, such as age, level of maturity, family and home circumstances should mitigate the sentence. The decision was based on the premise that juveniles are different, have a greater capacity for rehabilitation, and should only be sentenced to life in prison without the possibility of parole in "rare" circumstances. 567 U.S. 460 (2012).

¹⁰ Saul & Betts, *supra* note 1.

¹¹ Anna Marchiony, *A Parent's Legal Duty: The Crumbleys' Culpability for Failing to Stop a School Shooting*, U. CINN. L. REV. (Dec. 13, 2023), <https://uclawreview.org/2023/12/13/a-parents-legal-duty-the-crumbleys-culpability-for-failing-to-stop-a-school-shooting/>.

¹² Brandon Drenon, *Ethan Crumbley: Parents of Michigan School Gunman Sentenced to at Least 10 Years*, BBC NEWS (Apr. 9, 2024), <https://www.bbc.com/news/world-us-canada-68773119>.

¹³ *Id.*

¹⁴ Luke J. Rapa et al, *School Shootings in the United States: 1997-2022*, PEDIATRICS (April 2024), <https://publications.aap.org/pediatrics/article/153/4/e2023064311/196816/School-Shootings-in-the-United-States-1997-2022?autologincheck=redirected>. Since the Columbine school shooting in 1999, 440 people have been killed and another 1,243 have been injured in K-12 school shootings. When the Sandy Hook Elementary school shooting killed 26 people in 2012, there were cries of "never again," but school shootings persist. *A Timeline of School Shootings Since Columbine*, SECURITY.ORG, April 4, 2025, <https://www.security.org/blog/a-timeline-of-school-shootings-since-columbine/> (providing graphics and data).

¹⁵ Jennifer Piemonte & Jonathan Metzl, *Gun Violence and Mental Health: Myths and Strategies for Socio-Legal Research*, in RESEARCH HANDBOOK ON SOCIO-LEGAL STUDIES OF MEDICINE AND HEALTH, 405–06 (2020) (explaining the United States' unique history that has led to endemic gun violence and the 2nd Amendment being used as an ostensible barrier to solving it); *U.S. Gun Policy: Global Comparisons*, Council on Foreign Relations (Oct. 13, 2025), <https://www.cfr.org/backgrounders/us-gun-policy-global-comparisons>; *Four Years On: Children's Mental Health Remains a National Emergency*, Children's Hospital Association (Oct. 20, 2025), <https://www.childrenshospitals.org/news/newsroom/2025/10/childrens-mental-health-remains-a-national-emergency>; Jonathan Haidt, *THE ANXIOUS GENERATION: HOW THE GREAT REWIRING OF CHILDHOOD IS CAUSING AN EPIDEMIC OF MENTAL ILLNESS* (2024) (documenting the current teen mental health crisis and suggesting social changes to phone use for children as remedy).

¹⁶ See Arianna Prothero, *Schools Feel Less Equipped to Meet Students' Mental Health Needs Than a Few Years Ago*, Education Week (May 9, 2024), <https://www.edweek.org/leadership/schools-feel-less-equipped-to-meet-students-mental-health-needs-than-a-few-years-ago/2024/05/> ("Fewer than half of public schools—48 percent—report they can effectively meet students' mental health

are often killed during the course of the attack, or, seemingly beyond rehabilitation, spend the rest of their lives in prison. They are described as “evil” or “monsters” and justice is pursued by focusing on their individual criminal liability.¹⁷ But the *Crumbley* case is distinct for reaching beyond the perpetrator of the crime to hold his parents directly responsible, broadening the circle of culpability and condemning the parents as monsters too. It is the first instance of the parents of a school shooter being held criminally liable for homicide based on their child’s intentional independent acts of violence.¹⁸

Ethan Crumbley’s parents purchased the gun used in the shooting. But they violated no laws at the time in Michigan regarding gun ownership, storage or maintenance.¹⁹ They were not charged as accomplices to Ethan’s crimes, nor were they charged for contributing to the delinquency of a minor for providing Ethan with access to the firearm he used. Rather, they were independently charged with involuntary manslaughter, laying responsibility for the shooting deaths of the four victims squarely at their feet. The prosecution claimed the Crumbleys were grossly negligent, the requisite *mens rea* for involuntary manslaughter in Michigan,²⁰ in failing to address their son’s deteriorating mental health and failing to securely store the firearm that he used in the shooting and that their failures were a proximate cause of the victims’ deaths.²¹ Proximate causation requires a defendant’s conduct to be sufficiently connected to the ultimate harm to justify criminal liability.²² It

needs”); Ron Avi Astor et al., *Call for Action to Prevent Gun Violence in the United States of America*, University of Virginia (May 27, 2022) <https://education.virginia.edu/research-initiatives/research-centers-labs/research-labs/youth-violence-project/call-action-prevent-gun-violence-united-states-america> (calling for adequate staffing of mental health professionals and national programs to train community-based crisis intervention and threat assessment teams).

¹⁷ See Matt Gutman et al., *Mother of Texas Gunman Says Son was ‘not a monster,’ Could be ‘Aggressive’*, ABC News, May 26, 2022, <https://abcnews.go.com/US/mother-texas-gunman-son-monster-aggressive/story?id=84986088> (quoting the Texas Governor’s characterization of the Uvalde school shooter as “hav[ing] evil in his heart”); see also, Nathaniel M. Schutten et al., *Punishing Ramage: Public Opinion on Sanctions for School Shooters*, 39 JUSTICE QUARTERLY 252, 261–62, 265 (2022) (finding that “most Americans believe that anyone who plans, attempts, or carries out a school shooting is a lost cause[.]” unlikely to be rehabilitated, “and should be punished severely”).

¹⁸ Monu Bedi, *Expanding Homicide Liability for a Parent’s Omission*, 2024 CARDOZO L. REV. DE-NOVO 133, 143 (2024). Since this case was decided, there has been another case where criminal charges were brought against Colin Gray, the father of school shooter Colton Gray, in Georgia for the involuntary manslaughter of his son’s victims. The factual background as well as the legal theory alleged by the prosecutor are very similar to those of the *Crumbley* case. The charges are more serious and include second-degree murder and a potential sentence of 180 years. The Colin Gray case has yet to go to trial and is in pre-trial proceedings as of the writing of this article. Rich McKay, *Charges Against Father of Georgia Shooting Suspect Test Emerging Legal Strategy*, REUTERS (Sept. 6, 2024, 4:41 PM), <https://www.reuters.com/world/us/teen-suspected-georgia-school-shooting-appear-court-2024-09-06/>.

¹⁹ Since this tragedy occurred, Michigan has enacted a safe storage gun law, which the Crumbleys would have been guilty of violating, had it been the law at the time. MICH. COMP. LAWS § 28.429 (2024).

²⁰ *People v. Crumbley*, 11 N.W.3d 576, 590–92 (Mich. App. 2023).

²¹ *Id.*

²² Joshua Dressler, UNDERSTANDING CRIMINAL LAW § 14.01–14.03 (7th ed. 2015).

goes beyond but-for causation to tether the conduct at issue to the resulting harm. While proximate causation is a notoriously flexible concept, it is not without constraint. It requires that the resulting criminal harm be a reasonably foreseeable consequence of the defendant's actions or, as in this case, inactions.²³ In order to satisfy the requirement of proximate causation in this case, the prosecution had to convince the jury that it was reasonably foreseeable that the Crumbleys' omissions would result in their son committing a mass school shooting.²⁴

The prosecution's theory of proximate causation stretched foreseeability to the breaking point. There was no evidence to suggest that the Crumbleys knew that their son posed a risk of violence to others or that they should have foreseen that he would commit a mass shooting. It also created a new doctrinal exception for causation that renders parents criminally liable as direct perpetrators for their children's intentional harms to third parties. While the prosecution's theory of liability was novel, using the criminal law to punish parents is not.²⁵ Parents are routinely criminalized for the unintentional consequences of their actions, inactions, and the behavior of their children, including for inadequately monitoring their child, leaving them alone, failing to provide them with basic necessities,²⁶ and failing to stop their independent bad acts, such as skipping school, bullying, reckless driving, and in the most serious cases, committing acts of violence.²⁷ There are typically two ways that parents can be held criminally liable for unintentional conduct with respect to their children. The first is when a parent fails to perform a legal duty owed to their own child, resulting in harm to that child.²⁸ The second is when their child engages in criminal conduct and the parents are found guilty of contributing to their child's delinquency, a misdemeanor offense, but they are not

²³ *Id.*

²⁴ See Bedi, *supra* note 19, at 141–42.

²⁵ See Eve M. Brank & Leroy Scott, *The Historical, Jurisprudential, and Empirical Wisdom of Parental Responsibility Laws*, 6 SOC. ISSUES & POL'Y REV. 26, 31–32 (2012); Jennifer M. Collins, *Crime and Parenthood: The Uneasy Case for Prosecuting Negligent Parents*, 100 NW. U. L. REV. 807, 830 (2006).

²⁶ See Brank & Scott, *supra* note 24; see, e.g., Thomas Lake, *A Boy in North Georgia Went for a Walk Down the Road. It Landed His Mother in Jail*, CNN (Dec. 22, 2024), <https://www.cnn.com/2024/12/22/us/mother-arrested-missing-son-georgia-ccc>; Nicole Gelinas, *They Let Their Children Cross the Street, and Now They're Felons*, N.Y. TIMES (Aug. 6, 2025), <https://www.nytimes.com/2025/08/06/opinion/children-traffic-death-parents.html>; Maria Cramer & Claire Fahy, *Parents of Teen Driver Who Killed Girl in High-Speed Crash Are Sentenced*, N.Y. TIMES (July 22, 2024), <https://www.nytimes.com/2024/07/22/nyregion/teen-driver-queens-crash-parents-sentence.html>; Meredith Deliso, *Parents Charged with Manslaughter After Their 7-Year-Old Son Fatally Struck by Car in North Carolina*, ABC NEWS (June 4, 2025, 2:14 PM), <https://abcnews.go.com/US/parents-charged-manslaughter-boy-struck-car-gastonia-north-carolina/story?id=122500748>; State v. Williams, 4 Wn. App. 908 (Wash. Ct. App. 1971).

²⁷ See Mark Keierleber, *A History of Holding Parents Responsible for Their Kids' Crimes*, JUVENILE JUST. INFO. EXCH. (Feb. 13, 2024), <https://jjiie.org/2024/02/13/a-history-of-holding-parents-responsible-for-their-kids-crimes/>.

²⁸ See Jeanne A. Fugate, *Who's Failing Whom? A Critical Look at Failure-to-Protect Laws*, 76 NYU L. REV. 272, 276–278 (2001); see e.g., *People v. Head*, 323 Mich. App. 526 (2018) (upholding the involuntary manslaughter conviction of a father whose illegally possessed shotgun was used by his ten-year-old daughter to accidentally shoot and kill his nine-year-old son).

held liable for the substantive crime or harm their child committed regardless of how serious it is.²⁹ Given this legal framework, one could argue the *Crumbley* case is just another example of how criminal law selectively punishes parents for violations of social expectations to offer post hoc accountability. But this case goes further than prior cases in imputing the ultimate harm Ethan committed to his parents as though they themselves pulled the trigger and punishing them accordingly. Beyond contributing to an alarming trend towards punishing parents, it extends the bounds of criminal liability and sets a precedent for holding admittedly unsympathetic parents criminally responsible on shaky grounds.

Beyond these doctrinal issues, there is a normative objection to extending criminal liability to parents based not on their direct criminal conduct, but on their parenting choices. The Crumbleys are easy targets—the media and prosecution painted a portrait of inattentive, self-absorbed parents whose son committed a horrific atrocity.³⁰ But while they may have been bad parents and bear responsibility for how their son turned out, their conduct does not rise to criminal legal responsibility for his actions. Their prosecution emphasizes individual culpability while absolving regulatory and institutional actors of responsibility for addressing complex social issues like access to guns and mental health. It also ignores the socio-cultural context of parenting that valorizes parental autonomy over how children are raised and largely ignores the collateral consequences of parenting decisions. The Crumbleys made routine choices about their son, including exposing him to guns and eschewing professional mental health treatment. Then they were punished for failing to appreciate the severity of Ethan’s mental health struggles and accurately assessing the danger he posed to others. The *Crumbley* case advances a model of parents as watchdogs in the home, blurring the line between parenting and policing, and creates a nearly impossible standard for parents to meet as experts on public health, mental health, and their children. It normalizes expansive theories of liability and punitive sentences, particularly where there is a regulatory vacuum and criminal punishment substitutes for social policy.

There is also an empirically informed objection to this case. The prosecution’s theory ignored the psychological science of parenting, relying on unsupported assumptions about the depth and quality of knowledge the Crumbleys had about their son and his plans in ways that led to an improper finding of both *mens rea* and causation. The prosecution’s theory turned on the argument that the Crumbleys knew about their son’s deteriorating mental health and preoccupation with violence, that they should have known about the danger he posed to others, and that they should have exercised ordinary care to prevent it. But that argument rests on more than just lay intuitions about how parents in the same situation would act. It rests on inaccurate behavioral assumptions about what parents know or should know

²⁹ Toni Weinstein, *Visiting the Sins of the Child On the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 866 (1991) (stating that instead of focusing on the child’s behavior, “contribution statutes focus on parents’ behavior and hold parents accountable for their own conduct”).

³⁰ See Miller, *supra* note 3.

about their children and how they should assess and appreciate the risk posed by their children. It also assumes that Ethan's actions were preventable.³¹

The psychological literature has found that parents are unlikely to correctly interpret signs of mental health issues in their children and, in the absence of overt displays of aggression or distress, are unlikely to realize that their child may act violently.³² Even if they do recognize that their child is struggling, many parents resist acknowledging the severity of the problem or seeking professional help.³³ And while there is a growing body of research documenting the common warning signs leading up to incidents of mass violence, there is little to suggest these episodes can be interrupted by individual family members without community support, training, and resources.³⁴ Placing liability for children's intentional acts of violence on parents misunderstands their ability to appreciate the risk their child may pose and shifts the onus of responsibility for keeping the public, and especially schoolchildren, safe from state and institutional actors onto individual parents who lack the training, resources, and support to be effective stewards of public safety in the modern era.

This Article offers a three-part critique of parental criminal liability premised on parents' knowledge of their children's mental health, appreciation of their children's risk of harm to others, or failure to monitor their children's interior lives. Using in-depth analysis of *People v. Crumbley*, it argues that the *Crumbley* case sets a dangerous precedent doctrinally and normatively and ignores psychological research relevant to questions of *mens rea* and causation. Part I offers an overview of the prosecution's case and the facts it relied on to prove the Crumbleys were guilty of involuntary manslaughter. It then critiques the prosecution's theory of liability, arguing that it is a problematic application of existing doctrine that stretches proximate causation too far, ignores established limitations on causation when there is an intentional intervening cause, and extends the well-established legal duty of care that parents owe their children to third parties. While involuntary

³¹ See Tresa Baldas, *Crumbleys' Novel Case to Test Theory: Are All School Shootings Preventable?*, DETROIT FREE PRESS (Oct. 29, 2022), <https://www.freep.com/story/news/local/michigan/oakland/2022/10/29/ethan-crumbley-parents-charges-oxford-school-shooting/69599528007/> (discussing expert testimony on whether school shootings are preventable, including testimony acknowledging that there have been cases where there was intervention that was still followed by a shooting).

³² Stephen Hinshaw, *The Stigmatization of Mental Illness in Children & Parents: Developmental Issues, Family Concerns, and Research Needs*, 46 J. OF CHILD PSYCH. & PSYCHIATRY 7 (2005); see generally *infra*, Part III.C.

³³ Rachel Elisabeth Riggs et al., *Exploring Predictors of Parents' Negative Emotional Response to Adolescents' Mental Illness Disclosures*, J. CHILD HEALTH CARE, May 20, 2025, at 1, 2, <https://journals.sagepub.com/doi/10.1177/13674935251344649> [<https://doi.org/10.1177/13674935251344649>].

³⁴ See Alice P. Villatoro et al., *Parental Recognition of Preadolescent Mental Health Problems: Does Stigma Matter?*, 216 SOC. SCI. & MED. 88, 92 (2018); Vilas Sawrikar et al., *The Ws of Parental Help-Seeking: When, Where, and for What Do Parents Seek Help for Child Mental Health*, CHILD PSYCHIATRY & HUM. DEV., Mar. 20, 2024, at 1, 9, <https://link.springer.com/article/10.1007/s10578-024-01683-5>; PETER LANGMAN, WARNING SIGNS: IDENTIFYING SCHOOL SHOOTERS BEFORE THEY STRIKE (2022).

manslaughter is a notoriously broad theory of liability, causation is a legal requirement that legitimizes criminal culpability in indirect cases and necessarily draws a distinction between lay judgments of blame and legal responsibility.³⁵ Bending the doctrine too far to extend liability to meet a perceived need for justice risks collapsing the distinction between moral and legal wrongs, with far-reaching implications.

Part II draws attention to the parental bind that gives parents relatively unfettered autonomy over their children and encourages them to make independent parenting decisions without state interference but then punishes them for those choices if and when things go wrong.³⁶ The socio-cultural background concerning parental rights and autonomy offers another lens through which to understand the Crumbleys' parenting choices and why they did not meet the requisite *mens rea* requirement, gross negligence, in failing to appreciate the risk their son posed to others and get him mental health treatment.

Part III provides the psychological background to explain why the prosecution's argument on causation—that Ethan's actions in committing a mass school shooting were reasonably foreseeable to the Crumbleys—should have failed. It examines the psychological literature on youth crime and parent-child relationships to demonstrate that parents are not well-suited to appreciate the risks posed by their children or to intervene to prevent acts of violence.³⁷ The prosecution argued that the Crumbleys' greatest moral error was failing to acknowledge their son's capacity for violence. But the research suggests that most parents in a similar situation would not have been able to meaningfully understand the risk Ethan posed, especially because he had not engaged in any violent behavior before or made any overt threats.³⁸ Given this empirical reality, this Article argues that criminalizing parents for their perceived failures does not advance the interests of public safety; it broadens the state's reach to surveil and criminalize parents, with the potential to disproportionately affect marginalized groups and outsource policing responsibilities to families.

Part IV turns towards prescriptions to address both the rise in parental criminal liability and the issue of adolescent gun violence. It argues for a more robust inclusion of psychological science with respect to expert testimony and jury instructions in parental liability cases, as well as increased resources to support mental health education and intervention. It calls for more research to better understand early intervention strategies and how parents can effectively identify and support children dealing with mental health or behavioral issues, while deemphasizing the role of the criminal legal system in responding to situations that

³⁵ Terry Skolnik, *Causation, Fault, and Fairness in the Criminal Law*, 65 MCGILL L.J. 1, 25 (2019).

³⁶ See Jane C. Murphy, *Rules, Responsibility and Commitment to Children: The New Language of Morality in Family Law*, 60 U. PITT. L. REV. 1111, 1165 (1999); Carl E. Schneider, *Moral Discourse and the Transformation of American Family Law*, 83 MICH. L. REV. 1803, 1835–39 (1985).

³⁷ See Villatoro et al., *supra* note 33; Sawrikar et al., *supra* note 33.

³⁸ *Id.*

can lead to acts of violence. And it advocates for safe storage laws and similar regulations that encourage the safe use of firearms, in line with research on gun violence prevention. Ultimately, this Article calls for a deeper engagement with social science research in service of criminal law and policy. A psychologically informed response can better address the complex social and structural issues that contribute to mass school shootings than a response focused on individual culpability.

I. DOCTRINAL EXTENSIONS IN *PEOPLE V. CRUMBLEY*

James and Jennifer Crumbley were prosecuted separately from Ethan Crumbley for four counts of involuntary manslaughter for the deaths of the four students that he shot and killed. Involuntary manslaughter in Michigan is an unintentional killing. It requires that the defendants acted, or failed to act, in a grossly negligent manner,³⁹ that their actions or inactions were a cause of death, and that the actions of the person who did the actual killing, here Ethan Crumbley, were the reasonably foreseeable consequences of their actions or inactions.⁴⁰

The prosecution argued that the Crumbleys were grossly negligent because they failed to seek help for Ethan's deteriorating mental health and failed to secure the firearm they had just purchased and these failures were a proximate cause of the victims' deaths.⁴¹ The prosecution's theory of causation hinged on the argument that Ethan's actions on the day of the school shooting were reasonably foreseeable: that his parents knew he was mentally unstable, they knew he had access to firearms, and they knew or should have known there was a likelihood that he would use a firearm to kill his classmates.⁴² The prosecution argued that this gross negligence, combined with the Crumbleys' failure to intervene, substantially contributed to the deaths of the Oxford High School students. But the Crumbleys did not know of the lethal risk their son posed, they likely could not fathom he would act the way he did, and his independent, intentional actions were not foreseeable to his parents.⁴³ This Part analyzes the ways in which the *Crumbley* case should have failed as a matter of doctrine: because even with the most expansive interpretation of proximate causation Ethan's actions were not reasonably foreseeable, Ethan was an independent intentional cause, it is not clear that the Crumbleys could have prevented Ethan from committing this crime, and they did not owe a legal duty of care to the victims.

³⁹ MICH. COMP. LAWS § 750.321 (2025); *see also* WXYZ-TV Channel 7 Detroit, *Final Jury Instructions – Jennifer Crumbley Trial* at 18–26, SCRIBD, <https://www.scribd.com/document/703793729/Final-Jury-Instructions-Jennifer-Crumbley-trial> (M Crim JI 16.10 & 16.13) [Hereinafter “Jury Instructions”].

⁴⁰ MICH. COMP. LAWS § 750.321 (2025); Jury Instructions, *supra* note 38.

⁴¹ People's Brief in Support of People's Response to Defendant's Motion to Quash at 9, *Crumbley*, 2022 Mich. Cir. LEXIS (No. 2022-279989-FH, No. 2022-279990-FH); White, *supra* note 2; Miller, *supra* note 3.

⁴² People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40.

⁴³ *See id.* at 16.15; *See* Luis E. Chiesa, *Mass Shooting by Omission*, 92 TENN. L. REV. 355, 380–92 (2025) (discussing the reasonable foreseeability of a mass shooting).

A. Taking Foreseeability Too Far

While the facts of this case make it is easy to assert the Crumbleys were imperfect parents, the claim that Ethan's actions were reasonably foreseeable stretches the doctrine of proximate causation too far.⁴⁴ Importantly, the Crumbleys were not prosecuted for failing to secure the gun Ethan used in the shooting, or for ignoring warning signs in Ethan, both of which could have been the basis for independent charges under Michigan's law criminalizing contributing to the delinquency of a minor.⁴⁵ They were prosecuted for involuntary manslaughter for negligently causing the deaths of the four victims, a much more serious crime, with a much more serious penalty.⁴⁶ Causation is notoriously flexible, expanding to attach liability when the demands of justice support it,⁴⁷ but in this case it rested on unsupported assumptions about what parents know about their children and how much control they have over them.

Reasonable foreseeability requires that defendants knew or should have known of a dangerous situation, which they could avert, through ordinary care.⁴⁸ The prosecution argued that Ethan's actions in committing the school shooting were reasonably foreseeable based on three factual premises. First, the Crumbleys knew their son was experiencing significant mental health issues because, beginning in March 2021, he told them about the delusions he was experiencing over text messages.⁴⁹ He also sent text messages to a friend telling him he had asked his parents for help and to see a counselor, although there was no evidence his parents saw those messages.⁵⁰ Second, the Crumbleys knew Ethan had access to the gun they had recently purchased, ostensibly as an early Christmas present for him.⁵¹ James Crumbley bought the firearm used in the shooting four days before it happened, and Ethan had taken it to the gun range and posted pictures with it on social media.⁵² The prosecution also demonstrated that the gun lock that came with the gun had not been used.⁵³ Third, the Crumbleys knew the morning of the

⁴⁴ I focus on causation here, but the claim that the Crumbleys did not know about the risk Ethan posed goes directly to *mens rea*, which requires that the Crumbleys knew of the danger Ethan posed to another. See Jury Instructions, *supra* note 38, at 16.18.

⁴⁵ See MICH. COMP. LAWS § 750.145 (2025).

⁴⁶ The Crumbleys could have easily been prosecuted for contributing to child delinquency, for example, a misdemeanor crime under Michigan state law. See MICH. COMP. LAWS § 750.145 (2025).

⁴⁷ See Skolnik, *supra* note 34.

⁴⁸ See Jury Instructions, *supra* note 38, at 16.18 (articulating the Michigan standard for gross negligence); Chiesa, *supra* note 42, at 381–82, 402–04.

⁴⁹ People v. Crumbley, 11 N.W.3d 576, 580 (Mich. App. 2023).

⁵⁰ People v. Crumbley, 11 N.W.3d 576, 581 (Mich. App. 2023); People's Brief in Support of People's Response to Defendant's Motion to Quash at 9 n.2, People v. Crumbley, 2022 Mich. Cir. LEXIS 501 (2022) (No. 2022-279989-FH, No. 2022-279990-FH). The evidence suggested that Jennifer received most of these text messages, but not James.

⁵¹ People v. Crumbley, 11 N.W.3d 576, 593 (Mich. App. 2023).

⁵² People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9 n.3; Crumbley, 11 N.W.3d at 582.

⁵³ See Crumbley, 11 N.W.3d at 587. James claimed he did not know that Ethan knew where he kept the gun. And Jennifer claimed she did not know anything about guns and had no involvement with

shooting Ethan was distressed. He had drawn an image of a gun and a gunshot victim on his math worksheet and been sent to the school counselor.⁵⁴ The prosecution introduced evidence that, on the day of the shooting, the Crumbleys were called to the school to meet with Ethan and the school counselor to discuss the disturbing drawings Ethan made in class.⁵⁵ During that meeting, the Crumbleys declined to remove Ethan from school, electing to let him stay for the rest of the day.⁵⁶ While these facts are damaging, they do not provide sufficient evidence that the Crumbleys knew or should have known of the danger their son posed to others or the actions he would take that day.⁵⁷

The evidence that Ethan had texted his parents regarding delusions he was having and their knowledge that he was upset about several recent events in his life⁵⁸ does not amount to knowing he posed a risk of danger to others. That claim relies on hindsight bias, the psychological tendency to overestimate the likelihood of past events,⁵⁹ and the belief that the Crumbleys were bad, selfish parents to substitute for evidence that they knew about the danger he posed. The evidence that Ethan was heading towards committing an act of violence was based on things his parents claimed they did not know—the time he spent online looking at violent videos, the threats he was making in his personal journal,⁶⁰ and the text messages he sent to his friend that talked about wanting to commit a school shooting.⁶¹ While the Crumbleys arguably knew or should have known Ethan was suffering from mental health issues, that does not mean they knew or should have known that he was dangerous, especially because he did not have a history of acting out or acting violently.⁶² The belief that mental illness is a predictor of violence is overblown and

securing it and no knowledge about whether it was locked or not. See Eric Levenson & Lauren del Valle, *Prosecutor Says School Shooter's Father Was 'Grossly Negligent,' While Defense Says His Manslaughter Case Is Built on 'Hindsight'*, CNN (Mar. 13, 2024), <https://www.cnn.com/2024/03/13/us/james-crumbley-school-shooter-father-trial>; Cassidy Johncox, *Defense Implies James Crumpley Wasn't Legally Required To Lock Gun Used in Oxford Shooting*, CLICK ON DETROIT (Mar. 11, 2024, 6:00 AM), <https://www.clickondetroit.com/news/local/2024/03/11/defense-implies-james-crumbley-wasnt-legally-required-to-lock-gun-used-in-oxford-shooting/>.

⁵⁴ People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9–10.

⁵⁵ People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9.

⁵⁶ *Id.*; Crumpley, 11 N.W.3d at 586.

⁵⁷ “Both the resulting harm and the manner in which the harm occurred must have been reasonably foreseeable to establish proximate cause.” *People v. Aiyash*, 2024 WL 4293329, at *7 (Mich. Ct. App. 2024).

⁵⁸ Crumpley, 11 N.W.3d at 581 (noting that Jennifer believed Ethan was “having a hard time because he had lost his only friend, his dog, and a grandparent all in quick succession”).

⁵⁹ See Jeffrey Rachlinski, *A Positive Psychological Theory of Judging in Hindsight*, 65 U. CHI. L. REV. 571, 571 (1998); Mark D. Alicke, *Culpable Control and the Psychology of Blame*, 126 PSYCH. BULLETIN 556, 567–68 (2000).

⁶⁰ Crumpley, 11 N.W.3d at 582 n.5.

⁶¹ *Id.* at 581 n.3.

⁶² See Alicke, *supra* note 58; see also Transcript of Dr. Dewey Cornell's Expert Testimony at 108, 112, 114–119, *People v. Crumpley*, 2022 Mich. Cir. LEXIS 501 (2022) (No. 2022-279989-FH, No. 2022-279990-FH). By contrast, in a leading civil case where parents were found to be negligent for

based on anecdotal evidence following high profile instances of public shootings.⁶³ In fact, people suffering from mental illness are more likely to be the victims of violence than the perpetrators.⁶⁴ And a vanishingly small number of people with mental health issues, even those who exhibit a fascination with violence, actually go on to commit a violent act.⁶⁵ The risk of suicide is more likely.⁶⁶

The evidentiary record suggests that the Crumbleys could have done more to help with Ethan's mental health and emotional struggles, but this is not the same as proving that the Crumbleys appreciated the extent of Ethan's issues or, more importantly, knew that these issues could manifest as violence towards others. As discussed further below, parents are expected to think about risks to their own children and protect them from those risks. But there is no legal rule that extends that concern to others. In the absence of direct threats or prior acts of violence, it was not reasonably foreseeable that Ethan posed a risk of violence to others.⁶⁷ To find otherwise is an aggressive, inappropriate extension of causation that makes parents susceptible to liability any time their child acts out.

Beyond this, psychiatric experts found based on the record that Ethan was not suffering from mental illness at the time of the shooting.⁶⁸ During Ethan's *Miller* hearing to determine whether he could be sentenced to life without the possibility of parole, forensic psychiatrist Dr. Lisa Anacker testified that although Ethan's mental state was troubling and he had a preoccupation with violence, he did not have a significant mental health issue at the time of the shooting.⁶⁹ Dr. Anacker testified regarding Ethan's coping mechanisms in response to his feelings of depression and determined that his behavior did not rise to the level of significant mental health impairment.⁷⁰ It is difficult to imagine how a parent, who is not an expert on mental health diagnoses and treatment, could determine that their child needed a mental health intervention when an expert in the field found that Ethan's behavior did not rise to the level of significant mental illness.⁷¹ Combined with the bias parents have towards normalizing their children's behavior,⁷² this suggests that

failing to control their son who went on to commit a serious assault, their son had just been released from a mental health institution and had a lifelong history of rage-filled outbursts and third-party assaults, put them on notice of his risk to others. *May v. Goulding*, 365 Mich. 143, 146 (1961).

⁶³ Piemonte & Metzl, *supra* note 16, at 409.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ See Villatoro et al., *supra* note 33, at 94 (discussing the hurdles to parents recognizing mental health issues in their own children, even if they can appreciate them in other children); see also *infra* Parts II & III.

⁶⁸ See White, *supra* note 2.

⁶⁹ Tresa Baldas & Gina Kaufman, *Psychiatrist: Crumley Told Me He Attempted Suicide in Weeks Before Shooting*, DETROIT FREE PRESS (Aug. 18, 2023), <https://www.freep.com/story/news/local/michigan/oakland/2023/08/18/ethan-crumbley-miller-hearing-life-without-parole-oxford-school-shooting/70614654007/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epi=z114701e000400v114701b0053xxd005365&gca-ft=140&gca-ds=sophi>.

⁷⁰ *Id.*

⁷¹ See Villatoro et al., *supra* note 33.

⁷² See *infra* Part III.

a parent in the Crumbleys' situation exercising ordinary care would not necessarily intervene to get Ethan mental health treatment or counseling.

Similarly, the Crumbleys could have, and most certainly should have, taken greater precautions with the firearms they kept in the house. But reasonable foreseeability does not ask that people take extra care and caution. It asks what a person exercising ordinary care would do and whether they could foresee that the guns would be used to commit a crime of mass violence.⁷³ The prosecution did not argue that it was grossly negligent that the Crumbleys had guns in their home, likely because gun ownership is common in Michigan and the gun laws at the time were lax.⁷⁴ There was no legal basis to require the Crumbleys to remove their guns from their home prior to the Oxford High School shooting.⁷⁵ The Crumbleys' ownership and use of guns was consistent with Oxford community norms, where it is routine among gun owners to take their guns to shooting ranges to practice with them.⁷⁶ The gun that Ethan used in the Oxford School shooting was not the only gun in the house and not the only gun Ethan had ever used. James Crumbley had purchased several firearms before buying the Sig Sauer used in the shooting and had taken Ethan to the shooting range several times over the four months prior to the shooting.⁷⁷ And there was nothing to suggest that the Crumbleys had the guns for suspicious or concerning reasons. The Crumbleys may have kept guns in the house for the same reasons that many in America do, for protection. And there may have been a psychologically valid reason to purchase the gun for Ethan, as he claimed, to bolster his confidence and cheer him up during a difficult period.⁷⁸ None of these details would form the basis for the Crumbleys to be concerned that Ethan was planning to use the gun in an unlawful manner to harm others.

⁷³ Jury Instructions, *supra* note 38, at 16.18.

⁷⁴ Jessica Learish, *Gun Map: Ownership by State*, CBS NEWS (Apr. 14, 2022), <https://www.cbsnews.com/pictures/gun-ownership-rates-by-state/> (stating that in Michigan, 40.2% of adults have at least one gun at home). *See also* Hilary Golston & Nour Rahal, *Michigan's Safe Storage Gun Law Begins Feb.13: What to Know*, FOX 2 DETROIT (Feb. 7, 2024, 6:05 PM), <https://www.fox2detroit.com/news/michigans-safe-storage-gun-law-begins-feb-13-what-to-know>; MICH. COMP. LAWS § 28.429 (2024).

⁷⁵ That is, nothing in Ethan's behavior at that time would have risen to the legal justification for removal of firearms, such as clear threats of harm to oneself or others. Piemonte & Metzl, *supra* note 16, at 412.

⁷⁶ *See* Amber Ainsworth, *Ethan Crumbley's Parents Ignored Signs of Violence for Months Before Oxford Shooting, Prosecutor Says*, FOX 2 DETROIT (Jan. 7, 2022, 4:36 PM), <https://www.fox2detroit.com/news/ethan-crumbleys-parents-ignored-signs-of-violence-for-months-before-oxford-shooting-prosecutor-says>; Bryan Wilmot, *Guns in the Family: A Complex Legacy*, SMITHSONIAN CTR. FOLKLIFE & CULTURAL HERITAGE (July 30, 2018), <https://folklife.si.edu/magazine/guns-in-the-family-complex-legacy>. *See also* Miller, *supra* note 3 (describing the Accurate Shooting Range and how it advertised itself as a family place that hosted church events).

⁷⁷ Click on Detroit, *ATF Agent in Charge of Oxford Case Takes Stand at James Crumbley's Manslaughter Trial*, YOUTUBE (Mar. 11, 2024), <https://www.youtube.com/watch?v=QwMCCFyoZX8>; *see* Ainsworth, *supra* note 73.

⁷⁸ Piemonte & Metzl, *supra* note 16, at 408 (describing the varied meanings of gun ownership, including bolstering masculinity and sense of security).

Given the sheer amount of gun violence and the high rates of accidental shootings by minors in homes with unsecured guns, it may be foreseeable that an unsecured gun will result in some harm.⁷⁹ But courts have generally refused to impose civil liability, let alone criminal liability, on gun owners, in the absence of a gun storage law, when minors engage in intentional or reckless conduct.⁸⁰ Many families keep guns in the home and, even in the absence of safe storage laws, failure to secure a gun may be considered negligent and give rise to a child negligence charge, or even a manslaughter charge if there is an accidental shooting with an unsecured gun.⁸¹ But the risk of an unsecured firearm in a home is an accidental shooting or accident involving the gun, not a premeditated, intentional mass shooting. That requires more than awareness that an unsecured gun can be dangerous; it requires awareness that the children in the home plan to use that gun to commit violence. The Crumbleys were not blamed for exposing Ethan to guns or facilitating his use of them, which they had been doing for months beforehand.⁸² They were blamed because of the specific actions Ethan took with the gun—something unthinkable to them.

While the Crumbleys arguably should have known their son was struggling and arguably should have known the risks in maintaining an unsecured firearm in the house, that is not the same as claiming they should have known Ethan intended to use the gun to harm others. The only evidence that suggests the Crumbleys had any knowledge of Ethan's intentions came from the day of the shooting, when he drew pictures of the gun and gunshot victims on his math worksheet.⁸³ On that day, arguably, the Crumbleys could have thought that Ethan was harboring feelings that might culminate in an act of violence. But on that day, they, in concert with the school counselor, determined Ethan should stay in school.⁸⁴ It is just as plausible that the Crumbleys were worried about Ethan hurting himself and thought the school would provide a better environment for him than being home.⁸⁵ In fact, they

⁷⁹ See generally Rebecca F. Wilson, *Unintentional Firearm Injury Deaths Among Children and Adolescents Aged 0–17 – National Violent Death Reporting System, United States, 2003–2021*, 72 CDC MORBIDITY & MORTALITY WKLY. REP. 1338 (2023). See also *People v. Head*, 323 Mich. App. 526 (2018).

⁸⁰ Chiesa, *supra* note 42, at 388.

⁸¹ See *People v. Head*, 323 Mich. App. 526, 534–35 (2018).

⁸² Click on Detroit, *supra* note 75.

⁸³ People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9–10.

⁸⁴ *People v. Crumbley*, 11 N.W.3d 576, 585–86 (Mich. App. 2023).

⁸⁵ This would be consistent with gun violence and prevention research given that suicide is the most common form of gun violence. See Piemonte & Metzl, *supra* note 16, at 403. Indeed, in 2020, 930 youth under age 18 were arrested for murder and nonnegligent manslaughter. See *Estimated Number of Youth Arrests*, Office of Juvenile Justice and Delinquency Prevention, [https://ojjdp.ojp.gov/statistical-briefing-book/crime/faqs/qa05101?](https://ojjdp.ojp.gov/statistical-briefing-book/crime/faqs/qa05101?text=Suicide%20accounted%20for%20approximately%20one,attention%20to%20disproportionately%20affected%20populations) This can be compared to 105,000 youths aged 14–18 that visited the emergency room for self-harm injuries in 2020. See Elizabeth M. Gaylor, MPH et al., *Suicidal Thoughts and Behaviors Among High School Students — Youth Risk Behavior Survey, United States, 2021*, CDC, Apr. 28, 2023, <https://www.cdc.gov/mmwr/volumes/72/su/su7201a6.htm#:~:text=Suicide%20accounted%20for%20approximately%20one,attention%20to%20disproportionately%20affected%20populations>.

determined it was best that Ethan not be alone.⁸⁶ A tiny fraction of threats made concerning school-related violence actually come to fruition.⁸⁷ It is much more likely that a student struggling with psycho-emotional and mental health issues will self-harm than harm others.⁸⁸ While no amount of school-related violence is acceptable, the data on school safety supports interpreting evidence like Ethan's drawings as requiring counseling, support, and monitoring, as opposed to signifying a credible threat requiring immediate action. The school did not take the drawings as evidence of a credible threat of violence requiring immediate removal, and neither did the Crumbleys.

B. Upending Causation

The most straightforward argument in favor of the defense is that Ethan acted intentionally of his own free will, as an autonomous agent, which should break the chain of causation and release the Crumbleys of liability.⁸⁹ To hold the Crumbleys liable for their son's intentional bad actions violates longstanding principles of causation and creates a doctrinal loophole that can be exploited in future cases to similarly extend legal culpability.

Under existing legal precedent, when a child is an independent causal agent, it defeats parental liability for harm to third parties.⁹⁰ The law has repeatedly held that intentional wrongdoing by another actor interrupts the causal chain and renders the ultimate harm unforeseeable.⁹¹ This legal doctrine is supported by public opinion regarding parents' responsibility for their children's crimes. While the public might find parents of children who commit crimes to be bad or morally responsible, the public does not generally support criminal liability or criminal punishment of parents if the child acts independently and is held criminally responsible themselves.⁹² In cases of child or adolescent criminal conduct, the public tends to recognize the distinction between moral responsibility and legal responsibility.⁹³

Ethan intentionally acted on his own when he made the decision to commit a mass shooting. That is not in dispute. And in fact, Ethan was charged and convicted of first degree, intentional murder as an adult, which further supports the defense

⁸⁶ *People v. Crumley*, 11 N.W.3d 576, 586 (Mich. App. 2023).

⁸⁷ Jennifer dePaoli & Stacy Loewe, *Keeping Schools Safe? The Research on Behavioral Threat Assessments*, Learning Policy Institute (Oct. 7, 2025), <https://learningpolicyinstitute.org/product/behavioral-threat-assessments-report>

⁸⁸ *Id.*

⁸⁹ See Defendants' Brief in Support of Defendants' Motion to Quash at 11–14, *People v. Crumley*, 2022 Mich. Cir. LEXIS 501 (2022) (No. 2022-279989-FH, No. 2022-279990-FH).

⁹⁰ See Chiesa, *supra* note 42, at 384–85; Eve M. Brank & Victoria Weisz, *Paying for the Crimes of Their Children: Public Support of Parental Responsibility*, 32 J. CRIM. JUST. 465, 465 (2004).

⁹¹ See Chiesa, *supra* note 42, at 384–85; Brank & Weisz, *supra* note 87; Defendants' Brief in Support of Defendants' Motion to Quash, *supra* note 86. See *People v. Aiyash*, 2024 WL 4293329 (Mich. Ct. App. 2024); *Bell v. State* 893 S.E.2d 918 (Ga. 2023).

⁹² See Brank & Weisz, *supra* note 87, at 472.

⁹³ *Id.*

theory.⁹⁴ Ethan was initially charged as an adult for his actions and the judge denied the defense's attempt to move him to juvenile court.⁹⁵ During the Crumbleys' trial, the prosecution, and the court, upended longstanding principles of causation to find that, despite Ethan's independent, autonomous acts, a jury could find the Crumbleys caused the deaths of the Oxford High School shooting victims.⁹⁶ This judicial decision enabled the prosecution to leverage the severity of the harm, the context of mass school shootings, and the sensational and highly publicized details regarding the Crumbleys' parenting failures to secure convictions, blurring the lines between lay judgments of blame and legal culpability.

C. The Problem with Preventing Harm

The prosecution did not just argue that the Crumbleys should have been aware of the danger their son posed, and that they should have intervened, it also argued that had the Crumbleys intervened, the tragedy would have been averted, a requisite component of their theory of gross negligence and causation.⁹⁷ The prosecutors argued that if the Crumbleys had gotten their son counseling or mental health treatment, and if they had secured the gun he used in the school shooting, then the Oxford High School shooting would not have happened.⁹⁸ As logical as this might sound, there is no evidence, and indeed there could be no evidence, that the Crumbleys could have prevented the school shooting on their own.⁹⁹ Research documenting the risk factors and warning signs for episodes of adolescent violence such as this is growing, and it is being used to help identify and intervene early with adolescents who display concerning behaviors.¹⁰⁰ The nascent research in this area suggests it takes a number of different actors—family and community members, school counselors, case workers, and law enforcement, for example—multiple points of contact, and a variety of strategies over an extended period of time to intervene when an adolescent has threatened mass violence.¹⁰¹ There is no evidence that one specific action or intervention can successfully interrupt a plan to commit this kind of violence. Rather, the burgeoning research suggests that intervention requires concerted effort by multiple stakeholders over time to address the

⁹⁴ Holleman, *supra* note 9; Sanchez, Brown & Sangal, *supra* note 9.

⁹⁵ George Hunter & James David Dickson, *Judge Refuses to Transfer Accused Oxford High Shooter into Youth Facility*, DETROIT NEWS (Dec. 13, 2021), <https://www.detroitnews.com/story/news/local/oakland-county/2021/12/13/ethan-crumbley-probable-cause-oxford-high-shooting/6470375001/?gnt-cfr=1&gca-cat=p&gca-uir=true&gca-epti=z114242e009200v114242b0047xxd004765&gca-ft=96&gca-ds=sophi>.

⁹⁶ See *People v. Crumley*, 11 N.W.3d 576, 591–95 (Mich. App. 2023).

⁹⁷ Jury Instructions, *supra* note 38, at 16.18.

⁹⁸ See *Crumley*, 11 N.W.3d at 591–95.

⁹⁹ See Transcript of Dr. Dewey Cornell's Testimony, *supra* note 61, at 114–17. See also Piemonte & Metzl, *supra* note 16, at 409 (highlighting the lack of predictive models for acts of mass violence and noting that mental health professionals are not able to prevent their patients from engaging in harm).

¹⁰⁰ See Transcript of Dr. Dewey Cornell's Testimony, *supra* note 61, at 114–17.

¹⁰¹ John Leland, *How 106 People Got Together To Stop a School Shooting Before It Happened*, N.Y. TIMES (Sept. 27, 2025), <https://www.nytimes.com/2025/09/27/nyregion/mass-shooting-prevention.html>.

underlying issues that give rise to this sort of behavior.¹⁰² Even then, it is not clear that anyone can prevent a child from committing an act of violence that they are intent on pursuing. The research suggests that children and adolescents who become preoccupied with gun violence and who are suffering from depression or more extreme mental health issues will keep pursuing this path until violence erupts.¹⁰³

Limiting access to firearms has been proven to lower the incidence of gun violence.¹⁰⁴ But barring complete removal of all guns from a home, it is hard to cut off access for children completely. Up until the day of the shooting, the Crumbleys were using their firearms in ways consistent with community and legal norms. They violated no laws in their purchase, practice, and storage of their guns. Stricter gun control measures, like the Extreme Risk Protection Act or other similar red flag laws that allow individuals to report that a family member poses a danger to themselves or others, triggering removal of firearms from the house, can be an effective obstacle.¹⁰⁵ But those laws are voraciously opposed by gun rights advocates and they require that the threat level be high enough to mandate removal of all firearms. This was simply not the situation with respect to the Crumbleys.

Hindsight bias and counterfactual thinking may lead people to believe the Crumbleys could have prevented this tragedy on their own. But this is an oversimplification that ignores the constellation of factors that lead to acts of mass violence and assumes the Crumbleys had greater control over Ethan than they did. Psychological research has documented that in criminal negligence cases, a determination that someone is blameworthy often precedes a determination that they had control over what happened and therefore bear legal responsibility.¹⁰⁶ Here, based on the record and the scale of the tragedy, the desire to blame the Crumbleys for what happened can support the belief that they had control over

¹⁰² See *id.*; see also, Jason Silva & Emily Greene-Colozzi, *What We Know About Foiled and Failed Mass School Shootings*, ROCKEFELLER INSTITUTE OF GOVERNMENT (Aug. 10, 2022) <https://rockinst.org/issue-area/what-we-know-about-foiled-and-failed-mass-school-shootings/>; Christina Coulter, How a ‘Hero’ Tennessee Gamer Stopped a Mass Shooting Allegedly Being Plotted in a California Town, *People* (May 16, 2025), <https://people.com/hero-gamer-thwarted-california-mass-shooting-11736748/>; Tom Jackman, *Their Kids Died at Sandy hook. Their Tip Line Prevents School Shootings*. (Mar. 31, 2025), <https://www.washingtonpost.com/dc-md-va/2025/03/31/sandy-hook-say-something-shootings/>?

¹⁰³ See J. David Goodman, *Behind a Mass Shooting Trial in Texas, a Lawyer’s Own Grief*, N.Y. TIMES (Feb. 9, 2025), <https://www.nytimes.com/2025/02/09/us/lawyer-schizophrenia-santa-fe-school-shooting.html> (describing a lawyer who defended the parents of a school shooter in a civil parental liability case after her own son died by suicide, noting the similarities in the warning signs and the ways that attempted intervention failed to prevent the violence).

¹⁰⁴ Piemonte & Metzl, *supra* note 16, at 409.

¹⁰⁵ See Lanae Erickson, *Third Way Applauds H.R. 1236, the Extreme Risk Protection Order Act*, THIRD WAY (Sept. 3, 2019), <https://www.thirdway.org/press/third-way-applauds-h-r-1236-the-extreme-risk-protection-order-act>. One issue with these laws is that they typically require removal of all firearms; they act as a total bar on access to firearms, which may be appropriate in cases of extreme threat, but are not calibrated to respond to moderate risks.

¹⁰⁶ See Alick, *supra* note 58.

Ethan and, therefore, they are legally responsible for what he did.¹⁰⁷ But that requires a leap unsupported by the evidence, the law, and the research on mass shootings.

D. Extending the Parental Duty of Care to Others

Another way in which the *Crumbley* case upends legal conventions is by claiming that the legal parental duty of care, which the Crumbleys owed to Ethan and which would make them liable for negligence that resulted in harm to him, extended to the victims of the Oxford High School shooting as well.¹⁰⁸ That is, the prosecution claimed that the Crumbleys owed a legal duty of care, similar to the duty to parents owe their children,¹⁰⁹ to the victims of the shooting in a novel and problematic doctrinal extension.

When parents breach the duty of care owed to their child, they can face legal consequences, either through the family welfare system or the criminal legal system.¹¹⁰ Many criminal cases against parents arise from omissions—a failure to protect their children from physical or environmental harm that results in illness or death.¹¹¹ The prosecutors argued that the Crumbleys’ failure to secure the firearm Ethan used and their failure to intervene when he was experiencing mental health issues amounted to legally cognizable omissions given their duty of care to Ethan.¹¹² But the legal duty of care, and the liability that flows from omissions when one owes a legal duty, are limited to those owed a duty. Parents owe a clear duty to their children based on their relationship status. They do not owe a general duty to others.¹¹³ This legal principle combined with the social norm that good parents

¹⁰⁷ This belief is clearly reflected in remarks made during the Crumbleys’ sentencing, which asserted that had the Crumbleys done one thing differently, it would have prevented the shooting. *See* Transcript of Sentencing at 77, *People v. Crumbley*, 2022 Mich. Cir. LEXIS 501 (2022) (No. 2022-279989-FH, No. 2022-279990-FH).

¹⁰⁸ *See* The People’s Bench Brief Re: Proposed Jury Instructions Submitted by Defendant and the People, p. 8–10.

¹⁰⁹ Criminal law imposes a duty on parents to “provide necessary care for a child’s health and well-being.” *See* *People v. Ogg*, 26 Mich. App. 372, 381, 385–86 (1970); *accord*, M.C.L.A. § 712.

¹¹⁰ *See* Vincent R. Johnson & Claire G. Hargrove, *The Tort Duty of Parents to Protect Minor Children*, 51 VILL. L. REV. 311, 313 (2006); *State v. Williams*, 4 Wn. App. 908 (Wash. Ct. App. 1971); DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES – AND HOW ABOLITION CAN BUILD A SAFER WORLD* (2022).

¹¹¹ *See, e.g.*, *Williams*, 4 Wn. App. 908; *People v. Ogg*, 26 Mich. App. 372, 381 (1970) (upholding the involuntary manslaughter conviction of a mother who left her two children home alone, locked in a windowless room without means of escape during a fire); *see also* *State v. Gardner*, 716 S.W.3d 388 (Tenn. Crim. App. 2024). *See e.g.*, *Ogg*, 26 Mich. App. at 385–86 (finding that a mother who was negligent in leaving her children unattended and unable to escape their home was criminally liable for their deaths when a fire broke out); *Commonwealth v. Howard*, 265 Pa. Super. 535, 536–37 (1979) (finding that a mother was criminally liable for the death of her child because she failed to protect the child from the abuse of her boyfriend). Guyora Binder & Luis Chiesa, *The Puzzle of Inciting Suicide*, 56 AM. CRIM. L. REV. 65, 77 (2019) (“The combination of a legal duty to prevent harm, an available prophylactic strategy, and an omission to use it, suffices for causation by omission.”).

¹¹² *People v. Crumbley*, 11 N.W.3d 576, 588, 591–92 (Mich. App. 2023).

¹¹³ *See* Chiesa, *supra* note 42, at 389–90 (discussing the case of *Smith v. Brooks*, where the court

should focus on their own children's well-being precludes criminal liability for harm to the Oxford High School shooting victims based on the Crumbleys' failure to control Ethan.

If Ethan had used the gun to harm himself, there could be an argument that his parents bore legal responsibility for their omissions because their failure to secure or remove the gun from the household or take other actions to address his mental health resulted in him shooting himself. But even this kind of legal theory is rarely pursued because of the strong presumption that an intentional act like shooting oneself, as opposed to an accidental shooting, intervenes and severs the causal chain.¹¹⁴ There are very few cases where parents are held criminally responsible for intentional acts of self-harm by their children. In one case, a mother whose son committed suicide was found legally culpable because he showed clear signs of depression and suicidal ideation and his mother did not take any action to try to intervene or get him help.¹¹⁵ The jury found that she owed a duty to her son that was violated, and since he was the one who suffered harm, she could be held liable.¹¹⁶ The case was ultimately overturned on other grounds,¹¹⁷ but it illustrates a theory of liability by omission when a duty is owed, even when there is an independent, autonomous cause for the ultimate harm.

Extending the parental duty of care to those outside the parent-child relationship, making parents legally responsible for harms to third parties, has the potential to exponentially increase parental criminal liability cases. It would dramatically widen the range of conduct that parents could be held responsible for and it is unclear where the limits would be drawn given that liability under tort law is easier to meet. Perhaps the extension of this doctrine would be limited to holding parents accountable when their child's actions result in traumatic harm to multiple victims, such as the Oxford High School shooting. But that limitation would be based on a norm and not a legal principle because of how broadly the legal duty, as stated in this case, would extend—to any third party victim of intentional harm by a minor child.¹¹⁸ Thus, over time, this line could erode and extend liability in more run-of-the-mill cases, opening the floodgates and making parents susceptible to the sweeping reach of the criminal legal system. Statutory measures creating parental

found that “a parent is not an insurer that the child will not harm another”); Johnson & Hargrove, *supra* note 108, at 320. Parents may bear responsibility for their children's conduct that harms others under tort law. But statutory and precedential authority is clear that this duty exists only in civil cases for monetary damages. See *Dortman v. Lester*, 380 Mich 80 (1968); MCLS § 600.2913; *accord*, *May v. Goulding*, 365 Mich 143 (1961).

¹¹⁴ *But see e.g.*, *People v. Kevorkian*, 447 Mich. 436 (1994) (finding liability for assisted suicide can attach even when there is an independent, intentional intervening cause if the defendant also intended to cause death).

¹¹⁵ John W. Toomey, *The Causes of Minor Suicide: How the Restatement Approach to Foreseeability & Scope of Liability Fails To Act as a Deterrent*, 49 AM. J. L. & MED. 396, 402 (2023).

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ People's Brief in Support of People's Response to Defendants' Motion to Quash, p. 5, *People v. Crumley*, Case Nos. 2022-279989-FH, 2022-279990-FH (Jun. 15, 2022).

criminal liability could try to proactively address this ambiguity and set clear limits on the scope of liability. But even with legislative safeguards, there are policy reasons why this expansion is misguided. Extending parental criminal liability for children's intentional conduct does nothing to address the factors that lead to acts of youth violence and extracts costs from families subjected to even greater contact with the criminal legal system.¹¹⁹

If the state wanted to hold the Crumbleys accountable for their actions, in purchasing the gun and not securing it properly, or their inactions, in failing to respond to their son's deteriorating mental health, or both, it could have without pursuing these doctrinal extensions. At a minimum, it could have charged them with contributing to the delinquency of a minor—a misdemeanor crime under Michigan law.¹²⁰ The Crumbleys also likely could have been prosecuted for negligence related to Ethan's unfettered access to the firearms in the house. In previous cases where a child has intentionally used a firearm to injure or kill others, parents have been prosecuted and convicted for reckless conduct and felony neglect for providing access to the firearms.¹²¹ The state also could have pursued an accomplice liability charge against them, for aiding and abetting Ethan's crimes by purchasing a gun for him. This would be very difficult to prove because it would require some intentionality on the part of the Crumbleys, which there was no evidence of.¹²² Had Michigan had a safe storage law or a red flag law at the time,¹²³ the Crumbleys could have been charged with violations of those laws for failing to secure the gun or for having the guns in the home at all given Ethan's mental health issues. But the prosecution did not bring these charges. They went after the Crumbleys for involuntary manslaughter because it would have the biggest symbolic impact and result in the harshest penalty.¹²⁴ The prosecution made a conscious choice to pursue the involuntary manslaughter charges to widen the zone of accountability, to get more justice, and more retribution for the lives lost. Regardless of what the Crumbleys deserve, this doctrinal precedent will open the

¹¹⁹ See *infra* Part III.D. (discussing parental monitoring laws and evidence that they do not reduce youth crime or improve parental support).

¹²⁰ MICH. COMP. LAWS § 750.145 (2025).

¹²¹ See Lauren Mascarenhas, Chris Boyette & Virginia Langmaid, *Father of Highland Park Shooting Suspect Pleads Guilty to Misdemeanor Reckless Conduct Charges in Deal with Prosecutors*, CNN (Nov. 6, 2023), <https://www.cnn.com/2023/11/06/us/robert-crimo-highland-park-shooting/index.html>; *Deja Taylor, Mother Of 6-Year-Old Who Shot Virginia Teacher Abby Zwerner, Gets 2 Years in Prison for Child Neglect*, CBS News (Dec. 15, 2023), <https://www.cbsnews.com/news/deja-taylor-sentenced-mother-6-year-old-shot-virginia-teacher-abby-zwerner-child-neglect/>.

¹²² The fact that there was no evidence the Crumbleys knew of Ethan's intention to commit a mass shooting, which would make an accomplice theory of liability impossible to bring, also supports the argument that his actions were not foreseeable.

¹²³ Michigan passed a Safe Storage gun law in the wake of the Oxford School shooting. Golston & Rahal, *supra* note 71.

¹²⁴ Kerry Breen, *Michigan Prosecutor on Why She Embarked on Landmark Trials of School Shooter's Parents*, CBS NEWS, Mar. 15, 2024, <https://www.cbsnews.com/news/jennifer-james-crumbley-convicted-oxford-high-school-shooting-parents-prosecutor/> ("The precedent set by the convictions of James and Jennifer Crumbley could have a wide impact. . . [the prosecutor] said she hopes these landmark decisions prompt future change").

door to more prosecutions of parents on similarly shaky legal grounds, potentially exposing parents to liability for all manner of their child's conduct and doubling down on the use of the criminal legal system to vindicate social and moral judgments about proper parenting, without addressing the social and structural issues that contribute to acts of mass violence by juveniles.

II. THE PARENTAL BIND

Parents in America are in a difficult bind. They are expected to raise well socialized, productive, good children without government interference or much guidance. They are expected to make choices for their children independently, using their best judgment guided by their principles and cultural values. Parents, not experts or government actors, are assumed to know what is best and are given near total authority over decisions that affect their children.¹²⁵ This is a core American right, central to the notion of individualism and autonomy.¹²⁶ The emphasis on parental autonomy and rejection of expert guidance has grown recently as a result of the parental rights movement and the increasing privatization of education and medical care.¹²⁷

There are two corollaries that complicate the valorization and legal privileging of parental autonomy in American society. First, with autonomy comes individual responsibility. Parents are allowed to make independent choices about their children's upbringing, but they are expected to manage and provide for their children without state assistance.¹²⁸ A failure to properly provide for one's children can lead to social reprobation or charges of child neglect at which point state agencies can step in. Second, with autonomy comes blame for any unintended or unwanted outcomes. This is true even when the parenting style or choices on their own are not necessarily problematic. But when they lead to negative consequences, parents are blamed after the fact and judged for the decisions they made and can be subjected to state interference, regulation, and increasingly criminalization.¹²⁹ The Crumbleys were prosecuted not for their independent criminal acts but for their parenting choices that, as the prosecution argued, led to their son's horrific crime.

¹²⁵ Mary Ziegler, Maxine Eichner & Naomi Cahn, *Retrenchment by Division: The New Politics of Parental Rights*, 123 MICH. L. REV. 669, 700 (2025); Clare Huntington & Elizabeth S. Scott, *Conceptualizing Legal Childhood in the Twenty-First Century*, 118 MICH. L. REV. 1371, 1414 (2020). See Murphy, *supra* note 35, at 1165 ("One of the most deeply embedded principles in American family law is the principle of family autonomy, which limits the state's intervention in the affairs of the intact family."); Schneider, *supra* note 35, at 1835–39 (discussing the "legal tradition of noninterference in the family").

¹²⁶ *Troxel v. Granville*, 530 U.S. 57, 65 (2000) ("[T]he interest of parents in the care, custody, and control of their children – is perhaps the oldest of the fundamental liberty interests recognized by this Court.").

¹²⁷ See Ziegler, Eichner & Cahn, *supra* note 123, at 674.

¹²⁸ See Cynthia Godsoe, *Parsing Parenthood*, 17 LEWIS & CLARK L. REV. 113 (2013) (discussing the way parents who rely on state programs are seen as bad and underserving).

¹²⁹ This description applies to parents who may make decisions that are controversial or contested, but within a grey zone of acceptability. I am not referring to parents who engage in abusive or neglectful behavior, where the expectations are clear.

This Part unpacks the parental bind and examines the tension between the parenting decisions that gave rise to the Crumbleys' criminal liability, most notably the failure to address their son's mental health issues, and the long-standing tradition of deference to parents in making those decisions.¹³⁰ While Part I argued that the *Crumbley* case is doctrinally unsound and went too far in holding the Crumbleys liable for involuntary manslaughter, this Part claims that even if the law allows for liability, criminalizing parenting choices will only serve to exacerbate inequality between those who are already targets for enhanced scrutiny and judgment and those whose are insulated by virtue of their race and class privilege while doing nothing to address the underlying issues that give rise to adolescent violence.

The Crumbleys were found to be grossly negligent, which required a finding that they knew about the danger their son posed and they failed to exercise ordinary care by not getting him mental health treatment and not securing the gun he used in the shooting.¹³¹ But when parenting is a private matter, parents are given near-total autonomy, and different parts of society champion different models of parenting, how do we determine what ordinary care looks like? Many segments of society, including those who emphasize tough love and are skeptical of the medical, pharmaceutical, or psychiatric industries, would likely think the Crumbleys acted with ordinary care when they did not get Ethan mental health treatment. Instead of being grossly negligent, many parents might see it as reasonable to respect their child's privacy and to encourage their child's resiliency and independence before turning to counseling or other treatment. Similarly, many members of the Oxford community would find the presence of guns in the Crumbley home and Ethan's trips to the gun range to be reasonable and consistent with local culture. This is not a defense of the Crumbleys' parenting or the decisions they made about their son. However, it suggests that in the absence of clear parenting guidelines and fuzzy norms regarding children's privacy and independence, the Crumbleys' behavior did not meet the requisite *mens rea* standard. The socio-cultural norms around parenting, deference to parental judgment, and the diversity in parenting approaches, demonstrate that "reasonable" or "ordinary" care are slippery concepts and can be deployed to make reasonable decisions at the time unreasonable after the fact. In marginal cases and cases like the Crumbleys that base liability not on the parents' own criminal actions, but on their parenting choices and their son's criminal actions, the law should demand more before condemning parents to the penal system.

This Part begins by surveying the contours of modern parenting and parental autonomy, and the tension created when parenting choices conflict with shared social values, violate class or race-based expectations, or result in harm requiring accountability. It then examines the ways in which parents can be held criminally

¹³⁰ See Murphy, *supra* note 35; Schneider, *supra* note 35.

¹³¹ Jury Instructions, *supra* note 38, at 28. The gross negligence standard uses the terms "ordinary care" and "reasonable person" in its explanation.

culpable, reflecting socio-economic and cultural biases and illustrating the highly discretionary way in which parental criminal liability is used as a mechanism of social control. Lastly, this Part argues that the Crumbleys were judged according to an idealized model of parenting—what a perfect, as opposed to reasonable, parent would do in their situation; a standard that almost no parent could meet when judged in the aftermath of an unspeakable tragedy like the Oxford High School shooting, and which will lead to unfair and overly broad instances of parental criminal liability.

A. Mother Knows Best: Privileging Parental Autonomy

Parents in modern American society have tremendous autonomy over decisions regarding their children.¹³² They are given a wide berth by the government to raise children according to their personal values and beliefs; in other words, “as they see fit.”¹³³ There is a long legal tradition of not interfering with the nuclear family or parenting decisions.¹³⁴ Parents are virtually unrestricted in making decisions regarding education, discipline, medical care, gender expression, religious upbringing, and access to technology, social media, and firearms on behalf of their children. This right is legally enshrined and understood to include a parent’s “sacred private interests” in the “control of the child and his training.”¹³⁵

Parents also have a duty to care for their children.¹³⁶ In its most basic terms, this means parents must ensure that their children have basic necessities, are protected, receive supervision and guidance, and medical care when needed or face legal consequences.¹³⁷ But, as discussed in Part I, this duty is owed exclusively to one’s own children; it is not a general duty owed to society or to other children.¹³⁸ Parents are typically focused, often laser-like, on their own child’s well-being and raising them in accordance their own worldview, with little regard for others. For example,

¹³² Murphy, *supra* note 35; Schneider, *supra* note 35; Elizabeth S. Scott & Robert E. Scott, *Parents as Fiduciaries*, 81 VA. L. REV. 2401, 2406 (1995) (noting that courts, media and academic commentators have begun to argue that “the latitude given to parents in rearing their children is . . . excessive, allowing some parents to inflict unmonitored and unsanctioned harm on their children” and that “the tradition of legal protection of parental rights has deep historical roots”); *see also* Katharine T. Bartlett, *Re-Expressing Parenthood*, 98 YALE L.J. 293, 311 (1988) (“The regulation of, and the failure to regulate, family matters . . . reflect public decisions about the family . . .”); Ziegler, Eichner & Cahn, *supra* note 123, at 699.

¹³³ *See* Ziegler, Eichner & Cahn, *supra* note 123, at 672-74; MAXINE EICHNER, *THE SUPPORTIVE STATE: FAMILIES, GOVERNMENT, AND AMERICA’S POLITICAL IDEALS* 10, 12 (2010); Cynthia Godsoe, *Redrawing the Boundaries of Relational Crime*, 69 ALA. L. REV. 169, 183 (2017) (“This privilege is also sometimes supported by a parent’s right to raise his child as he sees fit.”).

¹³⁴ *See* Murphy, *supra* note 35 (“One of the most deeply embedded principles in American family law is the principle of family autonomy, which limits the state’s intervention in the affairs of the intact family.”).

¹³⁵ *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944).

¹³⁶ Johnson & Hargrove, *supra* note 108, at 317–18.

¹³⁷ *See* Clare Huntington & Elizabeth Scott, *The Enduring Importance of Parental Rights*, 90 FORDHAM. L. REV. 2529, 2531 (2022); Johnson & Hargrove, *supra* note 108, at 313; *State v. Williams*, 4 Wn. App. 908 (Wash. Ct. App. 1971); ROBERTS, *supra* note 106; *infra* Part I.D.

¹³⁸ *Supra* Part I.B; Johnson & Hargrove, *supra* note 108, at 320.

increasingly parents are being empowered not to vaccinate their children against childhood diseases like the measles, despite the public health consequences to other children, particularly those too young to be vaccinated.¹³⁹ The parents' duty and sphere of autonomy and responsibility only include their own family, not the broader public. Consistent with the emphasis on individualized culpability and a limited duty of care, parents are not liable for the effects on other children of their personal medical, educational, or religious decisions. That is the role of the state, which is tasked with protecting the well-being of all citizens, including minors, and fostering their development.¹⁴⁰

Beyond merely providing the material necessities for one's child, parents' duty of care also encompasses responsibility for a child's social and moral upbringing.¹⁴¹ While the duty to provide a child with adequate food and shelter may seem straightforward,¹⁴² the duties around imbuing one's child with the right values and prosocial behaviors are contested. Who is to say what a proper social and moral upbringing looks like? Scholars in developmental psychology and education have debated whether the parental duty is one of care or control.¹⁴³ Is a parent's duty to honor a child's preferences and nurture them in ways that lead to their social and moral development? Or is it a duty to exercise control over their decisions, supervise them, and prevent them from engaging in harmful behaviors?¹⁴⁴ If parents owe a duty to provide their children with a social and moral upbringing, which version of morality is correct? Social and governmental institutions do little to help answer this question. There are deeply divisive accounts of what it means to be good and moral in society.¹⁴⁵ And regardless of which vision one may subscribe to, government support and resources to help parents are largely nonexistent.

Judgements of other people's parenting depends largely on one's ideological orientation and value system, and whether they are aligned. But they also reflect *post hoc* judgments dependent on outcome. This outcome-dependent approach suffers from two problems. First, there is no guidance for parents in advance. They are left to independently determine how to raise their children, considered experts on their own family, and then demonized and blamed if their children either fail, are harmed, or cause harm to someone else. Second, giving parents near-total autonomy over their children also means that they are accountable for regulating

¹³⁹ See Liz Crampton & Gregory Svirnovskiy, *Florida Plans to Stop School Vaccine Mandates. These States Could Follow.*, POLITICO (Sept. 19, 2025, 5:00 AM), <https://www.politico.com/news/2025/09/19/rfk-vaccine-mandate-maha-florida-00572512>.

¹⁴⁰ Emily Buss, *Allocating Developmental Control Among Parent, Child and the State*, 2004 U. CHI. LEGAL F. 27, 33–36 (2004); Ziegler, Eichner & Cahn, *supra* note 123, at 701.

¹⁴¹ Leonie Le Sage & Doret De Ruyter, *Criminal Parental Responsibility: Blaming Parents on the Basis of Their Duty to Control Versus Their Duty to Morally Educate Their Children*, 40 EDUC. PHIL. & THEORY 789, 797 (2008).

¹⁴² Of course, this is not straightforward, particularly for parents facing financial instability and food or housing insecurity.

¹⁴³ Le Sage & De Ruyter, *supra* note 139.

¹⁴⁴ *Id.*

¹⁴⁵ See JOHN SIDES ET AL., *THE BITTER END: THE 2020 PRESIDENTIAL CAMPAIGN AND THE CHALLENGE TO AMERICAN DEMOCRACY* (2022).

their children and accountable if and when things go wrong. This is a clear devolution of responsibility for safety and security, something that state actors and institutions should be providing to families.¹⁴⁶ Public schools are explicitly charged with providing instruction and guidance to, as well as protection and oversight of, children during the school day.¹⁴⁷ Police departments and social service agencies, like Child Protective Services, are charged with providing security and oversight when there is a reason to be concerned and intervene if necessary.¹⁴⁸ Despite the existence of these state institutions, the care and management of children, as well as their relationships and effects on others, are largely outsourced to individual families. Parents are expected to be the law enforcement mechanism in their homes, placing the onus on parents to cultivate the correct behavior in their children and then correct, punish, or control them when they act out or engage in harm.

These tensions have been exacerbated by the increasing prominence of the parental rights movement over the last decade.¹⁴⁹ This movement seeks to wrest control back, primarily in educational spaces, from government overreach and indoctrination.¹⁵⁰ As Professor Baldwin Clark has argued, the movement has most recently been consumed with pushing back on Critical Race Theory (CRT) and diversity, equity, and inclusion (DEI) ideology that parents feel improperly indoctrinates their children.¹⁵¹ Public schools and libraries have come under attack for exposing children to material parents do not agree with. School Boards have become central sites of contestation as parents attempt to impose their ideological preferences on the curricular content their children are exposed to. As part of this movement, as of 2022, thirty-four states introduced bills to give parents control over their children's education.¹⁵² However, the parental rights movement goes further back than the recent backlash against DEI initiatives and covers more terrain.¹⁵³ It encompasses pushback against the medical, pharmaceutical, and food industries. Parents, particularly mothers,¹⁵⁴ are challenging medical and scientific guidance, claiming that these industries are corrupted by corporate interests. They are pushing for greater autonomy over decision making related to their children's

¹⁴⁶ See Anna Arons, *Prosecuting Families*, 173 U. PENN. L. REV. 1029, 1039 (2025).

¹⁴⁷ See Barbara A. Fedders, *The End of School Policing*, 109 CAL. L. REV. 1443, 1464 (2021) ("The Supreme Court has . . . stated that for many purposes schools act *in loco parentis*" and "have a legal obligation to keep the students under their supervision safe"); see also, Morton Skovdal & Catherine Campbell, *Beyond Education What Role Can Schools Play in the Support and Protection of Children in Extreme Settings?*, 41 INT'L J. OF EDUC. DEV. 175, 175 (2015).

¹⁴⁸ Jane Waldfogel, *Prevention and the Child Protection System*, 19 THE FUTURE OF CHILDREN 195, 195 (2009); DONNA PENCE & CHARLES WILSON, THE ROLE OF LAW ENFORCEMENT IN THE RESPONSE TO CHILD ABUSE AND NEGLECT 6–7 (1992).

¹⁴⁹ LaToya Baldwin Clark, *The Critical Racialization of Parents' Rights*, 132 YALE L. J. 2139, 2180 (2023).

¹⁵⁰ See Ziegler, Eichner & Cahn, *supra* note 123, at 673–74.

¹⁵¹ Baldwin Clark, *supra* note 147, at 2147, 2180.

¹⁵² *Id.* at 2180.

¹⁵³ See Ziegler, Eichner & Cahn, *supra* note 123, at 672–74 (discussing parental focus on things like gender ideology and requiring parental consent for name changes, medical decisions, and access to social media).

¹⁵⁴ See generally ELIZABETH GILLESPIE MCRAE, MOTHERS OF MASSIVE RESISTANCE: WHITE WOMEN AND THE POLITICS OF WHITE SUPREMACY (2018).

medical care, gender expression, education, religious upbringing, and related decisions that reinforce a worldview that sees parents as the ultimate experts on their children.¹⁵⁵

Part of a parents' expertise comes from the belief that they will always choose the best option for their child because of how much they love them.¹⁵⁶ This assumes that, because a parent's love is absolute, they are always operating in the child's best interest. Legal regulation or government guidance is thus unnecessary for the upbringing and development of children.¹⁵⁷ Parents are the only ones who can be trusted to look out for their children, while state and government actors are working towards other political, ideological, or economic goals. Scholars have called this the romanticization phenomenon and described the ways in which it has insulated parents from scrutiny, particularly when it comes to issues of discipline and abuse.¹⁵⁸ But the same logic—that a parent is always making a decision with their child's best interest at heart—drives the support for parental rights and autonomy in contested areas, such as education and healthcare.

The notion of parents as the ultimate authority or parents as watchdogs, surveilling their children's activities with almost panopticon-level intensity, cuts against research on parenting best practices. The public health literature advocates trusting scientific and medical experts for advice regarding nutrition, medication, and vaccinations.¹⁵⁹ Research in developmental psychology has long found that fostering children's independence and autonomy is critical to their long-term success and is highly correlated with prosocial tendencies.¹⁶⁰ It is common for children to keep personal journals or diaries, offering a private realm in which they can work through their innermost thoughts. Research supports that respecting children's privacy helps foster their independence and trust with their parents.¹⁶¹ Moreover, many studies document the harms of constant supervision or "helicopter

¹⁵⁵ See Ziegler, Eichner & Cahn, *supra* note 123, at 672–74.

¹⁵⁶ Jennifer M. Collins, *Lady Madonna, Children at Your Feet: The Criminal Justice System's Romanticization of the Parent–Child Relationship*, 93 IOWA L. REV. 131, 134, 139 (2007).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.* at 141.

¹⁵⁹ See generally ERIKA ALLEN WOLTERS & BRENT S. STEEL, WHEN IDEOLOGY TRUMPS SCIENCE: WHY WE QUESTION THE EXPERTS ON EVERYTHING FROM CLIMATE CHANGE TO VACCINATIONS (2018) (explaining circumstances that have led to distrust of experts and providing examples of harmful outcomes as a result).

¹⁶⁰ See Emma L. Bradshaw et al., *Disentangling Autonomy-Supportive and Psychologically Controlling Parenting: A Meta-Analysis of Self-Determination Theory's Dual Process Model Across Cultures*, 80 AM. PSYCH. 879 (2025); Jolene van der Kaap-Deeder et al., *Children's Daily Well-Being: The Role of Mothers', Teachers', and Siblings' Autonomy Support and Psychological Control*, 53 DEV. PSYCH. 237 (2017), <https://doi.org/10.1037/dev0000218>; Kenneth H. Rubin et al., *The Transaction Between Parents' Perceptions of Their Children's Shyness and Their Parenting Styles*, 23 INT'L J. OF BEHAV. DEV. 937 (1999); Karyn Sporer & Dana L. Radatz, *Mothers of Violent Children with Mental Illness: How They Perceive Barriers to Effective Help*, 32 J. FAM. VIOLENCE 683, 689 (2017).

¹⁶¹ See Benjamin Shmueli & Ayelet Blecher-Prigat, *Privacy for Children*, 42 COLUM. HUM. RTS. L. REV. 759, 772, 789 (2011); Cindy J. Weigel-Garrey et al., *Children and Privacy: Choice, Control, and Access in Home Environments*, 19 J. FAM. ISSUES 43, 44 (1998).

parenting.”¹⁶² And yet, parents who do give their children more freedom and independence have been demonized, or worse held criminally liable for choices that respect and foster their children’s autonomy.¹⁶³

Parents of transgender children know this struggle intimately.¹⁶⁴ Some parents of transgender children will fight for their child to be addressed using preferred pronouns, have access to gender-neutral bathrooms, and receive gender-affirming medical treatment. In certain socio-cultural groups, fighting for a transgender child’s rights is a key way of supporting them.¹⁶⁵ However, as transgender rights have become more politicized and attacks on issues like bathroom access and inclusion in sports have proliferated, supporting a child who is seeking medical interventions can be seen as abusive.¹⁶⁶ For some parents, acknowledging, encouraging, or facilitating a child’s transition may be seen as harmful.¹⁶⁷ In this divisive moment, which parent is the good one and is most faithfully fulfilling their duty to their child? At a time when science and expertise are under attack, there is no objective source of authority for many issues that parents face; they are left to rely on their own judgement and values. For example, even though decades of psychological research have demonstrated the long-term harmful effects of gender conversion therapy on youth,¹⁶⁸ some parents want the option to try this therapy for their children.¹⁶⁹ And while the therapy was banned in some states, consistent with the social science guidance, this issue is now in front of the Supreme Court and may become an available option for parents hoping to influence their children’s gender identification or sexual orientation.¹⁷⁰

Parents’ rights over their children’s exposure to firearms is also largely protected. Many states have a variety of robust gun laws, such as safe storage laws, red flag laws, registration requirements, and age and background checks. Nevertheless, a parent’s decision to expose their children to firearms and firearm safety is their own. While it is not legal for a minor to purchase a gun, in many states the law expressly permits children to handle guns under parental or adult

¹⁶² Bart Soenens et al., *Maladaptive Perfectionism as an Intervening Variable Between Psychological Control and Adolescent Depressive Symptoms: A Three-Wave Longitudinal Study*, 22 J. FAM. PSYCH. 465, 465–474 (2008); Bart Soenens et al., *Perceived Parental Psychological Control and Adolescent Depressive Experiences: A Cross-Cultural Study with Belgian and South-Korean Adolescents*, 35 J. ADOLESCENCE 261, 261–272 (2012), <https://doi.org/10.1016/j.adolescence.2011.05.001>.

¹⁶³ Gelinas, *supra* note 25. *See infra* Part II.C.

¹⁶⁴ *See* Holly Honderich, *Texas Parents Battle in Court for Custody of Transgender Child*, BBC NEWS (Oct. 25, 2019), <https://www.bbc.com/news/world-us-canada-50172907>.

¹⁶⁵ *See* Scottie Andrew, *Four Parents of Transgender Boys on the Challenges and Joys of Raising Their Sons in a World That Can Be Hostile*, CNN (July 25, 2021), <https://www.cnn.com/2021/07/25/us/parents-of-transgender-children-joy-wellness-trnd>.

¹⁶⁶ *See* Honderich, *supra* note 162.

¹⁶⁷ *Id.*

¹⁶⁸ Ann Mariow, *Can Conversion Therapy be Banned? Colorado Faces Speech Test at the Supreme Court*, N.Y. TIMES (Oct. 5, 2025), <https://www.nytimes.com/2025/10/05/us/politics/supreme-court-conversion-therapy.html>.

¹⁶⁹ *Id.*

¹⁷⁰ *Chiles v. Salazar*, No. 24-539 (2025).

supervision for things like hunting and target practice.¹⁷¹ Not only are parents allowed to expose their children to firearms, but in many places, learning to hunt and shoot is a key aspect of culture.¹⁷² In some communities, including Oxford, Michigan, learning how to properly operate a firearm is a rite of passage, and going on hunting trips or to the shooting range is part of local and family traditions.¹⁷³ In American society, there can be a variety of valid reasons for choosing to expose your child to firearms.¹⁷⁴ This variability with respect to exposure to firearms is part and parcel of a parenting culture that leaves decision-making authority in the hands of parents. And it leaves parents to triangulate different sources of information and pressures to try to make parenting decisions without clear guidance or support.

One area where the autonomy-responsibility conundrum is particularly murky is in mental health treatment for children. There are no general laws that require a parent to seek mental health treatment for their child, and more than half of U.S. states require a minor to consent to outpatient mental health treatment.¹⁷⁵ Parental consent alone is insufficient.¹⁷⁶ Laws requiring that parents seek medical or mental health treatment are typically only triggered once someone displays very serious symptoms indicating a physical risk of harm to themselves or others.¹⁷⁷ In those situations, parents may be subject to a court order mandating treatment and children can be involuntarily kept at a facility during a safety hold.¹⁷⁸ These are extraordinary steps that few parents or children want to undergo.¹⁷⁹ With respect to more typical mental health issues faced by children and young adults, there are no uniform standards for when to seek treatment. Despite the well-documented mental health epidemic that young people are living through,¹⁸⁰ there is no state requirement that they receive counseling services. They may be referred by schools if they display concerning behaviors and parents may certainly choose to seek out counseling or treatment for children, but there is no law that makes this kind of

¹⁷¹ See, e.g., GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE, *Minimum Age to Purchase & Possess in California*, https://giffords.org/lawcenter/state-laws/minimum-age-to-purchase-possess-in-california/#footnote_11_16021. See also Miller, *supra* note 3 (discussing the role of guns in community like in Oxford, Michigan).

¹⁷² See Wilmut, *supra* note 74; See Tommy Carroll, *My Son Experienced What Many Michiganders Feel Is a Rite of Passage*, WGRD (Apr. 4, 2022), <https://wgrd.com/my-son-experienced-what-many-michiganders-feel-is-a-rite-of-passage/>.

¹⁷³ *Id.*

¹⁷⁴ Piemonte & Metzl, *supra* note 16, at 408.

¹⁷⁵ Cf. MaryLouise E. Kerwin et al., *What Can Parents Do? A Review of State Laws Regarding Decision Making for Adolescent Drug Abuse and Mental Health Treatment*, 24 J. CHILD ADOLESCENT SUBSTANCE ABUSE 166 (2015) (discussing the limits on parents' ability to seek mental health treatment for their children).

¹⁷⁶ *Id.*

¹⁷⁷ See, e.g., CAL. WELF. & INST. CODE § 727.13 (West 2024); CAL. WELF. & INST. CODE § 5585.50 (West 2013).

¹⁷⁸ See, e.g., CAL. WELF. & INST. CODE § 5585.50 (West 2013).

¹⁷⁹ See Sporer & Radatz, *supra* note 158, at 685; cf. Ellen Barry, *Parents Often Bring Children to Psychiatric E.R.s to Subdue Them, Study Finds*, N.Y. TIMES (Dec. 27, 2022), <https://www.nytimes.com/2022/12/27/health/children-emergency-room-mental-health.html>.

¹⁸⁰ Piemonte & Metzl, *supra* note 16, at 409.

treatment mandatory. Because there is some debate over the appropriateness of certain types of mental health treatments, a wide range of therapeutic approaches, and conflicting or lacking empirical support for various treatments,¹⁸¹ parents may be reluctant to pursue mental health counseling.

Yet, when children act out in antisocial ways, make threats, or engage in harmful or violent conduct, parents are often blamed for not getting them help. During the Crumbleys' sentencing hearing, a parent of one of the victims beseeched the court during her reading of a Victim Impact Statement, stating: "If only, Your Honor, they had taken their son to get counseling instead of buying him a gun."¹⁸² But again, this seemingly clear course of conduct is only after the fact, with the knowledge of what Ethan did. At no point were the Crumbleys ordered to get mental health treatment for their son. The school, despite having a log of concerns related to Ethan's affect, performance in school, and in-school behaviors, did not suggest to the Crumbleys that he should be taken for mental health counseling until the day of the shooting.¹⁸³ It was not until that day, after Ethan drew images of guns, a gunshot victim, and disturbing phrases like "blood everywhere" on a math worksheet, that the school required that Ethan be seen by a mental health professional.¹⁸⁴ And even then, that mandate was not immediate, and he was allowed by the school to remain on campus.¹⁸⁵

The Crumbleys, as well as the Oxford High School system, could have done more to address Ethan's mental health issues. But it is not at all obvious that the Crumbleys' failure to seek professional mental health treatment for Ethan was an instance of gross negligence, especially given the lack of uniform guidelines for mandated mental health treatment and the stigma many people feel regarding mental illness.¹⁸⁶ Guidelines requiring earlier mental health interventions would likely be deeply unpopular with the general public, who have been told that parents can make independent medical decisions for their children. There would likely be pushback against the perceived usurpation of parental autonomy to manage children's mental and emotional well-being. And yet, when something terrible happens, parents are held to account, and increasingly criminally prosecuted, for failing to pursue a specific intervention, such as getting mental health treatment or removing guns from the home. While the Crumbleys were prosecuted for these omissions, it is not clear what specific actions would have been good enough to

¹⁸¹ E.g. David Tolin, *Is Cognitive-Behavioral Therapy More Effective Than Other Therapies?: A Meta-Analytic Review*, 30 CLINICAL PSYCH. R. 710 (2010); Gerald Koocher et al., *Controversial Therapies for Children*, in COMPREHENSIVE EVIDENCE-BASED INTERVENTIONS FOR CHILDREN AND ADOLESCENTS (2014); Brian Zabooski et al., *Broadening our Understanding of Evidence-Based Practice: Effective and Discredited Interventions*, 21 CONTEMP. SCHOOL PSYCH. 287 (2017).

¹⁸² Transcript of Sentencing, *supra* note 105, at 77.

¹⁸³ People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9–10.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ See Sporer & Radatz, *supra* note 158, at 685.

overcome the presumption that they were bad parents who failed to exercise ordinary care.

B. Discretionary Parental Criminal Liability

Further complicating the parental bind are the many inconsistently enforced laws on the books that hold parents legally liable for their children's conduct. These laws are enforced in highly discretionary ways, such that parents who are seen as bad are subjected to them, while other parents who engage in similar conduct but are viewed as good parents are left alone. There are truancy laws that are inconsistently enforced against parents, often reflecting racial and class biases.¹⁸⁷ There are child neglect laws that are, again, discretionarily enforced and premised on subjective, context-dependent determinations about who to monitor and investigate. Many states have laws criminalizing contributing to the delinquency of a minor, which potentially applies to a huge swath of parenting behavior.¹⁸⁸ These laws are often vague or overbroad as written, providing little guidance to parents on how to manage their children. They are then selectively deployed against parents who are otherwise targeted as having done something wrong for some reason—either because their child was harmed or because of race and class dynamics.¹⁸⁹

Law enforcement also has the option to charge parents with straightforward crimes, such as involuntary manslaughter, for parenting conduct that results in tragedy. Many parents who absentmindedly leave their children in hot cars are prosecuted for involuntary manslaughter, although this is another area where there is a documented racial privilege, with white parents more often getting the benefit of the doubt and receiving a sympathy discount in charging and sentencing decisions.¹⁹⁰ Recently, parents in North Carolina were charged with involuntary manslaughter when their child was hit and killed by a car crossing the street, on the theory that they allowed him to walk outside without their supervision.¹⁹¹ In one notable case, Native American parents were convicted of involuntary manslaughter for the death of their infant child because they failed to get medical attention in time to address his abscessed tooth.¹⁹² This case took place in the context of the high rates of forced removal of Native American children from their parents during the period preceding the Indian Child Welfare Act. The defendants in that case, the Williams, testified that they were terrified of having their child removed from their care.¹⁹³ They also did not know how severe the illness was and assumed the child

¹⁸⁷ Dana Goldstein, *Inexcusable Absences*, THE NEW REPUBLIC (Mar. 6, 2015), <https://newrepublic.com/article/121186/truancy-laws-unfairly-attack-poor-children-and-parents>.

For a broader history of the racial and socioeconomic dimensions of these choices, see Collins, *supra* note 24, at 809.

¹⁸⁸ Paul W. Schmidt, *Dangerous Children and the Regulated Family: The Shifting Focus of Parental Responsibility Laws*, 73 N.Y.U. L. REV. 667, 675 (1998).

¹⁸⁹ ROBERTS, *supra* note 107.

¹⁹⁰ Collins, *supra* note 24, at 809.

¹⁹¹ Lake, *supra* note 25; Gelinas, *supra* note 25.

¹⁹² State v. Williams, 4 Wn. App. 908 (Wash. Ct. App. 1971).

¹⁹³ *Id.*

would respond to the medicine they gave him. But the court determined that a reasonable parent would have sought professional medical attention sooner, making them liable for negligence. The decision to criminally prosecute the Williams reflects a cultural bias regarding the reasonable standard of care, with little regard for the context that made them hypervigilant about involving non-Native American state actors with the power to break up their family. Putting aside the question of whether the Williams should have sought medical help sooner from a practical or moral standpoint, the determination of whether they acted “reasonably” was made without regard to context, and they were punished for a cultural and context-dependent decision. Thus, parental criminal prosecution can often function as a highly discretionary tool used against parents who fail a subjective test of proper parenting—one imbued with cultural, religious, and ideological biases.

Another domain where the selective deployment of these laws is apparent is when it comes to children suffering from mental illness who self-harm or commit suicide. Theoretically, parents could be held criminally liable for their omissions, failing in their duty to protect their child if their child commits suicide.¹⁹⁴ However, there is only one reported case of a parent facing criminal liability for failing to intervene to prevent her son’s suicide.¹⁹⁵ It may be that prosecutors decline to pursue charges in these situations because the suffering that a parent endures when they lose a child is enough punishment,¹⁹⁶ or because the general public, and legal actors, do not see the actions or inactions of parents in these situations as rising to the level of criminal culpability. But there is no meaningful limitation in the criminal law itself if a prosecutor was motivated to pursue criminal action against a parent of a child who commits suicide.

These parental liability laws and theories of liability by omission create an ever-present risk of criminal prosecution of parents based on their children’s actions. There is no clear, theoretically informed end point for parental liability if parents are presumed to have control over their children. These laws and legal applications create a landscape wherein prosecutorial discretion, and public opinion, drive outcomes, leaving parents without clear guidance on how to parent, and more importantly, having been indoctrinated to believe that they should make parenting decisions on their own—that they know best and have the prerogative to do as they see when it comes to their child’s upbringing.

¹⁹⁴ Chiesa, *supra* note 42.

¹⁹⁵ A survey of research did not find any cases where parents were charged with manslaughter liability for their child’s suicide. The closest example is a parent who was prosecuted in connection with her son’s suicide and charged with risk of injury to a minor and cruelty to persons. The parent was ultimately convicted, although the conviction was overturned on the basis that the statute was unconstitutionally vague. Vanessa Gardianos, *Adolescent Suicide: A Call for Parental Liability*, 24 ST. JOHN’S J. LEGAL COMMENT. 201, 206–09 (2009) (discussing the case of Daniel and Judith Scruggs).

¹⁹⁶ See Collins, *supra* note 24, at 828 (discussing the concept of a “suffering discount” for parents).

C. Socio-Cultural Norms of Parenting

Against this backdrop, what would a reasonable parent do? In American society, there is no universally agreed upon understanding of what it means to be a good parent. Bad parents can be identified based on what their children do, how successful (or unsuccessful) they are, and whether they act out, harm others, or otherwise fail to live up to modern standards.¹⁹⁷ Judging a parent as bad enough to justify criminal action is often a subjective, *post hoc* determination. Moreover, the meaning of good versus bad parents is often mediated by race and class privileges and filtered through the lens of identification.¹⁹⁸ People are less likely to judge parents to be bad if they share similarities along class, race, religious, or political dimensions.¹⁹⁹ And good parenting is largely associated with social class.²⁰⁰

Yet there is a normative version of a model parent that is perpetuated in the media and in political and religious discourse, and which is legally favored. This model valorizes hypervigilant, individualized parenting only attainable for those occupying a certain social class.²⁰¹ The narrative is of a parent, typically a mother, who has the time and resources to be completely devoted to their child, and ultimately completely responsible for their child.²⁰² Being a parent is the most important part of the parents' identity. They focus on their child's well-being to the exclusion of their own needs or interests.²⁰³ Any conflict between the two should favor the child. This is the paradigm of good parenting perpetuated by legal decisions and institutions as well as media, particularly social media, portrayals.²⁰⁴

This trope was deployed effectively during the prosecution's case against the Crumbleys, particularly Jennifer Crumbley.²⁰⁵ The prosecution painted Jennifer

¹⁹⁷ See Kayla Jimenez & Itzel Luna, *Well-Meaning Parents' Mistakes Kill Thousands of Kids Each Year. What Can Be Done?*, USA TODAY (Aug. 9, 2023), <https://www.usatoday.com/story/news/nation/2023/08/09/many-kids-lose-their-lives-every-year-as-a-result-of-parents-mistakes/70507866007/>.

¹⁹⁸ See Cynthia Godsoe, *Disrupting Carceral Logic in Family Policing*, 121 MICH. L. R. 939, 962 (2023); ROBERTS, *supra* note 107; see also Collins, *supra* note 24, at 809.

¹⁹⁹ Godsoe, *supra* note 196; ; ROBERTS, *supra* note 107; Collins, *supra* note 24, at 809; see also Christie Renick, *The Nation's First Family Separation Policy*, THE IMPRINT (Oct. 9, 2018, 5:05 AM), <https://imprintnews.org/child-welfare-2/nations-first-family-separation-policy-indian-child-welfare-act/32431>.

²⁰⁰ See generally Cynthia Godsoe, *Parsing Parenthood*, 17 LEWIS & CLARK L. REV. 113 (2013); ROBERTS, *supra* note 106; Godsoe, *supra* note 191.

²⁰¹ *Id.*

²⁰² See Devany J. Bauer, *How the Media Communicates Ideals of Motherhood to Real Life Mothers*, 26 UWL J. UNDERGRADUATE RSCH. 1, 3 (2023).

²⁰³ See Natalie Mae Sisson, *Prioritizing Children's Well-Being: Child-Centrism and Parent and Relationship Outcomes* (2024) (Ph.D. dissertation, University of Toronto) (ProQuest).

²⁰⁴ See Ciera E. Kirkpatrick & Sungkyoung Lee, *Comparisons to Picture-Perfect Motherhood: How Instagram's Idealized Portrayals of Motherhood Affect New Mothers' Well-Being*, 137 COMPUTERS IN HUM. BEHAV. 1 (2022); Sally Hawkins et al., *'Tradwife' Lifestyle Trends on Social Media and the Internet Is Divided*, ABC NEWS (June 24, 2024, 6:40 AM), <https://abcnews.go.com/US/tradwife-lifestyle-trends-social-media-internet-divided/story?id=111327508>.

²⁰⁵ Women, specifically mothers, are generally seen as more culpable and treated more severely for

Crumbley as a negligent mother who ignored her son's pleas for help and put her interests and hobbies, including keeping horses and an extra-marital affair, ahead of her son.²⁰⁶ The prosecution introduced into evidence text messages from Ethan to his mother complaining about his mental health, and evidence that she either did not respond to or responded by dismissing or joking about them.²⁰⁷ The meaning of the text exchanges is subject to various interpretations, including that Jennifer Crumbley did not respond via text but discussed the content of the text messages with Ethan directly. But the prosecution argued they demonstrated that Ethan was trying to share his struggles and being ignored by his mother. The prosecution also presented evidence of unanswered text messages Ethan sent to Jennifer when she was at the horse stables, arguing that had she not been so focused on her hobby she would have been, and should have been, more responsive to her son's needs.²⁰⁸

The sentencing hearing echoed these gendered critiques, with several parents of the victims explicitly contrasting their parenting with Jennifer Crumbley's. One parent said during her victim impact testimony: "I would like to share with the shooter's parents . . . an example of what love looks like between a mother and her son. . . it doesn't appear that either of you cherished or even wanted your son, but I wholeheartedly wanted and cherished mine."²⁰⁹ The clear implication is that because Jennifer Crumbley had interests beyond her son, she was a bad parent. The irony is that Jennifer Crumbley's unwillingness to distance herself and denounce her son during her trial and sentencing, remarking that she still loved her son and requesting that a no-contact order with her son be removed, was used as further evidence of her guilt, lack of remorse, and disregard for victims.²¹⁰

failing to comply with gender stereotypes than men. Andrea L. Lewis & Sara L. Sommervold, *Death, But is it Murder? The Role of Stereotypes and Cultural Perceptions in the Wrongful Convictions of Women*, ALBANY L. REV. 1035, 1056 (2015); Rob Tillyer et al., *Differential Treatment of Female Defendants*, 42 CRIM. JUST. & BEHAVIOR 705, 706 (2015).

²⁰⁶ Eric Levenson & Lauren del Valle, *Mother of Michigan School Shooter Admits She and Husband Gifted Their Son the Gun as Precedent-Setting Trial Nears End*, CNN (Feb. 2, 2024), <https://www.cnn.com/2024/02/02/us/jennifer-crumbley-michigan-school-shooter-trial>; see also Tresa Baldas & Gina Kaufman, *Prosecutor Asks Jennifer Crumbley To Explain: Why Didn't You Bring Your Son Home?*, DETROIT FREE PRESS (Feb. 2, 2024), <https://www.freep.com/story/news/local/michigan/oakland/2024/02/02/jennifer-crumbley-prosecution-cross-examination/72451444007/>; Nadine El-Bawab, *Jennifer Crumbley Grilled By Prosecutors Over Extramarital Affairs in 2nd Day on Stand in Manslaughter Trial*, ABC NEWS (Feb. 2, 2024, 2:02 PM), <https://abcnews.go.com/US/jennifer-crumbley-grilled-prosecutors-extramarital-affairs-2nd-day/story?id=106894602>.

²⁰⁷ See FOX 2 Detroit, *Jennifer Crumbley Trial: Prosecution's Closing Arguments*, YOUTUBE (Feb. 2, 2024), <https://www.youtube.com/watch?v=PMAAyYwKJBY> (noting that Ethan Crumbley texted his mother about "seeing things" and that Jennifer did not reply because "he was just messing around").

²⁰⁸ See *id.* (emphasizing that the point of the evidence regarding Jennifer's horses was to show "what Jennifer Crumbley cared about the most and what she was doing . . . when her son learned to be a killer").

²⁰⁹ See Transcript of Sentencing, *supra* note 105, at 77–78.

²¹⁰ See *id.* at 22, 74, 82, 102, 127.

James Crumbley was similarly denounced for failing to adequately care for and engage with his son. He was criticized for the time he spent working as a DoorDash delivery driver. The prosecution claimed that James Crumbley's job was more important to him than his son because he chose to make deliveries instead of deal with his son's mental health issues.²¹¹ The prosecution argued that DoorDash delivery is a flexible job, allowing James Crumbley to accept or decline deliveries if there was a pressing need to do so.²¹² This description ignores James Crumbley's economic situation. It suggests he was a DoorDash delivery driver because he wanted to be and had complete control over his schedule. It ignores the possibility that James Crumbley was driving as much as possible to make money because he was concerned about making ends meet. In fact, James Crumbley had lost his job earlier in November 2021 and had just started driving for DoorDash to make money to support his family.²¹³ Both the prosecutor and the court ignored the relevant socioeconomic factors that affected James Crumbley's behavior and parenting approach. His focus on his job was pitted against his concern and care for his son during the trial, reflecting a class bias that favors a version of parenting that few families achieve.

While the stereotype of the utterly devoted parent is perpetuated throughout the media, political discourse, and the law, most research finds that parents with well-rounded lives and interests are better mentors and role models for their children.²¹⁴ Parents who display a total focus on their children to the exclusion of their personal needs can foster hyper-egoism in their children and inhibit prosocial development and understanding of their place in society.²¹⁵ It can also warp a child's sense of the roles that adults play in society, and disrupt their moral and social development and independence.²¹⁶ Despite this research, diverting one's attention away from one's child is seen as a parenting failure, especially if the child is having a hard time or acting out. This narrative ignores the reality of parenting in the moment, when a

²¹¹ See FOX 2 Detroit, *James Crumbley Trial: Prosecution's Closing Arguments*, YOUTUBE (Mar. 13, 2024), <https://www.youtube.com/watch?v=ovAi4LAR5vg> (highlighting that James performed four DoorDash deliveries on the day of the shooting, after the counselor informed him of Ethan's drawings and expressed concerns).

²¹² FOX 2 Detroit, *James Crumbley Trial: Prosecutor's Opening Statements*, YOUTUBE (Mar. 7, 2024), <https://www.youtube.com/watch?v=D4eqx2xxHaY> (stating that DoorDash allowed James Crumbley to set his own hours and decided when to work and when not to work and arguing that "as a DoorDash driver, he was able to just put his son next to him in the car" if he had to watch Ethan).

²¹³ *Id.* (stating that James Crumbley did not have a job in early November until he started driving with DoorDash).

²¹⁴ See Kathleen L. McGinn et al., *Learning from Mum: Cross-National Evidence Linking Maternal Employment and Adult Children's Outcomes*, 33 WORK, EMP. & SOC'Y 374, 374 (2019).

²¹⁵ Omna Shaki et al., *Helicopter Parenting, from Good Intentions to Poor Outcomes. What Parents Need to Know?*, 11 J. FAM. MED. & PRIMARY CARE 4753, 4755–56 (2022).

²¹⁶ *Id.*; Nathan A. Winner & Bonnie C. Nicholson, *Overparenting and Narcissism in Young Adults: The Mediating Role of Psychological Control*, 27 J. CHILD & FAMILY STUDS. 3650, 3654–55 (2018) (linking overparenting and parental psychological control with narcissistic tendencies); Daniel J. van Ingen et al., *Helicopter Parenting: The Effect of an Overbearing Caregiving Style on Peer Attachment and Self-Efficacy*, 18 J. COLLEGE COUNSELING 7, 13 (2015) (associating helicopter parenting with low general self-efficacy and poor peer attachment).

parent's attention is split between a number of competing priorities. If, under the law, having a demanding job or hobby can be introduced as evidence of parental neglect, then to guard against potential liability, parents must be constantly vigilant, constantly monitoring their children, and the children must be their number one priority at all times.²¹⁷ Thus, only those parents who have the ability to monitor their children all the time are given the benefit of being left alone by state and government agencies. Race and class subjugated individuals are subjected to much higher levels of state surveillance, partially because they may be unable to devote all their time and attention to their children.²¹⁸

Given the parental bind and the unrealistic demands placed on parents in contemporary society, parenting can be fraught, and what a reasonable parent exercising ordinary care would do is difficult to judge. Besides the problems with normalizing hypervigilant parents and privileging, then undermining, parental autonomy, the psychological research on parenting finds that most parents are not able to appreciate the risk their child may pose, further undercutting the wisdom of parental criminal liability.

III. THE PSYCHOLOGY OF PARENTING

The criminal legal system rests in part on a number of assumptions about human psychology, many of which are unfounded or controverted by empirical research.²¹⁹ The doctrinal extension of parental criminal liability for children's independent criminal acts ignores the psychological science of parenting. Imposing liability on parents based on their knowledge or awareness of their children's mental health, state of mind, and propensity for harm assumes that by virtue of their parenting role and relationship, they have this knowledge or should have this knowledge. But research suggests that parents typically view their children through rose-colored glasses, tend to downplay mental health concerns, and are more likely to perceive threats to their children, not from their children. Even when parents are aware that their child is struggling with mental health issues, that does not mean that they can appreciate the risk of harm they pose to others. Psychological research demonstrates that in the absence of direct threats or prior acts of violence it is not foreseeable to a parent that their child will seriously harm or kill others, contradicting the *Crumbley* prosecution's theory of proximate causation.

²¹⁷ But see Tami Scarola, *Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding of Justice*, 66 *FORDHAM L. REV.* 1029, 1029 (1997) (discussing the Provenzano case where the parents actually asked for help controlling their child and still were found guilty of misdemeanor failure to control for their son's criminal activities).

²¹⁸ See ROBERTS, *supra* note 107.

²¹⁹ See e.g., Kelli D. Tomlinson, *An Examination of Deterrence Theory: Where Do We Stand*, 80 *FED. PROBATION* 33, 34, 37 (2016) (summarizing empirical studies of deterrence that contradict its effectiveness).

Research on parents' understanding of and attitudes towards children who display antisocial, aggressive, or violent behaviors is relatively limited. But most empirical studies on this and related topics suggest that parents are unlikely to recognize when a child has mental health issues that may pose a danger to themselves or others.²²⁰ There are many factors that affect how a parent perceives their child. But by and large parents are no better equipped to appreciate the risk their child might pose than other people in the child's life, such as teachers, counselors, or coaches.²²¹ Moreover, parents tend to have biases in favor of their children,²²² leading them to downplay the severity of mental health symptoms and normalize concerning or problematic behavior.²²³ This research suggests that in most cases parents do not have the requisite *mens rea*, that is, they are not aware of the risk their children pose, to warrant liability for involuntary manslaughter under current doctrinal standards. Greater attention to the psychology of parenting can bring important insights to the area of parental criminal liability and help guide legal and institutional responses to adolescent criminality.

A. Predictors of Antisocial and Delinquent Behaviors

Research in developmental psychology has identified a number of factors that relate to antisocial, delinquent, or violent behavior by children and adolescents. Ecological, socio-economic, educational, and familial variables are all relevant to child and adolescent behavior.²²⁴ Decades of research have documented that the quality of the child-parent relationship is a key variable correlated with juvenile behavior.²²⁵ First, children who are securely attached have a baseline of trust in their parents and are able to develop independence and form good relationships with others as they mature. Children who have anxious or avoidant attachment styles typically do not feel secure in their relationships with their parents, leading them to either be insecure and anxious in forming relationships with others or to suppress or dismiss their emotional attachment to their parents and others. Anxious and avoidant attachments are correlated with antisocial and delinquent behavior.²²⁶

²²⁰ Arlenis Santana et al., *A Scoping Review of Barriers and Facilitators to Latinx Caregivers' Help-Seeking for Their Children's Mental Health Symptoms and Disorders*, 32 J. CHILD FAM. STUD. 3908, 3918 (2023); Kelly Wallace, *After Mass Shootings, Do Parents Shoulder Some of the Blame?*, CNN (Oct. 7, 2015), <https://www.cnn.com/2015/10/07/health/oregon-shooting-parents-blame/index.html>.

²²¹ See Andres De Los Reyes & Alan E. Kazdin, *Informant Discrepancies in the Assessment of Childhood Psychopathology: A Critical Review, Theoretical Framework, and Recommendations for Further Study*, 131 PSYCH. BULL. 483 (2005).

²²² See Scott A. Miller, *Parents' Attributions for Their Children's Behavior*, 66 CHILD DEV. 1557, 1565 (1995).

²²³ See Santana et al., *supra* note 218, at 3918–20.

²²⁴ David P. Farrington, *Prospective Longitudinal Research on the Development of Offending*, 48 AUSTL. & N.Z. J. CRIMINOLOGY 314, 321 (2015); Madeleine Stevens, *Preventing At-Risk Children from Developing Antisocial and Criminal Behavior*, 6 BMC PSYCH. 1, 2 (2018).

²²⁵ Le Sage & De Ruyter, *supra* note 139, at 791; Heather Scheuerman et al., *Reexamining the Link Between Parental Knowledge and Delinquency: Unpacking the Influence of Adolescents' and Their Parent's Perceptions*, 40 DEVIANT BEHAV. 703, 703 (2019).

²²⁶ Ryan Broll & Dylan Reynolds, *Parental Responsibility, Blameworthiness, and Bullying: Parenting Style and Adolescents' Experiences with Traditional Bullying and Cyberbullying*, 32

Second, researchers have found that “hostile parenting [is] significantly associated with crime.”²²⁷ This is particularly true if the parents exhibit violent tendencies themselves, and their children perceive violence to be a normal facet of life.²²⁸ Third, a lack of parental involvement and, importantly, monitoring during early childhood has been linked to incidences of aggressive and violent behavior in children.²²⁹ Parental control, defined as secure child-parent attachment, clear household rules, and parental supervision, is an important protective factor against child delinquency.²³⁰ Parental social support, defined as interest in and attention to a child’s emotional and social world, is also negatively correlated with delinquent behaviors.²³¹ This is consistent with research “suggesting that effective parenting involves both expressing warmth and setting limits.”²³²

But parental factors are just one aspect of childhood development and one piece of the juvenile delinquency puzzle. While research has consistently found that parental factors are correlated with child delinquency, the reality is more complicated than simply blaming distant or reactive parents for their children’s behaviors.²³³ Juvenile maladaptive, antisocial, and criminal behavior is influenced by the complex interplay of familial factors, environmental and community factors, neighborhood and peer group variables, and personality traits.²³⁴ The main variables associated with juvenile crime, particularly the use of violence, are delinquent peer association, exposure to crime and poverty, and the prevalence of guns in a community.²³⁵ The diagnostic tools employed by psychologists and psychiatrists evaluating adolescents for risk of future violence require consideration of at least twenty variables.²³⁶ Mental health status is one of the relevant factors, but not a determinative one.²³⁷ Given the complexity of behavior, it is difficult to

CRIM. JUST. POL’Y REV. 447, 448 (2021); Le Sage & De Ruyter, *supra* note 139, at 791.

²²⁷ Jennifer E. Copp et al., *Parenting and Young Adult Crime: The Enduring Effects of Parental Attitudes and Behaviors*, 62 J. RSCH. CRIME & DELINQ. 567, 586 (2025).

²²⁸ *Id.*

²²⁹ Cf. Elinore J. Kaufman et al., *Youth Firearm Injury: A Review for Pediatric Critical Care Clinicians*, 39 CRITICAL CARE CLINICS 357, 360 (2023); Broll & Reynolds, *supra* note 224, at 447.

²³⁰ John Paul Wright & Francis T. Cullen, *Parental Efficacy and Delinquent Behavior: Do Control and Support Matter?*, 39 CRIMINOLOGY 677, 695 (2001).

²³¹ *Id.*

²³² *Id.* at 695–96.

²³³ Le Sage & De Ruyter, *supra* note 139, at 790–91. Research into public attitudes regarding parental blame for their children’s actions has found that culpability determinations are moderated by the age of the child. The older the child, the less culpable the parents are deemed to be. And, even when parents are seen as blameworthy, support for punishment of the parents is low. Instead, participants support parental education and training. Eva Aizpurua et al., *The Sins of the Child: Public Opinion About Parental Responsibility for Juvenile Crime*, 114 CHILD. & YOUTH SERVS. REV., July 2020, at 1, <https://www.sciencedirect.com/science/article/pii/S0190740920301328> [<https://doi.org/10.1016/j.childyouth.2020.105023>]; Brank & Weisz, *supra* note 86.

²³⁴ See also Kevin S. Douglas et al., *Historical-Clinical-Risk Management-20, Version 3 (HCR-20^{V3}): Development and Overview*, 13 INT’L J. FORENSIC MENTAL HEALTH 93 (2014), doi:10.1080/14999013.2014.906519.

²³⁵ Colleen Sbeglia et al., *Parental Legal Culpability in Youth Offending*, 7 ANN. REV. CRIMINOLOGY 403, 408 (2024).

²³⁶ Douglas et al., *supra* note 232, at 98.

²³⁷ *Id.*; see also Piemonte & Metzl, *supra* note 16, at 410.

predict whether someone with social, psychological, or mental health issues poses an actual threat. Research on mass shootings has identified common warning signs, but there is no reliable model for predicting whether someone with mental health issues will engage in acts of violence.²³⁸ And there is little uniform guidance on therapeutic or mental health interventions absent a finding of credible threat.

Research on juvenile delinquency has found a variety of targeted interventions that can be protective against antisocial and delinquent behaviors, including increased parental monitoring.²³⁹ But research also cautions that focusing on parents ignores other key factors and can backfire. Parenting quality is subjective and increased parental monitoring and scrutiny can have adverse consequences for families and erode trust and connection between children and their parents.²⁴⁰

B. Parental Attributions and Beliefs

Some empirical research has examined parents' attributions for their children's behavior, as well as their beliefs regarding their children's personality. Attributions refer to the way in which individuals explain the cause of a behavior.²⁴¹ Research typically evaluates whether attributions are internal (or dispositional) or external (or situational). Internal attributions understand behavior to be a product of someone's innate character, personality, or ability, whereas external attributions understand behavior to be a product of one's social environment and other structural, contextual, and ecological variables.²⁴² One of the most robust findings in social psychology is the fundamental attribution error, where individuals tend to attribute their positive behaviors and outcomes to their innate characteristics and abilities and blame negative behaviors and outcomes on social contextual or environmental factors.²⁴³ Conversely, individuals tend to attribute others' negative behaviors and outcomes to internal, dispositional factors, and downplay the role of social or environmental factors.²⁴⁴ Attribution theory has important implications for assessing culpability for criminal conduct. Research has consistently found that individuals who make internal attributions for criminal behavior—such as thinking that someone committed a criminal act because they are a bad person, as opposed to thinking that their environment played a role—are more likely to endorse harsh, carceral responses to crime as opposed to rehabilitative responses.²⁴⁵ This is partly

²³⁸ This is especially true given that people with mental health issues are more likely to be victims of violence than perpetrators. Piemonte & Metzl, *supra* note 16, at 411; *see also* Jonathan Metzl & K.T. MacLeish, *Mental Illness, Mass Shootings, and the Politics of American Firearms*, 105 AMER. J. OF PUB. HEALTH. 240 (2015).

²³⁹ Sbeglia et al., *supra* note 233, at 412; *see also* Scheuerman et al., *supra* note 223.

²⁴⁰ Sbeglia et al., *supra* note 233, at 412.; Scheuerman et al., *supra* note 223, at 716 (finding that increased parental monitoring “may serve as an aggravating factor for the relationship between parenting practices and delinquency.”).

²⁴¹ *See* Cassandra Flick & Kimberly Schweitzer, *Influence of the Fundamental Attribution Error on Perceptions of Blame and Negligence*, 68 EXPERIMENTAL PSYCH. 175, 176 (2021).

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.*

²⁴⁵ Shirin Bakhshay, *The Dissociative Theory of Punishment*, 111 GEO. L.J. 1251, 1255 (2023);

because internal attributions are seen as stable, part of a person's character. If someone commits a crime because of internal, dispositional reasons they are unlikely to be rehabilitated.²⁴⁶ Attribution theory plays an important role in how people make sense of the world and how they reason about responsibility for bad acts.

Similar to research on the fundamental attribution error and the way individuals reason about their own success and failures, parents tend to reason differently about their own children compared to children in general.²⁴⁷ They see positive outcomes as reflective of their child's abilities and personality—internal and stable traits—and they tend to view negative or problematic behaviors as a function of the social environment and external factors, such as difficult peer interactions, bullying by others, or unsupportive teachers.²⁴⁸ These causal factors are seen as temporary and outside the child's control, enabling parents to minimize bad behaviors and delay responding to them.²⁴⁹ In attributing problematic or antisocial behavior to external forces, parents may fail to see them as indicative of something serious.²⁵⁰ Moreover, parents who minimize their children's problematic or antisocial conduct and attribute it to external forces are less likely to think their actions will influence their child's behavior. Making external attributions for behavior shifts the focus of any potential intervention or change away from the parents and their child to social and environmental factors that they may think they have limited control over.

C. Parental Awareness and Resistance

While it is common for parents of children with antisocial or aggressive behaviors to make external attributions for that behavior, it is even more common for parents to view any problematic conduct as isolated or to be largely unaware when their child acts out. Foreseeability doctrine, which asks whether a parent knew or should have known of a potential risk of violence, does not reflect the psychological reality of parenting where parents cannot appreciate the severity of risks posed by their children and are psychologically motivated to downplay any potential warning signs.

The growing research on red flags and warning signs in children who perpetrate mass shootings documents the behaviors, developmental factors, personality traits,

Timothy Hartnagel & Laura Templeton, *Emotions About Crime and Attitudes to Punishment*, 14 PUNISHMENT & SOC. 452 (2012); Shadd Maruna & Anna King, *Once a Criminal, Always a Criminal?: Redeemability and the Psychology of Punitive Public Attitudes*, 15 EURO. J. ON CRIM. POL'Y & RSCH. 7 (2009); de Vel-Palumbo, M., Howarth, L., & Brewer, M. B. (2019). 'Once a sex offender always a sex offender'? Essentialism and attitudes towards criminal justice policy. *Psychology, Crime & Law*, 25

²⁴⁶ Bakhshay, *supra* note 243; see Hartnagel & Templeton, *supra* note 243; Maruna & King, *supra* note 243.

²⁴⁷ Miller, *supra* note 220.

²⁴⁸ See David A. Murphey, *Constructing the Child: Relations Between Parents' Beliefs and Child Outcomes*, 12 DEV. REV. 199, 220 (1992); Santana et al., *supra* note 218, at 3918–20.

²⁴⁹ Miller, *supra* note 220; Murphey, *supra* note 246.

²⁵⁰ De Los Reyes & Kazdin, *supra* note 219.

and social contextual variables that children who commit mass violence share.²⁵¹ These include a history of fascination with violence and guns, mental health struggles and depression, journal entries or online posts that contain suggestions of violence, withdrawal and isolation, and persistent or obsessive thoughts about self-harm or harm to others.²⁵² While the list of warning signs is becoming well-established among experts, most parents of children who engage in this conduct have no prior knowledge regarding their child's propensity toward violence.²⁵³ This is for a variety of reasons, including that most of the warning signs occur in private or online spaces that parents are not privy to. Writings or posts that either suggest or openly declare an obsession with violence typically happen in online fora that are kept secret from family members or in personal journals that are not shared.²⁵⁴ In Ethan Crumbley's case, his online history showed that he was obsessed with violence and gun culture and that he posted images and comments on social media that valorized acts of violence.²⁵⁵ But these discussions happened in online spaces that his parents were not aware of, and which most of the participants in never act on. He also kept a private journal where he recorded some of his disturbing thoughts and made notes about his plan to commit a mass school shooting.²⁵⁶ His parents knew about the journal but did not read it out of consideration for Ethan's privacy. If there is no outward indication that anything is wrong, parents have no incentive to monitor their child's online behavior or diary entries. When a child is involved in an aggressive incident at school, such as a fight, parents are more likely to seek help or otherwise intervene. But concerning behaviors and warning signs that happen internally, in thoughts and writings, or in private posts are very hard to identify and address.²⁵⁷

Research has found that it is not the severity of mental health issues, but the visibility of those issues and how much they interfere with a child's day-to-day life, that is likely to lead parents to seek out counseling or psychiatric help.²⁵⁸ When a child's mental health issues result in "functional impairment," such as an inability to attend school or complete work, parents are more likely to take action.²⁵⁹ But many of the children who engage in acts of violence are able to function in school.

²⁵¹ See, e.g., LANGMAN, *supra* note 33.

²⁵² JAMES SILVER, ANDRE SIMONS & SARAH CRAUN, A STUDY OF THE PRE-ATTACK BEHAVIORS OF ACTIVE SHOOTERS IN THE UNITED STATES BETWEEN 2000 AND 2013 (2018); Shaila Dewan, *What Are the Real Warning Signs of a Mass Shooting?*, N.Y. TIMES (Aug. 22, 2022), <https://www.nytimes.com/2022/08/22/us/mass-shootings-mental-illness.html>; SANDY HOOK PROMISE, *Prevent Gun Violence By Knowing the Signs*, <https://www.sandyhookpromise.org/resources/warning-signs/>.

²⁵³ Jolie Bodner Zangari, *An Unprecedented Verdict, Expanding Parental Liability for Children's Violent Crimes*, 39 CRIM. JUST. 7, 11 (2024); LANGMAN, *supra* note 33; SANDY HOOK PROMISE, *supra* note 250.

²⁵⁴ LANGMAN, *supra* note 33; SANDY HOOK PROMISE, *supra* note 250.

²⁵⁵ See Crumbley, 11 N.W.3d at 582.

²⁵⁶ Nissen, *supra* note 2; see also Crumbley, 11 N.W.3d at 582.

²⁵⁷ Sawrikar et al., *supra* note 33.

²⁵⁸ Shaun Liverpool & Julian Edbrooke-Childs, *Associations Between Child Mental Health, Carer Worry and Help-Seeking*, 26 J. CHILD HEALTH CARE 355, 362 (2021).

²⁵⁹ *Id.* at 361–62.

Ethan Crumbley's parents, for example, had not been told by the school that Ethan was unable to complete his work or participate in class.²⁶⁰ The school's disciplinary record for Ethan indicated some concerns about a change in academic performance, but it was not so significant that his parents were informed.²⁶¹ From their perspective, Ethan was a good student who was going through typical struggles trying to make friends and find a peer group with which he fit in.

In the absence of overt signs of distress or violence, it is challenging for parents to appreciate what is going on with their children. Parents who may notice changes in their child's behavior or affect do not interpret those changes as indicating mental health problems. Rather, they are viewed as normal developmental phases during which many children struggle to find the right peer group and tend to pull away as they age.²⁶² Parents who normalize their children's behavior or think they may grow out of it tend to delay recognition of mental health issues and resist seeking help.²⁶³ One recent study found that fewer than one-third of parents recognized mental health problems in their children.²⁶⁴ Even if a parent does recognize behavior as abnormal, they may believe that "the problems are time-limited and may not fully recognize the problem as a mental health concern," making them less likely to seek professional help.²⁶⁵ Parents are simply not primed to see their children through the lens of mental health or trained to identify potential risk. Even studies of law enforcement officers find that trained officers do not consistently interpret warning signs of future violence correctly.²⁶⁶ And there is insufficient evidence that mental health professionals can identify would-be perpetrators of mass violence.²⁶⁷

While many parents may be unaware when their child is struggling with mental health issues, those that are aware often have a negative or avoidant reaction and resist seeking help.²⁶⁸ Many parents' initial response to learning that their child is having difficulties is to minimize the extent of the problem and wait until it

²⁶⁰ Transcript of Sentencing, *supra* note 105, at 99.

²⁶¹ *Id.*

²⁶² Stephen Hinshaw, *The Stigmatization of Mental Illness in Children & Parents: Developmental Issues, Family Concerns, and Research Needs*, 46 J. OF CHILD PSYCH. & PSYCHIATRY 7 (2005).

²⁶³ Oliver G. Johnston & Jeffrey D. Burke, *Parental Problem Recognition and Help-Seeking for Disruptive Behavior Disorders*, 47 J. BEHAV. HEALTH SERVS. & RSCH. 146, 151 (2020).

²⁶⁴ Villatoro et al., *supra* note 33.

²⁶⁵ Johnston & Burke, *supra* note 261, at 152.

²⁶⁶ For example, as part of the Youth Violence Prevention project, law enforcement officers were surveyed about their ability to accurately identify warning signs. The officers only identified drawings of violent images, including guns, as a serious risk factor a minority of the time. DEWEY CORNELL & JENNIFER MAENG, NAT'L CTR. FOR SCH. SAFETY, SCHOOL THREAT ASSESSMENT TOOLKIT (2024), <https://www.nc2s.org/wp-content/uploads/2024/03/School-Threat-Assessment-Toolkit-Full.pdf>.

²⁶⁷ Piemonte & Metzl, *supra* note 16, at 402; see Metzl & MacLeish, *supra* note 236 (explaining that this is largely because the research is observational, not experimental and therefore cannot be the basis for clear causal predictors).

²⁶⁸ Rachel Elisabeth Riggs et al., *Exploring Predictors of Parents' Negative Emotional Response to Adolescents' Mental Illness Disclosures*, J. CHILD HEALTH CARE, May 20, 2025, at 1, 2, <https://journals.sagepub.com/doi/10.1177/13674935251344649> [<https://doi.org/10.1177/13674935251344649>].

subsides.²⁶⁹ Parents that are more likely to intervene or seek help are those who have high mental health literacy.²⁷⁰ But parents who hold stigmatizing beliefs about depression or mental illness or who are distrustful of mental health professionals tend to respond negatively to their children's signs of distress or disclosures regarding their mental health.²⁷¹ Parents may both be less likely to appreciate their children's mental health issues and less likely to act on any concerns they may have because of fear that their children will be labeled and stigmatized, with negative consequences.²⁷² Parents may also be concerned that seeking help will lead to themselves being blamed for failing their child, and fear the repercussions of personal stigma.²⁷³ And parents may be the very ones who view mental health issues negatively and are resistant to mental health treatment or counseling.²⁷⁴ Thinking that mental health issues are made up or overblown, that children should be able to work through their problems on their own, and that mental health treatment is a form of weakness are common beliefs among certain segments of the public.²⁷⁵ In fact, the evidence presented at trial to show that Ethan Crumbley was asking his parents for help with his mental health, his text messages to them and to his friend, suggests that anti-mental health treatment prejudice played a role in their response. According to the evidence at trial, the Crumbleys minimized the severity of Ethan's problems and encouraged him to persevere. They downplayed his claims that he was having delusions, stating they thought he was joking about his hallucinations and that it was part of a longstanding, family prank.²⁷⁶ Ethan told a friend via text that in response to disclosing that he was feeling bad, his father had given him pills and told him to "suck it up."²⁷⁷ And in conversations with each other, his parents discussed his emotional state, his depression about his

²⁶⁹ See Santana et al., *supra* note 218, at 3918–20; Nina E. Cerfolio, *Hear No Evil, See No Evil: Parental Neglect and Violent Kids*, PSYCH. TODAY (Mar. 4, 2025), <https://www.psychologytoday.com/us/blog/esprit/202503/hear-no-evil-see-no-evil-parental-neglect-and-violent-kids> (finding that denial of the existence or severity of mental illness is common among parents).

²⁷⁰ Riggs et al., *supra* note 266, at 1, 7, 9.

²⁷¹ *Id.*

²⁷² Johnston & Burke, *supra* note 261, at 155; Villatoro et al., *supra* note 33; Anya Kaushik et al., *The Stigma of Mental Illness in Children & Adolescents: A Systematic Review*, 243 PSYCHIATRY RSCH. 469 (2016).

²⁷³ Johnston & Burke, *supra* note 261, at 155 (Parents wrestling with these issues who participated in a study reported fear of blame and judgment from both peers and from mental health professionals who might interpret their child's issues as their fault.).

²⁷⁴ Colette T. Burke et al., *Are Parents the Key? How Parental Suicide Stigma and Suicide Literacy Affect Help-Seeking Attitudes and Intentions for Their Child*, 52 J. YOUTH & ADOLESCENCE 2417, 2425 (2023); Patrick Corrigan et al., *The Impact of Mental Illness Stigma on Seeking and Participating in Mental Health Care*, 15 PSYCH. SCI. 37 (2014).

²⁷⁵ This is particularly true of older men. See Ryan McKelley, *Men's Resistance to Seeking Help: Using Individual Psychology to Understand Counseling-Reluctant Men*, 63 J. OF INDIVIDUAL PSYCHOL. 1 (2007); Kristin Reynolds et. Al, *Older Adults' Narratives of Seeking Mental Health Treatment: Making Sense of Mental Health Challenges and "Muddling Through" to Care*, QUAL. HEALTH RES. 10, 1517, 1518 (2020); see also Santana et al., *supra* note 218, at 3921.

²⁷⁶ Jennifer Crumbley Sentencing Memorandum at 9, *People v. Crumbley* (Apr. 5, 2024).

²⁷⁷ People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9 n.2.

grandmother's passing and his friend moving away, and determined that it was a phase he would grow out of.²⁷⁸

Relatedly, fear of receiving a negative reaction or anticipating a futile response from one's parents can prevent children from sharing their mental health concerns. The evidence in the *Crumbley* case documented that Ethan did not share the full extent of his mental health struggles with his parents or take more action to get help himself because he thought his parents might get mad.²⁷⁹ At one point, Ethan texted his friend that he wanted to call 911 because of the delusions he was having, but did not because he thought his parents would be "really pissed."²⁸⁰ This is consistent with research that finds children are less likely to share their symptoms with parents who express negative views of mental health issues or who lack an awareness around mental health.²⁸¹

Even when parents are aware their child is experiencing emotional or mental health issues, that does not mean that they are able to appreciate how those issues could manifest as violence. Research on violence prevention has found that multiple sources of intervention—family members, teachers, school counselors, members of church or community groups, police officers, and social workers—are necessary to adequately identify students who pose a risk of violence and to successfully intervene.²⁸² Parents alone are psychologically predisposed to downplay warning signs and, on their own, lack the training and resources to identify and address risk. This is especially true when there is an absence of explicit violent or aggressive behavior, as opposed to thoughts or writings, leading up to an act of mass violence. Despite this empirical reality, the law places the onus on parents to surveil their children and places the blame on them when they fail to appreciate the severity of a situation.

D. Legal Cudgels and Parental Surveillance

One legislative response to the increase in acts of violence perpetrated by children has been to shift responsibility for monitoring children's behavior to parents under threat of criminal sanction. There has been a spate of legislation directed at encouraging parents to monitor their children.²⁸³ These parental accountability laws use the threat of criminal punishment to encourage parents to surveil their children's behavior and thoughts, both online and offline, or risk being held criminally responsible when their children act out.²⁸⁴ But it is unclear what these laws accomplish, other than outsourcing a public safety function to parents

²⁷⁸ *People v. Crumbley*, 11 N.W.3d 576, 581–82 (Mich. App. 2023).

²⁷⁹ See generally *id.*; see also Miller, *supra* note 3.

²⁸⁰ Miller, *supra* note 3.

²⁸¹ Johnston & Burke, *supra* note 261, at 155.

²⁸² Leland, *supra* note 98; see also CTRS. FOR DISEASE CONTROL AND PREVENTION, YOUTH RISK BEHAVIOR SURVEY DATA SUMMARY & TRENDS REPORT: 2013–2023 1, 54–57 (2024), <https://www.cdc.gov/yrbs/dstr/pdf/YRBS-2023-Data-Summary-Trend-Report.pdf>.

²⁸³ Sarah Swan, *Home Rules*, DUKE L. J. 823, 840 (2015).

²⁸⁴ *Id.*

with no clear guidance or resources.²⁸⁵ These laws pressure and incentivize parents to be hypervigilant surveyors of their children's behavior in ways that are counterproductive to children's socio-emotional development, and which actually reduce the likelihood of disclosure of their mental health issues.

Research from countries that have introduced criminal parental responsibility laws has found that they do not reduce youth delinquency, but impose additional burdens on parents that can erode the parent-child relationship.²⁸⁶ These laws have actually been shown to reduce parental vigilance and engagement.²⁸⁷ Some parents report reluctance to ask their children too much about their lives for fear that it could lead to liability, creating perverse incentives for parents to be less engaged and aware of their child's behavior.²⁸⁸ They are also less likely to report any concerning behavior, for fear that they will be penalized either criminally or by the family court system.²⁸⁹

If the goal is to deter the behavior of children who engage in criminal conduct and parents who arguably fail to intervene and prevent their criminal acts, the empirical story suggests that punishing parents after the fact is not effective.²⁹⁰ These laws have not had an appreciable effect on youth criminality and can be counterproductive. Rather policies and resources aimed at empowering parents to help their children and encouraging prosocial bonds without the threat of legal sanction are more effective in long-term studies.²⁹¹ This is especially true when parents are provided with resources and education on how to help children struggling with emotional or mental health issues.

Expanding carceral surveillance and control over families is a gamble that can lead to worse outcomes for families, and less trust in legal and government institutions that might otherwise provide help and support.²⁹² While there is little reason to believe that laws that require parental monitoring or laws that criminalize parents after the fact are effective crime prevention tools, they are effective at reaffirming the primacy of criminal punishment as the response to seemingly intractable problems and legitimizing the outsourcing of responsibility for keeping communities safe to families.

²⁸⁵ *Id.* at 899.

²⁸⁶ Le Sage & De Ruyter, *supra* note 139, at 795.

²⁸⁷ See Cynthia Godsoe & Shanta Trivedi, *Parenting as a Crime*, 15 CAL. L. REV. ONLINE 13 (2024).

²⁸⁸ *Cf. id.* (discussing parents' likelihood of being less engaged as a result of parental liability laws).

²⁸⁹ See ROBERTS, *supra* note 107; Sbeglia et al., *supra* note 233, at 410.

²⁹⁰ Godsoe & Trivedi, *supra* note 285, at 22.

²⁹¹ Madeleine Stevens, *Parents' Experiences of Services Addressing Parenting of Children Considered At-Risk for Future Antisocial and Criminal Behavior*, 95 CHILD. & YOUTH SERVS. REV. 183, 188 (2018).

²⁹² Sbeglia et al., *supra* note 233, at 410.

IV. A PSYCHOLOGICALLY INFORMED APPROACH TO MASS SCHOOL SHOOTINGS

Leveraging insights from psychology and the social sciences about how to respond to a perceived failure of parenting that has criminal consequences is critical, especially at a time when children are struggling with mental health issues at unprecedented levels,²⁹³ the constant use of social media has led to higher incidences of cyberbullying and forms of self-harm, and the prevalence of gun violence and mass shootings involving children has increased.²⁹⁴ The research suggests a focus on three different prescriptive strategies. First, when a theory of legal culpability rests on a parent's failure to intervene to get medical or mental health treatment for a child who is displaying warning signs, psychological or psychiatric experts should be used to evaluate the child's risk factors and provide an expert opinion that can inform legal determinations regarding gross negligence. Jury instructions should also incorporate some of the psychological research on hindsight bias and established warning signs that have been correlated with mass shooting events.²⁹⁵ Second, researchers, government actors, and institutions should do more to inform parents, educators, and community members about mental health—risk factors for mental health issues, warning signs, and guidelines on when it is appropriate to intervene. In Ethan Crumbley's case, although the school had documented a few concerning incidents, the school counselors lacked uniform guidance on when to proactively intervene or clear steps for handling perceived mental health concerns that fell short of an imminent, credible threat. This will require additional research to support early intervention strategies and bolster the developing research on warning signs. Third, given that many school shootings and shootings by children involve an unsecured firearm, states should pass safe storage laws and other established measures that reduce gun deaths as a first line of defense and deterrence and pursue gun violence prevention research.

A. Expert Testimony and Jury Instructions Regarding Child Mental Health and Red Flag Warnings

The prosecution's theory of liability for James and Jennifer Crumbley rested largely on their failure to appreciate the severity of their son's mental health issues and take steps to intervene or get treatment. Those arguments relied on lay determinations that the Crumbleys were grossly negligent and failed to perceive the danger their son posed to others. They did not rely on expert testimony to establish how serious Ethan Crumbley's mental health problems were or how the signs he was displaying would appear to an ordinary parent. The prosecution did retain two forensic psychology experts, Dr. Jillian Peterson and Dr. Dewey Cornell, to testify regarding the risk factors and warning signs that precede acts of mass violence.²⁹⁶

²⁹³ CTRS. FOR DISEASE CONTROL AND PREVENTION, *supra* note 280..

²⁹⁴ Alex Leeds Matthews, Amy O'Kruk & Annette Choi, *School Shootings in the US: Fast Facts*, CNN (Sept. 24, 2025), <https://www.cnn.com/us/school-shootings-fast-facts-dg>.

²⁹⁵ See Michael Conklin, *I Knew It All Along: The Promising Effectiveness of a Pre-Jury Instruction at Mitigating Hindsight Bias*, 74 Baylor L. Rev. 307 (2022); see, e.g., LANGMAN, *supra* note 33.

²⁹⁶ Aileen Wingbland, *Judge Says 'No' to Mass Shooter Expert Testimony in Ethan Crumbley*

Their research supports the “pathway to violence” model that indicates that, in most cases, mass shootings do not occur out of the blue once someone has “snapped,” but are the culmination of a number of identifiable warning signs.²⁹⁷ This is not a predictive model, and the experts testified during the preliminary hearing that there is no way to accurately determine if someone will engage in an act of mass violence, nor is it clear that mass shootings can be thwarted.²⁹⁸ The experts also did not opine on the reasonableness or appropriateness of the Crumbleys’ response to their son’s behavior. Rather, the expert testimony they offered was general and would have provided a theoretical and empirical basis to argue that, in cases like the Oxford High School shooting, it is common for the would-be perpetrators to display earlier antisocial behaviors and a number of warning signs leading up to the shooting.²⁹⁹

Judge Matthews, who oversaw the Crumbleys’ trial, disallowed the expert testimony on the grounds that it was of questionable relevance and reliability, noting that whether the parents acted reasonably is something the jury could decide without expert testimony.³⁰⁰ This ruling highlights the novelty of this area of research. But the ruling also suggests that research regarding patterns of conduct that precede a mass shooting event, alone, has little relevance to the question of parental liability. What is relevant is what a reasonable parent can be expected to know and understand regarding the risk posed by their child. Going forward, testimony provided by psychiatric experts on warning signs related to mass shootings could be provided alongside expert testimony that speaks to the prevalence of mental health issues among adolescents and the relative rates of children with these sorts of issues who engage in self-harming behavior, other-harming behavior, or who do not act out at all. Additionally, testimony that discusses typical parental responses to children’s mental health issues would be instructive. While the research may point to a growing consensus that there are common warning signs that precede mass shootings by adolescents like those in the *Crumbley* case, it is also true that this research is new, developing, and relatively unknown. The relevant question for a determination of the Crumbleys’ liability is whether parents in their situation would have seen and appreciated the warning signs, not whether it was likely Ethan Crumbley would act out violently. If parents

Parents’ Trial, OAKLAND PRESS (Nov. 22, 2022), <https://www.theoaklandpress.com/2022/11/22/judge-says-no-to-mass-shooter-expert-testimony-in-ethan-crumbley-parents-trial/>.

²⁹⁷ *Id.*

²⁹⁸ Baldas, *supra* note 30 (“[W]e can’t predict who is going to be a mass shooter”); *see also* Speaking of Psychology, *How to Stop Mass Shootings*, with Jillian Peterson, PhD, AM. PSYCH. ASS’N (June 7, 2023), <https://www.apa.org/news/podcasts/speaking-of-psychology/mass-shootings> (quoting Jillian Peterson, PhD, stating that we are not able to predict mass shooters because “99.99%” of people, even those with warning signs, would never do it); Stuart Ritchie, *Predicting the Next School Shooting May Never Be Possible*, 23 EDUC. NEXT 25, 28 (2023) (quoting Dr. Dewey Cornell saying “the barriers to conducting rigorous research on the prediction of mass violence seem insurmountable” and opting for schools to be methodically reactive to threats of school violence). *See also* Piemonte & Metzl, *supra* note 16, at 409.

²⁹⁹ *See* Transcript of Dr. Dewey Cornell’s Testimony, *supra* note 61, at 116.

³⁰⁰ Opinion and Order of November 18, 2022, *People v. Crumbley*, 2022 Mich. Cir. LEXIS 501 (2022) (No. 2022-279989-FH, No. 2022-279990-FH).

are going to be held responsible for failing to appreciate and intervene in their children's lives, standards of parental conduct should be established by experts who can attest to what a reasonable parent would do given the same information the Crumbleys had. Psychological expertise can add an objective dimension to the question of reasonable foreseeability and provide an empirically grounded perspective on how parents respond, as opposed to relying on narratives and lay opinions about what a good parent would do.

Relatedly, jury instructions could provide jurors with more information about how to make sense of the evidence presented regarding the Crumbleys' gross negligence and awareness regarding Ethan's intentions. Instructions could include the established list of warning signs as well as indicate which signs would be appreciable to parents or teachers as opposed to warning signs that may be imperceptible because they reflect internal thoughts and feelings that are not necessarily shared. Jury instructions that include psychological findings are routinely used with respect to eyewitness identification and statements made during interrogations to help educate jurors regarding the credibility and accuracy of those types of evidence.³⁰¹ Similar instructions to help jurors make sense of evidence regarding parental knowledge could go a long way to combatting the intuitions lay people may have about the parents of a school shooter.

Jury instructions should also include research findings regarding hindsight bias and encourage jurors to base their judgments on the facts presented that go to the issue of what the parents knew or should have known, as opposed to relying on the severity of the harm caused to impute knowledge and blame to parents. Federal jury instructions that include admonitions regarding cognitive heuristics such as hindsight bias have been shown to be effective in reducing its effect on juror perceptions.³⁰²

B. Mental Health Research, Education, and Awareness

A second related recommendation is to focus on mental health research, education, and awareness, particularly for adolescents. Schools, public health officials, and community institutions should be at the forefront of a campaign to raise awareness regarding adolescent and young adult mental health, warning signs of antisocial or violent behavior, and when it is appropriate to report a concern or intervene. The research in this area is growing and generating a database of both warning signs and best practices for how to address various types of mental health issues that present in early adolescence.³⁰³ But more research is needed to better

³⁰¹ See e.g., Joel D. Lieberman, *The Psychology of the Jury Instruction Process*, in JURY PSYCHOLOGY: SOCIAL ASPECTS OF THE TRIAL PROCESS: PSYCHOLOGY IN THE COURTROOM 129 (2016); Don Read & Sarah Desmarais, *Expert Psychology Testimony on Eyewitness Identification: A Matter of Common Sense?*, in EXPERT TESTIMONY ON THE PSYCHOLOGY OF EYEWITNESS IDENTIFICATION 115 (2009); Brian Bornstein & Joseph Hamm, *Jury Instructions on Witness Identification*, 48 Ct. Rev. at 49 (2012).

³⁰² Conklin, *supra* note 293.

³⁰³ JILLIAN J. TURANOVIC, TRAVIS C. PRATT, TERESA C. KULIG & FRANCIS T. CULLEN,

understand the constellation of factors that can culminate in acts of mass violence and effective strategies for early identification and intervention. Until recently, this has been an severely underfunded area and studies on gun violence prevention have stalled.³⁰⁴ Even now, as research funding has been reinstated, resistance to science and public health expertise is growing, abetted by state actors who reinforce the narrative that parents know best regarding how to raise and care for their children.³⁰⁵ At this political moment, the great irony is that parents are receiving consistent messaging that they should trust their own instincts and judgment when it comes to how to parent, giving wide berth to parents who may distrust the mental health industry and who may fear medical diagnoses that stigmatize or otherwise limit children. In this climate, school counselors and mental health advocates are undervalued and under resourced to address the needs of adolescents. Even with adequate training, many school counselors are overwhelmed with the number of students that they are responsible for and do not have the capacity to adequately check in with students.³⁰⁶

Given this tension, it is important for local community institutions—both formal and informal—to step in to offer support and guidance on how to manage the complex issues that adolescence can bring. Public schools, church groups, community organizations such as the Girl Scouts, Boy Scouts, and National League of Young Men can offer workshops, classes, and resources to educate their members about potential warning signs and when to seek professional help. Local community groups are critical partners and points of intervention when it comes to adolescent health and well-being, and they can provide children with support systems they may be missing at home.³⁰⁷ Part of this requires destigmatizing mental health issues and creating safe spaces to discuss them. But it is also a way to equip parents, community leaders, and school officials with the most up-to-date research regarding the link between mental health and violence and offer parents guidance on how to respond when their child displays concerning or worrying behavior.

CONFRONTING SCHOOL VIOLENCE (David Weisburd ed., 2022); CORNELL & MAENG, *supra* note 264.

³⁰⁴ Jessica Beard & Elinore Kaufman, *US Government Cuts Imperil Life-Saving Gun Violence Research. As Doctors, We Fear for the Future*, THE GUARDIAN (Mar. 28, 2025), <https://www.theguardian.com/us-news/2025/mar/28/trump-cuts-gun-violence-research>; Jessica Roche et al., *The History of Firearm Injury Prevention Research*, in HANDBOOK OF GUN VIOLENCE 8, (Nicholas D. Thomson ed., 2025).

³⁰⁵ See e.g., Robert F. Kennedy, Jr., *RFK Jr: HHS Moves to Restore Public Trust in Vaccines*, U.S. DEPT. HEALTH & HUMAN SERVS. (June 9, 2025), <https://www.hhs.gov/press-room/wsj-kennedy-op-ed-restore-public-trust-in-vaccines.html>; THE WHITE HOUSE, *Fact Sheet: President Donald J. Trump Empowers Parents, States, and Communities to Improve Education Outcomes*, (Mar. 20, 2025), <https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-empowers-parents-states-and-communities-to-improve-education-outcomes/>.

³⁰⁶ ANGELA MANN ET AL., COPS AND NO COUNSELORS: HOW THE LACK OF SCHOOL MENTAL HEALTH STAFF IS HARMING STUDENTS 4 (2019), <https://www.aclu.org/publications/cops-and-no-counselors>.

³⁰⁷ See Pamela Hull, Barbara Kilbourne, Michelle Reece & Baqar Husaini, *Community Involvement and Adolescent Mental Health: Moderating Effects of Race/Ethnicity and Neighborhood Disadvantage*, 36 J. CMTY. PSYCH. 534, 545–47 (2008); Scarola, *supra* note 208, at 1065–74; see also Leland, *supra* note 98.

Beyond education, schools can work with medical and psychological professionals to update protocols for how to respond when children display warning signs in school. In Ethan Crumbley's case, while the school had documented a few incidents of his behavior it found concerning, the school counselors did not have uniform guidance on when to proactively intervene or clear steps for handling a perceived mental health concern. They did not mandate earlier intervention and even on the fatal day of the shooting, with Ethan's drawings in hand, they did not require him to be sent home from school or to be taken for psychiatric evaluation.³⁰⁸ While it is easy to fault both Ethan Crumbley's parents and the school administrators for failing to take this step, if the school had a clear protocol for requiring mental health evaluations before something as worrisome as drawing images of guns and gunshots victims or as a routine part of its health screening, it would shift some decision-making responsibility away from parents and onto professionals with mental health expertise. Of course, mandating psychological intervention can be a slippery slope where nontraditional students are caught in a net that targets difference. Any institutional guidelines for violence prevention and intervention should be based on the developing research on the pathways to violence risk factors, and not a broad directive to intervene with any child who seems to be having a hard time.

C. Safe Storage Gun Laws and Gun Violence Prevention Research

Third, given that many school shootings and shootings by children involve an unsecured firearm, states should pass safe storage laws as a first line of defense and deterrence for adults who do not securely store their guns.³⁰⁹ While these laws do not necessarily mean that gun violence will not occur, they create barriers that can impose enough of a burden that it will deter or slow someone from acting out with the gun. At the time of the Oxford High School shooting, Michigan did not have a safe storage law,³¹⁰ although that has since changed.³¹¹ For the prosecutor who wanted to hold the Crumbleys liable for their alleged negligence, charging them with a violation of a straightforward gun safety law was not an option. It is an open question whether the prosecutor would have brought involuntary manslaughter charges if she could have imposed criminal liability on them through more straightforward mechanisms.

Putting aside the specifics of the Crumbley case, a body of research demonstrates that while gun control laws do not necessarily prevent gun violence, states that have more robust laws have a lower incidence of these types of shootings,

³⁰⁸ See White, *supra* note 2.

³⁰⁹ Everytown Rsch. & Pol'y, *Which States Have Child-Access and/or Secure Storage Laws?*, EVERYTOWN RSCH., <https://everytownresearch.org/rankings/law/secure-storage-or-child-access-prevention-required/> (last updated Jan. 15, 2025).

³¹⁰ Johncox, *supra* note 52.

³¹¹ Michigan's safe storage law went into effect on February 13, 2024. See MICH. COMP. LAWS § 28.429 (2025); see also Johncox, *supra* note 52.

in part because it is harder to access firearms.³¹² Research has found that safe storage laws, red flag laws, and other types of gun regulations reduce the number of gun deaths in a community.³¹³ Laws that are based on the safe maintenance of guns without necessarily seeking to remove guns may be more politically palatable and have appreciable public health effects.³¹⁴ Safe storage laws, which do not restrict gun ownership but impose requirements for how guns must be kept in homes with minors, are a relatively easy way to create an additional safeguard.

More broadly, the current epidemic of gun violence is a result, in part, of America's lax gun control laws and love affair with gun rights and gun ownership. Reducing or eliminating mass shootings will require a reckoning with gun culture and a cultural shift away from valorizing gun violence. One of the warning signs identified by the pathways to violence model is an obsession with guns and weapons.³¹⁵ This was true in Ethan Crumbley's case. He posted pictures on social media romanticizing his father's guns and the time he spent at the shooting range.³¹⁶ He researched different types of guns and ammunitions online.³¹⁷ He looked up and drew images of guns and scenes of shootings.³¹⁸ But his fascination with guns was largely accepted as typical of a young boy. On its own, this fascination is not enough to set off alarms because gun ownership is normalized. Tackling the social and cultural forces that legitimize guns and lead to the glamorization of gun violence is a gargantuan undertaking, but it may be necessary to stem the tide of gun violence in America. Funding research that examines gun violence prevention strategies and analyzes the protective factors that reduce gun violence even when guns are available is an important part of this endeavor.³¹⁹

CONCLUSION

This Article offers a diverse set of critiques of expansive parental criminal liability, especially as a response to the epidemic of mass shootings, and encourages research-based, structural approaches to reduce acts of adolescent violence. It argues that pursuing parental liability in cases where children act independently and extending parental duties to third parties is doctrinally unprecedented and unsound. It claims that this extension is also normatively problematic and focuses attention on parents at the expense of social, structural, and institutional factors. And it provides social psychological evidence that parents are not well-positioned to

³¹² D. Mark Anderson, Joseph J. Sabia & Erdal Tekin, *Child Access Prevention Laws and Juvenile Firearm-Related Homicides*, 126 J. URBAN ECON. 1, 13 (2021); Siegal et al., *The Relation Between State Gun Laws and the Incidence and Severity of Mass Public Shootings in the United States, 1976–2018*, 44 LAW & HUM. BEHAV. 347, 354–56 (2020). This research is nuanced and careful not to draw causal inferences from gun control legislation.

³¹³ Beard & Kaufman, *supra* note 302.

³¹⁴ Piemonte & Metzl, *supra* note 16, at 404, 405.

³¹⁵ TURANOVIC, PRATT, KULIG & CULLEN, *supra* note 301; CORNELL & MAENG, *supra* note 264.

³¹⁶ People's Brief in Support of People's Response to Defendant's Motion to Quash, *supra* note 40, at 9–10.

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ Piemonte & Metzl, *supra* note 16, at 404, 405.

understand and intervene when their children are struggling with mental health issues and may pose a danger to themselves or others, undermining legal liability premised on foreseeability.

The socio-cultural and legal norms of parental care and control over minor children empower parents to see themselves as the experts on their children and reject attempts at government interference into parenting decisions, including when their child may need psychological or psychiatric interventions. But parents are not better situated to appreciate when their children present a risk of harm to others, and in fact have cognitive biases that make recognizing their children's struggles and faults more challenging. Psychology research on mental health and violence prevention suggests that relying on multiple stakeholders, including state actors, to identify warning signs and intervene when a child is struggling and may pose a risk is the best way to stop adolescent acts of violence before they happen. But the law has yet to incorporate this research into how it approaches liability for acts of mass violence, focusing exclusively on the individual perpetrator and, increasingly, on parents as an extension of the perpetrator. This approach has many costs to families and few benefits to public safety and ignores the social and structural context in which acts of mass violence occur. Until the law and state actors take seriously the complex and multi-faceted causes of mass shootings, as opposed to focusing on individual bad actors, we will continue to use expansive criminal liability and harsh punishment as the default and, often, only response to these horrific acts, deflecting the role that institutional actors, socio-cultural narratives, and social policy play in enabling mass violence to happen.